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Broken Trusts: The Texas Attorney General Versus the Oil Industry, 1889-1909

by

Jonathan Whitney Singer

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE Doctor of Philosophy

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ABSTRACT

Broken Trusts: The Texas Attorney General
Versus the Oil Industry

by

Jonathan Whitney Singer

The legal history of state antitrust enforcement and the oil industry in Texas illustrates how and why antitrust law contemplated complementary enforcement at the state and federal government level. Historians, economists, and lawyers have concentrated on federal antitrust law and enforcement, ignoring state efforts. Yet for most of the first twenty-five years following the enactment of the Sherman Antitrust Act, federal enforcement efforts were extremely limited, leaving the field to the states. Texas was one of several states that had strong antitrust laws, and whose attorneys general prosecuted antitrust violations with vigor. Political ambition was a factor in the decisions to investigate and prosecute cases against a highly visible target, the petroleum industry, but there was also a genuine belief in the goals of antitrust policy, and in the efficacy of enforcement of the laws. Enforcement efforts were also complicated by the fact that large oil companies provided vital commodities, articles of "prime necessity," to the citizens of Texas and following the discovery of large oil fields, played an increasingly important role in the economies of many Texas communities.

The Texas Attorney General's antitrust enforcement efforts against the oil industry in this time of transition from an agricultural society to an industrial society provide insights into the litigation process, and reveal how well the rhetoric of trust-busting fit with the reality of antitrust enforcement. The antitrust crusade against the petroleum industry also highlights the changing roles of state government in the late nineteenth and early twentieth centuries, particularly the Attorney General's Department. The experience of Texas undermines the view that federal action has always dominated antitrust enforcement efforts
and that antitrust litigation against Standard Oil was ineffective and ineffectual. Rather, the Texas Attorney General's litigations and their results suggest that some states took their role in the dual enforcement scheme seriously and that the measure of success of antitrust enforcement goes beyond the amount of monetary penalties collected, and companies permanently ousted from a state.
ACKNOWLEDGMENTS

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My family has been a constant source of strength over the years in graduate school, and I cannot adequately express what their love and support have meant to me. I am grateful to the members of my family, particularly my mother, Elizabeth Singer, and my brothers, Professor Robert A. Singer, and David A. Singer. My late father never questioned my decision to return to graduate school, and it is to his memory and to my mother that I dedicate this work.
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<td>CAH</td>
<td>Barker Center for American History, University of Texas at Austin</td>
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<td>Conoco</td>
<td>Continental Oil Company</td>
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<td>FTC</td>
<td>Federal Trade Commission</td>
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<td>ICA</td>
<td>Interstate Commerce Act</td>
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<td>RG</td>
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<td>Socal</td>
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INTRODUCTION: ANTITRUST, OIL AND THE TEXAS ATTORNEY GENERAL

Although gasoline prices are still at their lowest level for 20 years when adjusted for inflation, the Justice Department announced Tuesday that it will investigate whether illegal collusion was responsible for the price rise.

Houston Chronicle, May 1, 1996

Texas has the best Anti-trust Laws of any State in the Union. They are clear, specific, comprehensive, and the penalties provided for their violation most severe.
John M. Duncan, An Eye Opener: The Standard Oil Magnolia Compromise (1915)

The aphorism "Ours is a government of law and not of men!" is a utilitarian admonition. We use it in a variety of ways to depict our political system. It is handy to condemn behavior of public men that we neither approve nor understand, and when we approve government action, it becomes a testimonial to the good that can be accomplished by worthy men in a stable system. However it is used, and whatever inferences are drawn from its use, it identifies two major ingredients that fuel the dynamics of our body politic—people and law. The reciprocal impact of these two ingredients upon each other propels the policy-making machinery of our political system.

James G. Dickson, "Law and Politics: The Office of Attorney General in Texas" (1970)

Lawyers, economists, and historians have written extensively about antitrust law, policy, and enforcement in the United States since Kansas enacted the first effective statute to address the problem of large business combinations in 1889, one year before Congress passed the Sherman Anti-Trust Act. Few of the numerous articles and books on antitrust have concerned state antitrust enforcement and policy. Scholars and practitioners have concentrated on antitrust at the federal level. This omission marginalizes state enforcement efforts during the first twenty-five years following the enactment of the Sherman Act, which contemplated dual enforcement efforts by the nation and the states, and the continuing vitality of state law in this field.

The gap in knowledge has recently lessened. Herbert Hovenkamp and James May, among others have helped to renew interest in the role of the states in antitrust policy and enforcement. Recent antitrust efforts directed at Microsoft, for example, are similar to those directed against Standard Oil in the late nineteenth and early twentieth centuries.
Now, as then, the states took the lead in addressing the issue of dominance of a major industry by a single business organization.¹

Scholars have written numerous books and articles about the oil industry and antitrust matters, but typically as part of other issues and problems such as conservation, vertical integration, transportation, competition within the industry, and government policies towards petroleum.² Robert L. Bradley Jr.'s two-volume Oil, Gas, and Government: The U.S. Experience, covers from the 1870s until approximately 1984. It


deals with a number of antitrust issues and concerns, mostly federal, from an economic and political perspective regarding government intervention, not a legal and historical view. Bruce Bringham examined antitrust enforcement by the states and federal government against Standard Oil, its subsidiaries and affiliates between 1890 and 1915. He observed that the states' attorneys general lacked the resources to pursue effective antitrust campaigns against large corporations, and that most of the attorneys general really did not want to succeed. The federal government had the resources, but did not have the will to enforce judgments against Standard Oil in a meaningful way. He concluded that antitrust enforcement during that period, at least, was a futile exercise for the primary purpose of public relations, which effected no change in Standard Oil's dominance in the oil industry and chiefly benefited it and ambitious politicians. Bringhurst's work is limited by the broad scope of his study and the sources that he used. He failed to consider that antitrust litigation and the threat of antitrust action could and did affect the policies and business decisions of companies that might be subject to attack. Magnolia Petroleum attorney Charles Wallace came to a similar conclusion, observing that "Like death and taxes, antitrust is certain—it has always been with us; it will always be with us." which hampered the operations of legitimate, law-abiding oil companies. Author of several works about the early development of the petroleum industry in the Gulf Coast region, economic historian Joseph A. Pratt concluded that Standard Oil provided the main focus for antitrust attention. Texas largely turned a blind eye to the actions of "native" oil companies like The Texas Company and the Gulf companies, while keeping a close watch on Standard Oil firms. This focus on Standard Oil sheltered the new oil companies, allowing them to grow and integrate vertically, becoming mini-Standard Oils, while discouraging Standard Oil from exerting too strong a presence in the new Texas oil fields. Pratt concluded that

Events in the early Texas Oil industry,..., strongly suggest that antitrust and the fear of antitrust had a pervasive and far-reaching effect on the rise of oligopoly in oil. Without these laws, Standard Oil would have faced fewer and weaker competitors in the twentieth century.... The "intent to terrify" that lay behind the Texas antitrust laws helped shape the structure of the modern oil industry.
Pratt's antitrust studies were necessarily limited in scope, but pointed out that the fear of antitrust litigation could and did shape corporate behavior in Texas. An executive's business decision influenced by antitrust considerations would not show up as a victory for antitrust enforcement in the courts, but it was nonetheless a victory.\footnote{See Robert L. Bradley, Jr., *Oil, Gas and Government: The U.S. Experience* (1996); Bruce Brinthurst, *Antitrust and the Oil Monopoly: The Standard Oil Cases, 1890-1911* (1979); Charles Wallace, *Nine Lives: The Story of the Magnolia Petroleum Companies and the Antitrust Laws* (1953), 132; Joseph A. Pratt, *The Growth of a Refining Region* (1980); Joseph A. Pratt and Mark Steiner, 'An "Intent to Terrify": State Antitrust in the Formative Years of the Modern Oil Industry,' 29 *Washburn Law Journal* (1990) 270, 289; and Joseph A. Pratt, "The Petroleum Industry in Transition: Antitrust and the Decline of Monopoly Control in Oil," 40 *Journal of Economic History* (1980) 815-37. Brinthurst's study encompasses antitrust-related litigation against Standard Oil firms throughout the country. It would have been impossible to examine all of the extensive litigation files, and the correspondence and other documents relating to those lawsuits and the investigations that preceded them. The chief limitation on Pratt's excellent articles is simply that they are articles, with all of the limitations there to.}

Texas has had a long, rich tradition of suspicion of "big business," particularly as embodied in corporations chartered in other states, and operating in Texas. This suspicion resulted in antitrust statutes and in regulatory agencies, particularly the multi-faceted Texas Railroad Commission. Texas passed its first antitrust statute in 1889, well before the enactment of the Sherman Act by Congress in 1890. Governor James S. Hogg, newly inaugurated in 1891, presided over the establishment of the Texas Railroad Commission. From 1889 until the present, the Texas Attorney General has regularly engaged in antitrust litigation, uncovering defects and deficiencies in the state antitrust laws. Major revisions occurred in 1895, 1899, 1903, and 1907, marking a consistent commitment to antitrust enforcement in Texas that few states can match.\footnote{On the Texas Railroad Commission, see Pamela M. Fowler, "The Origins of the Texas Railroad Commission," (M.A. thesis, Rice University, 1982) and David Prindle, *Petroleum Politics and the Texas Railroad Commission* (1981).}

While Texans have been leery and suspicious of big business, its political leaders particularly governors, have recognized the importance of attracting capital and industry to the region. This bifurcated attitude towards large corporations has caused endless headaches in endeavoring to predict how various state departments and agencies would react to their business plans and operations in Texas. Despite the conflicting governmental policy imperatives, few multi-state companies were willing to ignore the Texas market.
The state had too many consumers and natural resources that could be developed and exploited.

The discovery of numerous fields of petroleum and natural gas at Spindletop in 1901 marked a change in the course of the industrial development of Texas, one that was bound to clash with ambitious Texas Attorneys General and tough antitrust laws.\(^5\) The petroleum industry in Texas faced persistent scrutiny from the State government, from consumers, and from independent oil men that flourished with the discovery of numerous oil patches. Between 1889 and 1939 the Texas Attorney General's Department and county attorneys filed fourteen antitrust and antitrust-related actions against oil companies. This does not include the numerous hearings and investigations conducted under the auspices of the Texas Railroad Commission after it acquired the power to regulate petroleum pipelines in 1917, and to regulate the conservation of petroleum and natural gas in 1919.\(^6\)

For a threat to be effective, it has to be credible. To generate credibility for antitrust enforcement the Texas Attorney General's Department had to investigate and litigate antitrust actions against suitable, visible, vulnerable targets. Standard Oil subsidiaries and affiliates filled this role admirably. Well-publicized antitrust suits were also a convenient way for ambitious Texas Attorneys General (and local government attorneys) to establish reputations as tough fighters, protecting the Texas interests from big business.\(^7\)

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\(^5\)See John S. Spratt, *The Road to Spindletop: Economic Change in Texas, 1875-1901* (1955) for a discussion of the transition of the Texas economy prior to the discovery of large oil pools. For an examination of Texas politics during the same era, see Alwyn Barr, *Reconstruction to Reform: Texas Politics, 1876-1906* (1970).

\(^6\)In addition to the litigation efforts covered by this dissertation, 1894-1913, there was a suit filed against Gulf in 1904 that left no records in the Texas Attorney General's Department that was apparently quickly dismissed. one suit in mid-1913, five antitrust-related actions instituted by the Texas Attorney General's Department in the 1920s, and a suit of epic proportions filed by Attorney General James V. Allred in 1931 directed against nearly every major oil company in Texas and the American Petroleum Institute that dragged on until 1938. The Texas Attorney General's Department also launched an investigation into gasoline prices in 1915, and another investigation into the petroleum industry in 1922. The Texas Legislature, when faced with the dislocations produced by the discovery of the East Texas oil field, spent the summer of 1931 investigating all aspects of the oil industry. Benjamin F. Looney filed a libel suit after he left the Texas Attorney General's Department in response to criticisms that several newspapers published by A.H. Belo had made about his actions as a trust-buster and foe of big business.

\(^7\)Between 1876 and 1968 thirteen Texas Attorneys General ran for governor and/or U.S. Senator subsequent to being the state attorney general. Five were successful: James S. Hogg, Charles A. Culberson, Dan Moody, James V. Allred, and Price Daniel. All of the five had been involved in antitrust campaigns, or
What follows examines the efforts of the Texas Attorney General to enforce the antitrust laws in a series of related cases against a single industry, petroleum, in a transitional era in which Texas was shifting from a predominantly agricultural society to an industrial one, and was moving from being merely a market for petroleum products to a leading producer. Such a study should yield insights on the litigation process, and the motives and methods of state antitrust enforcement, much as other legal history studies have done, such as Don Fehrenbacher's and Walter Erlich's works on Dred Scott v. Sandford, and Richard Kluger's work on Brown v. Board of Education. It was recently observed in an internet discussion on legal history that most lawyers are poor historians, but,

[I]t should be added that there is fault on the side of historians as well. While legal scholars might comment on cases using faulty history, their history will not be corrected unless or until historians comment on the same legal cases with better history, on a case by case basis, producing better articles for purposes of legal citation than the lawyers, judges, or legal scholars are.

This study will endeavor to address these concerns, and provide something of value to the legal and historical communities.\(^8\)

CHAPTER 1: BATTING WITH A GREAT CORPORATION

No one seemed to care much what poor old Texas got out of the attempted compromise. Read any of the various accounts of these negotiations and you will be impressed with the inherent viciousness of a system which places a money reward on the prosecution of corporations or of any other violators of the law.

Frederick Upham Adams, The Waters Pierce Case In Texas (1908)

I. Trying to Terrify—Fumbling Towards Enforcement

Texas in the 1890s was a land of farmers and mechanics. Their main produce was cotton, lumber from the piney woods of East Texas, and cattle. Industrial products were a small part of the economy, though the effects of industrialism were being felt strongly, particularly from the railroads. For the petroleum industry, it was still the Age of Illumination—oil was used for lubrication, and its principal refined product was kerosene for lamps, not gasoline for engines. Oil had been discovered at Corsicana in the Spring of 1894, and soon would be discovered at Sour Lake, but the pre-Spindletop Texas oil fields were minor compared to those of Pennsylvania. It was a time of economic transition and dislocation. Railroads and corporations strongly affected the people of Texas, but were seemingly beyond their control. Farmers and workers attempted to emulate the corporations by forming cooperative organizations like the Grange, the Southern Farmers’ Alliance, and unions, and political parties such as the Populists.¹

¹For this transitional time in Texas, see generally the following: economy—Spratt, Road to Spindletop; politics—Barr, Reconstruction to Reform, Ralph Smith, "The Farmers Alliance in Texas, 1875-1900," Southwestern Historical Quarterly 48 (January 1945), 346-69. Roscoe Martin, The People's Party in Texas (1933), Bob Charles Holcomb, "Senator Joe Bailey, Two Decades of Controversy," (Ph.D. dissertation, Texas Technological College, 1968); Robert C. Cotner, James Stephen Hogg (1959). Though the internal combustion engine still had not come to prominence in the 1890s, the end of the Age of Illumination was near. Between 1884 and 1899, demand for petroleum products changed noticeably. The use of manufactured gas and electricity as illuminants began to spread significantly by the end of the 1890s, due mainly to technical developments and processes that made both gas and electricity cheaper, and better sources of light than kerosene. By 1899 per capita consumption of kerosene had declined from a peak of 7.4 gallons to 7.1 gallons. Higher kerosene prices from 1894 onward, after a decade of decreasing prices doubtless accelerated the movement towards gas and electricity. The main use of gasoline in the 1890s was in cooking stoves, and several petroleum marketing companies, including Waters-Pierce, sold gasoline-burning stoves. Harold F. Williamson and Arnold R. Daum, The American Petroleum Industry: The Age of Illumination, 1859-1899 (1959), 232-51, 679-84.
The efforts of these agriculturists resulted in public policies aimed against big business, initially the railroads. Texas Attorney General James Hogg had successfully broken up the Texas Traffic Association in 1888, and forced a number of railroads which had moved their corporate offices out of state to return them to Texas. This success helped push through the Texas Trust Act of 1889, and got Hogg elected governor in 1890. Governor Hogg continued his efforts against the railroads, pushing through the legislation that created the Texas Railroad Commission in 1891. At the same time, Hogg saw the need not to drive railroads out of the state; compromises were reached and balances struck. The war on the roads eased. The railroads were only the first, most obvious target. Corporate excesses, real and imagined, took the form of the trust in the popular mind. Denunciations of one trust or another multiplied: the Sugar Trust, the Beef Trust, the Cotton Bagging Trust, the International Harvester Trust, the Textbook Trust, and so on. The largest, most visible model of a trust was Standard Oil. In Texas, Standard Oil's main subsidiary was the Waters-Pierce Oil Company, and it became a target for muckrakers, popular outrage, and political and legal action.\(^2\)

In a way, Henry Clay Pierce and his firm, Waters-Pierce, were victims of his own drive to succeed and marketing skills. Born in Watertown, New York around 1850, Pierce moved to St. Louis, Missouri in 1864, eventually became a bank cashier, saved money, and invested well. When nineteen years old, he had entered into the oil business, joining with John R. Finlay, bought him out, and formed H.C. Pierce & Company. Well before John D. Rockefeller, Sr. founded Standard Oil, before Standard dominated the industry.

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Pierce intended to dominate the untapped market for oil in the Southwest. The region then was still largely a frontier, with a sizable population that would soon grow dramatically, but a populace scattered widely over an area larger than western Europe, with few railroads compared to the more settled eastern areas. Starting in 1870 in southern Missouri, young Pierce traveled on horseback about the region with samples, appointing agents in various towns, training them quickly, and arranging for the future delivery of supplies. With a substantial influx of capital from William H. Waters, a St. Louis businessman, Pierce was able expand his network as rapidly as the railroads spread, and to establish numerous bulk stations for petroleum products.\(^3\)

Many towns and potential customers were not served by railroads in the 1870s. To reach these isolated consumers Pierce invented the tank wagon, a large iron cylinder, or tank, mounted on a horse-drawn chassis with compartments for kerosene and lubricating oil. Coupled with bulk stations and warehouses in railroad towns, and along waterways, this simple device enabled Waters-Pierce to market petroleum products throughout southern Missouri, Arkansas, the Indian Territory, Louisiana, Texas, and Mexico. By buying in large quantities, Pierce was able to get good prices from eastern refineries. By shipping large quantities, Pierce, like Standard Oil, won rebates from railroads. Pierce both created a demand for petroleum products, and then supplied that demand, reaping handsome profits.\(^4\)

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\(^3\)Pierce married Finlay's daughter prior to setting out on his excursion. He employed several of his in-laws as trusted officers of Waters-Pierce later. Waters saw Waters-Pierce as an investment, and let Pierce run the firm, and eventually sold his interest back to Pierce. Most of the background on Pierce comes from Frederick Upham Adams, The Waters Pierce Case in Texas, Compiled from the Series of Press Articles Entitled: Battling With a Great Corporation (1908). Adams, by his own account, had early predicted the rise of the corporation, and did not see it as a bad thing. His account of the struggles of Waters-Pierce in Texas is highly biased in favor of Pierce, and must be considered accordingly. This is a problem with most contemporary accounts of any matter dealing with Waters-Pierce in Texas. Adams liked to contrast Pierce's early struggle and lack of education with John D. Rockefeller, whom he did not seem to admire so much as Pierce. See also Williamson and Daum, Age of Illumination, 541-51.

\(^4\)Williamson and Daum, Age of Illumination, 536-45. Williamson and Daum discuss the problems that Pierce faced in developing a market over a wide, sparsely settled territory, and contrast it to the rise of Chess, Cashel and Company in Kentucky, the other main "independent" of Standard Oil. The Kentucky region was much more densely settled, had a good rail system and waterborne transport. The authors accept Pierce's contention that he invented the tank wagon system of delivery, and pioneered the use of iron barrels to transport petroleum products. Prior to Pierce, and for some time after he started using iron barrels,
Pierce shut down his Missouri refinery, for it was cheaper to buy quality petroleum products from others; increasingly that meant Standard Oil. By the mid-1870s, Waters-Pierce had become, in essence, an independent marketer for Standard Oil. Pierce even fended off an attempt to invade his "territory" by a Standard concern, Chess, Carley & Company in 1875-1876, taking the oil war to its home territory in Kentucky, whereupon the two antagonists negotiated a truce over territory.\footnote{Bringhurst, Antitrust and the Oil Monopoly, 41-42; Adams, Waters Pierce Case, 12-14. It seems that Rockefeller could have destroyed Pierce, had he wished to do so by the simple expedient of not selling oil to him at reasonable prices, but preferred to see how Pierce handled the war with Chess-Carley, whose relationship with Standard was as rocky as Waters-Pierce would prove to be. Rockefeller and Standard Oil tolerated both mavericks, Pierce and F.B. Carley because they both generated huge profits for Standard Oil. Carley sold his remaining interest in the firm to Standard in 1886; Pierce would never sell out completely. Williamson and Daum, Age of illumination, 536-45. See also Ron Chernow, Titan, The Life of John D. Rockefeller, Sr., (1998) 254-56.}

This success and Waters-Pierce's large market territory and profits, interested Rockefeller and Standard. When Pierce needed more capital to expand in 1878, Horace A. Hutchins and Colonel William P. Thompson, Rockefeller associates and Ohio Standard Oil executives, each bought twenty percent interests in Waters-Pierce, as did Chess-Carley. The Standard Oil Trust was formed in 1882, and this majority interest of Waters-Pierce stock became part of the Trust (Pierce's minority stock interest was not). When the Standard Oil Trust reorganized into twenty companies, with Standard Oil of New Jersey as a holding company in 1892, Pierce kept his approximately forty percent minority interest separate. As before, Pierce and his associates ran their company, and sent sixty percent of the profits to Standard Oil's coffer.\footnote{That Standard Oil, or its catspaws, owned stock in Waters-Pierce was not a secret, but the extent of the ownership was. This was not revealed until the investigations into Waters-Pierce and Standard Oil by Attorney General Herbert Hadley in Missouri, Assistant Attorney General Jewel P. Lightfoot in Texas, and the U.S. Justice Department in 1905-1907. The figures on Pierce's stock ownership of Waters-Pierce after Waters sold him his interest vary somewhat, from thirty-two to forty percent--Waters apparently sold some of his stock to Standard. Despite Standard's majority interest, it was understood that Pierce would retain managerial control, which he did except for a brief period in 1904-1905. Williamson and Daum, Age of illumination, 544-45; Bringhurst, Antitrust and the Oil Monopoly, 41-45; Adams, Waters Pierce Case, 14-15. According to Adams, Pierce never meant to sell out a majority interest to Standard; he allegedly

petroleum products, crude and refined were stored in wooden barrels for shipping, and wooden tanks and open embankments for storage. This led to a great deal of loss through evaporation. Iron barrels greatly reduced this loss, which meant that Pierce was able to market his products more cheaply per unit. Most of the authors' information is taken from Pierce's testimony in 1906 in the federal antitrust suit against Standard Oil. See also, Bringhurst, Antitrust and the Oil Monopoly, 41-43; Adams, Waters Pierce Case, 11-13.
Texas's first foray antitrust litigation against an oil company began on November 21, 1894, in Waco. The McLennan County grand jury issued indictments against Standard Oil executives, all the senior executives of the Waters-Pierce. The latter included Henry Clay Pierce, its president, the Waters-Pierce division managers in Texas, William Grice, E. Wells, F.A. Austin, and E.T. Hathaway, and the Waco agent of Waters-Pierce, William E. Hawkins. The six-count indictment charged in essence that on or about October 1, 1894, the defendants had conspired to monopolize the oil trade in Texas, that the first fourteen named defendants had conspired with Hawkins "and divers other persons to the grand jurors unknown" about the oil trade in McLennan County, that this conspiracy was a restrained trade and sought to control the production and manufacture of petroleum and petroleum products, to control the sale of those products; to raise and fix prices to artificial levels, to destroy competition by granting rebates, by fictitious competitors, also known as "blind tigers," and by temporarily cutting prices. Some evidence suggests that Governor James S. Hogg, who knew a great deal about the activities of Waters-Pierce in Texas owing to his friendship with Standard Oil nemesis George Rice, exerted pressure on Texas Attorney General Charles A. Culberson to have his office prepare the indictment, which contemporary accounts indicate that the McLennan County Attorney prosecuted, rather than the Texas Attorney General's Department.7

Governor Hogg, who had also been one of the main authors of the 1889 Texas Trust Act, sought to extradite several of the leading non-resident defendants, including John D. Rockefeller in New York and Henry M. Flagler in Florida. None of these defendants had had any actual presence in the State of Texas, and had not fled the jurisdiction. Accordingly, the governors of New York and Florida denied Hogg's extradition requests on a firm legal basis, though it is not likely that the chief executives of the two states would have extradited two of their most prominent and richest businessmen for anything less than a serious, iron-clad criminal matter, even if all else had been proper. The attempt to extradite merely made Texas and Governor Hogg look somewhat foolish, and was a poor legal decision. The executives of Waters-Pierce were almost equally immune to extradition, which effectively left only the Divisional Managers, and the local agent, Hawkins as viable defendants that could be brought to trial. 8

Defending the five Waters-Pierce employees in Texas were two prominent attorneys, John D. Johnson, one of the general counsels of Waters-Pierce in St. Louis, and George Clark of the Austin firm of Clark & Bollinger, providing local counsel. Both were highly capable. Clark was also a well-known Texas politician. They determined to challenge the constitutionality of the 1889 Texas Trust Act, bolstered by legal opinions from Standard Oil's general counsel S.C.T. Dodd. The defense team moved that E.T. Hathaway's case be severed from the others and tried separately. Judge Sam R. Scott granted the motion, and set the trial date for December 2, 1895. 9

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8 Cotner, James Stephen Hogg, 436-43; Brinhurst, Antitrust and the Oil Monopoly, 44-46.
9 John Davis Johnson was a prominent St. Louis attorney in civil litigation and corporate law, though for many years he was part of the firm of Johnson & Johnson with his elder brother, Charles, a renowned criminal attorney. Well-respected, he had frequently received offers to become a judge, and turned them down, preferring the private practice of law. Along with Henry S. Priest, he had served H.C. Pierce for many years. The National Cyclopedia of American Biography, Vol. VI (1929), s.v. "Johnson, John Davis." George Clark was a prominent Texas lawyer and politician, known as the "little Warwick" owing to his stature and success as a campaign manager. He served Texas as its Secretary of State, Attorney General, and as an appellate judge. He built a reputation in the 1880s and 1890s as a premier railroad and corporate attorney. Not surprisingly, he had opposed Hogg on the establishment of the Texas Railroad Commission, and ran against him for Governor in 1892. He was the leader of one of the three factions of the Democratic Party in Texas, though tainted somewhat by his earlier career as an attorney for the railroads. See Barr, Reconstruction to Reform, 89-91, 96-99, 114-120, 131-142, 152-160.; Cotner, James Stephen Hogg, 168-75, 201-02, 250-51, 268-319, 439-42, 495-96, 506-07. See also Adams, Waters Pierce
Waters-Pierce had little to lose. No major executives were at risk. One lower-mid level manager, Hathaway, a seventeen year employee of the oil company, faced only a slight risk of prison time and comparatively minor fines. He knew that H.C. Pierce would stand behind him. Additionally, by December 2, 1895 the political scenery in Texas had changed. Hogg was no longer governor, but instead practiced law, while Charles Culberson had parlayed his Texas attorney generalship into succeeding Hogg as Governor of Texas. No longer prosecuting trusts, Culberson had little interest in the McLennan County criminal antitrust cases, and as governor, he wanted to attract capital investment and industry to the state, not drive it off.\(^{10}\)

To indicate that Waters-Pierce might be guilty of violating the antitrust laws, the prosecution charged that the oil company had made exclusive dealing contracts with merchants, granted rebates to certain customers, cut prices to drive out competition in one locale while raising it in others to offset losses, and had operated at least one pseudo-competitor, Eagle Refining, to obtain the trade of customers that did not like Waters-Pierce or Standard Oil. None of these practices were explicitly forbidden by the antitrust statute, however, and had been commonplace behavior for companies through much of the nineteenth century. There was also evidence that Standard Oil owned a portion of Waters-Pierce stock, but no evidence as to how much. It was not then publicly known that Standard Oil in fact controlled a majority of the stock. However, the McLennan County Attorney introduced virtually no evidence that Hathaway had anything to do with any conduct in McLennan County that violated the statute, such as fixing prices. McLennan County was not in Hathaway's division, but in that of William Grice, so the defendant had no business dealings there, and no opportunity to violate the antitrust law.\(^{11}\)

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\(^{11}\) *Hathaway*, 261-76; Bringhamurst, *Antitrust and the Oil Monopoly*, 44-46; Cotner, *James Stephen Hogg*, 436-443. It is not clear if the McLennan County Attorney was Joseph W. Taylor at this point.
Clark and Johnson argued that most of the alleged business practices were not illegal. They were less concerned about their erstwhile client's fate than repeatedly raising arguments that the antitrust statute violated the federal Constitution: the antitrust law interfered with the power of Congress to regulate interstate commerce; interfered with a businessman's liberty to contract; and that the agricultural exemption, designed to encourage farming and livestock cooperatives, violated the Fourteenth Amendment's equal protection clause. Judge Scott refused to consider the defense's constitutional arguments. Hathaway was convicted of a felony, and fined fifty dollars.  

This was what Johnson and Clark had hoped for. Instead of paying the minor fine, with no jail term, the attorneys had Hathaway appeal the case. He would remain in jail for nearly a year in Waco, and his employer rewarded his loyalty. He continued to draw his full pay, and Waters-Pierce turned his spacious cell into luxury confinement. The defense lawyers were pleased. They perceived that the prosecution had chosen a poor case to argue the constitutionality of the antitrust laws. Accordingly, when the appeal came before the Texas Court of Criminal Appeals in 1896, Clark and Johnson again asserted that the 1889 antitrust statute was unconstitutional. Fortunately for Hathaway, and unfortunately from the perspective of Clark and Johnson as corporate lawyers, they also raised the issue that the indictment against their client was defective. It failed to allege that Hathaway, as an agent of Waters-Pierce, had acted "knowingly" in furtherance of the conspiracy to monopolize and restrain trade in Texas. That element, "knowingly" was required by the statute, and Judge Scott's charge to the jury, which included the requirement that Hathaway had acted "knowingly," could not remedy the defect of the indictment. Therefore, on June 26, 1896, the Court of Criminal Appeals reversed the conviction, and remanded the case to the Waco district court, but without ruling on the issues of constitutionality. Neither the McLennan County Attorney nor Culberson's successor as Attorney General, Martin

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12Brinjhurst, Antitrust and the Oil Monopoly, 44-46; Cotner, James Stephen Hogg, 436-43. The Texas antitrust statutes took an approach opposite that of the Sherman Antitrust Act, which was written in vague, undefined terms that theoretically encompassed all transactions. Texas law was specific, but that specificity left loopholes that could be exploited, particularly when the legislation was not well-written.
McNulty Crane, had any interest in pursuing the matter. The latter had his sights set on a bigger prize, so Hathaway still in jail in Waco, eventually applied for a writ of habeas corpus, and received it on November 24, 1896. But before the habeas hearing came up in federal district court, the charges against him were dropped, and the matter became moot, at least regarding Hathaway.13

For reasons unknown, charges were not dropped against the other resident Texas defendants. Johnson and Clark seized the initiative. They had William Grice, manager of the Central Texas Division of Waters-Pierce who had been free on bail, surrender himself to the sheriff and be placed in the Waco jail cell that Hathaway had so recently occupied. Immediately Grice applied for a writ of habeas corpus in federal district court on December 9, 1896. Johnson and Clark again raised the arguments that the Texas Trust Act of 1889 was unconstitutional. Texas Attorney General Crane and the new McLennan County Attorney, Cullen F. Thomas responded that the 1889 statute, since superseded by the 1895 Texas Trust Act, was constitutional. Swayne wasted little time, and on February 27, 1897, he held that the 1889 Texas Trust Act was unconstitutional on two grounds under the Fourteenth Amendment. First, it impaired the liberty to contract, and deprived people of the right to their property without due process of law. Swayne conceded that Texas’s police power allowed regulation, somewhat, but not in the broad sweeping fashion of the antitrust statute, adding that the provision granting an exemption from the antitrust laws to agricultural and livestock producers violated the Fourteenth Amendment’s requirement of equal protection by creating two separate classes treated differently under the law. It was a victory, of sorts, for Waters-Pierce, but a limited one. As noted, the 1889 antitrust law had been replaced by the 1895 statute, and the latter was not at issue in the case. Crane decided also to appeal to the United States Supreme Court. It would take some time to resolve, and

13Hathaway, 261-78; Brinthurst, Antitrust and the Oil Monopoly, 44-46; Cotner, James Stephen Hogg, 436-443; Adams, Waters-Pierce Case, 22-23. There is no good explanation for the handling of these cases, save that they simply were forgotten during changes in administration, and without efforts on the part of the defendants to get a speedy trial, no one thought much about them.
both sides had other concerns, namely the antitrust ouster suit filed by Crane on February 6, 1896, which was rapidly approaching a trial date.\footnote{In re Grice, 79 Fed. 627 (N.D. Tex., 1897) 628-31, 645-46; Baker v. Grice, 169 U.S. 284 (1898); Brinthurst, Antitrust and the Oil Monopoly, 46.}

Meanwhile, between the time of McLennan County grand jury indictment of November 21, 1894 and the trial of Hathaway in December 1895, the McLennan County Attorney, Joseph W. Taylor, had filed a civil antitrust action against Waters-Pierce in the Texas district court of Judge Sam R. Scott, already busy with the criminal antitrust charges. This civil suit sought $109,900.00 in fines for an alleged 2,191 violations of the 1889 Texas Trust Act, as well as the forfeiture of the company's permit to do business in Texas, which would effectively oust it.

This antitrust action had very little to do with the Texas Attorney General's Department. Rather, it was the brainchild of Robert L. Henry, who had been the Assistant Texas Attorney General that conducted the McLennan County grand jury investigation which had indicted the executives and employees of Standard Oil and Waters-Pierce for alleged antitrust violations. One contemporary source claimed that Henry had drawn up the defective indictment for the Hathaway case, and that his actions in preparing that criminal case had been "evidently in aid of that penalty suit..." He resigned his position as Assistant Texas Attorney General in January 1895, and resumed his private law practice in Waco. Henry had approached McLennan County Attorney Taylor, and pointing out the penalty provisions of the 1889 antitrust statute, suggested that Taylor ought to file suit against Waters-Pierce. Taylor allegedly replied that he was interested, and declared that he would turn the case over to Henry's firm of Henry & Stribling if the firm was interested. Taylor allegedly orally agreed to split the statutory fees that the county attorney would receive with Henry & Stribling, which was ten percent of the penalties collected. According to this
agreement Taylor would retain one-third of the fees, and Henry & Stribling would collect two-thirds, but basically do most of the work and incur the expenses.¹⁵

Henry & Stribling drew up a petition and filed it on behalf of County Attorney Taylor on April 1, 1895. The law firm took the depositions of a number of witnesses in and out of Texas, including Standard Oil nemesis George Rice. The firm spent considerable time on the case, and incurred expenses, but not much happened after the efforts to collect evidence, possibly because Henry & Stribling were waiting to see the outcome of the more significant antitrust suit filed by Texas Attorney General Crane against Waters-Pierce on February 6, 1896. Like the criminal indictments, the McLennan County antitrust penalty case remained in legal limbo.¹⁶

II. Taking a Trust to Trial

What has Texas to gain by this procedure [antitrust enforcement]? Granted for the sake of argument simply, that the judgment rendered should stand? Of what earthly benefit will Texas or her people derive therefrom? The judgment is a mere brutem [sic] fulmen, signifying nothing. Its only possible effect would be a change of business methods, on the part of the Waters-Pierce Oil Company, by which the consumers of Texas would pay enhanced prices for their oils in unbroken packages. This judgment is a confession of impotency, which ought not to stand, even if it was valid, which it is not. The State should not be placed in this attitude.

John D. Johnson, Clark & Bollinger, Attorneys for the Waters-Pierce Oil Company, Brief for Appellant, December, 1897

¹⁵Texas Legislature, Proceedings and Reports of the Bailey Investigation Committee (1907), 704-07; Adams, Waters Pierce Case, 23-24; Holcomb, "Senator Joe Bailey," 201-02. Robert Lee Henry (1864-1931) was the great-great-great grandson of Patrick Henry, and a prominent Texas Democrat. Valedictorian of his class at the University of Texas in 1885, he was admitted to the Texas Bar in 1886, a year before he graduated from the University of Texas Law School. At the age of twenty-six he became mayor of Texarkana, Texas, but resigned in 1891 to become an Assistant Texas Attorney General, a post that he held until 1895, when he decided to run for Congress. He was a U.S. Representative from 1897-1917, with an active voice in Congress. He stayed active in Texas politics for many years thereafter, running unsuccessfully for the U.S. Senate in 1916 and again in 1922, one of several candidates with affiliations with the Ku Klux Klan. See Lewis L. Gould, Progressives and Prohibitionists, (1992), 99-100, 112-114, 176-179; Norman D. Brown, Hood, Bonnet, and Little Brown Jug: Texas Politics, 1921-1928 (1984) 99-104; Dan and Inez Morris, Who Was Who in American Politics (1974), 306; Rossiter Johnson, ed. The Twentieth Century Biographical Dictionary of Notable Americans, Vol. V (1904).

¹⁶Bailey Investigation Committee, 704-07; Adams, Waters Pierce Case, 23-24; Holoomb, "Senator Joe Bailey," 201-02; Transcript of Record, State of Texas v. Waters Pierce Oil Company, Court of Civil Appeals, Third Supreme Judicial District of Texas (hereafter "Transcript-McLennan County") 1-18, Texas State Archives (hereafter "TSA") RG 223, Box 223-150.
On February 6, 1896, Texas Attorney General Martin M. Crane filed an antitrust suit against Waters-Pierce and its divisional managers for Texas in the 26th District Court of Travis County before Judge Robert E. Brooks. This was the first serious attempt at enforcement.\(^{17}\)

Why did Crane choose to attack Waters-Pierce at this time? The McLennan County criminal and civil antitrust cases remained unresolved.\(^{18}\) Crane did not seem to be instituting a full-scale assault upon big business. In his unpublished memoirs, Crane stated that his office had received many complaints about Waters-Pierce and conclusive evidence of antitrust violations which had compelled him to action. Crane was politically important and ambitious. He had reason to think that in the next gubernatorial election in 1898 he could emulate his predecessors, Hogg and Culberson, who had successfully run for governor.\(^{19}\)

Crane's suit did not initially draw much press attention. He and his assistants quietly took depositions throughout 1896 and early 1897, reviewed information gathered in the McLennan County antitrust cases, and vainly requested Waters-Pierce officers and Standard Oil for documents. Better armed with more information, on May 12, 1897,

\(^{17}\)See Brinthurst, Antitrust and the Oil Monopoly, 40-51. For Crane's case, see generally Transcript of the Record, Waters-Pierce Oil Co. v. Texas, 19 Tex. Civ. App. 1 (1898) (hereafter "Transcript-1896"), TSA, RG 223, Box 223/104.

\(^{18}\)Attorney General Crane did not think highly of the McLennan County cases, given the difficulties in obtaining evidence and out-of-state defendants in the ambitious undertaking. Martin McNulty Crane, "Autobiography, Ch. 3," 1-7, Crane Papers, Box 3N111, Barker Center for American History, University of Texas—Austin (hereafter "CAH").

\(^{19}\)Crane, "Autobiography, Ch. 3," 8-11, Crane Papers, Box 3N111, CAH; Barr, Reconstruction to Reform, 116-21, 131139, 155-71, 211-13; Cotner, James Stephen Hogg, 42, 103, 232-33, 441-47, 478-80. Crane was born in West Virginia in 1855, and had moved to Cleburne, Texas in 1870, where he became friends with James S. Hogg. He went into law, and was Johnson County Attorney by 1879, a state representative from 1884-1886, and a state senator from 1886-1892. He supported Hogg in his campaigns, and was a staunch ally in the fight to establish the Texas Railroad Commission. Crane disclaimed any desire to run for governor in his autobiography, as he did not desire to end up like Jim Hogg, who had served Texas for four years as attorney general and four years as governor on a modest salary, raising a family, and having neglected his law practice. He claimed that pressure from friends and a sense of duty made him run for governor in 1898. Crane enjoyed the support of Hogg, perhaps the most popular governor in Texas history, and seemed to have had strong popular support. Crane, "Autobiography, Ch. 4," 1-5, Crane Papers, Box 3N111, CAH. See also Tom Finty, Jr. to Crane, March 13, 1897, and A.B. Flanary to Crane, n.d., Crane Papers, Box 3N98, CAH for comments on Crane's candidacy for governor. Twenty years later Finty would write Anti-Trust Legislation in Texas (1916), which would be critical of what he saw as wasteful antitrust efforts in Texas, including those of Crane, which he had praised in 1897. On the political aspirations of Texas Attorneys General, see Dickson, "Law and Politics," 206-60.
Crane filed an amended petition against Waters-Pierce and its divisional managers for Texas.20

The lengthy amended petition alleged, first, that Waters-Pierce was a member of the Standard Oil Trust and its successor holding company, which violated the Texas antitrust laws, and abused its corporate powers;21 second, that Waters-Pierce agents had entered into verbal and written exclusive dealing contracts with merchants in Texas, in exchange for rebates; third, that Waters-Pierce required some of those merchants not to sell petroleum products to dealers who bought oil from other companies; fourth, that Waters-Pierce entered into exclusive dealing arrangements containing minimum resale price maintenance provisions; fifth, that Waters-Pierce gave better prices to those who dealt exclusively with the firm; sixth, that Waters-Pierce made these arrangements with a number of specific people; seventh, that it bought out competitors in Texas, operated them as "blind tigers," maintaining a facade of independence, resulting in an illegal combination in violation of Texas antitrust laws; eighth, that Waters-Pierce had tried, and was still trying, to destroy competition unfairly, and to monopolize the Texas oil industry, resulting in increased costs to consumers for petroleum products, which were articles of "prime necessity."22

20 Transcript-1896, 1-42, 126-216 TSA RG 223, Box 223/104. The amended petition reads like a fishing expedition, in which the State admits to lacking names, and requests documents held by Waters-Pierce. The divisional managers sued by Crane were: E.T. Hathaway, William Grice (both defendants in McLennan County), J.W. Keenan, F.A. Austin, and Louis Fries. Unlike the many articles on great national trusts, and the investigations Waters-Pierce between 1905 and 1909, Crane's investigation seemed to excite no great interest or coverage, perhaps because of other national events, such as the impending Spanish-American War.

21 Crane's petition went into some detail as to how the Standard Oil Trust, and its successor holding company, Standard Oil Company of New Jersey were engaged in a combination and conspiracy to monopolize the petroleum industry in the United States, for the purpose of controlling prices and production, to the detriment of consumers in the United States, and Texas in particular. Besides the problem of proving this charge, which might have been a violation of the Texas Trust law of 1889 and 1895 (see Appendix for text of Acts), Waters-Pierce was a Missouri-chartered corporation, not a Texas one. How then could a Texas court determine whether a Missouri corporation was acting ultra vires, that is beyond the scope of its Missouri charter, under Missouri law? Transcript-1896, 4-28, TSA RG 223, Box 223/104. This issue would also rise in Texas Attorney General Robert V. Davidson's antitrust action in 1907.

22 Transcript-1896, 1-4, 28-42, TSA RG 223, Box 223/104. "Article of prime necessity" is a term of art from the classical theory of competition and "political economy" and its accompanying legal doctrine. The classical theory of competition had few problems with covenants in restraint of trade, and price-fixing agreements, being more concerned with state intervention in the economy. The result was that such
John D. Johnson of St. Louis, and the Austin firm of Clark and Bollinger represented Waters-Pierce and the five named defendants. These legal luminaries answered the amended complaint on June 5, 1897. Their defenses ranged from denying the jurisdiction of the court to denying that the alleged acts, even if committed (which they denied), were illegal, and to the unconstitutionality of the Texas Trust Acts of 1889 and 1895. Despite these vehement denials the trial began on June 8, 1897, with both sides stipulating to minor points in the amended petition. There was no further discovery, and no efforts to postpone the trial. Both sides appeared confident of victory.23

Crane introduced into the record the contract between Waters-Pierce and the Eagle Refining Company, an Ohio corporation, of October 5, 1894, and related documents. In the contract, Waters-Pierce bought all the Eagle Refining property in Texas for $10,494.19, and the exclusive right to use its name, labels, and trade marks within Waters-Pierce territory. Eagle Refining officers, including A.W. Clem, the general manager and agent in Texas, agreed also not to compete with Waters-Pierce in its then existing marketing area for fifteen years. From 1890 to 1894 Clem had competed against Waters-Pierce in the arrangements as exclusive dealing contracts, rebates, covenants not to compete, and resale price maintenance were not generally illegal under common law. An agreement among parties to form a pool and fix prices was not enforceable at law or equity, but also not actionable by third parties (consumers). The exception was for articles of prime necessity, those goods that consumers could not do without, such as foodstuffs. Agreements concerning such goods were examined very carefully by the judicial eye. What constituted an article of prime necessity was, of course, up to the judge, or the legislature. Emerging economic and legal theory in the late nineteenth century, the so-called neoclassicism, took a very different view of competition from classicism, one which looked at the reasonableness of restraints on trade, and looked severely at any price-fixing. The doctrine of prime necessity became irrelevant, as opposed to how easy it was for the goods to be produced by. Consequently, foodstuffs while necessary for life, would not generally be an object for concern for the courts, unlike gasoline. See Hovenkamp, Enterprise and American Law, 268-395. According to Hovenkamp, these neoclassical ideas of economics and competition were finding their way into legal arguments and judicial thought by the 1890s.

23 Given that there were so many blank spots in the evidence that the State accrued, it would seem surprising that no further efforts were made at discovery, save that Texas at that time lacked the necessary civil procedure laws and rules to enable the Attorney General to obtain easily information in other states. While Crane could have tried to exert pressure on the Texas agents of Waters-Pierce, which it had somewhat in charging them in the case, the lack of results from the McLennan County criminal cases perhaps warned him that this was futile. Waters-Pierce took care of its own, and expected them to stand by the firm. Many legal soothsayers predicted that the Texas Trust laws were unconstitutional, and that Waters-Pierce would win easily. See Galveston Daily News, March 20, 1900. On Waters-Pierce's side was the acceptance of past practice. Much of which Crane condemned the firm for had been common business practice throughout the United States in the nineteenth century, including Texas, merely not on the scale that Waters-Pierce was able to apply it. Also on the side of the oil company was its local counsel, Clark & Bolinger, specifically the politically powerful George Clark.
Dallas area as an independent marketing agent for Eagle Refining with some small success. In the end it had been easier for Waters-Pierce to buy out its competitor and retain Clem as a secret employee of Waters-Pierce to run Eagle Refining as a "blind tiger," than to eradicate the company by cut-throat competition.24

Texas did not call Clem as a witness though he had been deposed for the McLennan County antitrust cases a year earlier, and the jury did not get to learn of Waters-Pierce's efforts over four years to hound Clem into selling out. The only overtly illegal aspect the Eagle Refining deal was the covenant not to compete for fifteen years throughout Waters-Pierce's large territory. This violated common law's against restraints of trade. Merely buying out a competitor, absent an intent to fix prices by mergers, did not violate Texas antitrust laws. Operating Eagle Refining as pseudo-competition was deceptive, but not illegal.25

There were few live witnesses over the next several days. Instead the state's attorneys read excerpts from depositions into the record. The defense "cross-examined" the depositions, reading portions favorable to Waters-Pierce that Crane had "omitted."26 For example, H.A. Dennett, employed as a stock clerk for Waters-Pierce in San Antonio testified that "[c]ompetitive oil has been continually sold in San Antonio since my arrival

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24 Transcript-1896, 128-35, T S A RG 223, Box 223/104; Transcript of the Record, Waters-Pierce Oil Co. v. Texas, 48 Tex. Civ. App. 162 (1907) (hereafter, "Transcript-1907"), 609-56, T S A RG 302 Box 1898/41-85. Clem was basically a marketer for Eagle Refining products in Texas. Eagle Refining continued to operate independently in Ohio for a few more years after the sale in Texas before failing. The use of pseudo-independents to appeal to anti-Standard Oil consumers was a familiar tactic for Standard Oil. The most notorious example of such a shill was the Republic Oil Company, which operated in the Midwest, and actively posed as a competitor to Standard Oil of Indiana and Waters-Pierce, but was wholly owned by Standard Oil. Bennett H. Wall and George S. Gibb, Teagle of Jersey Standard (1974) 45-48; Paul H. Giddens, Standard Oil Company (Indiana): Oil Pioneer of the Middle West (1955), 73-74, 89-97.

25 As Waters-Pierce pointed out, once it became public knowledge that it owned Eagle Refining, as happened in 1895 with the McLennan County cases, what difference did it make that the subsidiary continued to operate under its own name? Clem's testimony in 1907 told the tale of how he was forced to sell his business, and how he was ordered to run Eagle Refining in such fashion as to lose customers to Waters-Pierce. In 1904, Waters-Pierce finally shut down Eagle Refining, and gave Clem a lower paying job as an agent, which Clem quit to open a new oil firm. Waters-Pierce did not seek to enforce the covenant not to compete.

26 Transcript-1896, 135-216, T S A RG 223, Box 223/104. The news coverage was limited to statements that the trial was continuing. Galveston Daily News, June 9, 10, 11, 12, 1897. This is in marked contrast to similar antitrust and antitrust-related litigations in Texas in 1907 and 1913 which received extensive coverage during the investigations, the trial, and the appeals process.
there August 1st, 1895, and is still being sold." Dennett stated that to his knowledge, Waters-Pierce never entered into exclusive dealing contracts, or required merchants to sell to consumers at fixed or minimum prices, or discriminate against any one, as long as "they were not in any combination against us." As a stock clerk, Dennett was familiar with the ways the company handled its inventory and prepared products for shipments, "the majority of the oil being cased and barreled in Texas..." with "the trade being supplied by tank wagons and iron barrels..." filled from storage tanks. Waters-Pierce sold at least a portion of its petroleum products in something other than the "original package." This meant that the oil and kerosene were being sold in intrastate, rather than interstate, commerce. Defense lawyers Johnson and Clark had claimed that the 26th District Court lacked jurisdiction because all of Waters-Pierce's trade was in interstate commerce. With Dennett's testimony, the objection lost all force.27

The next witness, C.J. Rosenberg of LaGrange, had dealt in "illuminating oils" for the previous fifteen years, usually purchasing from Waters-Pierce, but in 1891 he had also purchased from George Rice of Ohio. The local Waters-Pierce agent had tried to buy the entire carload of oil from him and, when that failed, had cut the price on Brilliant (a medium grade of oil) to other merchants in La Grange well below what Rosenberg paid for the equivalent oil. When Rosenberg agreed to patronize Waters-Pierce, the price difference went away. Rosenberg also admitted receiving "wholesaler's rebates" for buying exclusively from Waters-Pierce. The defense objected that these statements should not be allowed into evidence because "the same was incompetent and irrelevant and did not tend to prove any issue in the cause, in that it was no offense under the laws of the State of Texas" either to cut prices or give rebates. Both practices were apparently common among merchants, and were not explicitly banned by the Texas Trust Acts of 1889 or 1895. The

27 Transcript-1896, 135-37, TSA RG 223, Box 223/104. See glossary on the so-called "original package doctrine," which dates back to John Marshall's opinion in Brown v. Maryland 12 Wheat. 219 (1827). Clark and Johnson kept up the objections and exceptions despite Dennett's testimony.
objections were overruled. Rosenberg also noted that his agreement with the Waters-Pierce local agent had been oral, and was cancelable at any time.28

Rosenberg's testimony showed that since 1889, competitive oil was frequently offered for sale in LaGrange, and that Waters-Pierce responded to competitors' price cuts by deeper price cuts. But it did not start price wars. Regarding rebates, Rosenberg added:

A buyer of large quantities always receives lower prices than a buyer of small quantities in all lines....I have been frequently approached by dealers in other lines and offered inducements in the way of rebates or blandishments to handle exclusively their particular products. This is an every day custom in trade and has been customary for many years for dealers to promote their business and trade by offering special inducements in particular cases.29

M. Cheney of Mt. Pleasant noted that when there was some competition in his area, Waters-Pierce would lower its prices below that of the competition, except to those who bought from competitors. In April or May 1895, a Waters-Pierce agent had told him that was why he was discriminated against. This sort of testimony prompted objections from the defense that a) price discrimination was not illegal, and b) that the testimony was vague, lacking names, precise dates, and locations. Judge Brooks, who had previously overruled nearly every defense objection, overruled these as well. Like other witnesses, Cheney noted that after competition appeared Waters-Pierce had added storage tanks. Some witnesses testified that there was no competition to Waters-Pierce in some areas, while others told how Waters-Pierce had broken the competition through low prices and refusals to sell.30

28 Transcript-1896, 137-39, TSA RG 223, Box 223/104. Crane faced the problem of dealing with largely untested and poorly drafted laws. Texas needed either a vague antitrust law that could be interpreted by the courts to cover a wide scope of activities, at the cost of legitimate confusion among businessmen and lawyers, very detailed laws that covered all unacceptable activities, or a broad law that included a non-exclusive set of illegal practices. Texas had little precedent to go on, there being few antitrust decisions in the entire country, much less Texas itself. See Appendix for the text of the antitrust statutes.

29 Transcript-1896, 139, TSA RG 223, Box 223/104. The testimony of numerous other witnesses belies Rosenberg's statements that Waters-Pierce did not start price wars whenever competition appeared. Given that the competitors in order to sell their oil against the established Waters-Pierce inevitably sold at a lower price, price wars were inevitable, and the outcome predictable; with its far greater capital and resources and wide market, Waters-Pierce could outlast any small opponent.

30 Transcript-1896, 143-45; Transcript-1896, 126-216, TSA RG 223, Box 223/104. Judge Brooks ruled in favor of Texas on virtually every objection made by the defense attorneys regarding whether particular bits of testimony should be admitted into evidence. Possibly he was being cautious, preferring to let a higher
One telling witness, W.C. Dugger of San Marcos had been a local Waters-Pierce agent from 1890 to 1893. After 1893 Dugger worked with other oil companies and eventually struck off on his own. His experience made him well-informed about the conduct of Waters-Pierce, and familiarized him with the regional and divisional Waters-Pierce managers. He explained that in areas of no competition, Waters-Pierce used iron barrels and cans to deliver oil products, which were inconvenient for customers. In areas with competition, the oil company used tank wagons, which most competitors lacked, to deliver its products. Dugger also carefully pointed out that Waters-Pierce engaged in intrastate commerce as well as interstate commerce.31

On January 12, 1891, Dugger had received a letter from Arthur M. Finlay, Pierce's brother-in-law, then the division head at Galveston, in which Finlay told Dugger to drop prices on Brilliant oil to merchants who would retail at a fixed price:

Do not delay this any longer. It will be necessary to make an active fight, to satisfy Mr. Nott and others, that they cannot run the oil business in San Marcos. We have always treated dealers fairly, and all things considered, we are selling them oil at reasonable prices.

Accordingly Dugger offered to sell local merchants not handling competitors' (i.e., Eagle Refining's) products Brilliant oil at ten cents per gallon if they would sell it at twelve and a half cents per gallon. He refused to sell to merchants handling Eagle Refining oil. Once Eagle Refining was gone, things went back to normal. Dugger claimed that he had obeyed oral orders from Waggoner, Finlay's second in command. Reports went directly to Finlay, who "never objected to any of my acts done in obedience to the instructions of Mr.

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31 Transcript-1896, 145-46, TSA RG 223, Box 223/104. While Dugger was well-informed about the workings of Waters-Pierce, as an ex-employee in competition with Waters-Pierce, his testimony is accordingly more suspect. Iron barrels, while better than wooden ones, came in only one size, and leaked somewhat, creating a mess and shorting the customer. Tank wagons could deliver any amount of petroleum products to the customer from five gallons to five hundred gallons, in accurately measured quantities. Regarding intrastate commerce, Dugger explained that Waters-Pierce "repackaged" some of the products that it sold, thereby removing them from the stream of interstate commerce and placing them in intrastate commerce. See glossary, "original package doctrine."
Waggoner." On one occasion, Dugger got rid of a tank carload of a competitor's oil by persuading two merchants to cancel their orders, giving them Waters-Pierce oil at the same price, and paying five dollars for the stop order telegram.\textsuperscript{32}

The defense had objected and excepted to no avail several times during Dugger's testimony. They had better luck on cross-examination. They elicited helpful statements, including one in which Dugger stated that Finlay had not actually told him how to keep out the tank car of oil. "I did it on my own motion as local agent working for the company." Cross-examination also got the witness to admit that he no longer worked for Waters-Pierce, and had "been engaged in fighting the Waters-Pierce Oil Company ever since I quit working for them," and got defeated because he lacked the capital for a long fight with the oil firm, the economies of scale and organization, and the will and ability to risk a lot of money in a tough fight.\textsuperscript{33}

On redirect examination, the state sought to rehabilitate Dugger's credibility by showing that Finlay and Waggoner had had him interfere frequently with tank car orders of competitors' oils. He had offered rebates and good deals to merchants if they would deal exclusively with Waters-Pierce. Prices were sent to him on post cards, and he sent price alterations to Finlay every month.\textsuperscript{34}

The defense objected often that most of the state's witnesses testified vaguely, and about incidents that of themselves were not illegal under Texas law. Several witnesses testified not about actual contracts, but about "offers" made to them by various local Waters-Pierce agents. On several occasions R.C. Braden of Guadalupe County had sold a

\textsuperscript{32}Transcript-1896, 146-50, TSA RG 223, Box 223/104. Dugger also noted that he got his orders from Galveston--meaning Finlay, or Waggoner. Waggoner himself quit Waters-Pierce in 1892, and went to work for the Rocky Mountain Oil Company, in competition with Dugger and Waters-Pierce. When Dugger quit, he too went to Rocky Mountain for initial employment. This testimony made it explicit that Dugger, a local agent, was not acting without at least tacit approval from his superiors in Waters-Pierce. Finlay, a brother-in-law of Henry Clay Pierce, may not have given Dugger (and others) explicit orders, but they were orders, nonetheless.

\textsuperscript{33}Transcript-1896, 150-53, TSA RG 223, Box 223/104. Under cross-examination, Dugger essentially admitted that Waters-Pierce provided better, cheaper, service than he could do as an independent, unless he had been willing to invest the capital and take as risk, as Pierce had done. In the parlance of Theodore Roosevelt, Dugger's testimony made Waters-Pierce seem more like a "good trust" than a "bad trust."

\textsuperscript{34}Transcript-1896, 153-54, TSA RG 223, Box 223/104.
competitor's oil from Marietta, Ohio. In response Waters-Pierce charged him more per
gallon than it charged other merchants. The local Waters-Pierce agent, S.P. Dribrell, had
claimed that he was acting on "orders from the company and he could not do otherwise."
At that time, the traveling agent for Waters-Pierce, whose name Braden could not recall,
wanted to put a sign in Braden's store window, offering five gallons of oil for seventy-five
cents, if he would handle only Waters-Pierce products, which he refused to do. The result,
"...[a]fterwards I saw the same signs up at other stores who were handling the Waters-
Pierce oil only." The defense objected. This statement was,

...irrelevant and incompetent and embodies merely a proposition which was
not accepted by the witness, and therefore did not constitute any contract
within the meaning of the law in restraint of trade. Counsel for the State, in
opposition to the objection, gave as reasons for the testimony offered, first,
it showed the methods of doing business, though the offer was not
accepted, and second, it showed the circumstances that other merchants in
the town did accept the proposition, and therefore the contract was
completed by some of them.

The Court again overruled the objections. Judge Brooks allowed the state leeway
in admitting evidence that "showed the methods of doing business," or the "course of
dealing" of Waters-Pierce, or as "throwing light upon the question of whether any real
contract has been made of this character." This permitted the introduction of acts that
individually might not have been illegal, and therefore irrelevant, but cumulatively, might
violate Texas antitrust laws.35

Crane introduced six depositions from merchants in Brownsville, and the testimony
of five witnesses from the McLennan County antitrust trial of E.T. Hathaway. Typical of
the Brownsville witnesses, M.H. Cross had made a written contract with Waters-Pierce.
He received a rebate of fifteen cents per box of oil. In return, he agreed to handle only
Waters-Pierce products, and not to sell petroleum products below its price. Either party
could cancel with ten days notice. He, like all the witnesses from Brownsville, had no
copy of the contract, as Waters-Pierce kept all copies. However, all the Brownsville

35 Transcript 1896, 159-67; Transcript 1896, 126-216, TSA RG 223, Box 223/104. It is not clear what
Judge Brooks was allowing the state to prove by showing Waters-Pierce's "methods of doing business,"
other than the cumulative effect mentioned in the text.
merchants seemed satisfied with their relations with Waters-Pierce. Cross liked the protection that his arrangement gave him from competitors: if anyone handling other companies' products cut prices, Waters-Pierce cut prices and took the loss instead of the merchant. As for pricing policy, he stated,

The price was raised sometimes, but I don't know whether it was because there was no competition or because the price of oil in the New York market had increased. In selling oils we were always governed by the contract with the company.\textsuperscript{36}

The testimony from the Hathaway trial did not include written contracts. The various statements indicated that one or more of the individual defendants in the case, all of whom were Waters-Pierce divisional managers in Texas, had participated in making exclusive dealing agreements with merchants to combat competition. All gave rebates, and some had oral requirements that the dealer sell at a minimum fixed price. These five statements constituted virtually the entire case against the individual defendants. More important, they provided further evidence that a middle level of Waters-Pierce management knew what was taking place at the local level. Actions by local agents, and oral arrangements could be disavowed; the divisional managers' knowledge could not be so easily disproved or explained away.\textsuperscript{37}

To close the case, Crane read portions of the depositions of Waters-Pierce secretary John P. Gruet, Sr., and Henry Clay Pierce, the president of the company. To this point, little evidence tied Waters-Pierce to membership in Standard Oil. It was public knowledge that Standard owned stock in Waters-Pierce, but how much was unknown. Pierce managed his company seemingly without interference from 26 Broadway. Gruet and

\textsuperscript{36} Transcript-1896, 193-203, TSA RG 223, Box 223/104. These contracts were the most verifiable, in terms of information from the witnesses, and in clarity of violation of the Texas Trust laws, which prohibited price-fixing of any sort. With Waters-Pierce's financial and market resources, the firm could afford to give such protection, as it would be easy enough to compensate losses by raising costs elsewhere.

\textsuperscript{37} Transcript-1896, 203-10, TSA RG 223, Box 223/104. The issue of agency is an important one for the defense--to what extent can a corporation be liable for the criminal acts of its agents, when perforce illegal actions are outside the scope of agency?
Pierce had no qualms about cooperating with the lawsuits to the extent of submitting to
depositions—perhaps because they had little to fear.38

Gruet, a former Standard auditor in New York prior to moving to St. Louis,
testified generally about Waters-Pierce business and its capital stock. He refused to answer
any questions about stockholders or ownership beyond names, citing confidentiality.

The stockholders of the Waters-Pierce Oil Company are Standard Oil
Company of New Jersey, H.C. Pierce, Andrew M. Finlay, C.M. Adams,
H.M. Tilford, and J.P. Gruet. I decline to give the amount of stock owned
by each stockholder because I do not consider it my right to divulge the
affairs of the other stockholders....I decline to examine the books of the
Waters-Pierce Oil Company and give the names of those who held stock in
the company in March, 1882, and the amount of stock held by each,
because I do not consider it my right to divulge the affairs of the other
stockholders. I decline to examine [a] list of the names submitted me as
contained in the purported Standard Oil Trust agreement of 1882, and to
state whether or not any one of them owned any stock in the Waters-Pierce
Oil Company in 1882 or at any subsequent time, or how much each of them
owned,...39

Pierce’s deposition was equally unenlightening, although his refusals to answer were a bit
more colorful:

I decline to testify how much of the stock of the Waters-Pierce Company I
own or how long I have owned the stock, because I deem it unnecessary for
the purpose of this case and it would be making public my private
affairs....I decline to testify as to the amount of stock owned by each
stockholder because the statement would be incompetent and its is not
proper I should disclose the interests of others in this company....I have
examined the attached list of names which appear in the Standard oil Trust
Agreement of 1882, but decline to answer whether any one or more of them
owned any stock in the Waters-Pierce Oil Company in 1882 or at any
subsequent time, because I deem it unnecessary for the purposes of this
case, and it would be making public the private affairs of myself and
others.40

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38 The answer was more than it had to, less than Crane would have liked. Pierce could have avoided the
deposition fairly easily, as he would later avoid the sheriffs of Texas on charges of perjury. Gruet likewise
was given protection by distance. Neither had to go to Texas, and it is certain that they brought no
documents when they did. 26 Broadway was the address of the headquarters of Standard Oil, located in New
York City.
39 Transcript-1896, 210-11, TSA RG 223, Box 223/104. In addition to Pierce and Standard Oil holding
stock in Waters-Pierce, each of the directors of the company, other than Pierce, were required to hold one
share of stock to qualify for membership on the Board.
40 Transcript-1896, 211-13, TSA RG 223, Box 223/104.
What these two depositions illuminate is the marked lack of power that Texas exerted to obtain documents or to coerce testimony. The state's statutes did not provide resources for government attorneys to investigate beyond its borders. Given Pierce's cautious habits, it is safe to assume that no vital documents remained in Texas, if, recalling the fact the Brownsville merchants could not keep copies of their contracts, they had ever stayed there. Texas soon concluded its case. It was time for the defense.

IIII. The Octopus Strikes Back

_I have faith that a day is at hand when the calm judgment of Texas will assert itself, and when the facts in this case will have their proper weight against an organized effort to destroy a great enterprise which has developed with the splendid upbuilding of the territory in which it was a pioneer, and in which it asks only the right to pursue its business under strict compliance with the law._

Henry Clay Pierce to Governor Thomas M. Campbell, October 15, 1907

Technically, the defense of the Waters-Pierce Oil Company in the antitrust suit did not begin until Crane rested the case for Texas on the evening of June 12, 1897. In reality, the Waters-Pierce management had acted to protect itself well before the trial began, and had counter-attacked several times during the state's presentation through cross-examination. While Texas had several advantages in pursuing its suit against the oil company, the defense also had its advantages.41 Crane had great difficulty in obtaining

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41For actions taken by Clark and Johnson, see Transcript-1896, 42-73, 150-53, 184-86, TSA RG 223, Box 223/104. The general economic upheaval of the era between 1873 and 1900 as the nation moved towards a more national, industrial economy, punctuated by the Panic of 1873, the Depression of 1893 (which lasted until 1897), the problems faced by the South in general, and a few issues that affected Texas in particular made Texas fertile ground for resentment of big business, which favored the State's case. Railroads and Standard Oil were the most visible objects of that anger. See generally Spratt, _Road to Spindletop: Barr, Reconstruction to Reform; Brinthurst, Antitrust and the Oil Monopoly_, 1-9, 40-68; Cotner, James Stephen Hogg, 105-446. On the antipathy generated by the railroads in Texas and the reaction, see also Fowler, "Texas Railroad Commission," 34-77. It appears that Judge Brooks was not completely immune to the prevailing hostile atmosphere in Texas towards Standard Oil, as his rulings noticeably favored the State, though possibly he wished to err on the side of caution by allowing questionable evidence in, trusting that an appellate court would reverse any harmful errors. While Judge Brooks had no particular economic interest in the case or its outcome, it is interesting to note that he later became affiliated with The Texas Company, becoming the president of Producers Oil Company, a director of the same, and head of its Operating Committee. Producers Oil was the production company of The Texas Company. _The Texaco Star_, Vol. III, No. 1 (Dec. 1915). There was no direct connection between the case and his relationship with The Texas Company, as that firm was not founded until 1902.
documentary evidence that was not in the public record, such as business correspondence and records, particularly those that were in New York and Saint Louis. The reach of Texas justice did not then go so far as it later would. The state could not summon all the witnesses that it wished—Waters-Pierce and Standard Oil officers were beyond its reach in Missouri and New York. And Waters-Pierce could afford the best legal talent to challenge the Texas antitrust laws. These laws had never been seriously tested before, which meant a lack of precedent on which the state could rely. Yet Crane had presented a solid case even if he could not prove that it was a Standard Oil tool. Now it was the turn of Johnson and Clark to fight back on behalf of the oil company.42

Johnson and Clark cast doubt upon several claims of the state: a) that Waters-Pierce was part of the Standard Oil Trust; b) that agreements that Crane claimed violated the Texas antitrust laws did not exist; c) that any contracts in violation of the law were the actions of local agents, not authorized by the oil firm management. The first task was the easiest. Crane had produced little information about the alleged Standard Oil control of Waters-Pierce. Texas had shown only that Standard Oil of New Jersey, a successor holding company of the Standard Oil Trust, controlled some Waters-Pierce stock, as did several people affiliated with Standard Oil concerns. How much stock Standard controlled was unknown. Neither Henry Clay Pierce nor John P. Gruet, Sr., would answer, and the records were beyond the reach of Texas.43 Further to undercut the state's claims, Johnson and Clark introduced a document, the proceedings of a special March 21, 1892, meeting of holders of the Standard Oil Trust certificates in New York City. This meeting had voted unanimously on a resolution by S.C.T. Dodd, the general counsel of Standard Oil, to

42 At that time, Texas lacked statutes that made interstate discovery of evidence readily feasible, without cooperation from the object of investigation. Waters-Pierce had its headquarters in St. Louis, which was where all of the important corporate records were kept. Judging from the transcript in this case, Waters-Pierce also did not permit merchants or dealers to retain copies of any contracts made with the oil company, which made it difficult to prove what the alleged contracts actually said. Consider also the convenient fire that destroyed some of the corporate records in Texas that the State sought for this case. Transcript-1896, 193-202, 226-29. Regarding the lack of precedents on the Texas antitrust laws, see Finty, Anti-Trust Legislation, 15-19, 23-26, 63-64.

43 On admitting the Standard Oil Trust agreement of 1882 see Transcript-1896, 126-27. TSA RG 223, Box 223/104; Transcript-1896, 210-13, 236-47, TSA RG 223, Box 223/104.
dissolve the Standard Oil Trust. The Standard Oil Trust, brainchild of Dodd, ceased to exist, legally. Any holder of Standard Oil Trust certificates could exchange their equitable interest for a proportionate legal interest in the stocks of the companies in the Trust.\textsuperscript{44}

The Waters-Pierce defense team was trying to cover every base. Their defendant claimed never to have been part of the Standard Oil Trust. But this was irrelevant, because the Trust ceased to exist as of March 21, 1892. Crane’s real issue was the Standard’s effective control of Waters-Pierce. On that issue, the document was weak evidence, considering that the companies ran the same way and cooperated the same as they had before the dissolution.\textsuperscript{45}

Johnson and Clark later returned to this allegation of Standard control of Waters-Pierce by introducing testimony of Pierce and Gruet from depositions and interrogatories. This evidence included the following self-serving statement by the oil magnate,

\begin{quote}
The Waters-Pierce Oil Company was never in any manner or form, directly or indirectly, a member of the Standard Oil Trust....I never became in any manner or form, directly or indirectly, a member of the Standard Oil Trust. I was never invited to become a member of the Standard Oil Trust.
\end{quote}

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\textsuperscript{44}For the record of the dissolution proceedings, see Transcript-1896, 216-19, TSA RG 223, Box 223/104. The dissolution involved some considerable problems, as there were some ninety-two separate companies in the Trust in 1892, and the shares had no market valuation, because only the Trust certificates had traded for the previous ten years. Even with some matters simplified, the result was that it was undesirable for small certificate holders to redeem their certificates, as each certificate entitled the redeemer to a fractional share of stock in the various companies, called scrip. These fractional shares did not pay dividends, nor could they be voted. Only large certificate holders, such as John D. Rockefeller, gained by redeeming their trust certificates. Those who did not redeem their trust certificates still got an appropriate percentage of the combined profits of the firms that had been in the Standard Oil Trust. See Hidy and Hidy, \emph{Pioneering in Big Business}, 201-33; Williamson and Daum, \emph{Age of Illumination}, 710-12. To see how valueless individual trust certificates would have been if redeemed, see Deposition of Ida M. Butts, and Plaintiff's Exhibits "C-W", Transcript-1907, 231-49, TSA RG 302 Box 1989/41-85. There being approximately 972,000 trust certificates in circulation, an individual one was of little use if redeemed.
\end{flushright}

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\textsuperscript{45}In dissolving the Trust, the Standard Oil interests reduced the number of companies from ninety-two to twenty to simplify organization and administration. Typically, the directors of the constituent companies that had been in the Trust were the men who had been the trustees, or on the Executive Committee of the Trust. They cooperated as they had before. The dissolution was not an act of good faith by the Standard Oil Trust. Rather, it had been prompted by the efforts of the Attorney General of Ohio, Mark Watson, a Republican and associate of Mark Hanna from 1890 to 1892, which had culminated in an order by the Ohio Supreme Court to Standard Oil of Ohio to sever its connection to the trust. It took further litigation by the attorneys general of Ohio and Texas to force compliance. Standard Oil to redeem the remainder of the certificates extant in 1897 (approximately fifty percent were still not redeemed), and resulted in the reluctant use of the Standard Oil Company of New Jersey as a giant holding company. Hidy and Hidy, \emph{Pioneering in Big Business}, 201-32, 305-38; Williamson and Daum, \emph{Age of Illumination}, 709-20; Brinthurst, \emph{Antitrust and the Oil Monopoly}, 10-39.
\end{flushright}
Crane and his assistant, Tully A. Fuller, promptly objected to this statement as irrelevant and incompetent, which Judge Brooks sustained, thereby excluding it. Of course, Standard Oil scarcely needed to invite Pierce to join either the Trust or the holding company as it controlled over sixty percent of the Waters-Pierce stock.46

Pierce also feigned ignorance of why Standard Oil companies never competed in Waters-Pierce territories, conveniently forgetting the map in his St. Louis office that showed the territorial division between his company and Standard Oil, part of their unofficial agreement. He attributed Standard's aversion to the strength and depth of Waters-Pierce's marketing network. It would have been expensive for Standard to duplicate this network in order to drive him from business. He noted that Waters-Pierce was Ohio Standard's largest purchaser, which might have made Standard reluctant to fight its best customer. Pierce added that none of the present Waters-Pierce board of directors had ever been members of the Standard Oil Trust. Several board members had been associated with Waters-Pierce for many years. In discussing Gruet and Henry M. Tilford, Pierce noted that prior to moving to St. Louis and working for Waters-Pierce as an auditor in 1890, Gruet had lived in Newark, New Jersey, but neglected to add that Gruet also lived there working for Standard as an auditor. According to Pierce, Tilford lived in New York City, and "is the correspondent of the Waters-Pierce Oil Company in connection with its purchases of petroleum from the Standard Oil Company." He failed to add that Henry Tilford was an important officer in a Standard Oil subsidiary, and that his brother, Wesley H. Tilford was a director of Standard Oil of New Jersey. He averred that Standard Oil did not control Waters-Pierce; the officers of Waters-Pierce ran the company,

46 Transcript-1896 240; 236-47, TSA RG 223, Box 223/104. Regarding actual stock ownership, see Transcript-1907, 252-53, TSA RG 302, Box 1989/41-85; Williamson and Daum, Age of Illumination, 544-45. Though Standard had sufficient stock ownership in Waters-Pierce to exercise control of the company, it abided by the understanding with Pierce that Pierce would retain operating control of his firm, save for a brief period in 1904-05. Pierce had a reputation for independence, but brilliance as well. His huge profits made his independent streak tolerable to Standard. In the end, he succeeded in buying back control of his company after the 1911 dissolution of Standard Oil. See also Charles B. Wallace, "Waters-Pierce Oil Company Case Revisited" in Texas Bar Journal, Vol. 24, No. 3 (March 1961), 221-24.
...with a view to best serving its own interests, and if this has resulted in absence of conflict with the so-called Standard Oil Trust, it has been not because of any understanding to that effect. The Standard Oil Trust or its trustees never have interfered with or dictated the business of the Waters-Pierce Oil Company.

Standard had no need to interfere with the Waters-Pierce management, as it never sought to expand its territory into other Standard territory and produced annual profits of 400 to 700 percent of its stock value of $400,000.47

Johnson and Clark called a number of witnesses to rebut or contradict damaging evidence given by witnesses for the state. Nearly every one was a Waters-Pierce employee. This lack of unbiased witnesses made the lead-off defense witness, H. Hardy, more important. Hardy was a San Marcos merchant, the mayor of that town, and a figure of some credibility. According to Hardy, Dugger was not really a Waters-Pierce agent; the agent was Dugger's elderly father-in-law for whom Dugger did the physical work. This statement implied that Dugger's action were not a Waters-Pierce responsibility. Hardy further claimed that he always set his own prices and that the oil company never forced him to maintain a resale price. On cross-examination, Hardy's memory suddenly became poor. He could not recall when he had ever bought competitors' oil products—he only knew that he had done so. He did not remember any contracts with Louis Fries of Waters-Pierce to maintain resale prices. Instead he recalled that Waters-Pierce had offered to protect him from competitors' lower-priced petroleum products. But he did not have to purchase only

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47 Transcript-1896, 236-245, TSA RG 223, Box 223/104. Regarding the Tilfords, Gruet, and the infamous map, see Deposition of H.C. Pierce, Transcript-1907, 274-86, TSA RG 302, Box 1989/41-85. The Tilfords, as was the case with most important Standard Oil officials, served as officers and directors in multiple Standard Oil firms. Henry M. Tilford (1856-1919), had long been an important official of Standard Oil combination. He had served in a variety of executive positions for various Standard companies, including chief executive of Ohio Standard. He became a director of Jersey Standard in 1909, following the death of his brother Wesley H. Tilford, who had also been a prominent Standard executive and director. He gave up that position in early 1911, prior to the dissolution, and headed up Socony. Both Henry M. and Wesley H. Tilford were closely involved with Waters-Pierce for a number of years, and figured notably in the 1907 Texas ouster suit. Hidy and Hidy, Pioneering, 56-61, 70, 115, 147, 193 224-230, 290, 313-317, 320-326, 342-44, 350-52, 366, 444-49, 480, 495. For profits, see Bureau of Corporations. Report on the Petroleum Industry, Vol. 2 (1907), 42-43, 56, 535-42, 665-66; Brinthurst, Antitrust and the Oil Monopoly, 57.
from Waters-Pierce. His elaboration of his agreement with the oil company was less helpful to the defense:

I was not to buy exclusively from them in order to be protected. I had the liberty to buy from others if I saw fit, yet they would protect me in prices....The fact that they would not give me protection if I handled competitive oil would follow as a natural conclusion, and that is the way I understood the agreement, that if I handled competitive oil they would not protect me against competitors, but there was no agreement that I should not buy competitive oils. 48

Hardy had stated that no agent, meaning Dugger, had required him to maintain resale prices. Only a few minutes later, he noted that in 1895, Louis Fries, then a Waters-Pierce agent, had offered merchants a good price on Brilliant and White Water oil on the condition that they sell the products at a price set by Waters-Pierce. Thereafter the oil company sent advertising signs to Hardy with prices set by the firm, which Hardy's employees placed in his store window. But, according to the witness, there were no agreements.

This cross-examination prompted the following exchanges of re-direct and re-cross examinations:

RE-DIRECT: I don't think Mr. Dugger, while he was acting for the Waters-Pierce Oil Company at San Marcos, ever got me to cancel an order for competitive oil. I don't remember anything of that sort.

RE-CROSS: Mr. Dugger may have had some communication with other members of my firm. I wouldn't undertake that he did not. None passed between me and him personally.

RE-DIRECT: Mr. Dugger never paid me $5.00 for canceling an order. Never paid me a cent.

RE-CROSS: There were two members of our firm, that is, in 1895 there was two, myself and son. We had a clerk to whom we entrusted the buying of oils or anything else, and I do not know of my own knowledge what transactions he may have had with Mr. Dugger in reference to that or any other matter....

This exchange made Hardy's testimony largely meaningless for the defense, and more helpful to the state's case. He was not one of the people that Dugger had mentioned that he had dealt with in his testimony, and by his own statements, Hardy had no idea what

48 Transcript-lo96, 219-23, TSA RG 223, Box 223/104.
dealings his clerk may have had. At the same time he admitted that he had agreed to resell Waters-Pierce products at a price fixed by the oil company.49

The remaining principal witnesses for the defense were Waters-Pierce employees and officers. Wallace E. Hawkins led the parade. Hawkins had worked for the oil company since 1884, first in Dallas as a clerk, then in Waco as an agent before relocating to Ft. Worth. Johnson and Clark had Hawkins testify specifically to rebut the statements of H. Schmidt of Bremond, Texas. In his testimony, Schmidt, one of the largest retail sellers of petroleum products in Robertson County, had stated that in 1893 an agent for Waters-Pierce, either Hawkins or Grice, had offered to sell him oil at nine cents per gallon, provided that he would resell it at either twelve or twelve and a half cents per gallon, in order to drive out the Eagle Refining competition. Schmidt had accepted, and bought and sold the oil, though there was "no positive agreement." Hawkins admitted to knowing Schmidt well, and to having had dealings with him, but he vehemently denied having ever had the conversation that Schmidt referred to in his testimony, emphasizing that he had never required him to maintain a fixed price.50

On cross-examination, Crane interrogated Hawkins about his activities as a Waters-Pierce agent, and on the extent of his poorly defined operating territory, making it clear that the agent had had a number of clients over a wide area, and had had many conversations, most of which he did not remember. He did remember that particular conversation with Schmidt, which he had mentioned in direct examination, "because he had peculiar characteristics," these being that he was a large, well-established dealer, "and we don't forget people like that." Hawkins mentioned that he was one of the several Waters-Pierce agents still under indictment in McClennan County for alleged violations of Texas's

49 Transcript-1896, 222-23, TSA RG 223, Box 223/104.
50 Transcript-1896, 223-26, TSA RG 223, Box 223/104. It is possible that both Schmidt and Hawkins were telling the truth, but only if Schmidt had dealt with Grice, who also denied having the conversation about which Schmidt had testified. Someone was not telling the complete truth, and Schmidt had the least incentive to lie out of the three witnesses. Hawkins and Grice, however, had a great deal to lose, and knew that Waters-Pierce took care of its own, as the oil company kept both Hathaway and Grice on the payroll while they were in jail from the McClennan County suits. See Allan D. Sanford, "Texas' Million Dollar Anti-Trust Suit," Texas Bar Journal, Vol. 11, No. 2 (Feb. 1948), 167-68, 187-92.
antitrust laws, which did not enhance his credibility. He disclaimed any further knowledge of prices beyond his territory, or how Waters-Pierce operated.\textsuperscript{51}

The defense then called Grice to the stand to supplement Hawkins' rebuttal of the evidence from the Hathaway trial. The manager of Waters-Pierce for the Central Texas Division, based in Dallas, Grice was also a defendant in the McLennan County criminal antitrust case. He admitted knowing Schmidt and to a conversation with him in 1893, but denied having had the conversation that Schmidt had alleged, and ever making any agreements with the jobber for resale price maintenance for any price. Grice, like Hawkins, denied any price-fixing arrangements with W.A. Bryan of McGregor, in McLennan County, whose testimony from the Hathaway trial had been introduced by the state. He denied having made any offers, much less any actual deals, in direct opposition to the statements of Bryan, who claimed to have bought Waters-Pierce oil at nine cents per gallon, and sold it at twelve to fourteen cents per gallon at the behest of Grice, undercutting competing oils. In Grice's words, "No such conversation occurred between us."\textsuperscript{52}

Johnson and Clark then sought to have Grice address a critical question of agency. Did Grice, as manager, have the authority from Waters-Pierce to make contracts to re-sell oil requiring dealers to sell at a fixed price? Crane and Fuller objected vigorously to the question as defense counsel had phrased it, "because the defendants could not show the negative authority of the witness in that fashion." When the Attorney General's office had deposed Henry Clay Pierce about the authority that the company gave to its managers and agents, he had refused to reply. Grice's appointment as manager had been in writing—he could not simply deny he had authority by making a statement that he did not have the authority. Grice could not produce the letter appointing him as manager, or any other

\textsuperscript{51} Transcript-1896, 223-26, TSA RG 223, Box 223/104.
\textsuperscript{52} Transcript-1896, 226-29, TSA RG 223, Box 223/104. See note 10. Grice's McLennan County case went all the way to the Supreme Court, not because he had been convicted. Sheriff John Baker of McLennan County had arrested Grice, who was set free on bond. Grice some time later had his sureties refuse to stand good for his bond, so he went back to jail, where he then filed a petition for a writ of habeas corpus in federal district court. The district court ruled in Grice's favor, but the Supreme Court reversed, noting that Grice had not pressed for a speedy trial, and was in jail due to his own voluntary efforts. See \textit{In re Grice}, 79 F. 627 (N.D. Texas, 1897), and \textit{Baker v. Grice}, 169 U.S. 284 (1898).
letters describing his duties and powers. A fire had destroyed substantial amounts of the documents which had been in Texas. Evidently the Waters-Pierce head office had not sent any exculpatory letters showing that Grice lacked authority to make price-fixing contracts. Counsel for both sides then argued over Grice's authority regarding resale price maintenance, and as an agent. Judge Brooks's ruling on the subject were less than clear:

I will permit defendants [sic] to show what his powers were as agent, that is, if it was in writing to show what the writings were, to produce the writings, to show that the writings that he received were all he received on the question of his powers as agent, you can show it in a negative way. I will permit you to show what instructions that have been destroyed were, not what they were not.

Grice could state what he remembered the letters stated regarding his authority, but lacking the letters, he could not state what the documents did not contain. The result was that the court did not let him answer the question of defense counsel. He was allowed to testify that he never received particular instructions from management about his duties. As for his subordinates, "The local agents in conducting the business of the company were under my instructions. The instructions were never put in writing. We simply told them." Waters-Pierce seems to have been particularly careful to avoid letting any potentially damaging documents come into existence, or to get beyond the control of its managers.

Fries defended Waters-Pierce and himself. Like Grice, Fries had been indicted in McClellan County, was a defendant in the immediate case, and was a Waters-Pierce divisional manager. A longtime employee of the oil firm, Fries had worked his way up the corporate ladder and knew the business well. He detailed his ascent through the Waters-Pierce ranks, then tried to control the damage from Hardy's testimony the previous day, "clarifying" it. According to Fries, the sign sent to Hardy by Waters-Pierce which listed resale prices was innocent. Fries had offered Hardy a good price, not only to him but,

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53 Transcript-1896, 226-29, TSA RG 223, Box 223/104.
54 Transcript-1896, 226-29, TSA RG 223, Box 223/104. Given the amount of control Grice had over the agents beneath him, and his position as one of the five regional managers for Waters-Pierce in Texas, it would be hard to argue that Grice lacked actual authority for any contracts he or the agents under his control may have made. At the least, he had apparent authority to act, and his actions were not objected to by the upper management of Waters-Pierce. See glossary on "actual authority" and "apparent authority."
"indeed [to] the whole city of San Marcos," without any restrictions on resale. Hardy wanted to be a price leader for San Marcos and wanted an advertising sign. Lacking artistic skills, he had asked Fries to draft up a sign, and Fries offered to send him a sign from San Antonio. All of this was done for goodwill. "There was no contract or conditions named between us as to the prices named in the sign."

Clark and Johnson had Fries examine a copy of a circular letter he had received on January 2, 1896, and which he had distributed to his agents. The letter, dated December 31, 1895, was from Andrew M. Finlay, vice-president of Waters-Pierce, on the subject of Texas antitrust law:

During the recent trial of Manager Hathaway at Waco, there was some evidence elicited indicating that a few Agents of the Company had, on several occasions, agreed with retail customers to furnish the latter with oils at reduced prices, on condition that they would sell to consumers at agreed fixed prices.

Managers and Agents will therefore refrain from entering into any agreements whatever with customers, or from even making suggestions to them regarding prices at which they shall sell oils to others.

On the other hand, in competing for or to retain trade, we have the right to make rebates, sell or refuse to sell to certain persons, sell to different persons at different prices, sell at lower prices than competitors make, raise prices, or to make contracts for supplying customers with all oil required by them, for a definite or indefinite period, according as circumstances may [demand] from time to time; for we are advised by counsel that such matters are not violative of the trust law.

This circular is intended to take the place of any instructions heretofore given by Division Managers upon the points mentioned, and should be carefully followed until otherwise directed from this office.

This however, was not the complete circular sent out on December 31, 1895. The full letter also said in referring to resale price maintenance agreements that "[s]uch arrangements, if made, were offered without the authority or knowledge of the Company, and contrary to its policy and previous instruction on the point." Crane and Fuller objected.

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55 Transcript-1896. 229-36, TSA RG 223, Box 223/104. As was the case with Hawkins and Grice, Fries's credibility was questionable, given that he was still an employee of Waters-Pierce, and a defendant in the case at hand.

56 Transcript-1896. 232-33, TSA RG 223, Box 223/104.
to this latter language on the grounds that it was self-serving and not competent testimony, and Judge Brooks excluded it, over the exception of the defense. The same objection could have been extended to the entire circular letter, which read as if Andrew Finlay wrote it specifically with an eye towards future litigation.57

Fries then testified about his division in Texas and the distribution of petroleum products, which was based on the tank wagon system. He pointed out that for his division, petroleum products came out of St. Louis in both tank and box cars, and that the materials in box cars were "case and barrel goods" sold in unbroken packages. In theory this meant that the box car cargo was in interstate commerce, exempt from state laws or regulations. However, their bulk products in tank cars were placed in storage tanks, then transferred into multiple smaller containers in definitely "broken" packages, and subject to state rules.58

On cross-examination, Fries admitted that substantial amount of the Waters-Pierce business in Texas came from bulk shipments of petroleum products that were "repackaged." He emphasized the differences between tank stations and warehouses which did not have tank storage facilities. Sometimes Waters-Pierce sold to merchants directly from the warehouses, stating "[w]e sell him one or 500 cans. I would not sell him one can, that would be a broken package. We don't sell broken packages except bulk oil." Either Fries misspoke, or he said something that he should not have said, and tried to cover it over. He admitted that he set the prices for agents in his division for sale to merchants, using the unfortunate choice of phrase "fixed the prices." He also made it plain, however, that he occasionally consulted his superiors about what prices to set, and that he sent regular reports to Gruet at St. Louis. He declared that sales for oil at reduced prices "have been approved all along by the company." This statement produced a defense objection,

57 Transcript-1896, 232-33, TSA RG 223, Box 223/104. The problem with nearly all of the evidence presented by the defense was that it was so self-serving, and easily crafted for litigation purposes, given the inability of the State of Texas to obtain corporate records from Waters-Pierce. It is not clear how the fact that a statement or document might be self-serving constituted a valid basis for an objection. Andrew Finlay also happened to be Henry Clay Pierce's brother-in-law.
58 Transcript-1896, 233-34, TSA RG 223, Box 223/104.
which cited the best evidence rule in an effort to exclude this testimony. The court, as usual, ruled in favor of the plaintiff. To mitigate his gaffe, Fries again stated that he had set no resale price to merchants when he agreed to good prices. Whether intentionally or not, he also implied that Gruet was ultimately responsible for setting prices, and that he, Fries, had copies of all of his reports to Gruet, and of all Gruet's responses. Perhaps the Attorney General already knew this. But Fries was foolish to identify another possible source of information for the Texas investigators.59

Fries briefly returned to the witness stand the next day to correct a few numerical errors. F.A. Austin, manager of the Waters-Pierce East Texas Division, and also a defendant in the case, had little to add, confining his remarks to confirming the receipt and distribution of Andrew Finlay's circular letter of December 31, 1895.60

The defense offered into evidence portions of Pierce's deposition. Although asserting that Waters-Pierce was not controlled by Standard Oil, and that he would not talk about the stockholders or his private business, Pierce described business conditions in Texas. He offered a long list of active competitors of his company in Texas, stating that he or by his vice-president and brother-in-law, Finlay, set prices in Texas, and noted that the average profit that his company made was only one and a half cents per gallon in Texas. He neglected to mention that profits were regularly between 400 and 700 percent of the book value of the Waters-Pierce capital stock. Pierce claimed to know nothing about rebates in Texas, or exclusive dealing contracts, or about the contracts fixing resale prices with W.A. Bryan, H. Schmidt, and others "and if such contracts were made, they were not authorized by myself." Crane and Fuller objected to the defense's attempt to include the rest of Pierce's statement that no officer in Waters-Pierce authorized price-fixing contracts,

59 Transcript-1896, 234-35, TSA RG 223, Box 223/104. Judge Brooks ruled correctly. The best evidence rule demands that in evidence involving written material, the original document, or primary evidence, is required, and prohibits secondary evidence of the contents of a document, unless the original is destroyed or beyond the jurisdiction of the court through no fault of the party seeking to use it. In the latter case, secondary evidence, a copy or parol testimony, is acceptable. In this situation, Waters-Pierce had control of the original documents and had not produced them. See glossary "best evidence rule."
60 Transcript-1896, 236, TSA RG 223, Box 223/104.
because he lacked personal knowledge of what other officers might have done, and could speak for only his own actions. Judge Brooks sustained the objection. The oil magnate claimed that his company had purchased Eagle Refining in 1894 as an investment. He did not elaborate on why it remained, on the surface, an independent company competing with Waters-Pierce.61

Gruet's deposition dealt solely with the issue of Standard control over Waters-Pierce. Hathaway, star defendant of the McClellan County criminal antitrust case and manager of the Waters-Pierce North Texas division, gave a brief summary of his career and that of his division. He admitted that he had been convicted of violating Texas antitrust law in McClellan County, and had been in jail. He added that the Texas Court of Criminal Appeals had overturned his conviction and that the case in Waco had been dismissed.62

The cross-examination of Hathaway was brief. Crane and Fuller elicted from him the fact that his office was in constant communication with the St. Louis corporate headquarters, which meant that the head officers had to be aware of his actions. He said that he set the prices for his agents at which to sell oil, and that he had reduced prices to

61 Transcript-1896, 236-45, TSA RG 223, Box 223/104. Despite Pierce's long list of competitors, he still controlled approximately ninety percent or more of the marketing business in petroleum products in Texas, and the failure to control one hundred percent of the trade was not from a lack of trying to crush his competitors, which he did with efficiency and brutality. "He was the nastiest fighter you ever saw." Allan Nevins, Study in Power: John D. Rockefeller, (1953) Vol. II, 42 quoting from a letter from Charles Higgins to Allan Nevins, October 24, 1934. On Pierce's domination of the market see Bureau of Corporations, Report on the Petroleum Industry, Vol. 1 302-05, Vol. 2 443; Williamson and Daum, Age of Illumination, 544-45; Brinughst, Antitrust and the Oil Monopoly, 39-42. Pierce kept his acquisitions operating under their independent name, even if they ran at a loss, in order to present the image that Waters-Pierce had independent competition, and to market oil to those who refused to but from a putative member of the Standard Oil Trust.
62 Transcript-1896, 245-248, TSA RG 223, Box 223/104. Hathaway v. State, 36 Tex. Crim. Rep. 261 (1896). Hathaway, as noted earlier, did not suffer for his brief imprisonment. In addition to being on the payroll, he lived quite well in jail, with a suite of rooms, curtained, carpeted, with a nice bed, meals from the best cafes catered to him, all at the expense of Waters-Pierce. By arrangement, he could have visitors at any time, take long walks, go to the theater, go to restaurants, or visit his wife, who was staying at the best hotel in Waco, also at the expense of the oil company. Sanford, "Texas' Million Dollar Anti-Trust Suit," Texas Bar Journal, vol. 11 (Feb. 1948), 188-89.
meet competition, and would continue to do so. All of which had been reported to headquarters, which rarely complained of his actions.\footnote{Transcript-1896, 248-49, TSA RG 223, Box 223/104. Again, the testimony of its own witnesses proved that upper management of Waters-Pierce knew what was going on in Texas, and that if they had not authorized their agents to do such, they consented to it by inaction.}

The last of the key defense witnesses was also the last individual defendant, J.W. Keenan, manager of the South Texas division of Waters-Pierce, in Galveston. Keenan had been a manager only since June 1895, taking over from Arthur M. Finlay. But he had worked under Finlay for about eight years and was familiar with the alleged arrangements between Finlay and several merchants of Brownsville, which was a part of the South Texas division. He admitted, however, only that Waters-Pierce had allowed the Brownsville merchants a rebate, not that it was conditional on maintaining a minimum resale price. No one, however, knew where the original agreements were, though Keenan recalled that he had seen a copy. Regarding price setting, Keenan said,

\begin{quote}
The prices of oil is [sic] in a measure regulated in St. Louis. I make the prices, but they are subject to inspection and approval by the St. Louis office. I send a copy of my schedule off to [the] St. Louis office once a month to Andrew M. Finlay,...If competitive oil is brought in, I would make prices to meet competition. I have that authority.
\end{quote}

The state did not bother to cross-examine Keenan.\footnote{Transcript-1896, 249-50, TSA RG 223, Box 223/104. It is unclear what Crane and Fuller did not subject Keenan to cross-examination, as he appeared to have some useful information.}

Clark and Johnson concluded by introducing documentary evidence regarding the incorporation of Waters-Pierce which showed that the Waters-Pierce management could not have prevented the stock transfer to Standard Oil and its minions. The defense counsel also included a certified copy of Waters-Pierce's license to do business in Texas for ten years, dated July 6, 1889. The defense closed with excerpts from depositions in which the witnesses noted that Waters-Pierce always responded to lower-priced competitive oils by reducing its prices.\footnote{Transcript-1896 250-58, TSA RG 223, Box 223/104. There was no legal way for Waters-Pierce to control how its stock got traded once it was on the market, or to insist on its return from the Standard Oil Trust. But Waters-Pierce was a closely held corporation with 4,000 shares of stock. Pierce sold a controlling interest to Standard Oil, no one forced him to do it. The purpose behind trying to introduce U.S. Census evidence could be any of several things, but the likely intent was to help prove that the Texas}
Setting a precedent for future Waters-Pierce litigation in Texas involving Waters-Pierce, one of the defense attorneys, John D. Johnson was called as a witness by the State. His role was only to identify Samuel C.T. Dodd, as a speech of Dodd’s had been introduced into the record as Appendix "A."

Both sides made closing arguments and Judge Brooks submitted the case to the jury on June 15, 1897. But the judge had first to examine the requested instructions given to him by both sides in the case, and decide what instructions, or "charges" to give to the jury. This was not an easy task, as both sides requested charges that, if given, would have been tantamount to directing the verdict on all of the main allegations. Judge Brooks chose to ignore both sides, and produced his own, lengthy set of charges. They summarized the basic allegations of the State and the pleadings of the defendants, and set forth the applicable rules of law, as he interpreted them.66

Brooks first defined "trust" for the jury, quoting the definition in the Act of 1895 almost verbatim.67 In his tenth charge he explained that certain types of contracts, if they did not involve interstate commerce constituted violations of the Texas antitrust laws.

66 Transcript-1896, 75-98, TSA RG 223, Box 223/104. It is unusual to see all of the requested instructions from both sides rejected by the Court. But then it appears that neither side took a moderate approach to jury instructions in this case. This refusal of requested instructions merely provided another grounds for appeal, by either side. Samuel Calvin Tate Dodd is credited with being the creative father of the Standard Oil Trust, and the subsequent Standard Oil holding companies. Dodd was a gifted attorney who became a specialist in corporation law and equity just as the oil industry was developing in western Pennsylvania. He originally opposed Rockefeller interests while representing other oil men and firms, with some success. But in 1881 he became the general counsel for Standard Oil and moved to New York. He did not create the first Standard Oil Trust, but he produced a much more comprehensive trust agreement in 1882 that improved the efficiency of the organization somewhat. Following the dissolution of the Standard Oil Trust in 1892, he helped Standard Oil fend off the forces of antitrust and kept Standard Oil mostly within the bounds of the law until he organized the Standard Oil Company of New Jersey as a giant holding company in 1899, a superior form of organization to the trust. He remained active with Standard Oil until 1905. Unlike everyone else associated with Standard Oil from its early days, Dodd did not extremely rich. He never accepted any Standard Oil stocks, as he felt that in order to give the best, disinterested legal advice to his client, he should not have any financial interest in the firm. Dictionary of American Biography Vol. V (1930) s.v. "Dodd, Samuel Calvin Tate."

67 See Appendix for the Texas Trust Act of 1895's definition of "trust."
Among these contracts were those in which parties agreed to buy oil only from Waters-Pierce in exchange for any valuable consideration; those in which parties also agreed not to sell to anyone dealing in other company's products; and those in which the parties, "as stated and named in plaintiff's petition," in return for a valuable consideration, bound themselves, "either verbally or in writing," to buy only from Waters-Pierce, and "to sell said oils so bought to other parties desiring to purchase the same at a price fixed by said Company's [Waters-Pierce] officers or agents...[,]" provided that if officers or agents of the oil company had made such contracts, they were acting within the scope of their actual authority, or that such acts were "consented to and ratified or carried out the same after they were made," by the chief Waters-Pierce officers. If the jury so found, it was to return a verdict of guilty against Waters-Pierce.68

Judge Brooks had to explain a bit about the law of agency to the jury as well. He pointed out to the jury that a corporation can act only through people; a corporation could do nothing on its own. A corporation is not liable for all of the acts of its employees and servants, only those acts within the scope of their employment or agency, those acts which the company authorized the agent to do, and those unauthorized acts that the governing officers have allowed, or actually ratified. If contracts had been made by Waters-Pierce agents, but not by any of these means, then the jury was to find in favor of Waters-Pierce. Otherwise, the oil company was liable for the acts.69

68 Transcript-1896, 81-82, TSA RG 223, Box 223/104. What is peculiar in this charge #10, it is only contracts that gave Waters-Pierce the power to fix resale prices which the Court said could be verbal or written. Judge Brooks did not state that the other agreements had to be written, but he creates the implication that this is the situation by stressing that price-fixing agreements could be either.
69 Transcript-1896, 82, TSA RG 223, Box 223/104. From the evidence presented, including that of the defense, Waters-Pierce gave its regional managers a lot of authority to act to deal with potential competition, as long as they reported what they were doing. While it was not clear just where the buck stopped in determining prices, the management buck in St. Louis was informed of the actions of its managers, and consented to prices that they set, even if they did not explicitly ratify them, and the same applied to contracts made by local agents. A few agreements by a rogue agent could be overlooked; certainly the local agents and managers had apparent authority to make contracts which would bind Waters-Pierce, unless the contracts were illegal, in which case Waters-Pierce could have repudiated them. Until the suspiciously convenient circular letter of December 1895, the management of Waters-Pierce seemed to have had no problem with any of the contracts that its agents had made.
As noted, Judge Brooks stated that none of this mattered if the contracts in question were made in reference to interstate commerce. He then explained what constituted interstate commerce and the "original package" doctrine of John Marshall. Brooks stated that if the Waters-Pierce agents sold products within Texas in "broken packages, or by retail, and not in the original packages, in which said oils were shipped into this State, then such business is not Interstate Commerce, and is subject to the laws of this State...." As a caveat, he pointed out that merely because a contract referred to dealings in interstate commerce, this did not protect the parties from any further contractual dealings in which "such oils, after being sold to parties in this State, shall be sold by said parties at a price fixed by the duly authorized agents of defendant Company...." The laws of Texas applied to such dealings.70

Having instructed the jurors about what violated Texas's antitrust laws, Brooks limited the meaning of some evidence and threw some evidence out. He had allowed the introduction of evidence about Waters-Pierce's conduct prior to 1889. Texas had not enacted an antitrust law until March 30, 1889, and Waters-Pierce did not obtain a new permit to do business in Texas until July 6, 1889. Accordingly, Brooks told the jurors that they could not consider that evidence as grounds for forfeiting Waters-Pierce's business permit. It was merely "for the purpose of showing the course of dealing of said Company in this State...." In like fashion, the judge restricted the jury's consideration of evidence "tending to show" efforts by Waters-Pierce agents to get dealers to enter into exclusive arrangements with the oil company; of refusing to sell to merchants who handled competitive oils; and of price discrimination against merchants who sold competitor's petroleum products. As Brooks put it, "none of these things are unlawful....," and were only admitted as bearing upon other issues. These issues included the "course of dealing

70 Transcript-1896, 83-84, TSA RG 223, Box 223/104. Judge Brooks's explanation was a bit circular on the explanation of "original package." Nor did he make it clear whether or not there was a distinction between how bulk goods were treated as interstate commerce and smaller individual packages shipped as part of a single large shipment, after there had been testimony that implied just such a distinction. It would seem logical that any sale of petroleum products that had been in tank storage in Texas "broke the package" unless the entire contents of the tank had been sold.
of defendant Company in this State," and as circumstantial evidence as to whether or not Waters-Pierce had made any contracts that violated the antitrust laws, and whether or not the head officers of the company knew about such agreements, or had authorized them in some fashion.71

Waters-Pierce had bought out several Texas competitors and operated some of them as pseudo-competition. The court decided that while "such transactions as these are not believed to be in violation of the [antitrust] laws of this State," these dealings, were however, acceptable as evidence "bearing upon the course of dealing of defendant Company."72

Crane and Fuller had tried to prove that Waters-Pierce was a member of the Standard Oil Trust. Lacking both effective tools for discovery and cooperation, Crane had been able only to introduce into evidence a copy of the Standard Oil Trust Agreement, and testimony from Pierce and Gruet that certain individuals and companies associated with Standard Oil held Waters-Pierce stock. Judge Brooks told the jury to disregard all testimony regarding this allegation, essentially directing a verdict on this issue. He later explicitly directed the jury to find the defendants Hathaway, Grice, Austin, Keenan, and Fries not liable. They had probably violated Texas law, but "...they are only the agents of [the] defendant Company."73

Brooks then instructed the jury to answer the questions:

(1) Were any of the contracts mentioned in Section 10 of this charge made and entered into and carried out by the defendant Company in this State, since July 6th, 1889, acting through its agents;

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71 Transcript-1896, 84-86, TSA RG 223, Box 223/104. Allowing this sort of information into evidence was questionable. If the various actions of Waters-Pierce were not illegal, separately nor cumulatively (which also would be a tricky issue—how many marginally legal actions does it take to make the whole illegal?), why allow it into evidence? If the "course of dealing" was not a violation of the antitrust law, the only effect of permitting such evidence would be to inflame the prejudices of the jury.

72 Transcript-1896, 84-86, TSA RG 223, Box 223/104. See note 61. infra.

73 Transcript-1896, 85-86, TSA RG 223, Box 223/104. Judge Brooks must have had the McLennan County cases on his mind, which had been unable to net any important figure from Waters-Pierce or Standard Oil, and had to settle for harassing local agents and regional managers. Convicting such people would not have a deterrent effect on trusts, and would be more likely to produce a sympathetic reaction among people. Such was the case with Hathaway.
(2) Whether such agents were acting in the scope of their authority and employment in making such contracts, or if not, whether same were ratified or acquiesced in by defendant Company after they were so made;

(3) Whether said contracts, if any, relate to Interstate Commerce or to business within this State.

Brooks pointed out that the jury could consider circumstantial evidence, and that liability did not require direct proof. He stated that while the plaintiff, Texas, had the burden of proof, all it had to show was a preponderance of the evidence; it did not have to prove violations of the antitrust laws beyond a reasonable doubt, for this was not a criminal but a civil, suit.\textsuperscript{74} Then Brooks sent the jury out of the court to deliberate. It did not take long.

The jury returned later that day, June 15, 1897 with this verdict,

We the jury find for the plaintiff, the State of Texas, against the defendant Waters Pierce Oil Company and in favor of the individual defendants Hathaway, Austin, Grice, Keenan and Fries.

Texas had not proved that Waters-Pierce was part of the Standard Oil Trust, or a successor holding company, or that it had monopolized the oil business in Texas. It had proved that Waters-Pierce had made several illegal contracts in Texas. That was enough to establish liability by a preponderance of the evidence, and lead to the following order by Judge Brooks:

\textit{IT IS, THEREFORE, ordered, adjudged and decreed by the Court, that the defendant, the Waters Pierce Oil Company, be and is hereby denied the right and prohibited from doing any business within this State, and that its permit to do business within this State heretofore issued on July 6th, 1889, by the Secretary of State of this State, be and the same is hereby cancelled and held for naught, and that said defendant, the Waters Pierce Oil Company, its managers, superintendents, agents, servants and attorneys, be and are hereby perpetually enjoined and restrained from doing business within this State.} (emphasis added)

The Court assessed costs against Waters-Pierce. To balance, Judge Brooks assigned court costs against the state for that portion of the case dealing with the individual defendants.

\textsuperscript{74} Transcript-1896, 86-87. TSA RG 223, Box 223/104. Johnson and Clark maintained that a forfeiture suit was more in the nature of a criminal charge than an ordinary civil suit, and accordingly the standard of proof upon the State should be "beyond a reasonable doubt. There is some merit to this contention, particularly since the antitrust laws had both civil and criminal sanctions, and forfeiture is a stronger penalty than an ordinary fine.
Beyond that, there were no fines or other punishment. This order did not preclude interstate commerce within Texas by Waters-Pierce.\textsuperscript{75}

Matters would not, could not, rest here. Waters-Pierce had done a tremendous amount of highly profitable business in Texas for over twenty years, and Pierce would not give that up without fighting it to the bitter end. George Clark and John Johnson, the defense attorneys, had excepted frequently throughout the trial. One day after the verdict, Clark and Johnson filed two motions to prevent the cancellation of Waters-Pierce's permit to do business in Texas.\textsuperscript{76}

The first motion sought an arrest of judgment. According to this uncommon motion, judgment could not be rendered on the verdict. The suit was predicated upon the Texas Trust Acts of 1889 and a section of which stated,

\begin{quote}
Every foreign corporation violating any of the provisions of this Act is hereby denied the right and prohibited from doing any business within this State,...(emphasis added)
\end{quote}

The state's own petition, the defense argued, made clear that Waters-Pierce, a Missouri corporation, could do business under Missouri law in "other States of the American Union," and that Waters-Pierce was engaged in interstate commerce in Texas,

\begin{quote}
And this Court is without jurisdiction to enter judgment prohibiting this defendant from transacting such business under its corporate powers within the State of Texas, nor can the State of Texas, by any act, either executive, legislative or judicial, prohibit this defendant from doing such interstate business within the State of Texas.
\end{quote}

\textsuperscript{75}Transcript-1896, 73, 88, TSA RG 223, Box 223/104. The result was not surprising. All that the State had to prove was a violation of the antitrust laws, and that would have been enough to allow the court to order the business permit of Waters-Pierce to be forfeited. Given that the permit was due to expire within twenty-six months anyway, it might have been simpler, and more effective, to give the Texas Secretary of State more authority to refuse to issue permits to do business in Texas, instead of having it as basically a ministerial function. As far as the perpetual injunction and restraint of Waters-Pierce, while the matter was being appealed, it continued to operate. After the final judgment from the U.S. Supreme Court in March 1900, it was permitted until the end of May, 1900 to wind up its affairs in Texas. But by June 1, 1900, Waters-Pierce was back in action in Texas, technically as a new corporation, but with no discernible differences other than a new corporate charter, and a new business permit. The injunction would also have applied to the "blind tigers" that Waters-Pierce operated in Texas as well, such as Eagle Refining.

\textsuperscript{76}Transcript-1896, 112-26, TSA RG 223, Box 223/104. The motions were technically not to prevent the forfeiture of Waters-Pierce's permit to do business in Texas, but they had the effect of dealing the implementation of the judgment, and if successful, would prevent the cancellation for an indefinite period.
Accordingly, the Texas statutes violated the U.S. Constitution and were null and void. No judgment could be entered upon the verdict, and the court could not prohibit Waters-Pierce only from doing intrastate business. 77 Judge Brooks would have had to prohibit the oil company from doing any business in Texas, including interstate commerce, and any law or act purporting to give him such power would be unconstitutional. 78

Clark and Johnson also moved for a new trial, listing errors which Judge Brooks had allegedly made. Among these were: the failure to sustain all the Waters-Pierce demurrers; the incorrect instructions about the law of agency; the allowing into evidence conduct of the oil company and its agents that was not illegal in order to show "the course of dealing of the defendant," and then commenting on it in the instructions to the jury; the allowing a wide variety of matters into evidence that should have been excluded; the barring of certain testimony that Waters-Pierce wished to introduce; and the court's error in giving any instructions on contracts, or "pretended contracts" which placed restrictions on merchants, because said alleged contracts "lacked the essential characteristic of mutuality." 79

Despite the ingenuity of the motion in arrest of judgment, and the exhaustive detail in the motion for a new trial, little doubt existed about how Judge Brooks would rule. On June 25, 1897, he overruled them, to which Johnson and Clark excepted. The motions did

77 Transcript-1896, 112-14, TSA RG 223, Box 223/104. For section four of the Act of 1889, see Appendix. A motion in arrest of judgment is rare, essentially because it essentially accuses the Court of having been incompetent, in that the Court should have dealt with the problem during the trial. In other words, the Court should have seen that something fundamental was wrong with the case.

78 The argument was a crafty one, using the literal language of the statutes and the petition of the State, which was an amended petition at that. It reflects more on the poor legal drafting skills of the Texas Legislature, a body even then with a substantial number of lawyers, than on the legendary hair-splitting ability of defense attorneys such as Clark and Johnson. The fundamental flaw in this otherwise intriguing legal point was that as a general rule, state courts can interpret the statutes of their own state in such fashion as to render them constitutional, in this case construing section four as to apply only towards intrastate business.

79 Transcript-1896, 115-25, TSA RG 223, Box 223/104. Motions for new trials were and are fairly routine, but seldom granted. The defense in this motion took a shotgun approach stating that the Court had made multiple errors on a wide range of areas, and had the exceptions that they had made to back up the alleged reversible errors. The most amusing assertion was that the alleged contracts involved in the case were void, because they lacked mutuality of obligation, in that only the merchants who dealt with Waters-Pierce were bound to exclusivity. Waters-Pierce could sell to anyone, but each merchant could only buy from Waters-Pierce, therefore, the defense claimed, the contracts were void from the beginning.
buy more time for the defense to prepare an appeal, forestalled interference with Waters-Pierce's Texas operations, and provided additional grounds for an appeal, notice of which the defense filed after making the noted exceptions.\textsuperscript{80}

On July 10, 1897, Johnson and Clark filed an appeal bond, a supersedeas bond, and assignments of error for the trial, perfecting the appeal, and thereby staying further execution of the judgment against Waters-Pierce until the appeal was decided.\textsuperscript{81}

Both sides filed briefs in the Circuit Court of Appeals for the Third Supreme Judicial District of Texas in December, 1897. Oral arguments would occur early in 1898. Crane had his plate full that winter. He also had to prepare oral arguments to deliver in the United States Supreme Court in January 1898 on the McClennan County Waters-Pierce cases, and he was running for Governor of Texas. An adverse decision in either the Supreme Court or in the Texas Court of Civil Appeals would affect his ambition to follow in the footsteps of his predecessors, James Hogg and Charles A. Culberson, who had used the Attorney General’s office as a springboard to the governorship. Matters approached a peak.\textsuperscript{82}

IV. Texas Triumphant?

\textit{What do you think of the present anti-trust statute?}

\textsuperscript{80} Transcript-1896, 114-15, 125-26, TSA RG 223, Box 223/104.

\textsuperscript{81} Transcript-1896, 274-78, TSA RG 223, Box 223/104. An appeal bond is a bond posted by the appellant to insure that the appellant has the funds to pay for the court costs of the appeal, typically the amount is at least twice the expected costs. The bond in this case was one thousand dollars, not a large sum for Waters-Pierce. A supersedeas bond is a bit different. A party that wants to set aside a judgment must post such a bond in order to compensate the opposing party if the action to set aside the judgment fails. The supersedeas bond was also a trivial sum for the oil company, two thousand dollars. “Perfecting an appeal” means completing all of the work necessary to an appeal to proceed to a higher court, such as posting the necessary bonds, and filing all the necessary documents with the courts.

\textsuperscript{82} On Crane running for governor, see Barr, \textit{Reconstruction to Reform}, 211-217; Crane, "Autobiography, Ch. 4," 1-3, Crane Papers, Box 3N111. CAH; \textit{Austin Daily Statesman}, January 3, 1898. Crane had the support of James Hogg, which was worth a great deal, but he had failed to seek and obtain the backing of the Colonel Edward M. House, who never held political office in Texas, but was a kingmaker among the Texas Democratic Party. House supported Joseph Sayers, who was then a Congressman. Several others entered the field in early January, 1898. All took public positions against trusts. Crane argued the McClennan County antitrust cases before the Supreme Court on January 26, 1898. \textit{Galveston Daily News}, January 27, 1898. On Hogg, see Cotner, \textit{James Stephen Hogg}, 189-219. See also Dickson, "Law and Politics," 224-52.
It is sufficient for all purposes. There are four cases now pending in the
Supreme Court of the United States in which its validity is being
questioned. We hope for a decision in the early spring. If it be held valid
we will be able to destroy trusts in Texas. If it should be held invalid,
which I hope it will not, I shall favor the passage of a vigorous law, which
will render the operation of trusts in this state impossible. It is useless for
us to quarrel over other questions if trusts cannot be controlled. They, in a
large measure, practically dictate the price of commodities, including the
necessaries of life. They limit the output of factories and mines: they
ignore the law of supply and demand because they control the supply. They
render competition impossible; they practically destroy individualism and
drive the public mind with wonderful rapidity towards communism. Since I
have been attorney general I have endeavored to enforce the present statute
in all cases where proof could be found. Much of my time has been
devoted to the preparation of the cases now pending in Washington, as well
as in the state courts, but as before stated, if the statute can be upheld,
which I hope it will, it will be altogether sufficient. If supplemented by
appropriate federal legislation, even interstate traffic by trusts can be entirely
prohibited.

Texas Attorney General Martin M. Crane, in a press release of January 2,
1898, announcing his candidacy for governor of Texas, Austin Daily
Statesman, January 3, 1898.

Candidate Crane favored vigorous antitrust laws and enforcement, including an
improved federal antitrust law and a more vital, active Texas Railroad Commission, with
power to adjust freight rates. Crane also favored a corporate franchise tax, labor courts,
and free silver. Crane enjoyed two advantages: the fame that his efforts against Waters-
Pierce had brought him, and the support of Hogg.83

Meanwhile Crane also had to handle the Waters-Pierce appeal in Texas and the
Grice appeal in the U.S. Supreme Court. Crane argued the latter case on January, 26th.
Arrayed against him were fellow Texan, George Clark, the Waters-Pierce general counsel,
Johnson, and Joseph H. Choate, one of the nation’s leading lawyers.84

83Barr, Reconstruction to Reform, 211-217; Crane, "Autobiography, Ch. 4," 1-3, Crane Papers, Box
3N111 CAH; Cotner, James Stephen Hogg, 476-81; Austin Daily Statesman, January 3, 17 1898. One
writer for the Austin Daily Statesman made the observation that Crane had been running for governor for
four years, as soon as he had become the Texas Attorney General. U.S. Representative Joseph W. Bailey, a
major factional leader in the Texas Democratic Party, was a political foe of Bailey and Hogg, and supported
a Ft. Worth attorney, Richard M. Wynne for governor specifically to damage Crane's candidacy.
84Galveston Daily News, January 21, 27, 28 1898. Joseph Hodge Choate, Sr. (1832-1917) was a
prominent attorney based in New York, who had a lengthy legal career of fifty-five years handling a wide
variety of cases, many of them of considerable importance, so many that it was noted that merely listing
them would take up too much space in a biographical article. He was considered an extremely able and
theatrical trial lawyer, but was also adept at appellate work, particularly oral arguments. Many consider
Pollock v. Farmers Loan & Trust Co., 158 U.S. 601 (1895) to be his most important appellate case, in
which he successfully argued before the Supreme Court that the income tax law of 1894 was
Crane argued that the federal district court had lacked jurisdiction to hear Grice's habeas case. In the lower federal court, Clark and Johnson had successfully argued that the failure of the Texas Court of Criminal Appeals in the Hathaway case to rule on the constitutionality of the Texas antitrust statute had created a special circumstance which required the immediate intervention of the federal courts. In addition, the trial court had allegedly denied Grice a speedy trial, kept him languishing in jail, which also constituted a special circumstance justifying federal jurisdiction in a habeas corpus case. Crane responded by pointing out that the Texas Court of Criminal Appeals had reversed the trial court in Hathaway because the indictment had been defective, and the evidence had otherwise been insufficient for a conviction. It would have been improper for that court to rule on the constitutionality of the antitrust laws when such a ruling was unnecessary. As for the trial court having denied Grice a trial, he had never requested one, preferring to remain free on bail until after the complaint against Hathaway had been dismissed, whereupon he voluntarily placed himself in jail. Crane argued that Grice had sought the federal courts to avoid a trial in the Texas courts.85

Choate, Clark and Johnson argued that the Texas antitrust statute of 1889 was unconstitutional because it regulated interstate commerce, and because it exempted agricultural products and livestock while in the hands of the producer, thereby violating the equal protection clause of the Fourteenth Amendment. Crane responded that the Texas Supreme Court had already construed the statute as not interfering with interstate commerce, which construction bound the federal courts. As for the agricultural exemption, Crane argued that it was a valid exercise of the police power. Texas's legislature had

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regulated manufacturers and dealers, not producers; and farmers and livestock ranchers were incapable of agreeing to restrain trade in ways harmful to Texas.\textsuperscript{86}

On February 21st, Justice Peckham declared for a unanimous Supreme Court that the Texas Court of Criminal Appeals in \textit{Hathaway} had acted properly in not ruling upon the constitutional issues in the case. This issue had no merit. On the matter of Grice not receiving a trial, the Court adopted the position of Crane and Texas that Grice had not tried to obtain a trial while on bail, and that his subsequent imprisonment was voluntary, solely for the purpose of attempting to gain access to the federal courts. Having decided that the federal circuit had lacked jurisdiction, the Court pointed out that it did not need to address the issues of the constitutionality of the Texas antitrust laws, and reversed and remanded the case to Judge Swayne, with orders to set aside the writ of habeas corpus and remand Grice back to the sheriff of McLennan County.\textsuperscript{87}

It was a solid victory for Texas and Crane. The decision freed Crane to face Johnson and Clark in the Texas Court of Civil Appeals in Austin in March. Texas had only to retain its lower court victory, not overturn the results. Johnson and Clark rehashed their familiar arguments that the Texas antitrust statutes were unconstitutional and that Judge Robert E. Brooks had made errors during and after the trial. Crane and Fuller repeated the former's recent arguments before the Supreme Court on the constitutionality of the antitrust statutes, with only slight changes and that Judge Brooks's order barring Waters-Pierce from operating in Texas was in accord with Texas Supreme Court precedents. As for the Fourteenth Amendment arguments, Crane and Fuller admitted that the Texas laws might have affected the liberty of contract and property rights, but not unconstitutionally.\textsuperscript{88}


\textsuperscript{87} \textit{Baker v. Grice}, 169 U.S. 284, 290-294.

The equal protection issue required care. Clark and Johnson had pointed out that exemptions from the antitrust laws covered over eighty percent of the people and organizations in Texas. Crane and Fuller bluntly pointed out that states had always had the power to exempt certain people and property from the operations of laws, to enact legislation that applied only to certain groups or types of property, and to dictate the terms on which they would allow foreign corporations to operate within their boundaries. Virtually all laws discriminated in some fashion. What mattered was not mere discriminatory effects, but rather the basis and rationale of the discrimination. They asserted that for the statutory distinctions between groups to be unconstitutional the distinctions had to be arbitrary, and the burden of proof on arbitrariness weighed on those attacking a statute, in this case Clark and Johnson. The Waters-Pierce lawyers had not met that burden. Crane and Fuller also offered a brief history of the antitrust statutes to show the intent of the Texas Legislature in enacting the laws, and the agricultural/livestock exemption. The legislature had determined that farmers, ranchers, and laborers were no threat to the interests of the people or a danger to competition. If anything, the exemption for workers who combined to seek better wages should reduce labor troubles, thereby benefiting all Texans. And if the Court decided that the 1895 Texas Trust Act were unconstitutional because of the workers' exemption, then the 1889 antitrust statute would still be in effect, as a void 1895 law could not have repealed it.89

The Court of Civil Appeals decided on March 9, 1898 that:

The object of this suit, the laws under which it is brought, and the issues involved, are so accurately stated in the admirable charge of the trial court that we set it out in full, as giving all the information needed upon theses questions...

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89Waters-Pierce Oil Company v. Texas, 44 S.W. 936 (1898); Brief of Appellee at 1-17, 44 S.W. 936 (Tex. Civ. App., 1898), TSA RG 302 Box 2-23/848E.

One of the more interesting errors alleged by Johnson, Clark, and Bolinger was that Judge Brooks should have charged the jury that the standard of proof was guilt beyond a reasonable doubt, rather than guilt by a preponderance of the evidence. In their view the penalties of the antitrust statutes made them penal in character, and therefore guilt should require the burden of proof of a criminal case.
The opinion adopted the Crane-Fuller arguments, affirmed Judge Brooks's rulings, charges, and instructions to the jury in every respect, and deferred to the legislature in matters affecting the public welfare as duties "peculiarly within the knowledge of the law-making department." Referring to the regulation of railroads and trusts, Texas Court of Civil Appeals Chief Justice Fischer asserted that,

In each case, the interest of mankind requires that the selfishness of human nature, which seeks alone to advance its individual interests, shall, in the use of property, and in conduct, be so far restrained, as may be compatible [sic] with individual right and liberty, as will prevent harm and injury to the public.

The chief justice essentially argued for tougher antitrust laws, stating:

The legislatures of the state are supposed to have acted in this matter intelligently, and with a knowledge of the conditions and dangers confronting the people from combinations and trusts; and it requires little enlightenment to discover that at the time these laws were passed, and now, the disturbing classes, which were and now are so injuriously affecting the public welfare, are the buyers, sellers, and dealers in the articles in use by the people of this state. The unbridled license of these classes, which in many instances was exercised, had, within this state, as well as other sections of the country, assumed such proportions that the danger to the welfare of the people was so apparent that the layman as well as the lawgiver could discern it.

He also noted, as dicta, that if the 1895 Texas Trust Act was declared unconstitutional owing to the workers' exemption, that the 1889 Texas Trust Act would still be in effect and applicable to Waters-Pierce. Texas had triumphed.90

Crane's gubernatorial campaign gained little momentum from this victory. He withdrew from the race on May 17, 1898, and decided not to seek any further public office.91 Waters-Pierce, however, was far from finished. Undaunted by the Court of

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90Waters Pierce Oil Company v. Texas, 44 S.W. 936, 940-47. Arnold M. Paul has argued that judiciary of the late nineteenth century stood as a major force for conservatism which helped to transform the due process clause of the Fourteenth Amendment into a powerful check upon legislative regulation of business, which does not seem to describe Fischer's opinion in the case. James May, on the other hand, observed that "state antitrust efforts constituted a practically and symbolically substantial response to late nineteenth and early twentieth century problems of industrial combination, collusion, and predation as well as an important complement to public and private litigation under federal antitrust law." See Arnold Paul, Conservative Crisis and the Rule of Law: Attitudes of Bench and Bar (1976); May, "Antitrust Practice and Procedure in the Formative Era: The Constitutional and Conceptual Reach of State Antitrust Law, 1880-1918," 135 University of Pennsylvania Law Review (1987) 592.

91The Galveston Daily News, March 10, 1898 merely noted that Court of Civil Appeals for the Third Supreme District had affirmed the result of the trial court, one of number of cases that had recently been
Civil Appeals decision, Clark and Johnson applied to the Texas Supreme Court for a writ of error, which was denied on May 5, 1898. The Waters-Pierce lawyers applied for a writ of certiorari to the United States Supreme Court, which agreed to hear the case. Though he was a lame-duck Texas Attorney General, who knew that he would not be in office long enough to argue the case, Crane put together a comprehensive brief which he filed with the Supreme Court. Crane’s successor as Texas Attorney General, Thomas S. “Honest Tom” Smith, who took office in 1899, thought well enough of it to retain it as the state’s principal brief to the Supreme Court.92

On January 8 and 9, 1900, neither side added new arguments before the Supreme Court. Clark handled the Waters-Pierce argument, asserting that the Texas antitrust statutes of 1889 and 1895 were unconstitutional because they interfered with interstate commerce, with the liberty to contract and property rights without due process, and denied Waters-

decided. In addition to gaining little political mileage from his victory over Waters-Pierce, Crane had also hurt his political chances when he had proclaimed that he wanted to run on his own record, which was good, with the implication that he was not just a protégé of Jim Hogg. Consequently Hogg, who supported his former Lieutenant-Governor, was somewhat miffed, and did not campaign to any great extent for Crane. Colonel Edward M. House, one of the other major faction leaders within the Texas Democratic Party who had been an ally of Hogg, and his campaign manager, as well as the leader of Culberson’s successful races for governor, did not support Crane’s gubernatorial bid. Partially this was due to the Texas Attorney General’s reluctance to seek the aid of a man that he was not close to, and whose political machinations were somewhat Machiavellian. House was also purportedly disliked the idea of having three Texas Attorneys General in a row immediately go on to become the Governor of Texas, lest it become something of a tradition, with every Attorney General using his office primarily as a political springboard to the Governor’s Mansion. Instead House formed a loose political alliance with Bailey, despite the latter’s strident opposition to the Hogg faction. Crane faced a difficult race, though he later averred that he thought that he had stood the best chance of securing the Democratic nomination. Though he decided not to seek any further public office, purportedly lest he find himself broke as Hogg had been after he was no longer governor, Crane would remain politically active, and vocal, often in opposition to Bailey. On Crane’s problems with his gubernatorial bid, see Barr, Reconstruction to Reform, 210-14; Cotner, James Stephen Hogg. 476-80. See also Crane, “Autobiography, Ch. 4,” 1-2, Crane Papers. Box 3N111, CAH; Galveston Daily News, January 17, 1898. The Galveston Daily News noted that Crane had looked like a guaranteed winner a year and a half before the primary election, but that he and his supporters had become overconfident and complacent, leaving Joseph Sayers the likely winner. In addition to taking shots at Bailey whenever possible, Crane also had the distinction of serving as the prosecutor in the impeachment of Governor James E. Ferguson by the Texas Legislature in 1917. Ferguson was not only removed from office, but barred from holding any other public office in Texas. Gould, Progressives and Prohibitionists, 212-21.

92See “Brief of Plaintiff in Error,” Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900) (Johnson, Clark and Bolinger for Waters-Pierce); Brief of Defendant in Error, Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900) (Crane and Fuller for Texas); “Argument of S.C.T. Dodd,” Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900); “Argument of T.S. Smith,” Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900).
Pierce equal protection under the law due to the agricultural/livestock exemption and the laborers exemption. Smith echoed the Crane-Fuller arguments to the Texas Court of Civil Appeals, though more verbosely. Fortunately for the long-winded Smith, oral arguments continued the next day. Then came the waiting.\textsuperscript{93}

Justice McKenna delivered the Supreme Court's opinion on March 19, 1900. The Justices voted eight to one, (Harlan dissenting), to affirm the judgments of the lower Texas courts. The Justices did not rule on any of the constitutional issues before them. Instead the majority noted that when Waters-Pierce, a corporation foreign to Texas, obtained a permit to do business there on July 6, 1889, it did so subject to the restrictions that the state chose to place on its admission, which meant adherence to its laws. Stating that precedents had established that "the right of a foreign corporation to engage in business within a state other than that of its creation depends solely upon the will of such other state," Justice McKenna observed that this alone was ample authority to decide the case. But he went further, quoting with approval Texas Court of Civil Appeals Chief Justice Fischer's observation that the 1889 Texas Trust Act was in effect when Waters-Pierce obtained a permit to operate in Texas. It was not a surprise to the company. Rather the antitrust law was as much a part of the "contract" as if it had been explicitly and expressly made a part of the permit. Orders forfeiting the permit of Waters-Pierce to operate in Texas were upheld.\textsuperscript{94}

V. Aftermath of Victory

...I regard the decision as of great importance in many respects, in that it recognizes the right of the state to pass any regulations in respect to local commerce that is reasonable.

Former Texas Attorney General, Martin M. Crane, March 19, 1900

\textsuperscript{93}Galveston Daily News, January 9, 10, 1900. See also "Brief of Plaintiff in Error," Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900); Brief of Defendant in Error, Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900); "Argument of S.C.T. Dodd," Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900); "Argument of T.S. Smith," Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900).

\textsuperscript{94}Waters-Pierce Oil Company v. Texas, 177 U.S. 28 (1900).
Far from promptly seeking to oust Waters-Pierce from Texas following the Supreme Court ruling on March 19th, Texas Attorney General Smith allowed the company until May 15, 1900, to wind up its affairs in the state. He later extended the date to May 31st. Despite his public pose as a trust-buster, Smith was not hostile to Waters-Pierce's presence. On May 9, 1900, Johnson wrote Smith that,

[W]e have about reached the conclusion to proceed by mandamus against the Secretary of State [of Texas], and avail ourselves of your very kind undertaking to join with us in letting the public know that the suit is an amicable one, for the sole purpose of testing the only legal question involved, namely, the right of the authorities of the State of Texas to grant to the Waters-Pierce Oil Company a new permit to do business within the State, in view of the perpetual injunction rendered against it in the suit at Austin.

In short, Waters-Pierce was contemplating a friendly suit against Texas at the same time it was supposed to be closing operations. Smith's reply stated that Texas did not oppress people or companies, or confiscate their assets, but that it did insist that its laws be followed. He accepted Johnson's and Pierce's promises that Waters-Pierce had tried and would continue to follow the law, and he granted the extension to May 31st.

Johnson and Pierce wanted to avoid the most obvious solution to the ouster, dissolving Waters-Pierce and organizing a new corporation to do business in Texas. The process was costly though perhaps not as costly as the litigation expenses incurred by the firm.95

Meanwhile, Pierce was busy in St. Louis. Waters-Pierce had made tremendous profits from its Texas operations, and Pierce was not going to let potential millions slip away. Pierce discussed with his close friend, David R. Francis, former governor of Missouri, the problems facing his company in Texas. Essentially he asked Francis to connect him with a Texas lawyer with political influence in Austin. Francis suggested that he contact Congressman Joseph W. Bailey. Pierce was reluctant to consult a "politician," as he called Bailey, but Francis persuaded him. Francis requested Bailey to meet him in St.

Louis. On April 25th, Bailey met with Pierce, who allegedly claimed that Waters-Pierce was actually an independent concern. It had been convicted for making a few illegal contracts in Texas, not for being part of Standard Oil. Either Bailey was incredibly trusting and naive for a politician or he deliberately ignored the evidence that Waters-Pierce was tied to Standard Oil and had conducted business in a cut-throat fashion in Texas. Bailey expressed sympathy with Pierce's plight. Pierce offered to hire Bailey as his lawyer to handle the matter, but the congressman declined, instead offering to meet with some of his contacts in Austin and inform them of his opinion of Waters-Pierce. Bailey mentioned that he was in a financial bind due to his purchase of a 6,000 acre ranch near Dallas. Though he had just met the congressman, Pierce agreed to "lend" him $5,000.00, and gave him a check for $3,300.00 that same day, a fair amount of generosity for a new-met acquaintance who had proclaimed that he was a lawyer, not a lobbyist.96

Bailey met with Texas Governor Joseph Sayers, Secretary of State Dermott Hardy, and Attorney General Smith on May 1, 1900. Sayers owed Bailey political favors, and readily agreed that ousting Waters-Pierce would be bad for Texas. Though a supporter of Bailey, Smith was more cautious, and declared that the state would not issue a new business permit merely on Pierce's promise that his company would obey Texas's laws. Although not stated explicitly, "Honest Tom" Smith implied that he would not object to a reorganized Waters-Pierce seeking a permit to do business.97

Bailey reported to Pierce that the only ready solution was the one that Johnson wanted to avoid, the dissolution of the original Waters Pierce Oil Company and the organization of a new Waters-Pierce. Pierce traveled to New York to meet with Standard Oil executives. He secured the necessary proxies to vote all 4,000 shares of Waters-Pierce

96 Bailey Investigation Committee, 666-70, 805-12, 826-33, 838-39, 1025-26; Holcomb, "Senator Joe Bailey," 196-99; Bringhamurst, Antitrust and the Oil Monopoly, 48-50; Cotner, James Stephen Hogg, 494-95. Francis also knew that Bailey needed money, as he had helped the Senator purchase the ranch in 1899. Bailey was deep in debt, owing approximately $96,000.
stock. Returning to Missouri, Pierce called a shareholder’s meeting (May 28, 1900) and voted all 4,000 shares to dissolve the original Waters Pierce Oil Company. The next day a new Waters Pierce Oil Company was born, with a new Missouri corporate charter, legally a new entity, and theoretically free of any taint. Pierce bought all 4,000 shares at one hundred dollars per share, par value, so technically the company was free from Standard Oil. Pierce and Johnson, accompanied by all of the legal documentation of the dissolution and new incorporation, hurried to the Texas capital to beat the May 31st deadline. On May 31st, Pierce and his lawyer entered the office of Secretary of State Hardy, armed with certified copies of the dissolution and incorporation of the “new” Waters-Pierce, plus a completed application for a business permit. Uncomfortable, Hardy consulted with the Texas Attorney General. Smith advised the Secretary of State that he had to issue the permit. Still reluctant, Hardy made Pierce comply with one of the provisions of the amended Texas antitrust statutes of 1899, which required an affidavit of certain corporate officers that the company was not part of a trust or combination and had not been part of trust or combination for the proceeding six months. Pierce, after consulting with Johnson, signed the affidavit. Hardy then issued a permit for the new Waters-Pierce to engage in business in Texas.98

The return of Waters-Pierce with unchanged name and no apparent change in its business conduct roiled Texas politics. At the Democratic state convention in early August, Bailey, who was slated to receive the nomination for U.S. Senator was forced to defend his actions, which he did successfully, perhaps in part from failing to mention the Pierce loan. Condemnations of trusts and of Missouri for allowing Waters-Pierce to

98Bailey Investigation Committee, 141, 150-51, 374, 1028-44; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909; Holcomb, “Senator Joe Bailey,” 212-14; Brinthurst, Antitrust and the Oil Monopoly, 51-52. Johnson had arranged a deal whereby Pierce would buy all of the stock of the new company, hold onto it for several months, long enough to get a permit in Texas, and satisfy anyone investigating the firm, then transfer a majority of the stock, 2,748 shares to Standard Oil by endorsing it in blank. On the books the stock was still in Pierce’s name until the new holder of the shares registered them. See also Chapters 2-4. Smith was annoyed that Pierce and Johnson were so blatant in their actions, but saw the issuance of a permit as a ministerial act, done upon completion of the application, without any discretion for the Secretary of State to refuse to issue it.
circumvent the justice of Texas were applauded. Crane defended his record as trust-buster. But Bailey and Edward M. House were in command of the convention. A motion to censure Bailey was voted down and he received the coveted senatorial nomination. Smith and Sayers secured renominations for attorney general and governor respectively.99

Bailey also played a role in the reactivation of the McLennan County antitrust cases filed by McLennan County Attorney Joseph W. Taylor in 1894 and 1895. Before going to Austin on May 1, 1900, Bailey had met with political ally and fellow Texas Congressman Robert L. Henry. They discussed settling the criminal and civil antitrust charges against Pierce and Waters-Pierce, which had been in limbo for nearly five years. Pierce wanted the cases resolved, particularly the felony criminal indictment against him. Bailey stated that he was interceding in the matter only because of his friendship with David Francis. Bailey also met with the current McLennan County Attorney, Cullen F. Thomas that same day, and discussed settling the cases. Lacking substantial knowledge of the litigations, Thomas suggested that he was not averse to compromising the cases.100

Henry assumed that Thomas had made a firm offer to settle. Wanting to compromise the cases, and collect his fees, Henry arranged meetings with all parties. Bailey relayed Pierce's offer to compromise all the cases for around $13,000, a far cry from the $109,500 asked for in the original penalty action. Of the $13,000, Henry, his partner O.L. Stirling, and Thomas would split $3,000.00, and $10,000.00 would go to Texas. In early May, during several meetings between Bailey, Pierce, Henry and Thomas, Bailey kept pushing for a reasonable settlement, and urged that Pierce be spared the public spectacle of a trial unless the state was sure that it could convict him.101

99 For Bailey's troubles, and the political turmoil of 1900 and 1901 related to Waters-Pierce in Texas, see Holcomb, "Senator Joe Bailey," 223-61; Cotner, James Stephen Hogg, 503-12; Bringham, Antitrust and the Oil Monopoly, 53-57; Barr, Reconstruction to Reform, 217-19. Bailey had to face a limited investigation in the Texas Legislature in January 1901 for his role in the return of Waters-Pierce. He was exonerated, in large part due to the lack of information available to the investigators.
Henry and Stribling were willing to accept the settlement and thereby recoup some of their investment in the moribund case, cognizant that Waters-Pierce was likely to dissolve and reorganize as a new company in order to operate in Texas. If that happened, then it seemed probable that the suit would be moot, as the defendant, the "old" Waters-Pierce would be legally dead. Thomas might have gone along. He had put virtually no time and effort into the matter and had not even known about it until Bailey discussed it with him. Pierce added an extra condition to the settlement, that the criminal charge against him from the same indictment that had produced Hathaway and Grice be dismissed. Both Henry and Thomas were reluctant, presumably because of the potential political backlash if it appeared that they were "selling out" Texas to Pierce. Yet Judge Scott had stated that based on the evidence that he had seen as the judge in the Hathaway trial and the evidence gathered in the civil case itself, the amount was fair, indicating that he thought that the case was weak. Stribling and Thomas disagreed over the settlement and the fees. Thomas thought that a $3,000.00 fee was excessive. Under the antitrust statutes of 1889 and 1895, a fee of ten percent of the penalties was set for the county or district attorney. But the amended law of 1899 provided for a twenty-five percent fee. Thomas pushed for a settlement of $25,000.00, which would justify the attorneys' fees, and look better politically, though he knew little of the case, unlike Judge Scott and Stribling.102

Meanwhile as noted previously, Johnson and Pierce had dissolved the original corporation, formed a new Waters-Pierce with a new charter, and had obtained a permit to do business in Texas from Secretary of State Hardy. Pierce, Johnson, and Pierce's local counsel, George Clark, traveled to Waco to try to wind up the negotiations, now from a stronger position. The trio met with Thomas, Stribling, and Judge Scott. Pierce pointed out that the dissolution of the old corporation and formation of the "new" one had killed the civil antitrust cases in McLennan County. But to prove that he wanted tranquillity in

Texas, his settlement offer of $13,000.00 was still open. Pierce observed that Thomas seemed to be the main obstacle to compromise and declared that he did not care how the $13,000.00 would be divided. Thomas continued to insist on $25,000. Irate, Pierce refused to pay. Further arguments festered between Thomas and Stribling over how the fees and their division between Henry, Stribling, and Thomas. Negotiations broke down. Thomas declared publicly that Stribling and Henry were concerned only about the size of their fees, not what was in Texas's best interests.103

With public interest renewed, a tentative trial date was set for the end of October 1900. Stribling and Henry were still prosecuting the case, though the latter's role was nominal, plus County Attorney Thomas. Then on October 25th, Thomas asked the pair to withdraw from the case. His asserted that he did not think that they would push hard for a settlement in excess of $13,000.00 for Texas, that their offers to settle had damaged the case, and he declared that he would take over the case completely. For their previous efforts, Henry & Stribling would receive two-thirds of the county attorney's fees. They countered on October 27th, noting that their settlement offer of $13,000 had not hurt the suit any more than Thomas's demands for $25,000.00, which had precluded a compromise with Pierce. They knew the case and the evidence and Thomas did not. Without them the odds of winning went from slim to none.104

Somewhat abashed, Thomas requested that Henry and Stribling conduct the trial as they knew the evidence. Henry and Stribling were in Judge Scott's courtroom on October 30, 1900, prepared to try the case, when Thomas suddenly appeared and took over the case. Henry and Stribling withdrew at Thomas's formal written request. Unfortunately for the ambitious Thomas, John D. Johnson and George Clark had a surprise for Thomas. That very morning, representing Andrew M. Finlay, who had been president of Waters-Pierce at the time of its dissolution, they filed a petition of intervention which in effect

requested dismissal of the case, essentially on the grounds that the defendant, the "old" Waters-Pierce, no longer existed. Appropriate certified copies of documents confirmed the dissolution of the original corporation. Unprepared, Thomas promptly moved to strike Finlay's intervention, on the basis that it was actually a plea in abatement. It was untimely to file it just before trial when the alleged cause for abatement, the dissolution of Waters-Pierce, took place at the end of May, 1900. Next day Thomas filed a supplemental petition which alleged that the dissolution of Waters-Pierce had not been done in accordance with Missouri law, and therefore was ineffective, and denied all allegations in the plea to intervene. He followed this on November 3rd with a request to the court for a continuance. He needed time to gather evidence to prove the allegations of his supplemental petition about the sham dissolution of Waters-Pierce, despite frequent inquiries to Waters-Pierce's lawyers concerning any additional pleadings. Thomas declared that he wanted to depose people from Standard Oil in New York to court clerks in St. Louis, Missouri.105

Judge Scott refused to grant the continuance. A trial of sorts was held on November 5th. Scott examined the pleadings and supporting documents, and had access to all of the evidence gathered by Henry and Stribling. He announced that the Court sustained Finlay's plea of intervention, and on the basis of the dissolution of the "old" Waters-Pierce, he dismissed the case. Thomas immediately gave notice that he would appeal the case to Court of Civil Appeals. On November 7th, he filed a motion for a new trial, a useless gesture, which he had to amend on December 17th, 1900. The amended motion cited all of the alleged errors of Judge Scott in his handling of the case and requested a new trial. Scott's ruling was never in doubt. On January 19, 1901 he denied the motion.106

Thomas continued with his appeal of the case, and soon acquired some much needed assistance. At his urging, a new Texas Attorney General, Charles K. Bell, took up

106 Transcript-McLennan County, 40-43, TSA, RG 223 Box 223-150. Motions for new trials, while routinely made by the losing attorneys in cases, are seldom granted. Judges were and are extremely reluctant to admit, in effect, that they had made mistakes serious enough to justify overturning a verdict and granting a new trial.
the appeal. Both sides filed briefs in January, 1902. Johnson and Clark had argued that the case was actually a penal matter, not a civil one and therefore County Attorney Thomas for Texas could not appeal the dismissal. Judge Key for the Court of Civil Appeals, on April 2, 1902, declared that the text of 1899 antitrust law made it clear that the case at hand was a civil one, and that the Court properly had jurisdiction. Under the recent U.S. Supreme Court decision in Connolly v. Union Sewer Pipe Co., an agricultural exemption to Illinois antitrust statutes was an unconstitutional denial of equal protection under the Fourteenth Amendment. The exemption incorporated into the cumulative 1899 Texas antitrust law was similar to that of Illinois's. Accordingly the Texas Court of Civil Appeals held that the 1899 Texas antitrust laws were unconstitutional, "and the state cannot recover the penalties prescribed thereby." By implication, the antitrust acts of 1895 and 1889 were unconstitutional. Meanwhile, the 1901 Texas Legislature launched a brief, superficial, and ill-prepared investigation of Senator Bailey's ties to Waters-Pierce and Standard Oil. Bailey emerged tarnished but not broken.107

With that short opinion, after its years of litigation, inaction, and political maneuvering, the McLennan County cases were over. The beneficiaries were Pierce, his company, and his lawyers. Subsequent holdings of the Texas Supreme Court would limit the effect of the decision to voiding the exemptions, but the antitrust laws needed overhauling and would receive a wholesale revision in 1903. Cullen Thomas would unsuccessfully challenge Henry for his congressional seat in the 1902 Democratic primaries, criticizing the readmission of Waters-Pierce in 1900 and the greed of Henry and

107 State ex. rel. Attorney General v. Waters-Pierce Oil Company, 67 S.W. 1057 (Tex. Civ. App., 1902); "Brief of Andrew M. Finlay." Texas v. Waters-Pierce Oil Company, 67 S.W. 1057 (Tex. Civ. App., 1902) (Johnson, Clark & Bolinger as attorneys for Finlay) TSA, RG 223 Box 223-150; "Brief of Counsel for Appellant, The State of Texas," State of Texas v. Waters-Pierce Oil Company, 67 S.W. 1057 (Tex. Civ. App., 1902) (Bell, Reese, and Thomas, attorneys) TSA, RG 302 Box 2-23/848E; "Brief and Argument of Counsel for the State of Texas, Appellant. Upon the Resubmission of the Cause," Texas v. Waters-Pierce Oil Company, 67 S.W. 1057 (Tex. Civ. App., 1902) (Bell, Reese, and Thomas, attorneys), TSA RG 302 Box 2-23/848E. Charles K. Bell replaced Smith as Texas Attorney General on March 20, 1901. T.S. was an Assistant Texas Attorney General. See also Connolly v. Union Sewer Pipe Co., 22 S.Ct. 431 (1902). The Texas Supreme Court later construed the antitrust statutes in light of Connolly, and effectively held that the agricultural exemption was severable from the rest of the statute, thereby rendering the statutes constitutional.
Stribling which had prevented Texas from compromising the suit in a manner to procure more money for Texas. Stribling had worked as a paid lobbyist for H.C. Pierce in November 1900, which made his conduct suspect in McLennan County case. Henry, a congressman until 1917, was frequently referred to as a trust-buster, rather odd based on the results of his work against Waters-Pierce. Senator Bailey, who triumphed in 1900 despite his unwise efforts to aid Pierce, endured an investigation by the Texas Legislature in January 1901 into his role in the readmission of Waters-Pierce. He triumphed again because witnesses, including Smith, who testified that there had been no option but to readmit Waters-Pierce, supported him. The formal report of the investigation committee exonerated Bailey and sharply attacked his critics, so passionately that one member of the committee refused to sign it. The Texas House of Representatives adopted the report on January 23, 1901, and later that same day formally voted Bailey in as U.S. Senator.

Meanwhile in Beaumont, Captain Anthony Lucas and one-armed oil man Patillo Higgins were busy changing the oil industry and the economy of Texas. On the morning of January 10, 1901, they struck oil at a depth of 1,020 feet at a spot called Big Hill, an area that became better known as Spindletop.108

108Holcomb, "Senator Joe Bailey," 223-261; Cotner, James Stephen Hogg, 5011-13; Brinthurst, Antitrust and the Oil Monopoly, 56-57; Barr, Reconstruction to Reform, 218. Cullen F. Thomas was a regular feature in Texas politics for many years. He had served in the Texas Legislature from 1895 to 1897, followed by three terms as McLennan County Attorney. He ran unsuccessfully against Henry for the latter's Congressional seat in 1902, but attracted a great deal of attention. He emerged as an anti-Bailey politician, and the enmity grew over time. By 1912 Thomas was the permanent chair of the State Democratic Convention, and had campaigned actively for others, such as Pat Neff, always opposed to Bailey and his supporters, for whom he had coined the term "Baileyachers." In 1921-22 Thomas unsuccessfully ran for U.S. Senator against a wide field of opponent, which included Henry, who had joined the Ku Klux Klan in 1922. Henry had previously tried for a Senate seat in 1916. See Brown, Hood, Bonnet and Little Brown Jug, 93-112; Gould, Progressives and Prohibitionists, 122-23, 176-78, 264. On the discovery of the oil field at Spindletop, see James Presley, A Saga of Wealth: The Rise of the Texas Oilmen (1983), 37-46. The Lucas well initially produced as estimated 70,000 to 100,000 barrels of crude oil per day, which meant that its output in the first week equaled that of the entire Corsicana oil field for the entire year of 1901.
CHAPTER 2: WAGING WAR ON WATERS-PIERCE

...It has come to be part of the political gospel and tradition of Texas that the Attorney General must bring suits against everything that looks prosperous or he is not earning his salary. It's about the only way he can attract any attention and organize an excuse to run the second time and then be elected governor. Texans have grown accustomed to the plant and accept it as one of the responsibilities of American citizenship, but ignore it in every day business, because it is harmless and inexpensive. The logic of it is taken from the Irish policeman who "hate the prisoner just to show his authority, and not because he hated him."

Reporter for the Oil City Derrick, quoted in the Oil Investors Journal, October 3, 1906

I. Lightfoot Looses Litigation

The 1906 antitrust action in Texas against the Waters-Pierce Oil Company originated on May 31, 1900, when Henry Clay Pierce, obeying the Texas antitrust statutes, swore an affidavit that the newly reborn Waters-Pierce Oil Company was not part of any trust or combination, and that he held 3,996 out of 4,000 shares of stock in the new firm in his own name. According to Texas Attorney General Thomas S. "Honest Tom" Smith, Secretary of State Dermott Hardy had no choice but to issue a permit to the new Waters-Pierce, once Pierce made the affidavit. The corporation's path to admission to Texas had been smoothed by practical political factors. Waters-Pierce provided valuable services to Texans through its well-developed marketing network, which reached the most remote rural areas as well as the growing urban centers. Keeping the company out of Texas would have been detrimental to Texans. Politically, Texas Congressman Joseph W. Bailey had lobbied intensively to get Waters-Pierce back into Texas. Bailey, a rising power in Texas politics, had connections to Standard Oil interests--to Waters-Pierce in particular. His actions helped to quiet potential opposition to the re-entry of a firm tainted by allegations of subservience to Standard Oil.1

1Brighurst, Antitrust and the Oil Monopoly, 48-54; Adams, Waters Pierce Case, 28-34; Williamson and Daum, Age of Illumination), 541-45, 713-14. Bailey was not the only Texas politician that assisted in the re-admission of Waters-Pierce. Although Governor Joseph D. Sayers and Texas Attorney General Thomas S. "Honest Tom" Smith both proclaimed their enthusiasm for antitrust enforcement, neither one noticeably tried to prevent the return of Waters-Pierce, and Smith granted several extensions to the "old" Waters-Pierce which permitted it to operate in Texas until May 31, 1900. For a balanced account of the details
The second Waters-Pierce Oil Company was, legally, a new corporation, theoretically free of the taint of its predecessor. Its executives had portrayed its efforts to fight the ouster suit in Texas all the way to the U.S. Supreme Court in the best light possible, as well as its intent to accept the result, and behave in the future. To that end the newly formed Waters-Pierce expended considerable money advertising in urban and rural Texas newspapers, ads looking like editorials or other opinion pieces favorable to the new firm, all paid for at advertisement rates. One such "editorial" concluded that,

It may have been natural, and but an assertion of the right of opinion for the Waters-Pierce Oil Company to test the anti-trust laws of Texas in the courts of last resort, and no hostile sentiment should be indulged toward the corporation if, after the courts have decided that it was unlawfully prosecuting its business in this state, it yields gracefully to the decree and manifests an honest purpose to now obey the law.

The action of its president [in making the required affidavit] is an indication, in the most practical way, that this intention is now honestly formed, and both Mr. Pierce and Texas are to be congratulated that such a sensible course of conduct has followed the decree of the highest court in the nation....

These "ad-itorials" served a dual purpose: to sway public opinion in favor of the new Waters-Pierce, and to deflect criticism of those public officials, such as Joseph Bailey, who had encouraged the re-admission of Waters-Pierce into Texas. The fact that this "editorial" had been paid for by the company did not become public knowledge for a long time.2

Though the company was ostensibly new, its business practices apparently had not changed much. Before the 1900 summer ended Pierce had endorsed more than two-thirds of the Waters-Pierce stock in blank. Officially he still held the stock, but the actual holders could exert control anytime by registering a stock transfer. Reports, orders, accounts, and other records flowed from St. Louis to 26 Broadway and later 75 New Street, into the

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2The editorial had originally appeared in the Houston Post, and apparently was reprinted by a number of rural newspapers, including the Winnsboro Wide Awake on May 4, 1900. M.D. Carlock, an attorney of Winnsboro, passed along information to Assistant Texas Attorney General Jewel P. Lightfoot on October 25, 1906 reproducing the editorial, as well as information that indicated that Waters-Pierce had paid for its inclusion in the newspaper at advertising rates. M.D. Carlock to Lightfoot, October 25, 1906, TSA, RG 302 Box 4-8/386.
office of Henry M. Tilford, then on the Domestic Trade Committee of Standard Oil. Two-thirds of the Waters-Pierce profits went to the Seaboard National Bank in New York, ultimately to the credit of the Standard Oil Company of New Jersey, the Standard Oil holding company. Profits that Waters-Pierce sent to Seaboard between 1900 and 1904 were considerable, as high as any that the previous firm had earned, some four hundred to seven hundred percent of capitalization annually. The company continued to charge all that the market would bear, and the fledgling The Texas Company and Gulf Refining could not yet compete successfully throughout Texas.³

The huge Waters-Pierce dividends, and its competitive means were so out of line with Standard Oil's attempts not to stir up trouble that in April 1904, Standard executives "persuaded" Pierce to take on Richard P. Tinsley, former Socony assistant treasurer, as Waters-Pierce vice-president. Tinsley soon became the de facto president when Pierce's brother-in-law, Andrew M. Finlay suddenly went on an "extended vacation." In his brief stay at Waters-Pierce, Tinsley shook up that firm. He attempted to apply Standard Oil practices and procedures, and, "cleaning house" in St. Louis, he removed long-time Waters-Pierce employees replacing them from Standard Oil's talent pool. Tinsley reduced prices and profit margins substantially, and seriously tried to comply with the antitrust laws in Waters-Pierce territory. None of this sat well with Pierce. Exerting the power granted to him in his original agreement with Standard Oil, Pierce removed Tinsley in early 1905, and resumed full control of Waters-Pierce. Dirty linen, however, had already been partially exposed to the public.⁴

Several investigations and prosecutions against Standard Oil began between 1904-1906. U.S. Commissioner of Corporations James Garfield began an examination of the petroleum industry in February 1905 that would take over a year to complete. The report would condemn Standard Oil and Waters-Pierce. Prompted by the Garfield Report (May,

³Hidy and Hidy, Pioneering in Big Business, 448-51.
⁴Hidy and Hidy, Pioneering in Big Business, 448-51; Adams, Waters-Pierce Case, 48-49.
1906), in the midwest, already strongly anti-Standard and hotbed of progressive reform, multiple state suits were filed in Kansas, Ohio, Illinois, Arkansas, Missouri and elsewhere against various Standard Oil companies. The suit which would most influence the course of litigation in Texas was filed in Missouri by its young Attorney General, Herbert D. Hadley. A Republican reformer, Hadley enjoyed the support of Missouri Governor Joseph W. Folk, a Democrat, who was also a reformer and a crusader against political corruption. At a State Railway Commission hearings Hadley heard complaints from oil dealers about freight rates and the advantageous rates the two leading petroleum marketers—Waters-Pierce and Indiana Standard—paid the Terminal Company for the right to pipe oil products across the Mississippi River. Indiana Standard did not compete with Waters-Pierce in St. Louis, despite the former's strong presence in other large cities in Missouri. There was virtually no competition between the two leading firms, and that the major "independent" firm, the Republic Oil Company, was owned by Standard interests, and used to gain the business of those who did not wish to deal with a Standard firm.  

These inquiries resulted in the Missouri Attorney General filing charges against Indiana Standard, Waters-Pierce and Republic Oil. Hearings begun in St. Louis in June 1905 would last more than a year, with sessions in New York and St. Louis. Witnesses including many Waters-Pierce employees suggested Standard Oil de facto controlled the "independent" Waters-Pierce, and had divided the Missouri oil market among several Standard controlled companies. George U. Hendricks, a Waters-Pierce auditor from 1880 to 1904, presumably discharged under Tinsley's regime, testified that he had routinely sent all Waters-Pierce's business reports to Standard vice-president in New York. Pierce's

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former financial secretary, Charles B. Collins, stated that two-thirds of the Waters-Pierce profits went to Standard in New York. Evidence mounted when the hearings moved to New York in January 1906. Hadley subpoenaed Standard executives including John D. Archbold, Henry H. Rogers, and William G. Rockefeller. All were extremely uncooperative, purportedly on the advice of counsel, and some were arrogant and contemptuous. This helped to further fan the flames of public opinion against Standard Oil and its affiliates, and encouraged the attorneys general of other states to file actions against Standard Oil companies and coordinate their antitrust efforts.\(^6\)

Chief among states working with Missouri was Texas, where antitrust sentiment and enforcement had had an early start. Despite the limited direct success of litigation against Waters-Pierce, Texas maintained vigorous antitrust enforcements, amending its antitrust statutes several times since enacting its first antitrust statutes in 1889. Texas Attorney General Robert Vance Davidson, a Progressive Democrat, committed his department to active enforcement of the antitrust laws, and had designated Assistant Texas Attorney General Jewel P. Lightfoot as chief trust-buster. In early January 1906 Lightfoot was investigating suspected trusts in the lumber and oil industries. By early May 1906, Davidson, Lightfoot, and Hadley were working together on Waters-Pierce, and "for the purpose of securing testimony against the beef, oil and other trusts operating in Texas."\(^7\)

Lightfoot received 1,500 pages of the testimony in the Missouri hearings and complaints about other petroleum companies operating in Texas, allegedly part of the "Standard Oil Trust." Absent credible proof of these allegations, Davidson and Lightfoot focused on the Waters-Pierce's Standard Oil ties, aided by information from John P. Gruet, Sr., formerly a director and secretary of Waters-Pierce, who had had strong personal ties to Pierce. Gruet, an alcoholic, had been removed by Tinsley, but Pierce had

\(^6\)Plott, *Anti-monopoly Persuasion*, 118-122; Brighurst, *Antitrust and the Oil Monopoly*, 90-95

given Gruet a different post in another of his firms. Gruet resented this demotion, sued Pierce for back salary, and cooperated with all authorities investigating Waters-Pierce, for a price.  

Lightfoot was convinced of the value of Gruet, Sr.'s testimony and documentary evidence. Whether through foresight, paranoia, or a desire to blackmail, Gruet had copied and/or removed sensitive documents from Waters-Pierce files over several years, including some relating to Senator Joseph Bailey's dealings with Waters-Pierce and Standard Oil. This gave him leverage with Davidson who was a political foe of Bailey's.

Matters proceeded outside and inside Texas. Lightfoot's preliminary investigation received a boost from the June 22nd announcement by U.S. Attorney General William H. Moody of criminal proceedings to be initiated against Standard Oil and its executives, to be followed by suits that would begin "in certain states where there appears to have been a violation of the laws regulating interstate commerce and prohibiting [trusts,] rebates and other unlawful discriminations." Speculation was that prosecutions would quickly follow, based on evidence in the Garfield Report, and by the Interstate Commerce Commission (hereafter "ICC"), concerning violations of the Interstate Commerce, Sherman, and Elkins Acts.

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8 Lightfoot to J.B. Hall, May 25, 1906; State of Texas to H.D. Muir, June 8, 1906; Adams, Waters Pierce Case, 42-45; Holcomb, "Senator Joe Bailey," 400-02; Bailey Investigation Committees, 120-21, 201-04; Hidy and Hidy, Pioneering, 448-51; Bringham, Antitrust and the Oil Monopoly, 59-60. The Texas Company was the most frequent target of unfounded accusations that Standard Oil controlled it. It is not clear when the Gruets began to name a price beyond compensation for expenses. Adams, a strong supporter of H.C. Pierce, gave the impression that Gruet was always after money, while available evidence indicates that Gruet had not cut a deal at the time of his deposition in Fall 1906. The Garfield Report listed the Gulf Refining Company, The Texas Company, the Southwestern Oil Company, and the Richardson-Gay Oil Company as the principal independent oil refineries in Texas, with Gulf Refining and The Texas Company specifically discussed in the text, not merely listed on tables. See Oil Investor's Journal, (hereafter "OIJ") June 3, 1906, 12; Bureau of Corporations, Transportation of Petroleum, 55-60.


10 OIJ, July 3, 1906, 12, 14-15; Bringham, Antitrust and the Oil Monopoly, 131-33. Bringham notes that Moody was not particularly enthusiastic about pursuing Standard Oil, and had ignored William H. Taft's suggestion to act upon the legion of complaints already received by the federal government. Taft was at that time U.S. Secretary of War, but had been a federal judge with an active interest in antitrust enforcement, who would go on to become President of the United States, and Chief Justice of the U.S. Supreme Court. The ICC and federal grand juries in Ohio, and the Arkansas Attorney General were all
The Texas Attorney General’s Department continued to receive complaints from citizens concerning Waters-Pierce’s business practices. Lightfoot and Davidson corresponded with the Gruets frequently, working out arrangements for the elder Gruet’s possible testimony and information, which included promises not to harass Gruet if no agreement were made.¹¹

Lightfoot interviewed the elder Gruet in St. Louis in August, 1906. Gruet provided Lightfoot with copies of confidential documents and testimony and questions for Texas to ask of the Pierce group. Meanwhile, the federal grand jury in Chicago returned ten indictments against Standard Oil, with a total of 6,428 counts alleging illegal rebating with railroads, with potential penalties of up to $128,560,000;¹² and in the Missouri ouster suit that state’s attorney general, Herbert S. Hadley, tried "to examine Pierce in reference to the questions that I thought would have a bearing upon the truthfulness of his affidavit in the State of Texas,..." Under relentless cross-examination, and after numerous evasive answers, Pierce had admitted

that at the time that the new company was organized, he knew through his attorney, John D. Johnson that he, Johnson, had agreed with Mr. Elliott, the general solicitor of the Standard Oil Company that he, Pierce, should, following the organization of the company, turn over to a Mr. Garth of the Mechanics National Bank of New York, for Mr. Charles M. Pratt of the Standard Oil Company, the same number of shares in the new company that the Standard Oil Company of New Jersey had held in the old Waters-Pierce Oil Company.

investigating Standard Oil and its practices at this time as well. See "Interstate Commerce Commission at New Orleans," OII, July 3, 1906, 22-23; "Investigations Begin at Cleveland and other Ohio Points," OII, July 18, 1906, 14; OII, July 18, 1906, 19; Bringhamurst, Antitrust and the Oil Monopoly, 36-38, 102; Hidy and Hidy, Pioneering in Big Business, 681-84.

¹¹William Brewer to R.V. Davidson, July 13, 1906; Brewer to Lightfoot, September 13, 1906; Brewer to Lightfoot, September 17, 1906; J.P. Gruet, Jr. to Lightfoot, August 1, 1906, all TSA RG 302 Box 4-8/386; Lightfoot to Brewer, July 18, 1906, TSA RG 302 Box 1984/67-65.

¹²Lightfoot to Gruet, August 12, 1906; Lightfoot to Gruet, August 23, 1906; Davidson to Gruet, August 25, 1906; Davidson to Lightfoot, August 25, 1906, all TSA RG 302 2-23/848. J.P. Gruet, Sr. to Lightfoot, August 31, 1906, TSA RG 302 4-8/386; OII, September 3, 1906, 18. Standard Oil had a busy month, legally, in August. In addition to the indictments returned on August 27th, a federal grand jury in Cleveland adjourned without bringing indictment, as it lacked jurisdiction, but forwarded the transcript of evidence to government lawyers in Chicago for a grand jury investigation that began on August 6th. That grand jury promptly issued several indictments for rebating, while a federal grand jury in Jamestown, New York issued indictments on August 10th against the Vacuum Oil Company. See "No Indictments at Cleveland," OII, August 3, 1906, 16; "Indictments Against the Standard," OII, August 18, 1906, 14. It is also worth noting that the price of oil kept dropping throughout August.
Hadley added that in his opinion "it would not take a Texas jury very long to come to the conclusion that this was simply a device for the deception of the State of Texas, whose laws Mr. Pierce testified that he had felt under "special obligation to obey.""\(^\text{13}\)

Gruet, the potential star witness for Texas, noted to Lightfoot that "[t]he Missouri [suit] I believe is surely won and furnishes some points for you to use." He would soon journey to Austin to confer with Lightfoot and Davidson. Davidson also received correspondence from Dermott H. Hardy, a Beaumont lawyer and the former Texas Secretary of State who had issued the permit to the new Waters-Pierce in May 1900 to operate in Texas. Hardy pointed out that he had issued the permit because then Attorney General "Honest Tom" Smith stated that he had to do so under the law. However, he had required Pierce to make an affidavit stating that the new company was not part of any trust or combination. The affidavit was on file with the Secretary of State's Office. In reality, Hardy was urging Davidson to pursue Pierce for perjury/false swearing, a felony charge with the potential to put Pierce in jail rather than merely paying a hefty fine. Hardy did not have to wait long for action. Because the Texas Attorney General's Department was woefully understaffed for a major litigation effort against a large, well-financed corporation, Davidson and Lightfoot recruited several outside attorneys, and filed suit against Waters-Pierce in the district court of Travis County, Texas, on September 20, 1906.\(^\text{14}\)

In addition to seeking the cancellation of Waters-Pierce's permit to do business in Texas, the petition sought fines and penalties against the oil company of $5,228,000.00, based on daily alleged violations of the 1899 and 1903 antitrust laws over six years. Lightfoot's petition recounted the history of Standard Oil and of Waters-Pierce in detail.

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\(^{13}\) Hadley to Davidson, September 12, 1906. TSA RG 302 Box 4-8/386: St. Louis Post-Dispatch, September 10, 11, 12 1906.

\(^{14}\) Texas to H.D. Muir, September 15, 1906; Texas to Muir, September 26, 1906, all TSA RG 302 Box 1984/67-65. Gruet to Lightfoot, September 13, 1906; Gruet to Lightfoot, October 13, 1906; D.H. Hardy to Davidson, September 19, 1906; Hardy to Davidson, September 22, 1906, all TSA RG 302 Box 4-8/386. St. Louis Post-Dispatch, September 21, 1906. A Travis County grand jury in fact indicted H.C. Pierce in November 1906 on charges of perjury/false swearing, see Chapter 5.
He alleged continuous conspiracies by numerous parties and corporations, many as yet unknown, but including major Standard Oil and Waters-Pierce executives. As part of that conspiracy, in 1878, Waters-Pierce was organized as a Missouri corporation with 4,000 shares of stock, Pierce retaining forty percent of the stock, Standard Oil forty percent, and Chess, Carley & Company, a Standard affiliate and former competitor of Waters-Pierce & Company, twenty percent, giving Standard Oil an effective majority interest. In 1882, when the Standard Oil Trust was formed, Standard's interest in Waters-Pierce went into the Trust, though Pierce's did not. The Trust was legally dissolved in March 1892, but, reorganized through mergers and stock purchases, the "Standard Oil Interests" became a tight allied community of twenty companies and their "affiliates" controlled by the same individuals. Waters-Pierce was an affiliate of Standard Oil of New Jersey, which held sixty percent of its stock. This arrangement continued until 1899, when another reorganization took advantage of New Jersey's liberal incorporation statutes. Standard Oil of New Jersey emerged as the parent holding company of nearly all the assets and firms of the "Standard Oil Interests."

Waters-Pierce agreed to purchase all of its requirements for refined petroleum products only from Standard Oil companies and became the sole Standard Oil marketer of refined oil products in Texas, Arkansas, Oklahoma, southern Missouri, western Louisiana, and Mexico. All, the petition alleged, furthered the conspiracy to monopolize the petroleum industry, to destroy competition by unconscionable and unfair practices, and to fix the price of petroleum products throughout the United States, including Texas.

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15 Transcript-1907, 2-44, TSA RG 302 Box 1989/41-85; "Suit to Oust Waters-Pierce from Texas and for $5,000,000 Penalties," OIL, October 3, 1906, 14-16; Galveston Daily News, September 21, 22 1906; Houston Post, September 21, 22, 1906; St. Louis Post-Dispatch, September 21, 1906. There does not appear to be a fully extant copy of the original petition filed by the Texas Attorney General, or of the first amended petition, but only the final, second amended petition. Note that each day constituted a separate violation subject to the maximum fine, per day.

16 Transcript-1907, 2-44, TSA RG 302 Box 1989/41-85; "Suit to Oust Waters-Pierce from Texas and for $5,000,000 Penalties," OIL, October 3, 1906, 14-16; Galveston Daily News, September 21, 22 1906; Houston Post, September 21, 22, 1906; St. Louis Post-Dispatch, September 21, 1906. The 1899 reorganization of Standard Oil eased pressure from the charges that the dissolution of the Standard Oil Trust was a sham, and eased concerns that the stockholders that jointly controller the twenty Standard Oil companies were getting old.
Further, Waters-Pierce had been ousted from Texas in May, 1900. The original Waters-Pierce Oil Company, a Missouri corporation was dissolved, and a new corporation of the same named was incorporated immediately thereafter, which sought successfully to obtain a permit to do business in Texas. The president of the "new" Waters-Pierce, Pierce, made a sworn affidavit on May 31, 1900 day before Secretary of State Hardy and a notary, that the new company was not a member of any trust or combination since January 1, 1900, and that the corporation, its executives, and agents had

...not entered into and is not now in combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article....

All these actions had been part of an elaborate ruse to try to circumvent the Texas antitrust laws, Lightfoot asserted. The dissolution of the original Waters-Pierce had been a sham that mocked the laws regarding corporate dissolution. The "new" Waters-Pierce was still tainted by the "old" Waters-Pierce. Pierce had lied in making his affidavit that Waters-Pierce was trust-free, and therefore free from Standard Oil, knowing that plans existed to transfer a majority of the stock of the new company to Standard executives, with Pierce retaining title on the official books of the company, thereby giving the illusion that Waters-Pierce was independent. Accordingly, Waters-Pierce won its permit to do business in Texas fraudulently, and the attorney general demanded the forfeiture of the firm's permit to operate in Texas and the maximum possible fines, in excess of $5,000,000.00.17

The petition included examples of how Waters-Pierce crushed competitors in Texas in violation of the state antitrust law and many documents regarding the organization and

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17 Transcript-1907, 2-44, TSA RG 302 Box 1989/41-85; "Suit to Oust Waters-Pierce from Texas and for $5,000,000 Penalties," OIl, October 3, 1906, 14-16; Galveston Daily News, September 21, 22 1906; Houston Post, September 21, 22, 1906; St. Louis Post-Dispatch, September 21, 1906. The Pierce affidavit is contained on pages 29-30 of the Transcript-1907 as well as in the Oil article.
operation of Standard and its affiliates, including Waters-Pierce. Lightfoot also alleged that Standard Oil controlled several other operations in Texas which worked closely with Waters-Pierce: Security Oil, the Corsicana Petroleum Company, and Corsicana Refining, though these firms were not directly objects of the suit. 18

Waters-Pierce attorneys delayed a formal answer to the petition. In other forums, a Waters-Pierce spokesman informed reporters that the company had no intention of pulling out of Texas without a serious fight in the courts, adding that such rumors were

...either inspired by competitors or are a part of the plan of attack on Senator Joseph W. Bailey. The affidavit that Pierce made to the effect that his company was not connected with any pool or conspiracy in restraint of trade was absolutely true and the company has not violated it.

Always controversial, Senator Bailey had come under increasing attack in Texas. Testimony in the Missouri ouster hearings, particularly that of Pierce, who had lent money to Bailey, showed that the politician had done "legal work" for Standard affiliates and executives and had received suspiciously high fees for his minimal efforts as an attorney. Bailey had exerted his not inconsiderable influence in 1900 to assist the "new" Waters-Pierce in obtaining a permit to do business in Texas, and in delaying the dissolution of the "old" corporation. St. Louis journalists wondered whether Bailey had let greed override his judgment, or if he was a tool of Standard Oil and corporate interests:

What steps did Mr. Bailey take to assure himself that the reorganized company could go into Texas without violation of law? As a matter of fact, the Standard interest and influence were not diminished. The taint of monopoly so obnoxious to the laws of Mr. Bailey's State was never absent from the Waters-Pierce Co. Was he deceived? If so, his legal acuteness was strangely at fault. A fact that filled the Southwest with rumor was no loud enough to reach the ear of United States Senator Bailey. How may

18Galveston Daily News, September 21, 22 1906; Houston Post, September 21, 22, 1906; St. Louis Post-Dispatch, September 21, 1906; Transcript-1907, 2-44, TSA RG 302 Box 1989/41-85. The failure to include Security Oil and Corsicana Refining as defendants in this suit would provide U.S. Senator Joseph Weldon Bailey with ammunition for charges against Davidson that the suit against Waters-Pierce was politically motivated for Davidson's own aggrandizement, and against Bailey, rather than to oust Standard Oil and attack trusts. Ultimately the Texas Attorney General's Department filed suit against Security Oil and the successor to Corsicana Refining, the Navarro Refining Company in the Fall of 1907, litigation that was not pressed too hard. See Chapter 4.
questions would it have been necessary for Lawyer Bailey to ask to bring out the fact in plain sight and warn him of his danger.\footnote{St. Louis Post-Dispatch, September 15, 22, 23, 24, 1906. A number of anti-Bailey Texas Democrats were beginning to call for an investigation into Bailey’s activities, and actively mustering opposition to the senator.}

Meanwhile, Lightfoot quietly consulted with Texas State Senator Benjamin F. Looney over suggested changes to the antitrust statutes, and prepared for the Waters-Pierce trial. The suit against Waters-Pierce drew support from many Texans, even though some writers denounced it. Bailey’s greed had put him into an awkward position. He seemed to be greedy and foolish, even corrupt. Open political warfare between Senator Bailey and Attorney General Davidson would not be long in coming. A reporter condemned Pierce’s admitted perjury that had enabled the "new" Waters-Pierce to obtain a permit to do business in Texas on May 31, 1900, and suggested that Texas should punish the individuals who violated the antitrust laws rather than corporations. The latter attracted capital, jobs, and prosperity.\footnote{Lightfoot to B.F. Looney, September 26, 1906, TSA RG 302 Box 1984/67-65; "Calls the Waters-Pierce Ouster Suit a Texas Joke," OJL, October 3, 1906. Some supporters of the antitrust suit suggested that Bailey "prove" his integrity: As a Texan, loving right and despising wrong, I hope you will win in your suit against the Waters-Pierce Oil Co., and respectfully suggest that you request Senator Bailey to assist you in the prosecution of that company. This will show whom he serves best, the corporations and trusts or the people who have repeatedly and signally honored him. Please call him to this “show down.” (emphasis in the original) W.W. David to Lightfoot, September 27, 1906, TSA RG 302 Box 4-8/386.}

On October 2, 1906, Waters-Pierce filed a defiant answer to Lightfoot’s petition. The answer contained multiple pleas in abatement, a general demurrer, special exceptions to the petition, a motion to strike, and a general denial. The pleas in abatement asserted that Texas had misjoined actions in alleging fraud in the dissolution of the original Waters-Pierce and fraud when obtaining a permit to do business in Texas, and charging the current Waters-Pierce with violating the antitrust laws every day since May 31, 1900. The Waters-Pierce attorneys claimed that these were two separate actions, which, if tried together, would cause prejudice to the defendant. The defense lawyers also charged that the petition failed to state whether Texas was suing Waters-Pierce as a duly chartered Missouri
corporation, or as a partnership, attacked its charter and sought to set aside the firm's Texas business permit because its Missouri charter was issued improperly and illegally. The state should identify which party, corporation or partnership, that it was suing. The pleas in abatement declared also that the petition was "duplicitive and contradictory" in all allegations referring to Waters-Pierce prior to May 29, 1900. The present company had not existed at that time.21

A general demurrer followed the pleas in abatement. The demurrer stated that the petition failed to state a valid cause of action, and the suit ought to be dismissed. If the general demurrer was not to be granted, the defense counsel listed special exceptions to the state's petition. First, that the dissolution of the original Waters-Pierce corporation and the formation and admission of the new one into Texas had been made by Missouri and Texas and bound Texas under the full faith and credit clause of the federal Constitution. Second, the defense lawyers requested that the Court strike all allegations dealing with the dissolution of the first Waters-Pierce corporation and the creation of the new company. Third, they claimed that the petition was defective in failing to set forth the Missouri statutes on corporate dissolution and formation. Waters-Pierce had complied with all Missouri and Texas laws, including an antitrust affidavit by Pierce. Therefore, any further inquiry into

...what was represented to said Secretary of State [of Texas], and all allegations to the effect that he was influenced in filling said paper and issuing said permit [to do business in Texas] by matters outside of said papers became immaterial and should be stricken out.

In essence this was that because Pierce committed perjury, he and his company had complied with Texas law requiring an affidavit, and legally obtained a permit to operate in Texas.22

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21 *Galveston Daily News*, October 3, 1906. As with the state's original petition, there does not appear to be a fully extant copy of the defendant's original answer, though newspaper coverage and the Defendant's Third Amended Answer contained at Transcript-1907, 48-112 are sufficient to determine the gist of the first original answer.

The defendant also took exceptions to the antitrust acts of 1899 and 1903 which allegedly violated the United States Constitution. The cumulative 1899 and 1895 antitrust acts granted exemptions to livestock and agricultural cooperatives and to trade unions. These class-based exemptions created unconstitutional discriminations, and the statutes were accordingly void. Additionally, the 1903 antitrust act was void because it did not repeal the allegedly unconstitutional 1899 antitrust act.\textsuperscript{23}

The defendant's answer did not deny that the Standard Oil Company of New Jersey owned a majority of the Waters-Pierce stock but argued that Standard's stock ownership predated the 1903 antitrust act, and was a vested property right. Texas lacked the power, constitutionally, "to interfere with or divest the said prior holder [Standard Oil] of its said property [Waters-Pierce stock] or to make it an offense..." because that would make the 1903 antitrust act ex post facto, impair a contract, and deprive the defendant of its property without due process of law. The court should strike out all allegations concerning ownership of Waters-Pierce stock, and the allegations that Waters-Pierce purchased all its supplies from Standard Oil of New Jersey. The latter had no permit to operate in Texas and did not compete there. Accordingly to punish Waters-Pierce would give Texas law extra-territorial effect and interfere with interstate commerce in violation of the U.S. Constitution.\textsuperscript{24}

No violation of Texas antitrust laws resulted from any agreements between Waters-Pierce and Standard Oil. The petition itself stated that Standard Oil could not get a permit to do business in Texas, and accordingly, any agreement between Standard and Waters-Pierce could not affect trade in the State, be in restraint of trade, or violate any Texas laws. The oil company's answer also claimed that if it had demanded that Standard Oil of New Jersey not engage in business in Texas, this violated no law. Any statute banning such an agreement "would violate the fundamental and universal rules of commerce between two

\textsuperscript{23}Galveston Daily News, October 3, 1906.
\textsuperscript{24}Galveston Daily News, October 3, 1906.
distinct classes of people," marketers and manufacturers. The allegations in the state's petition were insufficient to state a legal cause of action regarding any alleged agreement or contract between Waters-Pierce and Standard Oil, because they failed to identify where and how such an agreement was made, executed, and kept. Nothing tied the alleged agreement to Texas. Further, Standard shipped petroleum products Waters-Pierce purchased to Texas in unbroken packages. Hence these shipments were in interstate commerce and beyond the scope of Texas law.25

The defendant's answer also claimed that the fraud it was alleged to have committed to obtain a Texas permit neither allowed recovery for penalties, nor proved violations of common law or the Texas constitution. Penalties could not be collected simply because another corporation held the stock of Waters-Pierce. Under Missouri law, Waters-Pierce could not prevent someone from purchasing and holding its stock. The mere ownership of Waters-Pierce stock by Standard Oil did not violate Texas law because Waters-Pierce was a Missouri corporation, and only it could decide who could hold stock in a Missouri corporation. Finally, the answer asserted that Texas could not collect penalties under the 1899 antitrust act because the 1903 antitrust act had repealed it.26

Waters-Pierce's answer also specially excepted to allegations in the petition about shady deals, secret schemes, devious methods of conducting business, and a score of rumored illicit and unfair actions including bribery, intimidation, stock and money manipulations. These allegations were "...irrelevant to any issue in this case and [were] impertinent and scandalous in its nature and calculated to prejudice the jury trying the case against the defendant."27

25Galveston Daily News, October 3, 1906. The interstate commerce argument was potentially a powerful one, and it showed the problems that individual states had in trying to curb big business, particularly when the federal government had done little to try to enforce the Sherman Act.
27Galveston Daily News, October 3, 1906. Both Waters-Pierce and the Texas Attorney General's Department sought to use the press to their respective advantages, and create favorable public opinions.
The answer also criticized the petition's logic and legal form. The petition was "a statement of alleged facts, so intermingled with irrelevant and impertinent matter, arguments and legal conclusions and of inconsistent averments as to cause confusion" and prejudice the jury. Defense counsel requested that the court require the plaintiff to amend the petition severely, and "omit therefrom all such irrelevant, impertinent and scandalous matter." The answer also excepted to allegations regarding the 1882 Standard Oil Trust agreement, noting that no Waters-Pierce agent or executive had ever signed it, that the firm had not ever been a party to it, and that it was executed eighteen years before the new Waters-Pierce legally existed.\(^{28}\)

Waters-Pierce's answer denied that it restrained trade by unscrupulous activities including bribery, spying, purchasing competitors and operating them as if they were still independent, coercing railroads for favorable freight rates, and by engaging in "other secret schemes." The complaint had failed to list any specific instances of the alleged acts, and did not state what Texas intended to prove. Therefore the insufficient allegations did not state a cause of action at law. The allegations that Waters-Pierce was party to some sort of trust also failed to list specific instances or facts. The answer closed with a general denial of all allegations.\(^{29}\)

A tentative court date for the trial was set for November 26, 1906, with a hearing set for November 20th on Waters-Pierce's exceptions in its answer and on questions of law. This was an optimistic trial date. Meanwhile Lightfoot enjoyed assistance from Missouri. J.P. Gruet, Sr., who had already provided Lightfoot and Davidson with documentary evidence helped Lightfoot prepare questions for various witnesses. The Texas Attorney General Davidson had retained outside counsel, Robert Lynn Batts and Thomas Watt Gregory. Batts performed much of the legal legwork in Texas, sent

interrogatories to the lengthy list of witnesses throughout the country, and forwarded special commissions and authorizations for Lightfoot to use in depositions.30

On October, 6, 1906, before a crowd 5,000 people in Houston, Senator Joe Bailey clashed publicly with former Texas Attorney General Martin M. Crane, who had prosecuted the earlier semi-successful ouster suit against Waters-Pierce. Crane did not doubt Bailey's integrity or honesty. Under the thin guise of discussing the impropriety of senators and congressmen accepting fees or employment from "monopolies or other public service corporations," Crane attacked Bailey for his ties to large, influential corporations, particularly Standard and Waters-Pierce. Judges and district and county attorneys in Texas had their fees set by law and were severely limited in their outside legal employment. No other U.S. Senator from Texas, Crane asserted, had worked for large corporations while

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30 "Waters-Pierce Case Set for Trial Next Month." OII, October 18, 1906, 12; Galveston Daily News, October 15, 1906. Lightfoot to Hadley, October 11, 1906: Lightfoot to Muir, October 11, 1906, all TSA RG 302 Box 1984/67-65. Gruet to Lightfoot, October 15 1906; R.L. Batts to Lightfoot, October 15, 1906; Hadley to Lightfoot, October 15, 1906; Batts to Lightfoot; October 16, 1906; Batts to Lightfoot, October 18, 1906; Gruet to Lightfoot, October 25, 1906, all TSA RG 302 Box 4-8/386. Robert Lynn Batts was a well-known and well-respected attorney, born in Bastrop, Texas on November 1, 1864. He graduated the University of Texas Law School in 1886, practicing law in Bastrop until he became an Assistant Texas Attorney General under Charles A. Culberson in 1891, handling several major cases. In 1893 he joined the faculty of the University of Texas Law School, teaching until 1901 when he joined T.W. Gregory in private practice in Austin. The pair were successful, so much so that in 1908 they asked Judge Victor L. Brooks, who had presided over the Waters-Pierce case to join the firm as a partner, which he did. Gregory, Batts & Brooks continued until 1913 when Gregory left for federal service, continuing as Batts & Brooks. Batts departed the firm in 1917 when appointed a federal judge on of the U.S. Circuit Court of Appeals, Fifth Circuit. Gulf Oil Corporation recruited Batts from the federal appellate bench to become their general counsel in Pittsburgh, a post that he filled well until 1924, when he quit to return to Austin, rejoining Victor L. Brooks in practice until the latter's death in 1925. Thereafter he practiced law alone in Austin until his death in 1935. See James H. Hart, "Robert Lynn Batts," Texas Bar Journal Vol. 24, #8 (September 1961), 835-36, 897-901. Thomas Watt Gregory was born in Crawfordsville, Mississippi on November 6, 1861, and after attending several colleges, graduated from the University of Texas Law School in 1885, entering private practice in Austin. He turned down positions as an Assistant Texas Attorney General in 1892, and as a District Court Judge in 1896. He joined forces with R.L. Batts in 1901, and the firm of Gregory & Batts did well. The firm became Gregory, Batts, & Brooks in 1908, and remained so until Gregory's active role in politics, with close ties to Col. E.M. House, and subsequently President Woodrow Wilson resulted in his becoming a Special Assistant U.S. Attorney General handling a major antitrust action against the New York, New Haven & Hartford Railroad Company. His success in that matter proved his legal talents sufficiently to President Wilson, who appointed him U.S. Attorney General to succeed his old acquaintance James C. McReynolds. Gregory headed the Justice Department from September 3, 1914 until March 4, 1919 to return to private practice in Washington, D.C., and New York. In 1916, he turned down President Wilson's offer to appoint him to the U.S. Supreme Court to succeed Justice Hughes, on the grounds that he would be more useful to the United States at that time as U.S. Attorney General. He returned to Texas in 1925, residing in Houston until his death in 1933. See Palmer Bradley, "Thomas Watt Gregory," Texas Bar Journal Vol. 25, #8 (September 1962), 769-70, 830-32.
serving as Bailey had done. Crane discussed his litigation against Waters-Pierce and explained why he did not pursue Standard Oil.31

Crane did not declare that Bailey was a crook. But he implied that Bailey must have been a totally credulous fool to have believed Pierce's claim that his firm was free from control by Standard. Despite the recent proof that Pierce had lied to him, Bailey had refused to denounce Pierce. It was more than a little strange that Pierce would trust Bailey with extensive legal work, including handling thirteen million dollars of bonds for him, given that Bailey, while licensed to practice law, had never established a practice, much less a sophisticated corporate practice. Crane's argument, a reporter judged, was "strong and clean cut."32

Senator Bailey defended himself passionately in what appeared to be an impromptu speech. He blamed the recent condemnation of his private legal work as part of a nationwide political attack by William Randolph Hearst to destroy the Democratic Party, diminish Bailey's influence in Texas and nationally, and destroy him personally. He had been vindicated in the 1900 legislative investigation about his efforts to get Waters-Pierce re-admitted into Texas after Crane had succeeded in ousting it. He had relied on a friend's judgment that Pierce could be trusted when he urged the re-admission of Waters-Pierce, stated that he had never worked as an attorney for Waters-Pierce, only for Pierce personally, and had not known about the Waters-Pierce and Standard Oil relationship. He admitted getting paid $5,000.00 for legal work for Security Oil, but averred that it was for more drawing up a corporate charter; he had also handled a mortgage and bond issue. His corporate clients paid for his legal skills, not for his influence. He attacked Crane's record

31Galveston Daily News, October 7, 1906; Holcomb, "Senator Joe Bailey," 377-80; Martin M. Crane, unpublished autobiography, ch. 4, 6-44, Martin M. Crane Papers, Box 3N111, CAH. Crane was an avowed political foe of Bailey, and doubtless enjoyed being able to quote Bailey's own speeches on the impropriety of government officials being involved in matters that they might have to legislate.
32Galveston Daily News, October 7, 1906; Holcomb, "Senator Joe Bailey," 377-380; Martin M. Crane, unpublished autobiography, ch. 4, 6-44, Martin M. Crane Papers, Box 3N111, CAH.
as Attorney General, and for defending a large corporate client charged with violations of the Texas antitrust laws.\textsuperscript{33}

Crane had appealed to logic, and Bailey had appealed to passion. There was no clear cut winner in this quasi-debate. Political foes seized on Bailey's vulnerability. Rumors circulated about an exchange of Bailey-Davidson letters. One rumor had it that Bailey had offered his services to the Texas Attorney General in the Waters-Pierce antitrust suit, presumably to show that he was not Pierce's tool. On October 8, 1906, First Assistant Texas Attorney General William E. Hawkins released the letters.\textsuperscript{34}

Bailey had not offered his services to Texas in its ouster suit against Waters-Pierce. He had intended to do so but had decided that it would be improper. The timing

...might have been coincidence and not the result of any understanding between you [Davidson] and them [Bailey's political foes], but the allegation which both I and my friends are compelled to consider an attempt to aid my enemies could not have been other than the result of a deliberate purpose. It had no place in the pleadings and could not have been incorporated except for some reason outside of the case....

Bailey offered to provide any information that he might have concerning Pierce's assertions to him of Waters-Pierce's independence in 1900. But given his public pronouncements concerning how "Mr. Pierce" had deceived him, this meant that Bailey had little to add.\textsuperscript{35}

Davidson's October 4th reply denied that the Waters-Pierce suit was politically motivated. Rather, "[i]t was filed for the sole purpose of vindicating an outraged law and punishing a palpable fraud." This was only partially true. No political friend of Bailey's, Davidson had aspired to higher political office. As for the timing, Davidson pointed out that the Waters-Pierce investigation had long preceded the filing of the suit, and asserted

\textsuperscript{33}Galveston Daily News, October 7, 1906; Holcomb, "Senator Joe Bailey," 380-381. For detailed, relatively balanced accounts of Bailey's dealings with Waters-Pierce, Standard Oil, and other big businesses see Holcomb, "Senator Joe Bailey," 199-261, 351-449. For contemporary accounts of Joseph Weldon Bailey, produced by admitted political enemies, see William A. Cocke, The Bailey Controversy in Texas 2 vols. (1908); W.L. Crawford, Crawford on Baileyism (1907); and E.G. Senter, The Bailey Case Boiled Down (1908). Crane' had resumed an established law practice after he left public office, and his defense of a corporate client took place many years after he had left government service.

\textsuperscript{34}Galveston Daily News, October 8, 1906; Holcomb, "Senator Joe Bailey," 381-382.

that it had been done as soon as his office had had sufficient information and evidence. Certainly Pierce's testimony admitting that Standard Oil controlled a majority of the stock of his company, and that he had essentially lied in his Texas affidavit of May 31, 1900, had been a major boon to Davidson and Lightfoot, who had acted swiftly following these revelations.36

If politics had not entered into the Waters-Pierce litigation before these letters, then it did thereafter. Davidson had publicly abraded Bailey's vanity and inflated sense of honor. Bailey had to address the issue of his relations with Waters-Pierce and Pierce, even before friendly crowds. As Standard Oil went to trial in Ohio, Bailey angrily responded to Davidson.37

Bailey claimed that he had been trying to act as a good Democrat by marking his initial letter to Davidson "personal." He had not wished to make any public criticism of "the Democratic nominee for Attorney General,..." Davidson had made his enmity for Bailey clear by "the tone of your letter" to him, but

...even under this new provocation I shall still refuse to engage in a controversy with a Democratic nominee pending the election and the responsibility for any friction which may grow out of this correspondence, so far as the public is concerned, must rest with you and not with me.

In a statement to the press rebutting what he saw as "attacks" upon him, Bailey stated that he resented the implication in the petition that Standard Oil had allowed Pierce, though the minority shareholder, to run Waters-Pierce because of "his supposed political influence in Texas." Bailey probably correctly concluded that the average Texan would have assumed that the petition referred to him. Bailey also denied Davidson's statement that he had "frequent opportunities" to offer his services to assist the state's prosecution. He pointed out that the ouster suit had been filed in late September, and that he had been out of Texas for most of that time. Had Davidson forgotten that they had met in Washington at Davidson's hotel, and that Bailey had offered to help him get information from the Bureau

of Corporations? They had discussed the Waters-Pierce case, and Bailey offered help in the litigation. Why had his offer to provide evidence concerning Pierce's false statements to him had been declined? The State needed more witnesses, not more lawyers, and he assumed that Pierce would admit the misrepresentations because Bailey could testify against him, if needed. Davidson, who was then in Washington, declined to reply. He did not need to do so.38

Bailey's dealings with Pierce generated criticism. Not normally partisan, The Oil Investors Journal noted that in one speech Bailey claimed that he had charged a moderate fee for drawing up a Texas corporate charter for Security Oil, then accused Standard Oil of leaking information to his enemies.

Can it be possible the Standard Oil lawyers are trying to work out a Standard Oil revenge on me, and are supplying them [Bailey's foes] with information? These men seem to be in communication with the Standard because no one knows what I received as a fee except those who paid me, and if the Security is owned by the Standard Company the Standard told it.

Holland Reavis, editor of the Oil Investors' Journal also observed that Bailey had accused The Texas Company and J.M. Guffey Petroleum of being tied to Standard and pointed out that Bailey's "friend," Pierce, had testified in Missouri that Standard Oil had only two other interests Texas in addition to Waters-Pierce, the Corsicana Refining Company and Security Oil. The Garfield Report confirmed Pierce's testimony and declared that The Texas Company and J.M. Guffey Petroleum were independent competitors of Standard Oil. Reavis also quoted Bailey's boast that he had handled less than twenty corporate cases since becoming a lawyer. Yet Bailey's Security Oil fee made his "services worth five to fifty times as much as the ordinary unsenatorial lawyer," and many Texas charters that cost only $10.00 to prepare had stood up better than Bailey's $5,000.00 charter.39

38 Galveston Daily News, October 10, 13 1906
39 Galveston Daily News, October 10, 13, 14, 1906; Holcomb, "Senator Joe Bailey," 382-383; OII, October 18, 1906, 12, 18, 20. Among the Texas politicians attacking Bailey in speeches was Cullen F. Thomas. See Chapter 1 for Thomas's role in the antitrust cases against Waters-Pierce. The quote in the OII came from a Bailey speech at Waxahachie, Texas on October 12, 1906.
Lightfoot and Davidson met in Washington in mid-October to discuss strategy and depositions. Rumors were that Lightfoot, and possibly Davidson, were headed to New York City to depose Standard Oil executives and collect documents, then to Ohio, Illinois, and Missouri to gather evidence. Other rumors claimed that the team of Texas trustbusters "go well equipped to ask for pointed evidence,..." having been "tipped" apparently by "a former secretary of the Waters Pierce Company." That tipster was John P. Gruet, Sr., an open secret. The evidence in the Waters-Pierce suit would "prove sensational and different from that dry legal kind in such cases," prophesied a Galveston journalist.40

Corresponding with Lightfoot, on October 29, 1906, Gruet, Sr. observed that the "payment made to H.C. Pierce for the 2748 shares of Waters-Pierce Oil Company stock was not on any basis of value, [as] such a sale made in a bona fide way would have required,..." and that Standard Oil had not acquired its interest after May 31, 1900, for anything resembling market value of the stock. He also suggested that politics made the outcome of Hadley's suit in Missouri uncertain. The former Waters-Pierce executive suggested further lines of inquiry and specific questions that Lightfoot should ask Standard executives, particularly Wesley H. and Henry M. Tilford, particularly on agreements between Pierce and Standard Oil around the May 1900 reorganization, and about Pierce's alleged absolute control of Waters-Pierce, all "for the purpose of a perjury suit." Gruet wanted Pierce, his former employer, in prison. In St. Louis, attorney Robert Funkhouser gathered information on potential witnesses and prepared for depositions, like several other local lawyers in Missouri and Ohio.41

40 Galveston Daily News, October 15, 19 1906; "Lightfoot and Depositions at St. Louis," OII, November 18, 1906, 10.
41 On information from non-Texas sources provided to the Texas Attorney General's Department at this time, see Gruet to Lightfoot, October 18, 1906; Charles A. Houts to Lightfoot, October 18, 1906; Gruet to Lightfoot, October 24, 1906; unknown (probably Lightfoot) to Gruet, October 26, 1906; Lightfoot to Messers. Johnson, Houts, Marlett & Hawes, October 26, 1906; Gruet to Lightfoot, October 29, 1906; Robert Funkhouser to Lightfoot, October 30, 1906; Hadley to Gruet, telegram dated November 7, 1906; Joseph C. Brenan to Lightfoot, November 14, 1906; William R. Condit to Lightfoot, November 15, 16, 1906; E.L. King to Lightfoot, November 15, 1906; King to Lightfoot, November 17, 1905; Brenan to Lightfoot, November 18, 1906; Kirk Hawkins to Lightfoot, November 20, 1906; King to Lightfoot, November 22, 1906; Brenan to Lightfoot; November 23, 1906; James M. Gray to Lightfoot, November 26, 1906, all TSA RG 302 Box 4-8/386.
Offering support and evidence, M.D. Carlock, a Winnsboro, Texas attorney, sent copies of statewide newspaper articles about Waters-Pierce shortly before it received a permit to do business in Texas in May 1900. Carlock asserted that he could prove that the so-called editorials expressing support for Waters-Pierce had been paid standard rates for advertising material, and that the "editorials" had been composed by lawyers for Pierce and presumably Standard Oil. Concerning a Houston Post editorial reprinted by country newspapers in May 1900, Carlock explained:

The widespread publication of the Post article nearly a month after its appearance in the Post was not worth one cent to the Waters Pierce Oil Company. Its appearance as an editorial in the Post had paved the way for the monstrous fraud and everything had been agreed upon. The Post was the recognized State exponent of Texas Democracy, and its manager was a recognized leader in the counsels of the party. Why, then, after the "editorial" had had the desired effect, and all the details of the monstrous fraud had been agreed on, was it considered advisable to have the Post article reproduced in the country papers? Evidently to forestall and discount the public effect of the forthcoming re-admission of the Oil company, and if possible prevent criticism and condemnation of--whom? Surely not Pierce, nor the Oil company but most assuredly the officials and politicians of Texas who had been parties to the perpetration of the outrageous fraud. And what was more natural than the suggestion that Pierce foot the bill?...[T]he jailer, or other public servant, who swings wide open the prison doors, and permits the culprit to walk out and flee the country, is not held guiltless....Hence in this instance the widespread publication of the Post editorial. Hence Pierce, the escaped convict, "pays the freight."

He added that the Post editorial was similar to recent editorials, reflecting a concerted effort. Walter Collins, an attorney in Hillsboro, Texas, wrote to Davidson, "[a]s a citizen interested in seeing Standard Oil out-rages checked...." A client who had tried to import oil into Texas found that there was a prohibitive "oil rate" and that this rate existed to protect Standard in Texas.42

Meanwhile Standard faced a barrage of legal actions and public criticism. An Ohio jury had returned a guilty verdict against John D. Rockefeller and other executives for antitrust violations in October 1906 in a county probate court, which Standard promptly appealed. A grand jury which returned new indictments against Rockefeller and Ohio

42M.D. Carlock to Davidson, October 25, 1906; Walter Collins to Davidson, November 9, 1906, TSA RG 302 Box 4-8/386.
Standard in November 1906 and Ohio Attorney General Wade Ellis filed quo warranto petitions against several Standard subsidiaries incorporated in Ohio. In Tennessee, the grand jury for the U.S. District Court returned indictments against Indiana Standard for rate discriminations relating to oil shipments, with 1524 separate counts and a maximum penalty of $30,840,000. Missouri Special Commissioner Robert Anthony noted to the Missouri Supreme Court in late October 1906 that Missouri had finished taking testimony, and he would complete his report by early 1907. In the Midwest and the Mid-Continent fields, accusations flew that Standard Oil had been cutting crude oil prices to deter excess production and turn a tidy profit.43

The peripatetic Lightfoot had finished his evidence-gathering in New York by the end of October and, after traveling to Ohio, Indiana, Illinois, and Virginia, returned to St. Louis in mid-November 1906 to uncover further information on Waters-Pierce. Upon his return to St. Louis, Lightfoot stated to reporters that if Texas succeeded in its civil suits against Waters-Pierce and Standard Oil, criminal prosecutions against Waters-Pierce and Standard executives would begin quickly. He did not intend, at that time, to call Pierce as a witness but would use Pierce’s Missouri litigation testimony. Lightfoot deposed witnesses in St. Louis in November 1906, being careful to sequester them, and to keep attorneys not involved in the case barred from the courtroom to preserve the legality of the depositions as Texas law required. The witnesses for the first set of depositions included: Charles M. Adams, Waters-Pierce secretary and treasurer; C.B. Collins, Pierce’s former private secretary; E.N. Vonharten, manager of the Waters-Pierce City Division; C.J. Cohn, a former Waters-Pierce agent in Texas; and Charles Hatfield, who had been employed to get information from railroad clerks on shipments from competing firms into Waters-Pierce territory. These witnesses stated that Corsicana Refining and Security Oil did not sell to firms which competed with Waters-Pierce in Texas, and that Waters-Pierce bought all the petroleum products produced by the two refineries, alleged to be owned by Standard Oil.

43Oil, November 3, 1906, 5, 19; Brinthurst, Antitrust and the Oil Monopoly, 26-38.
Maps showing territorial divisions between Waters-Pierce and other Standard Oil concerns had been prepared at 26 Broadway by the Domestic Trade Committee of Standard, and that Waters-Pierce sent approximately two-thirds of its profits to Standard, via New York banks.44

Lightfoot was aided by the resumption of Missouri ouster suit hearings, particularly the testimony of Charles P. Ackert, general manager of the firm, which provided the Texan with considerable information to use in his depositions. Then the federal government filed an antitrust suit against Standard Oil of New Jersey and all subsidiaries and affiliates in the Eastern District of Missouri in mid-November 15. A jury in Findlay, Ohio fined Ohio Standard for violating the state antitrust laws, and in Kansas a quo warranto suit against the Standard Oil affiliates there proceeded apace. Standard denied any possibility of a dissolution.45

Meanwhile Texas Senator Bailey backed down from statements that he had made in his debate with Crane and in speeches. He implied that Standard Oil controlled Gulf Refining and the J.M. Guffey Petroleum Company. F.C. Proctor, general counsel for the two firms, complained to Bailey about these "implications" and demanded a retraction. The U.S. Bureau of Corporations had given the companies clean bills of health, and Gulf Refining had forced a general shipping rate reduction by railroads. True to form, Bailey did not acknowledge mistakes in his "retraction," claiming that he never had said that he had personal knowledge of the ownership of Gulf and Guffey, he had merely been repeating what he had heard.46

44Galveston Daily News, November 15, 1906; "Lightfoot and Depositions at St. Louis," OII, November 18, 1906, 10; "Testimony in Ouster Suit Against Waters-Pierce in Missouri," OII, November 18, 1906, 15-16.


46Galveston Daily News, November 16, 1906. Despite his own business dealings with people and firms associated with the oil company, Bailey seemed fond of accusing others of being tied to Standard Oil.
While Bailey floundered, A.W. Clem, general manager of the Clem Oil Company, who from 1894 to 1904 had operated the Eagle Refining Company as a Waters-Pierce "blind tiger" to get the trade of those that did not like the Missouri corporation offered evidence against Pierce's operation. Eagle Refining had been truly independent concern until Waters-Pierce purchased it from the parent company. Eventually Waters-Pierce decided that it no longer needed to keep the firm operating. Clem lost his job and became displeased with his former employer.47

Clem offered Davidson and Lightfoot letters and contracts which showed how Waters-Pierce had kept track of competitors. They showed that Waters-Pierce had undercut competitors to drive them out of business and bribed railroad clerks and competitors' employees to obtain information.48

Clem also wanted to advise Davidson about The Texas Company, which was believed to be "affiliated with the Standard Oil Co. or the Waters-Pierce Oil Co...." as its method of doing business seemed to be "identical with that of the Standard Oil Co." He complained that someone had come to Clem Oil and the Oriental Oil Company in November seeking information, and the visitor was probably a "scout" or "spotter" for Standard Oil. C.P. Dodge, a Sales manager of The Texas Company wrote to Clem on November 3, 1906, identifying the so-called spotter as F.L. Wimmer. He had been sent by Joseph Cullinan to learn why The Texas Company was not selling the expected volume of its products in North Texas. In addition to failing to identify himself as a The Texas Company agent, Wimmer had given a false name and asked a great deal about their business. The letter stated to the Texas Attorney General that if the ouster suit against Waters-Pierce was successful, "its mantel [sic] will fall upon the Texas Company." He felt quite sure "that

47 A.W. Clem to Davidson, November 17, 1906 TSA RG 302 Box 4-8/386; Bringham, Antitrust and the Oil Monopoly, 42, 47; Adams, Waters Pierce Case, 24-25. The information that Waters-Pierce owned Eagle Refining emerged during the McLennan County and 1896 antitrust suits against Waters-Pierce, and was supposedly reported in many newspapers. Yet few people seemed to know that Eagle Refining had been owned by Waters-Pierce.

48 Clem to Davidson, November 17, 1906 TSA RG 302 Box 4-8/386.
these people [The Texas Company] are nothing more than a blind tiger of the Waters-Pierce..." and that Davidson could prove it by deposing executives of the companies.49

Clem was completely wrong regarding The Texas Company being a Standard or Waters-Pierce blind tiger. The only connection was that Cullinan, president of The Texas Company, had worked for Standard firms for many years. If Wimmer was a scout, he was an incompetent one, having made his interest in the purchasing habits of Clem Oil and the Oriental Oil Company very obvious, and having identified himself as connected to the Producers Oil Company. Everyone in the industry knew that Producers Oil was the production company for The Texas Company. While incorrect, Clem's interpretation of Wimmer's visit was understandable.50

Clem also advised Davidson to look into the Southwestern Oil Company, based in Houston. He suspected that it also was a blind tiger of Waters-Pierce. Southwestern Oil had been acquired by the Houston Oil Company in 1901 and operated as a wholly-owned, legally separate corporate entity. Senator Bailey had an idea to raise capital for the financially troubled Houston Oil. Southwestern owed its parent Houston Oil $160,000. Bailey suggested that Southwestern issue a note to Houston Oil for that amount which could then be collateral with the Riggs National Bank to pay to another creditor, Maryland Trust. Bailey agreed to guarantee the Riggs National loan, if Houston Oil's stock in Southwestern Oil would be used as security for him. Bailey paid off the loan from Riggs National in October 1903, and foreclosed on the Southwestern stock in December 1903.

49C.P. Dodge to Clem, November 3, 1906; Clem to Dodge, November 5, 1906; Clem to Davidson, November 17, 1906, all TSA RG 302 Box 4-8/386. Dodge's explanations to Clem were reasonable, but after his experiences with Waters-Pierce, Clem was not inclined to trust any large oil companies.

50Dodge to Clem, November 3, 1906; Clem to Dodge, November 5, 1906; Clem to Davidson, November 17, 1906, all TSA RG 302 Box 4-8/386. The Texas Pipeline Statute, under which refineries and pipeline were incorporated, prohibited a petroleum corporation from being fully integrated, that is operating in all four areas of the oil industry: production, transportation, refining, and marketing. A corporation could not engage in the production of oil and any of the other three areas, which required would-be integrated companies to form two separate corporations that operated jointly. An oil company that operated in two or three areas of the industry is called "semi-integrated." See R. D. Langenkamp, Handbook of Oil Industry Terms and Phrases, (1977 2nd edition), s.v. "integrated oil company." The Texas Company also maintained an office in New York, which seemed suspicious to some, but much of its capital came from the East.
after Houston Oil proved unable to raise the capital. Bailey assumed control of Southwestern Oil. He "sold" Houston Oil the stock in 1905, for more than $200,000. Had Bailey been acting for Waters-Pierce/Standard Oil effectively removing Southwestern as a low-price competitor? Clem voiced

... a supposition on my Part but I feel that Senator Bailey rendered the Waters-Pierce Oil Co. another great favor in practically wiping out their competition in Texas, up to that time, and if the records of the court in which Senator Bailey filed his petition could be investigated, as well as other inside workings of the Southwestern Oil Co. I believe that some valuable information could be obtained.

Though Davidson chose not to pursue the matter, Texas's legislature decided to launch a full-scale investigation into Senator Bailey in January, 1907.51

II. Hearings and Investigations

The trust managers and financiers have done no wrong. The evidence proves it. The investigations which have been conducted by the Interstate Commerce Commission, courts and legislative committees show that these men, these "captains of industry" and high financiers, are men of the highest honor and of the loftiest standards of personal integrity. They are rushing about hiding from bailiffs, dodging requisitions and defying the orders of courts, solely for the sake of righteousness.

This is the only conclusion to be drawn from the published statements of the able attorneys who are directing these millionaire martyrs how to escape from the rascally minion of the law...

One wonders if the able attorneys of these wealthy law breakers imagine that the public really swallows the flimsy excuses they put out for evading the process of law, and how long they think the public will stand such juggling with the laws and with the orders of courts.

Editorial, St. Louis Post-Dispatch, February 20, 1907

Lightfoot and outside counsels prepared for the November 26th hearing on the merits of the ouster suit in Judge Victor L. Brooks's court in Austin. Lightfoot's recent travels continued to produce results. Depositions, transcripts and other evidence flowed into Austin despite Waters-Pierce's refusal to cooperate. Many witnesses were eager to

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51 Clem to Davidson, November 17, 1906; John O. King, The Early Years of the Houston Oil Company, 1901-1908 (1959) 72-77; Holcomb, "Senator Joe Bailey," 412-20. Fueling suspicions were the price increases made after Bailey took over, which matched Waters-Pierce's price. Bailey made a good deal of money off of his brief control of Southwestern Oil, but he did not operate it to help Waters-Pierce or Standard Oil, having turned operation of the company to prominent Houston attorney Frank Andrews. Among those that believed that Bailey was fronting for Waters-Pierce and Standard Oil was William Cocke, a political foe of the U.S. Senator. See Cocke, Bailey Controversy, Vol. 2, 531-55; Cocke to Davidson, December 19, 1906 TSA RG 302 Box 4-8/386.
assist. For example, attorney James Gray took "a pretty warm deposition..." from one witness who "seems to have considerable information that tends to hurt the Standard Oil Company." 52

In his rulings on demurrers and exceptions that defense counsel had made to the petition, Judge Victor L. Brooks annoyed both teams of attorneys. Most significantly from a political perspective, he struck the allegation that Pierce had been restored as Waters-Pierce president due to political influence in Texas, which referred primarily to influence with Senator Bailey. Brooks merely noted that while it might be material that Pierce had been made president, "...the grounds and reasons why he was made President will introduce an element in the case that I can see no reason why it should be introduced." Political elements were to be kept out of the case unless expressly relevant and necessary to a material allegation. Brooks also struck all allegations relating to representations that Pierce had allegedly made to secure a permit to do business in Texas that Waters-Pierce was independent of Standard Oil. These allegations were Pierce had made a false and fraudulent affidavit/oath to deceive Texas officials to obtain a new permit; and that Standard Oil or an affiliate controlled Waters-Pierce as part of a conspiracy to monopolize the Texas oil industry. These rulings did not preclude criminal charges against Pierce for making a false affidavit/swearing a false oath, for those charges were independent of any violations of the antitrust laws, and a Travis County grand jury had just indicted the oil magnate. 53

Judge Brooks also sustained a number of other defense exceptions. Allocations in the state's petition that the original Waters-Pierce Oil Company had not been properly dissolved, and a new corporation organized under Missouri law was defective, were legally deficient because they failed to set forth the relevant Missouri statutes on corporations, and

52 Brenan to Lightfoot, November 18, 1906; Kirk Hawkins to Lightfoot, November 20, 1906; King to Lightfoot, November 22, 1906; Brenan to Lightfoot, November 23, 1906; James M. Gray to Lightfoot, November 26, 1906, all TSA RG 302 Box 4-8/386. For examples of editorial cartoons on Bailey see St. Louis Post-Dispatch, September 22, 1906 and October 23, 1906.
had not stated what Waters-Pierce had done, or not done, to void its dissolution and 
reincorporation under Missouri law to justify a review in Texas's courts. This ruling meant 
only that Texas's attorneys needed to include the Missouri statutes in its allegation and be 
more specific about facts, not merely state a conclusion of law in an amended petition.\textsuperscript{54} 

Brooks also sustained an exception to the allegation that when Waters-Pierce had 
increased its capitalization from $100,000.00 to $300,000.00 on June 13 1882, no 
additional money was paid in for the increase in the number of shares and another 
exception to the allegation that despite Standard's control of Waters-Pierce, "the 
unconscionable, exorbitant prices for oil which have at all times been exacted by the 
Waters-Piece Oil Company would have been reduced to a nearer approach to a proper 
price" if Pierce had objected as the minority shareholder. To Brooks this was not an 
allegation for an antitrust case, but rather for corporation law. Moreover Pierce, not 
Standard, was in fact the driving force for charging the maximum possible prices in 
Texas.\textsuperscript{55} 

A number of the allegations needed greater specificity to state a valid cause of 
action. The petition had alleged that Waters-Pierce had bought out competitors and 
operated them as pseudo-competitors, "blind tigers," to appeal to customers hostile to the 
firm. It alleged also that Waters-Pierce: made exclusive contracts with retailers and 
wholesalers; undercut competitors' prices to drive them out of business, after which prices 
were raised to compensate for the previous price; gave rebates and bribes; and maintained, 
in conjunction with Standard Oil, a spy network in Texas, bribed competitors' employees, 
and engaged in other assorted "secret schemes and devices." The original petition had not 
given any specific instances of the purportedly illegal acts. The Texas Attorney General's 

\textsuperscript{54}Galveston Daily News, November 27, 1906; "The Waters-Pierce Case Goes Over to the March Term of 
Court," OIL, December 3, 1906, 11. 
\textsuperscript{55}Galveston Daily News, November 27, 1906; "The Waters-Pierce Case Goes Over to the March Term of 
Court," OIL, December 3, 1906, 11. Standard Oil liked the profits generated by Waters-Pierce, but as 
Chernow summarized it in Titan at 255, "Even Standard Oil people never defended Henry Clay Pierce."
Department could overcome this ruling by including specific examples of the allegedly illegal acts.\textsuperscript{56}

Brooks also found the allegation that "since the reputed reorganization of the Waters Pierce Oil Company..." under a May 29, 1900, charter, it had continually violated the state's laws to be too vague. The charge might have been true, but it was an open-ended allegation that provided no clue to the defendant as to what conduct might have violated the laws so that it could prepare an adequate answer and defense.\textsuperscript{57}

In spite of these adverse rulings, all was not bleak for the state and its attorneys, represented principally by Robert L. Batts. Judge Brooks upheld other allegations as being legally sufficient to state a cause of action. This included the allegations that since approximately January 1, 1875, John D. Rockefeller and others had entered into a conspiracy to monopolize and control the refining and marketing phases of the oil industry throughout the United States. Further, that as of May 7, 1878, Pierce and his partners had conspired to monopolize the oil industry in portions of the United States, including Texas, in order to eliminate competitors and fix prices. To advance the conspiracy, Waters-Pierce had organized as a Missouri corporation. Some of the conspirators had formed Ohio Standard and had purchased control of the property and stock of several corporations and firms. The conspirators had agreed to limit Waters-Pierce's operating territory to several regions, including Texas. Brooks also sustained the allegation that Waters-Pierce agreed to purchase all of its requirements from Standard Oil or one of its affiliates, which contract the parties still honored. Among the other allegations deemed legally sufficient were those which averred that officers and agents of Waters-Pierce, Standard Oil of New Jersey, and Pierce had gone through the forms of dissolving the original Waters-Pierce corporation,

and of organizing the second corporation to carry out the "plans and conspiracies" and to hold the property of the original Waters-Pierce, with no substantive change.\textsuperscript{58}

At the time of the Waters-Pierce "reorganization" in 1900, Pierce had known that he was to transfer the majority stock interest (2,748+ shares) that Standard held in the original corporation back to Standard Oil of New Jersey, and did so by endorsing the shares in blank. Though the shares remained in Pierce's name on the corporate books from May 29, 1900 to June 1904, he sent the dividends to Standard Oil of New Jersey through New York banks. In June 1904, those same shares of Waters-Pierce stock were registered and held by a Standard officer, Martin M. Van Buren, Archbold's son-in-law, for the benefit of Standard Oil. Brooks also sustained the charge that Waters-Pierce had not changed its business practices since its reorganization, and that the only purpose for the reorganization was to circumvent the laws and courts of Texas, perpetuating a fraud so that the company could have a permit to do business in Texas and perfect a monopoly there. As a result of the "substantially complete monopoly effected by the Waters Pierce Oil Company and the Standard Oil Company," Waters-Pierce paid annual dividends as high as seven hundred percent of its $400,000 capitalization. Brooks also deemed as legally adequate the contention that Standard Oil's business methods were "secret and devious and its business is largely conducted by codes unintelligible to ordinary persons."\textsuperscript{59}

\textsuperscript{58}Galveston Daily News, November 27, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OIL, December 3, 1906, 11.

\textsuperscript{59}Galveston Daily News, November 27, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OIL, December 3, 1906, 11; Adams, Waters Pierce Case, 48. By endorsing the stock certificates in blank, Pierce made them freely transferable. Until the holder of a stock certificate chose to register his ownership with the company, officially Pierce still controlled the stock, and voted the shares as stockholders' meetings. Adams, a staunch defender of H.C. Pierce and Waters-Pierce, maintained that Standard Oil broke its agreement with Pierce when, after persuading the oil magnate to elect R.P. Tinsley as Vice-President, it had Martin M. Van Buren register his "ownership" of the 2,748 shares of Waters-Pierce stock, thereby depriving Pierce of voting control of the company. The old Standard Oil executives believed that the most trustworthy people were relatives, and the result was many of the executives and directors of the Jersey Standard and Socony were related to other executives or up and coming employees. There is no evidence that Van Buren was ever more than a trusted errand-boy, who could be used to help maintain the secrecy of Standard Oil by acting as a convenient name on ownership documents and powers of attorney. John D. Archbold started as an opponent of Standard Oil in the oil fields of Pennsylvania, but Rockefeller and his fellow directors recognized his ability, and co-opted him. He rose to be de facto president of Standard by 1895, and in 1911, officially president until his death in 1916. Biographers have described his as completely devoted to the growth of the oil industry and Standard Oil, more so than any other Standard
Attorneys for both sides announced that they made exceptions to Brooks's adverse rulings, for purposes of appeals. Batt for Texas asked leave to file an amended petition that would presumably address the weak points of the State's case that Brooks had already stricken. In ruling on this request, Brooks made it plain that he viewed the charges concerning the Pierce affidavit as superfluous, and ordered a swiftly amended petition. Robert Penn, counsel for the defendants, moved to have the court rule on the numerous defense motions to suppress interrogatories and testimony, after which, he claimed, the case could be tried easily and immediately. Judge Brooks merely noted that the lawyers for the state were already amending the petition. The state attorneys filed an amended petition that evening which addressed the flaws that Brooks discerned.60

Next day, the defendant's attorneys requested additional time to answer the "new" allegations raised by the amended petition. Counsel for Waters-Pierce also argued for a continuance of the trial until the next term of court, which would give them ample time to examine the allegations of the amended petition, and draft an appropriate and thorough answer to it. Judge Brooks, however, wanted the new answer by the next morning at the latest.61

Brooks had ample cause for demanding that the defense lawyers file an answer in short order. The "new" allegations contained in the amended petition addressed the defects that he had found in the original petition. Penn cited as new allegations, the specific examples in which the state claimed that Waters-Pierce had violated Texas antitrust statutes, and also the Missouri corporation statutes included in the amended petition. He claimed that Waters-Pierce needed time to investigate the "new" allegations thoroughly. To George

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60Galveston Daily News, November 27, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OIL, December 3, 1906, 11. Judge Brooks gave the state's lawyers until 3:00 p.m. that day to amend the petition, and extended it until 6:00 p.m., a deadline that they beat by three minutes.
Clark, also for the defendant, it seemed that Texas was trying to slip in a few allegations at the last minute, thereby denying them a fair trial, as he implied had occurred in Crane's ouster suit. Time to investigate the specific charges was necessary. They covered incidents in twenty different locations in Texas and would require examination of corporate records in St. Louis; therefore an immediate trial would be unreasonable. Batts replied, observing, as had the defense attorneys, that the amended petition mostly involved long familiar material. Batts noted that at least two of the defense counsel, John D. Johnson and Henry S. Priest of St. Louis, were familiar with the Missouri corporate statutes. As for the individual transactions complained of in the amended petition, Batts pointed out that one of Waters-Pierce's former directors (Johnson) was in the courtroom. As a senior executive he ought to be able easily to obtain and examine Waters-Pierce corporate records. Batts declared that with these documents the Texas Attorney General could craft a convincing argument and offered to drop a number of allegations regarding independent transactions if they could be proved by corporate records and correspondence.62

Texas had filed a lengthy list of "contracts, agreements, documents, books, letters, and memoranda...." which it wanted Waters-Pierce to produce for trial. This discovery included certified copies of the Standard Oil trust agreements of January 2, and January 4, 1882. The request also demanded all agreements, resolutions, memoranda, documents, and correspondence which related to the acquisitions of the Eagle Refining Company and the Texas Oil and Gasoline Company by Waters-Pierce, and also requested all material

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62 Galveston Daily News, November 28, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OJ, December 3, 1906, 11. Henry S. Priest, like John D. Johnson, was a prominent St. Louis-based business lawyer that had long been the primary legal advisor to Henry Clay Pierce, and to his business enterprises. Despite the fact that Priest and Johnson had worked together in several litigations for Pierce, they were not members of the same firm. Priest (1853-1930) was born in small-town Missouri, and became a lawyer in 1873. He became involved in railroad litigation, starting as an assistant attorney for the Missouri Pacific Railroad Company, moving on to become general attorney for the Wabash Railroad Company in 1883, and eventually general-attorney for the Missouri Pacific Company. While concentrating much of his practice on railroad litigation, he maintained a general business practice, his most notable cases being those involving Waters-Pierce and Henry Clay Pierce. He briefly served as a federal district judge in Missouri from 1894 to 1895, as an unsolicited appointee of President Cleveland, but quit to resume his law practice in his firm of Boyle & Priest. The National Cyclopædia of American Biography, Vol. VI (1929), s.v. "Priest, Henry Samuel"; Who Was Who in America, Vol. I (1942), s.v. "Priest, Henry Samuel."
relating to the employment of Clem and Royer Campbell, who had previously managed the Texas affairs of Eagle Refining and Texas Oil and Gasoline respectively. Texas also demanded all "maps, drawings and writings" that dealt with the alleged territorial boundaries of Waters-Pierce.63

The discovery request reached beyond the Texas borders. It demanded all memoranda of agreement between the Missouri Attorney General, Johnson, and Priest, lawyers of record for Waters-Pierce and Pierce in the Missouri suit relating to the testimony of Henry H. Rogers which admitted, for that case only, that Standard Oil of New Jersey held the majority of the stock of Indiana Standard and Republic Oil, and that the Waters-Pierce stock in the name of Martin M. Van Buren was actually held for Standard Oil of New Jersey.64

Additionally, the discovery requested demanded the correspondence to and from Johnson and George Clark regarding the settlement of the old antitrust cases filed in Waco, Texas, and regarding the re-admission of Waters-Pierce after its ouster in 1900. The request closed by stating that if the defendant did not provide any of the documents requested, then Texas was ready to prove the matters by secondary evidence.65

November 28, 1906, Judge Brooks handed down his rulings on the demurrers and exceptions by the defendant's attorneys to Texas's first amended petition and on defense motions to suppress numerous depositions that Lightfoot had taken. When court convened, defense counsel Penn requested and received permission to file a second amended original answer. Penn argued that the amended petition put in new matters and

63 Galveston Daily News, November 28, 1906. The state's lawyers included a wealth of detail in their discovery request which suggests that they had unofficial copies of many documents or their contents. But for trial purposes, the state needed the original documents as evidence.
64 Galveston Daily News, November 28, 1906.
65 Galveston Daily News, November 28, 1906. Among the correspondence specifically requested were letters and telegrams to and from Senator Joseph Bailey, and to and from "parties in New York" with Johnson and Clark. Further relating to Bailey's activities, the discovery request included vouchers, checks, and records from Waters-Pierce and H.C. Pierce regarding payments and loans made to and through Bailey, with reference to specific vouchers and dates, suggesting that the state already had copies of some of this material, and a good information source, John P. Gruet, Sr.. Davidson and Lightfoot were trying somewhat to accumulate evidence that would be useful to make Bailey look bad.
that the second petition did not follow the standards set by the Supreme Court regarding the allegations about Clem and Campbell. George Clark took exception to allegations regarding the specific examples in the amended petition, contending that these acts did not violate Texas statutes. He insisted that cutting prices below published schedules did not violate the antitrust statutes, where such prices were not below cost. Clark also argued against the court giving the state's attorneys any further latitude. Judge Brooks requested that Batts, outside counsel for Texas, clarify the confusing welter of antitrust laws.\textsuperscript{66}

Batts declared that the state's general allegations in its original petition were sufficient concerning violations of the antitrust statutes. The defense counsel had insisted upon specific examples, the court had agreed, and the state had complied in its amended petition. Regarding allegations concerning the Texas Oil and Gasoline Company, failures to follow published price schedules, and rebates, Batts conceded that individual failures to follow published prices and granting secret rebates would not violate the antitrust laws, but considered as part of the general conspiracy to monopolize the oil business, these actions did violate the statutes.\textsuperscript{67}

Lightfoot declared that Waters-Pierce had secretly acquired Eagle Refining and Texas Oil and Gasoline and kept them in business in order to deceive the public and obtain the trade of businessmen and consumers that did want to buy from Waters-Pierce. Texas Oil and Gasoline, presumably on orders from Waters-Pierce, hired boys to follow the wagons and trucks of competitors to see who purchased from their business foes. Thereafter Waters-Pierce or agents from its pseudo-independent subsidiaries would lure these customers from competitors by secret rebates and other incentives. The specific examples in the amended petition were but a few of the many instances of such conduct. Such actions were what the Texas antitrust laws condemned. John Brady, Travis County


Attorney, argued that the price reductions of Waters-Pierce which had been made to meet
and/or beat the competition clearly violated the 1903 Texas antitrust statute, which
prohibited combinations of two or more corporations from trying to fix, lower, or raise
prices.68

Judge Brooks overruled all of the general and special demurrers of Waters-Pierce's
attorneys. They turned to the motions to suppress depositions which Lightfoot and others
had taken. The most important deposition that Waters-Pierce wanted suppressed was that
of John Gruet, Sr., former director and executive of Waters-Pierce, turned friendly witness
for Texas. Penn noted that Gruet had worked for Standard Oil as an auditor prior to 1880,
and then for Waters-Pierce to 1905. According to Gruet's deposition, he had held one
share of stock in Waters-Pierce, which qualified him to be director and vote in meetings.
He had voted in favor of the dissolution and reorganization of Waters-Pierce in May, 1900.
This dissolution meant little, for he also asserted that Waters-Pierce was a continuously
operating company, unaffected by the 1900 dissolution.69

Standard Oil controlled the majority of Waters-Pierce stock, Gruet stated, and all
Standard subsidiaries, including Waters-Pierce, reported to the parent company. Henry M.
Tilford represented Standard's interests in Waters-Pierce, and Gruet had always consulted
Tilford about decisions until a commercial agent was appointed after the reorganization in

68Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of
Court," OII, December 3, 1906, 11. Predatory prices and rebates were common Standard Oil tactics. Some
studies, such as the Nevins biography of Rockefeller reached the conclusion that cutting prices to beat out
competitors was rarely done (only in 37 out of 37,000 locations according to a federal study cited by the
scholar). But Chernow, who has had access to his predecessors' well-indexed and detailed research, as well
as considerable material which had not been accessible to earlier researchers, came to the conclusion that
this predatory pricing to drive out competition had been commonplace, as he saw that "Rockefeller's files
are so rife with references to this practice as to refute Nevins's verdict." Some correspondence was quite
explicit, with Colonel W.P. Thompson telling Rockefeller in 1886 that Standard Oil was selling twenty-
five percent of its products at cost to drive out competitors, and that since competition had been driven out
of Chicago, "we jacked that price up a quarter or so,..." Chernow, Titan, 256-58, quoting from a letter of
W.P. Thompson to John D. Rockefeller, February 3, 1886. As noted previously, Pierce and his practices
were a bit much even for Standard Oil executives to defend in public, and if Standard Oil routinely engaged
in predatory pricing and secret rebates to destroy competition, it is a certainty that Waters-Pierce was also
doing it, though probably on a larger scale, and with greater price increases elsewhere to offset any
temporary losses.
69Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of
Court," OII, December 3, 1906, 11.
1900. Pierce had decided to operate as a marketing company for Standard rather than integrate. Somewhat exculpating Waters-Pierce from the charges that Standard Oil controlled it, Gruet explained that while Waters-Pierce often discussed the prices in its territory with Standard executives and agents, Waters-Pierce determined its own prices, which Standard consistently thought were too high and urged its affiliate to reduce. Waters-Pierce had maintained high prices, Gruet declared, because it could do so. In addition to maintaining Eagle Refining and the Texas Oil and Gasoline Company as pseudo-independents, Waters-Pierce continued to make exclusive dealing contracts with retailers after its 1900 dissolution and reorganization, as it had done before its ouster from Texas. All this information came from personal knowledge, Gruet asserted.\(^7\)

Gruet stated that Pierce had promised to "take care of" him. After Tinsley had terminated Gruet at Waters-Pierce, Pierce had given him a job at another company in New York, which Gruet had quit in November 1905, as he was not satisfied with this lesser job. The cross-interrogatories asked questions which Gruet was reluctant to answer fully. The defense counsel asked if Gruet had threatened to tell all that he knew about Waters-Pierce and its business methods, unless he received $20,000 that Pierce allegedly owed him. Gruet merely replied that he had had an interview with Johnson and stated that he had filed a lawsuit to obtain the $20,000.\(^1\)

Defense counsel Penn declared that he had introduced this material in order to show that Gruet had tried to blackmail Pierce, tainting his testimony. Penn added that Gruet had not answered some of the interrogatories and cross-interrogatories, or, in others had not provided requested details. Further, Penn declared that Gruet had not given true and full


\(^1\) *Galveston Daily News*, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court." *OJ*, December 3, 1906, 11. Frederick U. Adams's account of Gruet's actions during that period portray him as an alcoholic, which was true, as well as being a greedy, treacherous, blackmailing forger. Money and revenge do seem to have been the primary factors motivating the former oil man's willingness to aid Texas. See Adams, *Waters Pierce Case*, 42-47. It was Gruet's alcoholism that had caused Tinsley to remove him from Waters-Pierce, and Pierce had gotten him another, if lesser, job.
answers to questions regarding his motives for testifying, and about what remuneration he would receive if Texas proved victorious in its suit, implying that Gruet was a paid informer and liar.72

Batts and Brady argued against the motion to suppress Gruet's deposition. Batts pointed out that Gruet had had to answer approximately one hundred fifty-five intricate, detailed cross-interrogatories from Waters-Pierce's attorneys. Under the rules for taking depositions, witnesses were not allowed to review questions prior to answering them, but had to reply promptly and with little latitude in framing answers. In such circumstances it was difficult for witnesses to give answers that were wholly satisfactory. A rule to suppress for failure to answer questions fully and in detail could suppress whole depositions. Gruet had provided the information asked for by the questions. Indeed, Judge Brooks observed that Gruet seemed to be a friendly witness for the state. Conceding that Gruet was friendly, Batts declared that he had answered defense counsels' questions "in a seemingly fair spirit." Brooks commented that there were cross-interrogatories to which Gruet had not given full answers, to wit the question about the compensation Gruet would get from Texas for cooperating. Any deficiency in Gruet's answers could have been lessened by the defense lawyers asking supplementary interrogatories addressing those deficiencies, Batts replied, which they had not done.73

72 Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OJ, December 3, 1906, 11. Subsequent evidence over the next few months would show that Penn was largely correct in his accusations regarding John P. Gruet, Sr.. Apparently Lightfoot, acting on behalf of County Attorney Brady, entered into an agreement with Gruet on August 29, 1906, whereby he would provide information, evidence, and testimony for the State, and receive one-third of the county attorney's share of any penalties recovered from Waters-Pierce. The Texas Attorney General's Department itself could not make such an arrangement, as it had no power to dispose of penalties collected, but Brady could do what he saw fit with his statutory share, including assigning an interest in it. Technically this meant that Gruet did not have any agreement with the Texas Attorney General's Department, with the State of Texas, or with Lightfoot, but rather a private contract with County Attorney Brady. In later testimony Gruet would state that Lightfoot and Brady had told him not to discuss the agreement. See Texas Legislature, Bailey Investigation Committee, 253; Bringham, Antitrust and the Oil Monopoly, 59-63; Adams, Waters Pierce Case, 42-48.

73 Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OJ, December 3, 1906, 11. Depending on how the questions regarding compensation were phrased, Gruet could have given a literally true answer that still managed to avoid admitting the deal with Brady.
The Waters-Pierce lawyers stated that Gruet was plainly hostile to the defendant. Gruet had twice gone to Austin to be an informant for the state. He was a disgruntled former employee who had quit on his own initiative and was now seeking a large sum of money from his former employer, Pierce, which made his actions and testimony suspect. Gruet's answers had been general and evasive, motivated by spite and cupidity, not a desire to testify honestly.74

Brady pointed out that the lack of specific dates in Gruet's replies was unimportant. Gruet had testified chronologically about the history of Waters-Pierce which made it simple to determine dates. The witness had not tried to evade giving full answers. Under the statutes, only a county or district attorney could receive a portion of the penalties from a victorious antitrust suit in which he assisted. The Texas Attorney General's Department could not assign such penalties. Gruet had given a fair answer to that cross-interrogatory. Regarding the alleged discussions between Gruet and Johnson, the witness had denied the implications of the defense lawyers. Lightfoot observed gratuitously that Pierce had telegraphed Gruet after he had resigned and that upon the latter's arrival at St. Louis, Johnson had tried to persuade him to return to Pierce's employment.75

Reinforcing their motion to suppress, Penn declared that D.J. Pickle, who had taken Gruet's deposition, had not read the questions in a confused manner, or made them intricate or complex; Pickle had read the interrogatories by sections. Priest, former federal judge and longtime Pierce counsel, stated that Gruet's friendliness towards Texas and his enmity for Waters-Pierce were plain. Gruet obviously had intended to answer every

74Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," Oil, December 3, 1906, 11. It is uncertain why Gruet chose to leave the position that Pierce had given him with his other company, other than he saw an opportunity to make a large sum of money by turning against his Pierce, as repayment for his demotion. It is highly that Gruet, who had no ties to Texas, would have been motivated out of a sense of concern for the citizens of Texas, whom he had helped to flee for over twenty years during the course of his employment at Waters-Pierce.

75Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," Oil, December 3, 1906, 11. Brady was careful not to admit that he had made such an agreement with Gruet, via Lightfoot, rather stating that only he could have done such a thing, not Texas or the Texas Attorney General's Department. Lightfoot was trying to suggest that either the parting between Gruet and Pierce initially had not been acrimonious, or that Pierce had feared what Gruet could reveal.
question in order to damage Waters-Pierce and Pierce, and deserved little credibility. Brooks adjourn court for a dinner break and a chance to think.76

Reconvened, both sides made their final arguments on the motions to suppress. Priest asked that the court suppress twenty depositions which Lightfoot and others had taken between November 6th and 19th, alleging a lack of proper notice for the depositions. It had been physically impossible for the Waters-Pierce lawyers to have examined the interrogatories and prepared adequate cross-interrogatories within the five days permitted by law. Lightfoot's counter was that Texas had proposed an agreement to Waters-Pierce to take depositions, but the defendant had rejected that proposal. Any lack of adequate preparation, therefore, was due to the defendant's own acts, not inadequate notice. Priest replied that justice was frequently undermined by undue haste and to deprive a defendant of his own witnesses and adequately to cross-examine an accuser's would take liberty or property without due process. Texas had opportunity to examine forty witnesses which Waters-Pierce counsel was unable to examine due to the five day rule.77

Brooks overruled these motions. All agreed to Penn's suggestion that time could be saved by arguing objections to various matters as they arose at trial rather than before trial. Brooks had not yet reached a decision on the motion to suppress Gruet's deposition and adjourned court until November 30th.78

Meanwhile, in St. Louis, a federal grand jury indicted Waters-Pierce on seventy-two violations of the interstate commerce law and the Elkins Act for illegal rebates and freight rate discriminations. Potential fines were $1,520,000.00. The indictments also

77 Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OII, December 3, 1906, 11. The five day rule required that a party desiring to take the deposition of a witness had to serve notice to the opposing party five days prior to taking the deposition, which did not seem like a great deal of time when it involved an investigation spread out through Texas, the Midwest, and the East Coast in an era when traveling meant taking a train, not a jet plane, and urgent messages were sent by telegram, not by fax or electronic mail.
78 Galveston Daily News, November 29, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OII, December 3, 1906, 11. Brooks was probably aware that Waters-Pierce had contributed to its own problems in several instances by having refused to accept service of notice to take depositions.
charged that Waters-Pierce was a subsidiary of the Standard Oil Company of New Jersey. Deputy Commissioner of Corporations Herbert Knox Smith announced that the indictments were based on the Garfield Report on the petroleum industry. In Houston, interest renewed about Bailey's relations with Waters-Pierce Pierce, and even supporters of the senator admitted that matters were more ominous.79

In Washington, Bailey stated

...that the Attorney General's office is actively aiding the political conspiracy against me in Texas....The course which the Attorney General has now adopted confirms me absolutely in my opinion that he is a part and parcel of a deliberate and sedate conspiracy to defeat a Democratic nominee and defame an honorable man....

Bailey defended himself vigorously, and as usual, overstated, but he was largely correct in his defense. Even if he had done what had been alleged, it would have had little bearing on the outcome of the ouster suit. "The obvious and only effect of introducing politics into the trial of the case is to obscure the real merits of the controversy and to make the result a political rather than a judicial one," Bailey declared. Any document purporting to show that Waters-Pierce had given him money was a forgery, and he intended to have anyone claiming under oath to have such documents tried for perjury. Unfortunately, Bailey did not know that Pierce had listed a personal loan that he had made to Bailey on the Waters-Pierce account books, as if the corporation had loaned the money.80

On November 30th, Brooks announced his decision to overrule the motion to suppress Gruet's deposition. Motions to suppress particular portions of Gruet's deposition would be handled as they came up in trial. Lightfoot announced that Texas was ready for trial. Waters-Pierce, however, was not. Defense counsel applied for a continuance on two possible grounds. The first was the previously stated complaint that the defendants had not had "proper time" to prepare cross-interrogatories for many prosecution depositions. Accordingly, there had been a denial of due process. The second grounds was that the

state's amended petition contained new allegations to which the unprepared defendants could not reply.81

The state's lawyers opposed a continuance. Brady pointed out that both sides had agreed to a trial date of November 26th. The defense lawyers knew the general parameters of the state's case. Texas repeatedly had offered to rely only on the existing evidence from Hadley's Missouri ouster suit rather than take new depositions, but the defendant had repeatedly refused these offers. As for what the defense counsel called "new matter," Brady declared that the original petition should have put the defendant on notice regarding the allegations in amended petition. Additionally, the subject-matter was "peculiarly within the knowledge of the defendant," which is to say Waters-Pierce knew about its own business conduct and records. Defense counsel Johnson had been Waters-Pierce director and familiar with its operations and business conduct. Waters-Pierce had adequate opportunity to get additional testimony from witnesses, and had not done so.82

Penn, sworn in as a witness, granted that there had been some discussion regarding the offer from the state's lawyers to use testimony from the Missouri case. However, he had not known then who had testified in the Missouri case or what their actual testimony had been, beyond newspapers reports. He added that he had not been certain that the State's attorneys had actually made a firm offer. Penn answered several more questions before stepping down from the witness stand. Batts had made his point; the defense had been offered several methods of dealing with the depositions and availed themselves of none except to object.83

It was highly unusual for an attorney to testify in a case in which he was an advocate, a rarity compounded when Johnson was sworn in as a witness. He testified that

he had been a director of the "new" Waters-Pierce from 1900 to 1904, and was the firm's attorney. Records of its transactions were in St. Louis. Asked about records of rebates and price cuts, Johnson did not assert the attorney-client privilege but averred that he knew nothing about "the particular matters" in the amended petition. Batts asked if Johnson had information on rebates and price cuts from his capacity as an attorney. George Clark asserted that the questions were "a transgression of the rules." Judge Brooks was willing to sustain the objections, if the witness were raising an attorney-client privilege. Batts circumvented that problem by inquiring if Johnson had learned about the company business from his position as director. Johnson, when again asked about rebates and prices cuts, denied specific knowledge obtained from his position as a director. Johnson repeatedly denied that he knew anything about business practices in Texas. He had dealt with rebates not as a director but as legal counsel. He would not admit that he learned anything about the Executive Committee action on rebates in his capacity as director, but only as an attorney. He denied knowledge about expunging corporate records of rebating or about a purging of records about the Southwestern Oil Company. All that he ever did was state his opinion that rebates did not violate Texas's antitrust laws, or any antitrust laws. Rebates were recorded in Missouri, but he found that out only while preparing for the Missouri litigation, not as a director.\footnote{Galveston Daily News, December 1, 1906; "The Waters-Pierce Case Goes Over to the March Term of Court," OII, December 3, 1906, 11. The following dialogue between Batts and Johnson illustrates some of the problems of corporate counsels also serving as corporate officers:

\begin{quote}
Batts: Then you distinguished between yourself as director and as an attorney in those matters?
Johnson: The board of directors never considered those matters.
Batts: Who were they considered by?
Johnson: By the executive officers of the company.
Batts: Did they keep any record of the transactions?
Johnson: Of my own knowledge, I don't know. I know there was a record as to the Missouri business. In connection with the Missouri case I had occasion to look up the records. As to the Texas, I don't know.
\end{quote}

It is extremely difficult to determine when a lawyer is acting as a company attorney or as an officer of the company. Matters that a company thought were protected by the attorney-client privilege might not be protected.}
Johnson walked a fine line between his activities and knowledge as a member of the Board of Directors, and as one of the corporation’s principal attorneys. It would have been difficult to say clearly and authoritatively that he obtained business information from his capacity as an attorney rather than as a director of the corporation. Board members could easily learn of matters without being officially informed of them by the executives.

Batts kept the pressure on Johnson, inquiring about the disputed depositions. Johnson claimed that he had not understood Lightfoot to have offered to use the Missouri testimony in lieu of other depositions (except Gruet’s), but only for some of them. He had thought that the offer was a mere "proposition." Johnson and the other Waters-Pierce attorneys seemed to have deliberately remained ignorant, so they could claim a lack of knowledge later on. Johnson admitted that Missouri was seeking to cancel the Waters-Pierce charter for abuse of its corporate powers but was reluctant to speak forthrightly upon the subject. Batts had made his points.85

Cross-examining his fellow defense counsel, Clark asked Johnson questions concerning the specific examples and allegations contained in the amended petition. Did the witness know of price cuts in several Texas towns on particular dates? To each question, Johnson stated that he had no personal knowledge.86

Having shown that Johnson did not have knowledge of the "new" allegations, Clark shifted his line of questioning. He asked about his knowledge of the alleged arrangements involving Waters-Pierce, Eagle Refining, and Texas Oil and Gasoline. Johnson was once quite familiar with Eagle Refining, as an attorney, but had not thought of the matter for several years prior to the state’s petition. He acknowledged some familiarity with the Waters-Pierce-Texas Oil and Gasoline arrangements, again in his capacity as attorney, but he did not have evidence present to deal with these allegations. He

claimed that he knew nothing about the deal from his position as a Waters-Pierce director, but solely from his work as an attorney. Such contracts were "matters of detail, and not of general policy," and never were considered by the Waters-Pierce board of directors. When Batts pressed him, Johnson admitted that the Waters-Pierce and Eagle Refining arrangement continued past the dissolution of the "old" Waters-Pierce but not "as a legal proposition." Batts closed his case.87

Judge Brooks granted the continuance until the Spring term, because the amended petition charged violations of the Texas antitrust laws not in the original petition. Brooks preferred to be cautious rather than risk a denial of due process. Meanwhile, in the federal antitrust suit in St. Louis, the court issued subpoenas to various Standard Oil executives and records keepers.88

Lightfoot and his co-counsels had the unwanted gift of time to continue to prepare their case against Waters-Pierce. It was impossible to steer clear of political ramifications of the lawsuit even if the politically ambitious Davidson and Lightfoot had wanted to. Letters informed Davidson about alleged benefits that Senator Bailey had received from Standard Oil, such as interest-free loans that were never paid back. One ambitious newly-elected member of the Texas Legislature, William A. Cocke, a San Antonio attorney, provided Davidson with the names of two potential witnesses, former Standard Oil workers in Louisiana, who could "testify as to many of the methods pursued by that corporation," dealings with Waters-Pierce, and territorial divisions. Cocke wanted a transcript from the 1901 legislative investigation into Bailey's dealings with Waters-Pierce for comparison with the current version of past events. Cocke intimated trouble for Bailey at the next legislative session.89

89The Texas Attorney General's Department used the extra time to prepare and to dispose of the minutiae of litigation, like paying expenses. The routine correspondence dealing mostly with expenses for this period


Newspapers wanted information bearing on "the Bailey Controversy." Supporters of Bailey charged that some documents printed in newspapers, which purported to show that Bailey had received loans and checks from Waters-Pierce, had been altered. Lightfoot denied these charges:

You are respectfully advised that it has been the policy of this Department throughout the present controversy to take no part in the political phase of same, and while we will answer the questions propounded [by the Texas Legislature] we do not desire that it be used for such purposes.

[I] [w]ill state that none of the documents show to have been altered; that none of the documents show that the name of J.W. Bailey has been written in lieu of the name H.C. Pierce, or any other person; that none of the documents show any erasures of names whatever...but appear to be in the same condition in which they were originally issued.

Documents in question included those that Gruet, Sr. had removed without permission from Waters-Pierce. The storm over Bailey continued to grow. Lightfoot understood the value of good public relations. After one of his witnesses complained that Standard Oil had caused him to lose his job because he had testified for Lightfoot, Lightfoot asked for full details and for permission to circulate the story to the press.90

Lightfoot also stayed in close contact with his star witnesses, Gruet Senior and junior, who were still trying to amass evidence against Waters-Pierce, both for the Texas case and the elder Gruet's lawsuit against H.C. Pierce. The relationship between the Gruets and Lightfoot had become extremely friendly one. The younger Gruet sent newspaper clippings on Bailey, advised Lightfoot of other witnesses to depose, and warned of a clandestine trip through Louisiana and Texas that several Waters-Pierce executives planned for late December. Such a trip was "very unusual." Waters-Pierce

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might be trying to move assets out of Texas. Gruet Senior reminded Lightfoot to collect all of the information relating to "B," presumably for use in his lawsuit.91

Davidson did more work in the Texas newspapers and in the legislature than in the courtroom, releasing documents and statements. The Bailey Controversy continued to grow. Even if Davidson had avoided making the investigation and lawsuit political, neither Bailey nor his foes in Texas would let it remain that way.92

In 1906, some Democrats in Congress spoke of Bailey as a nominee for President in the next election. Unfortunately for Bailey, his dealings with Waters-Pierce and Standard Oil now haunted him. David G. Phillips wrote a series of articles in the Summer of 1906 in Cosmopolitan Magazine collectively called "The Treason of the Senate." Phillips's article on Bailey harshly attacked Senator Bailey's connections to Waters-Pierce and Standard Oil, and his role in the re-admission of Waters-Pierce to Texas. Phillips rehashed the unproved allegations against Bailey as facts and accused him of escaping the 1901 Texas legislative investigation by stacking the committee and using his connections to an alleged political machine. Phillips also attacked Bailey's fees for legal work for "the interests."

Much of Phillips's information was unverifiable, at times wrong, and added little, if any, new evidence of wrongdoing. The series of articles had been inspired by the owner and of Cosmopolitan Magazine, William Randolph Hearst, an enemy of Bailey. Nevertheless the article aired Bailey's dirty laundry nationally. It now became widely known that Standard Oil had majority control over Waters-Pierce. One of the arguments for having re-admitted the company in 1900 was the assertion that it was independent.93

91 J.P. Gruet, Jr. to Lightfoot, telegram dated December 2, 1906; J.P. Gruet, Jr. to Lightfoot, December 3, 1906; J.P. Gruet, Jr. to Lightfoot, December 13, 1906; J.P. Gruet, Sr. to Lightfoot, telegram dated December 13, 1906; J.P. Gruet, Sr. to Lightfoot, December 17, 1906; J.P. Gruet, Sr. to Lightfoot, December 31, 1906, all TSA RG 302 Box 4-8/386.
93 This section on Bailey's bad year in 1906 is largely derived from Chapter 9 of Holcomb, "Senator Joe Bailey," 351-99 and Bringhamurst, Antitrust and the Oil Monopoly, 56-62. On Bailey's rivalry with Hogg, see Cotner, James Stephen Hogg, 476-517. Prior to the Phillips article on Bailey, and the Texas suit
Bailey worsened his problems by responding publicly to the Phillips article. Defending his right to make money as an attorney while serving as a Senator, he saw no possibility of conflicts of interest between serving clients and serving the public. Bailey eventually announced that he would support William Jennings Bryan for President in 1908, thereby removing himself from contention as a candidate.94

Although no candidate opposed Bailey for reelection to the Senate in 1906, he had gone back to Texas in the Summer of 1906 to campaign, and remained in the public eye in Texas as a kingmaker in the gubernatorial election. Hadley's investigation and the Missouri and Texas antitrust litigations kept the Waters-Pierce matter in the press. The Pierce and Gruet testimony made Bailey look gullible, greedy, venal and corrupt. As Judge Brooks granted the motion for continuance in the Waters-Pierce suit, a crisis for Bailey seemed to be imminent.95

The political ramifications of the Waters-Pierce case loomed as large as the antitrust concerns. Davidson had refused to discuss Bailey until Brooks granted the motion for a continuance. Then Davidson wrote a letter to Bailey that was more like a press release. He declared that Waters-Pierce had gouged Texas since its re-admission, a fact that Pierce had effectively admitted in Missouri. Bailey had aided the re-admission of the oil company. Davidson wanted to "purge" Texas of Waters-Pierce. As for negative reflections on Bailey,

...our investigations have developed the fact that you have not been candid with the people in stating your connection with its reintroduction has only filled me with shame and sadness.

...I have had no feeling other than that of sorrow, that one to whom has been entrusted the high position of United States Senator should resort to abuse and vilification in an effort to silence the righteous indignation of our people.

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against Waters-Pierce, 1906 had seemed like the year that Bailey would become a nationally prominent and important political figure.


Davidson asked Bailey to explain the accounts and vouchers from Waters-Pierce's records, which showed that several sums of money passed to Bailey, or through his hands, apparently in connection with assistance provided Waters-Pierce in 1900-1901, and that large "loans" were made to Bailey by Pierce or his corporation.96

To add to Bailey's troubles, other Texas politicians attacked. W.L. Adkins, the Democratic chairman of Colorado County, publicly stated that he did not consider the convention which had nominated Bailey for U.S. Senator to be binding upon the members of the Texas Legislature. Adkins was not alone in his opposition. Bailey headed back to Texas. He promised to deal with Davidson's charges in short order but otherwise refused to comment upon the matter or the Waters-Pierce case. Bailey still had many political allies in and out of Texas and counter-attacked.97 He asked Davidson to permit him to examine the vouchers and records which purportedly proved that he had received money from Pierce or his company. Davidson would not let him do this and would supply them only if Bailey confessed that he had received money, something that he was not likely to do, particularly since he knew that at least some of the documents on which Davidson relied had to have been forged. In another public letter to Davidson, Bailey declared that he had helped Waters-Pierce gain re-admission into Texas not for money or favors, but out of friendship for former Missouri Governor David Francis, who had asked him if he could help Pierce, and because at that time he believed that the new Waters-Pierce was independent. He pointed out that his actions in that matter had been investigated in 1901 and were a matter of public record. He had nothing to hide. Bailey also stated that he had offered his assistance to Davidson early in 1906 in the likely event that Texas sued Waters-Pierce for antitrust violations, and his offer had not been accepted. Bailey complained that

96Galveston Daily News, December 1, 1906.
97Galveston Daily News, December 1, 3 1906. In Washington, Congressman Robert L. Henry issued a fervent denial that he or his law firm had ever received money from Pierce or his company to resolve the McLennan County suits against Waters-Pierce. Henry was a political friend and ally of Bailey, and thereby tainted by the charges against the latter. See Chapter 1 on the McLennan County cases, and Henry's role in them.
Davidson had not needed to include the allegations concerning himself in the Waters-Pierce suit and implied, not too subtly, that Davidson's conduct of the case was motivated by politics.  

Bailey also responded to Davidson's challenge to explain the five financial transactions recorded in documents that Texas sought from Waters-Pierce (it had them, after a fashion, from Gruet). Bailey denied income from Waters-Pierce for legal or lobbying services but admitted personal loans from H.C. Pierce. He had received a loan of $3,300 from Pierce in April 1900 and had repaid it in full. Bailey neglected to explain why Pierce would lend money to a man that he had just met, only shortly before Pierce would need help in Texas, and he did not reply to the accusation that Pierce had charged off this "personal loan" to Waters-Pierce under expenses for "Texas cases." Bailey denied that he had paid Robert Henry and O.L. Stribling $1,500 in June 1900 by a Waters-Pierce sight draft, which the oil company allegedly had listed it as an expense of "antitrust civil cases." Bailey also denied having received $200 from Waters-Pierce in November 1900 as compensation for legal/lobbying work in Texas. He had requested a $1750 loan from Pierce shortly after he had helped defeat bills in Texas that would have been detrimental to Waters-Pierce. This $1750 was part of a larger, earlier loan that he had negotiated with Pierce. It was not a payment for services rendered, though a letter from Pierce to Waters-Pierce indicated that the money was charged to the corporation for "Texas legal expenses." Bailey effectively admitted that Pierce had lent him $8,000 in March 1901. He had repaid that loan by obtaining another loan from a St. Louis bank. Though Pierce had apparently lost the loan document, Bailey stated that Pierce had given him a letter proving that the loan had been repaid.  

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98 *Galveston Daily News*, December 7, 1906; Holcomb, "Senator Joe Bailey," 385-87. Bailey knew from the copies of documents that had appeared in newspapers about his alleged dealings with Pierce and Waters-Pierce that some had to be forgeries, as some of the documents dealt with fictitious transactions and payments.  
Bailey wanted to know how Davidson had obtained his "evidence." Perhaps the missing loan note and the other evidence had been stolen by a Waters-Pierce employee. Davidson's informant and chief source of Waters-Pierce documents, real and forged, had to have been Gruet, Sr., whose animosity to Pierce and Waters-Pierce was public knowledge. Gruet had had opportunity as well as motive—he had been a Waters-Pierce director and officer for years, as well as the chief auditor, with ready access to the corporate records and books. Bailey also declared that much of the evidence cited by Davidson were forgeries. Some of the transactions in question had not taken place. Perhaps the mysterious employee had forged and altered documents in order to cover up other illegal activities. Knowing that documents had been forged, Bailey was sure that he could destroy Gruet's credibility as a witness, especially given the latter's history of alcoholism and current litigation against Pierce.  

100 Galveston Daily News, December 7, 1906; Holcomb, "Senator Joe Bailey," 389. There is an argument whether or not Davidson knew that the documents concerning Bailey and Waters-Pierce had been forged before he used them. Bailey's most neutral biographer, Holcomb implied that Davidson had known about the forgeries, but in his zeal to destroy a political enemy, Bailey, and advance himself, he went ahead and used them to back up his allegations. Brighthouse states that Davidson was unaware of the forgeries, but that he should have been suspicious of Gruet, and if he had checked into matters, would have discovered that Gruet had more or less tried to blackmail Bailey. Davidson knew that Bailey had gotten reports that the Texas Attorney General had information linking him to Waters-Pierce, and Bailey had written to Davidson in June 1906 denying the connections. Davidson did not pursue the matter and respond to Bailey, or he would have found out about Gruet's attempt to blackmail the Senator. While it was true that Davidson was politically ambitious, and stood to gain from any damage that Bailey and his allies would suffer, it seems unlikely that he would knowingly use falsified documents in his attacks on Bailey. Several other attorneys in and out of the Texas Attorney General's Department were actively involved in the litigation efforts against Waters-Pierce, all of whom would have had access to the forged documents, and presumably had to examine them preparing for the case. Though Lightfoot might have been equally ambitious enough to support the use of forged documents, neither County Attorney Brady, nor Batts nor Gregory would have gained much, save damage to their reputations. Though the last three named attorneys stood to make a great deal of money if the state were successful in its lawsuit, the charges in the original petition involving Bailey were not necessary to the suit, as shown by Judge Brooks having dismissed them, and were no longer a part of the litigation, and therefore irrelevant. Had these allegations not been tossed out by Brooks, then they would have been litigated, which meant that the defense lawyers would have had an opportunity to prove that the documents were forged. They knew the truth of the financial relations between Bailey, Pierce, and Waters-Pierce, and would have had little trouble demolishing counsel for the state, and thereby discrediting all of Gruet's testimony. It seems unlikely that the lawyers for the state would have knowingly and willingly used falsified documents in litigation under such circumstances, even assuming that none of them had any ethical qualms otherwise. It is more likely that Davidson and Lightfoot had placed too much faith and trust in their star witness, John P. Gruet, Sr., who had been instrumental in supplying them with information about Waters-Pierce and its operations, and with documents that he had obtained by virtue of his old position, and the abuse thereof. Possibly they persuaded themselves that Gruet was being perfectly honest with them, and that all of the records that he provided were legitimate. A certain amount of self-delusion, however, is a far cry from a deliberate use of falsified documents. Davidson's reply to Bailey's
Davidson responded by releasing the documents to the press. Bailey issued another public letter in which he declared that the documents on which Davidson based his allegations were forged. As before, he attacked Davidson personally and claimed that Davidson should grant him the basic rights of any accused person, the right to examine and challenge the evidence against him. Bailey continued to regard all criticisms as personal and felt obligated to respond publicly. In this instance Bailey was correct; Davidson was damaging Bailey politically. Bailey forgot that his own actions made it easier for political opponents in Texas to investigate into his private and public behavior. He should have taken his cue from the Texas press. Leading newspapers called for an investigation into Bailey’s affairs and opposed his re-election as Senator, which had been a foregone conclusion. Pro-Bailey newspapers discouraged an investigation and advocated Bailey’s re-election by the Texas Legislature because its members were legally obligated to vote for Bailey. A few supported Bailey but suggested that he first prove his innocence through an investigation.  

Opposition intensified in December 1906. Texas Representative William Cocke declared that he would resign from the legislature rather than vote for Bailey. Anti-Bailey clubs grew, and several politicians gave serious thought to trying to run against Bailey. In turn, the Senator and his numerous allies organized pro-Bailey groups in Dallas and other cities. Several counties held “primaries” to decide on Bailey’s re-election, an unusual and legally dubious novelty, given the previous statewide primary. Bailey foolishly declared that he would campaign in the first of these “primaries,” which gave weight to the argument

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101 Galveston Daily News, December 7, 8 1906; Holcomb, "Senator Joe Bailey," 390-91. Among those papers that continued to support Bailey were the Houston Post, the Austin Statesman, and the Fort Worth Record, while the San Antonio Express, which had endorsed Bailey, moved to the middle ground of calling for an investigation.
that these "primaries" had legal validity. He soon backtracked and implicitly denounced the
special county primaries.\footnote{Galveston Daily News, December 8, 11, 12, 13, 1906; Holcomb, "Senator Joe Bailey," 391-94. Political foes stepped up their attacks against Bailey, including former Texas Attorney General Martin M. Crane. Several state legislators publicly declared that they would oppose Bailey's re-election on the floor of the legislature. Governor Thomas Campbell, whom Bailey had supported in the 1906 gubernatorial race, repaid Bailey by remaining neutral. Campbell would have been the strongest candidate to run against Bailey for Senator.}

Bailey received reassurance from his victory in the "primary" in Comanche County. But his foes continued to work for his downfall. John Duncan, attorney and state representative from Tyler indicated that the anti-Bailey forces were going to launch another legislative investigation of the Senator and on January 2, 1907, asked that John P. Gruet, Sr. come to Austin and testify:

> It will be highly important to Mr. Davidson and his assistants to have him testify. Not only so but it is extremely important that we know before the legislature convenes that he will come.

> You have doubtless noted that yesterday, for the first time, Mr. Bailey declared himself opposed to a legislative investigation. That is their game and we must prepare to meet it.

> I suggest that Mr. Davidson do not ask the legislature to investigate him, (the attorney General [sic],) until the proper moment arrives. \(\text{It will arrive}\) and he will know it unmistakably when it does.

> It there should be an investigation properly and fairly conducted with an earnest and honest effort to bring out the facts, Mr. Bailey will never be elected senator and no primary will be required to settle it, for unless rank bribery and corruption should defeat it a majority of the two house will vote him down with out [sic] any new appeal to the people....

Gruet's testimony was essential, but it had to be voluntary, as the Texas Legislature could not compel his appearance and testimony. Lightfoot promptly urged Gruet to respond. His letter to Gruet suggested that Lightfoot had no idea that some of the documents that Gruet had provided were forgeries.\footnote{John M. Duncan to Lightfoot, January 2, 1907 TSA RG 302 Box 4-3/386; Lightfoot to J.P. Gruet, Sr., January 3, 1907 TSA RG 302 Box 1984/67-65. Duncan had asked Lightfoot to contact Gruet simply because Lightfoot obviously had Gruet's address in St. Louis, which Duncan and his allies lacked, not because Lightfoot and Davidson were part of some anti-Bailey conspiracy. Duncan would later be highly critical of Bailey's political ally Benjamin F. Looney and his conduct of an antitrust suit against Magnolia Petroleum and other companies in 1913. See John M. Duncan, An Eye Opener: The Standard Oil Magnolia Compromise—The Whole Cold Truth (1915) (a pamphlet available in the CAH).} Missouri Attorney General Herbert S. Hadley
wrote to Davidson that he had heard that Texas authorities had trouble locating Pierce after the grand jury had indicted him. Pierce's lawyers had told his office that they wanted to have Pierce testify again in the Missouri ouster case on January 7th, thereby providing the Texas sheriffs a date and location where they could apprehend their target.104

Standard Oil, meanwhile, won a victory in an Ohio court which dismissed a suit against it there. But in federal court in Chicago, Judge Kenesaw Mountain Landis upheld eight out of ten indictments against Standard on charges of illegal rebating. In Missouri, new antitrust legislation was proposed in the state legislature, directly stemming from Hadley's investigations. On a mysterious note, no trace could be found of a former Waters-Pierce employee, George U. Hendricks, who had testified, albeit reluctantly, in the Missouri case, and whose testimony had been sought in the Texas antitrust suit.105

In Texas, Representative Cocke declared that he intended to demand an investigation of Bailey when the Texas Legislature convened. Bailey lost in the Travis County "special primary." Davidson, responding to Bailey's accusations concerning the Waters-Pierce documents and his conduct of the ouster suit, denied that the documents were forgeries. Those in the keeping of his office were originals. Davidson absolutely denied any connection or affiliation with Standard Oil or any of its subsidiaries, a charge that seemed more fitting to apply to Bailey. He pointed out that Texas had not delayed the case for any political purpose, or to aid Waters-Pierce; rather it had fought the defense motion to continue the trial. He and his allies had been prepared. Neither he nor any other lawyer in the Attorney General's Department had received any portion of settlements. The assisting county and district attorneys received shares as per the antitrust statutes. He issued an open invitation to the Texas Legislature to investigate "...all my official acts...and

104 Hadley to Davidson, January 3, 1907 TSA RG 302 Box 4-8/386; Lightfoot to Hadley, January 8, 1907 TSA RG 302 Box 1984/67-65. Hadley also wanted Lightfoot's assistance in a joint Missouri-Texas investigation into the "Lumber Trust."

105 "Suit Against Standard in Ohio is Annulled--Other Cases," OII, January 3, 1907, 24; St. Louis Post-Dispatch, January 3, 4, 5, 6 1907. As a direct consequence of Missouri's antitrust investigation and suit against Waters-Pierce, state Republicans were touting Attorney General Hadley as the leading gubernatorial candidate. Hendricks had been visiting his mother in St. Louis for the holidays. He disappeared after leaving his hotel room on December 26th to see his mother, but never reached her home.
especially my conduct of the Waters-Pierce Oil Co. case and of the antitrust cases which have heretofore been settled."\textsuperscript{106}

On January 9, 1907, the Texas House called for an investigation of both Bailey and Davidson. Next day, John Duncan sponsored a resolution demanding an investigation of Bailey concerning the allegations that had been made about his connections to Waters-Pierce, Standard Oil, Kirby Lumber, and David R. Francis, former governor of Missouri and Pierce's close friend and business associate. Francis had been responsible for arranging Bailey's meetings with Pierce and had lent money to the Senator. Unable to prevent an investigation, pro- and anti-Bailey lawmakers compromised. Bailey's reelection to the U.S. Senate was to proceed as scheduled. A resolution was defeated which called for Bailey to resign if the legislative investigation found him guilty of the allegations. The pro-Bailey Speaker of the House, Thomas Love, appointed the seven members of the "Bailey Committee," a majority of which supported him.\textsuperscript{107}

Bailey had more support proportionately in the Texas Senate than in the House. A resolution much like Duncan's was countered by Bailey supporters. Over strong opposition, Bailey's supporters passed a resolution to assemble an investigatory committee. This committee of seven had a majority of pro-Bailey senators, and planned to attend the House hearings.\textsuperscript{108}

Bailey's reelection to the U.S. Senate proceeded relatively unimpeded. Though several other candidates were nominated and ran, Bailey won handily. Addressing the Texas Legislature after his victory, he made his stock defenses of his actions and again accused big business, led by Hearst, of sponsoring false charges against him. He denied

\textsuperscript{106}Galveston Daily News, January 6, 1907; St. Louis Post-Dispatch, January 7, 1907; Holcomb, "Senator Joe Bailey," 394-95. Davidson did not act as if he had anything to hide, or that he knew that some of the documents provided by Gruet had been altered, or were outright forgeries. At worst, it appears that Davidson and Lightfoot were so eager to pursue the Waters-Pierce case and to attack Bailey that they trusted Gruet too much, and did not examine his materials too closely.

\textsuperscript{107}Galveston Daily News, January 10, 12, 15, 16, 17, 18, 20 1907; St. Louis Post-Dispatch, January 12, 13 1907; Holcomb, "Senator Joe Bailey," 394-397.

that his private law practice influenced his political decisions, a denial few journalists seemed to believe, and claimed to welcome the investigation. He went so far as to declare that he would resign as Senator if any of the charges against him were proven to be true.109

The Bailey Investigation lasted approximately three and a half weeks and generated a great deal of testimony and press coverage. After the Texas House resolved on January 15th to request that Davidson produce all documents dealing with the allegations against Bailey, he complied. This was the extent of Davidson's direct involvement in the legislative investigation. All Lightfoot did was to encourage the Gruets to appear and testify, which they did.

The majority reports of the Bailey Committee, February 27, 1907, found him not guilty of any of the forty-two charges made against him by Representative William A. Cocke, leader of the anti-Bailey forces in the House investigation. Two minority reports were less favorable. One declared that the investigation needed to continue, and the other proclaimed that Bailey was guilty of a number of personal acts that were unwise at best, but which did not rise to the level of crimes.110

The legislative investigation did affect the Waters-Pierce antitrust suit. Gruet, Sr. was completely discredited as a witness in any litigation involving Waters-Pierce or Pierce. The correspondence of Pierce, Bailey, and David R. Francis, as well as corporate records, proved that a number of the Waters-Pierce documents concerning payments and loans to


110Holcomb, "Senator Joe Bailey," 399-449; Bringham, Antitrust and the Oil Monopoly, 62-63; Galveston Daily News, January 17, 1907; Lightfoot to Gruet, telegram dated January 18, 1907. There was extensive newspaper coverage of the Bailey Investigation from beginning to end. The complete record is found in Texas Legislature, Bailey Investigation Committee, a lengthy, poorly organized transcript of the hearings. Cocke, disturbed by these results, wrote his account of Bailey's life, career, and the investigation, The Bailey Controversy in Texas. The senate committee did not bother with hearings. O.L. Stirling, who had handled the McLennan County antitrust suits with his law partner, Robert Henry, emerged somewhat tarnished after it was revealed that not long after the Waco suit against Waters-Pierce was settled, he performed legal/lobbying work for the oil company and received $3,000.
Bailey had been altered. Gruet, confronted with the contradictions resulting from the altered documents, admitted to having altered and forged documents. Gruet denied that he had tried to blackmail Bailey, but the impression was that he had tried to do so. If this had not been bad enough, Gruet also testified that prior to turning over his "documents" to the Texas Attorney General's Department, he had made a contract with Lightfoot to receive one-third of the fees that the county attorney would be entitled to if Texas won its suit. At least in the public eye, Gruet was effectively a paid informant. More proof of Gruet's personal animosity to his former employer and benefactor, Pierce, further damaged his credibility. And his insistence that Texas pursue Waters-Pierce separately from any suit against Standard Oil and its other subsidiaries, tarnished him, though he asserted that he had urged that course upon Davidson and Lightfoot to avoid the complications and delays that had resulted from including Standard Oil in Hadley's antitrust suit in Missouri against Waters-Pierce.111

Gruet remained a valuable source of information, but was no longer of use as a witness. His misbehavior had compromised both Davidson and Lightfoot. At best, they had been too willing to accept Gruet's "evidence" without careful examination in their eagerness to win the legal battle against a large, unpopular "foreign" corporation, and to score political success by pulling down Bailey. At worst, Davidson and Lightfoot knowingly used falsified documents, Davidson to attack a political rival, and Lightfoot to strengthen litigation.

As the Bailey Committee ground on, in Missouri, Attorney General Hadley's antitrust ouster suit against Indiana Standard, Waters-Pierce, and Republic Oil continued, a prelude to the ouster suit in Texas, with Hadley making his closing arguments even as Bailey was being exonerated. In Ohio, new indictments were filed against Standard Oil, replacing those that the court had dismissed not long before. In Chicago, the federal case

against Standard Oil for rebating also moved along. In Washington, the ICC recommended that Standard Oil be divested of its pipelines. The Texas Attorney General continued to seek the extradition of Pierce on charges of perjury/false swearing, a step Pierce’s lawyers, Priest and Johnson vigorously resisted.\textsuperscript{112}

CHAPTER 3: TEXAS TRIES A TRUST

The infliction upon the Standard Oil of fines aggregating millions would teach certain eminent lawbreakers the expediency of prudence in their business methods. Stripped of the mask of hypocrisy, they can no longer pretend that they are martyrs to official malice and public prejudice. On the whole they are fortunate that they are not going to Jail. Penalties under the Hepburn law are more personal than under the Elkins Act. The iniquity of Standard Oil has been a long time in coming home to it. When Mr. Rogers next writes a panegyric on petroleum and Providence he may thank his stars that he is not in the Penitentiary.

Editorial, St. Louis Post-Dispatch, April 16, 1907

I. Preparations and Preliminaries, Trials and Tribulations

Davidson and Lightfoot had not forgotten the Waters-Pierce civil ouster trial scheduled for late spring and continued to amass evidence. Despite setbacks caused by the elder Gruet's testimony before the Texas Legislature, Lightfoot and Davidson still wanted him for the trial. The Gruets had no problem with the trial, but they also faced the elder Gruet's suit against Pierce. Pierce's lawyers had denied all of Gruet's claims and filed a counter-claim alleging that he owed Pierce money on a large loan.1 Lightfoot's investigations around the country continued throughout April, 1907, aided by special counsels Batts and Allen.2

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1 On evidence collection: S.D. Dickinson to Davidson, February 26, 1907; W.C. Hayward to Davidson, April 3, 1907; Hadley to Davidson, May 11, 1907; Roy Campbell to Lightfoot, May 13, 1907; C.A. Coker to Lightfoot, May 15, 1907; B.H. Brown to Lightfoot, May 17, 1907 all TSA RG 302 Box 4-8/386; Lightfoot to Campbell, March 26, 1907; Lightfoot to O.B. Colquitt, April 1, 1907; Davidson to Missouri Secretary of State, April 4, 1907; Davidson to Colorado Secretary of State, April 5, 1907; Lightfoot to Ward, Hadley & Neel, April 10, 1907; Harris to Lightfoot, April 22, 1907 all TSA RG 302 Box 1984/67-65. Regarding Gruet correspondence: Lightfoot to Gruet, March 13, 1907; Lightfoot to Gruet, March 21, 1907; Lightfoot to Gruet, March 23, 1907 all TSA RG 302 Box 1984/67-65. Regarding J.P. Gruet, Sr.'s suit against Pierce, see Galveston Daily News, March 28, 1907. Lightfoot was also active at this time in promoting legislation to make antitrust suits easier. The Texas Legislature enacted several laws and amendments to statutes relating to antitrust in that legislative session. See General Laws of Texas, Regular Session, (1907) Chapters 12, 97, 120, 173. See also General Laws of Texas, 1st Called Session (1907) Chapter 10.

2 Lightfoot to Colquitt, April 1, 1907 TSA RG 302 Box 1984/67-65; "The Standard's Troubles," OU April 19, 1907, 14. Lightfoot also learned that Waters-Pierce and other companies had arranged with Texas railroads to supply all their requirements on a mileage basis, prompting him to ask Texas Railroad Commissioner Oscar B. Colquitt to compel all of the railroads operating in Texas to file with the Texas Railroad Commission "...all contracts for oils of every character, and the points at which same is delivered to the railroads, and the conditions upon which the railroad companies transport such supplies to the point of delivery." Nothing seems to have developed from that inquiry to Colquitt.
Meanwhile, the Texas oil industry faced challenges. A prolonged fuel oil shortage in the Gulf Coast region encouraged several large businesses to consider returning to coal. The Texas Legislature and Governor Campbell were considering taxing the oil companies' gross receipts. The *Oil Investor's Journal* observed that

An industry that furnishes employment to twenty-seven hundred men in Southeast Texas, involving a pay roll of $212,000 a month, and that returns property for taxation aggregating about $8,000,000 should be encouraged by the state and not browbeaten and burdened with discriminatory taxation....Most states do all in their power to help their new industries. The oil industry is the greatest of the new industries in this state. To seek to tax it out of existence is a spectacle to make the other states wonder what sort of policy Texas is proceeding on.

A lockout by most of the production companies at the Batson field over hour and wage disputes had caused the unionized men to strike. Union workers at Guffey Company rigs and plants walked out in late April, the first signs that the strike was spreading. The strike continued into the second week of May, and the American Federation of Labor sent a special representative to meet with Davidson in Austin. The unknown agenda of the meeting caused a flurry of rumors. Some thought that the topic might be the workers arriving in Beaumont to work for the Guffey Company, many of whom had papers purporting to be requisitions for transportation issued by Standard Oil. At Batson, Sun Oil's unionized workers went out on a sympathy strike on May 8th. It was not until mid-May that the strikes were resolved and peace restored to the Texas oil fields.

This nervous atmosphere enveloped the long quiescent Waters-Pierce antitrust suit when Judge Brooks held a preliminary hearing on April 29th in Austin on several points of law, in an effort to expedite the upcoming trial. Davidson, Brady, and special counsel Batts represented Texas. The peripatetic Lightfoot was gathering evidence in New York. George Clark and Robert L. Penn represented Waters-Pierce. A principal preliminary issue

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3 *Galveston Daily News*, April 27, 28, 29 1907; *OII*, April 5, 1907, 2,18, 20, 28.
4 *Galveston Daily News*, May 9, 1907; *Houston Post*, May 9, 1907; "Labor Troubles Settled," *OII*, May 19, 1907, 12. The Guffey Company denied the rumor about that it was hiring workers sent in by Standard Oil, claiming that it was some sort of fraud by an employment agency. Many, however, believed that Standard was shipping laborers to Texas.
was the defense motion to suppress Gruet, Sr.'s deposition because he had not answered
fully the question about the compensation he would receive if Texas prevailed. In his
original answer, Gruet had stated that he would receive payment only for his expenses and
time spent testifying. But his Bailey Investigation testimony had shown that this was not
all he was to receive. Defense counsel characterized his original answer as an evasion and
cast doubt on the credibility and veracity of his entire deposition.5

To respond, Brady, who had executed the contract with Gruet, testified. In that
agreement Gruet would receive one-third of the penalties which Brady could receive under
the antitrust statutes, which was up to twenty-five percent of the fines collected. In return,
Gruet was to testify at any trials and provide evidence. Brady had stated at the prior
hearing that the agreement in question was between himself and Gruet, made independently
of Lightfoot's Department, that office being ineligible to receive money from antitrust suits.
He declared further that Gruet had been deposed prior to the execution of their contract.
Therefore Gruet's original answer had been true and correct at that time. Brady had
deposited the contract with the Texas Attorney General's Department. But Davidson was
unable to produce it. Apparently only Lightfoot, then in New York, knew where it was
filed.6

Though Brady's testimony left the defense little hope, Penn argued that Gruet's
answer was evasive, if literally correct at that time. The evasion had cast doubt upon the
entire deposition. Batts countered by asserting that Penn's "authorities" and citations did
not apply under current Texas laws. Even if Gruet's answer had not been complete, it had

5Galveston Daily News, April 30, 1907.
6Galveston Daily News, April 30, 1907. This is a point of some confusion. Gruet gave his deposition in
Austin on October 6, 1906. The agreement signed by Lightfoot apparently was dated August 29, 1906. It
would be possible for Gruet's answer, and Brady's answer to have been true if Brady did not sign the
agreement until after Gruet was deposed on October 6, 1906, even though Lightfoot had signed in August,
1906. This is assuming that County Attorney Brady had not granted authority to Lightfoot to act as his
agent, and sign the August 29, 1906 contract. On the other hand, in his testimony before the Bailey
Investigation Committee, Gruet more or less stated that he had made the contract with Lightfoot and Brady
prior to making the deposition, with the implication that he had given a crafty answer to the cross-
interrogatory. See Adams, Waters Pierce Case, 44-46; Bringhurst, Antitrust and the Oil Monopoly, 60-62.
It seems unlikely, however, that Brady would outright lie on the witness stand, whereas Gruet's credibility
was non-existent.
not been false or evasive, and he had not refused to answer. Hence the entire deposition should not be thrown out. Battt criticized the inadequacies of depositions by interrogatories, but conceded that they fit present needs. Clark insisted that Texas would lose nothing substantial if Gruet's deposition was suppressed. Texas could take another more accurate one, or Lightfoot could summon Gruet to testify about matters in his deposition. Clark also tried, unsuccessfully, to have Judge Brooks rule that Bailey Committee testimony could be used in the case at bar.7

Brooks declined. He overruled the motion to suppress Gruet's deposition. If the main defense concern was to get Gruet's contract with Brady before the jury, Lightfoot had a copy. It would be easy enough to have him produce it at the trial. No other major points of law were argued that day.8

Meanwhile in early May, Lightfoot finished his collection of evidence in New York. In St. Louis, Pierce voluntarily surrendered himself to local police on the Texas indictment for perjury/false swearing, while Pierce's lawyers prepared to fight the extradition request to Texas. Lightfoot was on hand for the arrest and extradition procedure, but only as a spectator. He was in St. Louis to take depositions for the Texas ouster suit, and to reply to public statements from Pierce and his attorneys.9

Meanwhile in Texas, State Senator Terrell was able to get a strong antitrust bill bearing his name passed without significant discussion or opposition. Indications grew that the tide in Texas politics was still in favor of antitrust enforcement. On May 8th,

7Galveston Daily News, April 30, 1907.
8Galveston Daily News, April 30, 1907; "Waters-Pierce Hearing Continued on Technical Questions," OIL, May 5, 1907, 23. Texas also filed its second amended petition that day. The text of the Second Amended Original Petition and the Third Amended Original Answer can be found at Transcript-1907 2-113, TSA RG 302 Box 1989/41-85.
9Galveston Daily News, May 3, 9 1907; "Independents vs. Standard--Discriminations in Freight to be Abolished," OIL, May 5, 1907, 14; "Waters-Pierce Hearing Continued on Technical Questions," OIL, May 5, 1907, 23; "St. Louis Court Denies Writ of Habeas Corpus," OIL, May 19, 1907, 12; Houston Post, May 9, 1907. The New York hearings had been kept closed by agreement of the parties, which only fueled speculation by the press. The attorneys agreed to a number of stipulations that made it unnecessary to depose major Standard Oil executives. In Washington, the ICC planned to hold hearings on complaints from the National Petroleum Association about railroad rate discriminations. Other Standard litigation continued around the country.
Waters-Pierce attorneys filed a third amended original answer in the ouster suit, one hundred pages of general and specific denials of all of Texas's allegations. That same day, copies of Lightfoot's New York depositions were made accessible to the press.\footnote{Galveston Daily News, May 6, 9; Houston Post, May 9, 1907.}

The multiple depositions illuminated the relationship between Standard and Waters-Pierce. One deposition was that of the elusive Robert H. McNall. McNall had worked for Standard Oil for many years and used the same office as Standard executive Henry M. Tilford. McNall asserted that Pierce had employed him for a time as the Waters-Pierce New York commercial agent from 1900-1906. Yet, McNall still shared Tilford's office in Standard's headquarters at 26 Broadway, though he eventually changed his address to "75 New Street," the rear entrance to the same building. Although he claimed that the two companies were unconnected, McNall admitted the frequency of correspondence between Waters-Pierce and Standard Oil. Gruet had provided Lightfoot with proof.

Lightfoot had also deposed Pierce in New York. Pierce's testimony was short, as the parties stipulated that Pierce's testimony in Hadley's Missouri ouster suit could be used in this case as well.\footnote{Galveston Daily News, May 9, 1907; Houston Post, May 9, 1907. It is not clear who gave the press access to the depositions of McNall and Pierce, but the newspapers eagerly reported the excerpts that they could get. Despite the impression given by the excerpt from McNall's deposition, it was not Waters-Pierce's idea that he use the 75 New Street address to conceal that McNall was working in the Standard Oil office building. He had used the 26 Broadway address initially in his employment with Waters-Pierce, then decided to change it against the wishes of the St. Louis management. For some of McNall's positions at Standard Oil of New Jersey, see Hidy and Hidy, Pioneering in Big Business, 495, 772, n.1. H.M. Tilford knew Waters-Pierce very well, having served as one of Standard's representatives or the Waters-Pierce board of directors for several years, and it was not a coincidence that Pierce hired McNall as his commercial agent. It is interesting to note that one of Pierce's attorneys at his New York deposition was D.W. Odell, who was also Bailey's chief lawyer during the investigation by the Bailey Committee.} Arguments on points of law began on May 10th. Lawyers for Waters-Pierce requested that the trial, slated to start on Monday, May 13th, be postponed due to the recent arrest of Pierce. Brooks decided that the motion required separate argument. The remainder of the day was spent arguing over issues of law. It was not a
good day for the defense, as Brooks overruled all of the defense's demurrers and motions, save one. It became worse when Lightfoot appeared. 12

Lightfoot had just returned from New York and St. Louis. He filed documents gathered on his travels, including admissions and stipulations about many of the state's allegations. For example, the defense admitted that the Standard Oil Trust had controlled a majority of Waters-Pierce stock, that the Jersey Standard holding owned a stock majority of both the "old" and "new" Waters-Pierce, and that Jersey Standard owned a majority of the stock of Socony, Kentucky Standard, Indiana Standard, Iowa Standard, Continental Oil, and Republic Oil. None currently competed with Waters-Pierce in Texas or had ever tried to do so. Stipulations also declared that auditors from Standard Oil regularly examined Waters-Pierce books and records for the benefit of the former, which received the profits of Waters-Pierce to in proportion to its stock interest. In Missouri the previous Fall, Wade Hampton, Jersey Standard's general auditor, had denied that point. But Lightfoot now had original letters, presumably obtained from Gruet, and Hampton had been forced to admit both the audits and attempts to conceal them by placing the auditors temporarily on Waters-Pierce's payroll. 13

Lightfoot's success in gaining stipulations and admissions stemmed in part from the emergency enactment of an amendment to Texas antitrust statutes on March 4, 1907. It established new procedures for obtaining evidence in antitrust cases, allowing Lightfoot to examine witnesses by oral deposition before a special commissioner, and requiring the production of documents, instead of typed questions submitted to the witness and his attorneys, which had made it easier to be evasive in answers. Apparently the defense lawyers did not know of this amendment and expected to take depositions in the old

12Galveston Daily News, May 11, 1907; Houston Post, May 11, 1907. N.A. Stedman handled the defense arguments in court that day. In addition to arguing on the demurrers, Stedman also asserted, unsuccessfully, that the large fines sought by Texas made the suit confiscatory in nature and therefore unconstitutional.
13Galveston Daily News, May 11, 1907; Houston Post, May 11, 1907. Wade Hampton supervised the traveling auditors and examiners that covered North America and Europe for Standard Oil of New Jersey, see Hidy and Hidy, Pioneering in Big Business, 330.
manner. Neither Pierce nor many of the Standard Oil executives and officers were eager to reply to extensive questioning by Lightfoot and had good reason to avoid testifying if they could, namely the pending federal antitrust suit in the district court in St. Louis.\textsuperscript{14}

On May 13th the defense filed a motion for continuance and an alternative motion requesting a change of venue, claiming that deep prejudice existed against Waters-Pierce in Travis County and adjacent Williamson County. Defense counsel offered affidavits of Waters-Pierce agents and of several residents, allegedly attesting to the strong antipathy to that strong antipathy. The state's lawyers submitted their own affidavits which declared that there was no strong prejudice for or against Waters-Pierce in Travis County. In reply, the defense summoned a horde of witnesses to testify about prejudice against Waters-Pierce.\textsuperscript{15}

The testimony and arguments on the motion to change venue took five days. Virtually all of the defense witnesses testified that the Bailey Controversy and the antitrust suit had stirred up a great deal of discussion about Bailey and about Waters-Pierce. Most testified that there was prejudice against Waters-Pierce in Travis County and stated that they thought that the oil company was part of a trust, or had hear others express such an opinion. But on cross-examination by Batts, nearly all of the same defense witnesses testified that they thought that Waters-Pierce could receive a fair and impartial trial in Travis County. The defense lawyers also had local newspaper editors and publishers testify on their coverage of Bailey and Waters-Pierce and on the prospects of Waters-Pierce receiving a fair trial. These witnesses did not greatly help the defense. Some of the editors of ethnic language newspapers indicated that there had been little coverage of the Bailey Controversy and investigation, little discussion of the subject in their communities, and that Waters-Pierce could receive a fair trial. A.G. Smoot, the manager of the \textit{Austin Statesman}, the

\textsuperscript{14} \textit{Galveston Daily News}, May 11, 1907; \textit{Houston Post}, May 11, 1907. On the new antitrust law, see \textit{infra} note 1. Lightfoot was assisted in New York by George W. Allen, another outside counsel from Austin, like Batts and Thomas W. Gregory.

\textsuperscript{15} \textit{Houston Post}, May 14, 1907.
leading English language newspaper in the area, testified that his newspaper had covered
the Bailey investigation thoroughly, but in a balanced matter. The Austin Statesman
supported Bailey and had not criticized him or Waters-Pierce. Smoot had heard little
discussion of Waters-Pierce and the antitrust suit and was certain that the company could
get a fair trial. Even the publishers of strongly anti-Bailey and anti-Waters-Pierce
newspapers, who admitted that they had written articles to inflame public opinion, thought
that the defendant could still receive impartial justice. The defense also introduced
newspaper articles in an effort to show that the press coverage of Bailey and Waters-Pierce
had greatly influenced public opinion against Waters-Pierce.\footnote{16}

Thought it hardly seemed necessary after the testimony of the defense witnesses,
special counsel Batt and Allen examined several witnesses for the state. These witnesses
served to confirm the testimony that Batt had elicited in his cross-examinations, namely
that Waters-Pierce could receive a fair and impartial trial from a Travis County jury.\footnote{17}

Penn, Stedman, and D.W. Odell all made brief arguments in support of the motion
to change venue. By the standards of the defense lawyers, all of Texas would be excluded
as a venue for the trial. Judge Brooks, not even bothering to have Batt and Allen make
prosecution arguments on the motion, denied the defense request: "The issue in this case is
whether the defendants have violated the antitrust laws of Texas. It is evident that the
citizens of this county have not formed an opinion generally of the issues that are issues.
The motion is overruled." Defense attorneys excepted, and Penn asked Brooks to set aside
the order for Waters-Pierce to produce at trial various witnesses Texas requested including
officers of the defendant and of Standard Oil. Texas had made no provisions for paying

\footnote{16}{Houston Post, May 14, 15, 16, 17, 1907. A relatively complete version of the testimony of the various
witnesses called on the motion for a change of venue can be found at Brief for Appellee, Waters-Pierce Oil
Company vs. The State of Texas, No. 4212, Court of Civil Appeals, Third Supreme Judicial District of
Texas TSA RG 302 Box 2-23/848 E. There were large numbers of Swedish and German speaking
immigrants and citizens in Travis County, and multiple ethnic language newspapers catering to these
groups. The defense also tried to introduce evidence from the grand jury that had indicted Pierce for
perjury/false swearing, but Brooks did not permit this due to the secrecy rules governing grand jury
investigations.}

\footnote{17}{Houston Post, May 17, 18, 1907.}
witness expenses. Penn requested also that the court set aside its order to produce various Waters-Pierce and Standard Oil documents and records at trial, claiming that the demand was, among other things, unconstitutional. Brooks declined to rule on these new motions, and both sides announced that they were ready for trial, with the state also announcing that it intended to seek a default judgment if the defendant did not produce the documents and witnesses listed in the court's orders. On that note, matters ended for the week.\(^\text{18}\)

In the midst of the motion to change venue, Lightfoot continued to gather evidence and witnesses. He contacted one of the state's star witnesses, Royer Campbell regarding other potential witnesses in San Antonio. Campbell identified George Howland, a former Waters-Pierce employee and close friend of Waters-Pierce's South Texas manager, Louis Fries. A politician who was also an agent of a Waters-Pierce competitor suggested to Lightfoot that William Kleiburg, formerly a Waters-Pierce manager, would make a telling witness. Others similarly offered aid and evidence. Meanwhile, the Texas Attorney General's Department continued its antitrust efforts in other industries, in conjunction with Missouri Attorney General Hadley, though these procedures necessarily marked time during the Waters-Pierce litigation.\(^\text{19}\)

Jury selection for the ouster suit began on May 20th. With the defense claims in mind that Travis County veniremen were prejudiced against Waters-Pierce, Brooks summoned a special venire of one hundred men in addition to the regular jury pool. Eight to ten of the special venire were excused as unqualified to be jurors. Many others sought to

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\(^{18}\) *Houston Post*, May 18, 1907.

\(^{19}\) Campbell to Lightfoot, May 13, 1907; C.A. Coker to Lightfoot, May 15, 1907; B.H. Brown to Lightfoot, May 17, 1907; Hadley to Davidson, May 11, 1907 all TSA RG 302 Box 4-8/386. While these events were taking place in Texas, Standard Oil continued to be attacked on several fronts. In Missouri, the federal antitrust suit continued, Special Commissioner Anthony had finished his report for Hadley's ouster suit, and Judge Adams had ruled in favor of extraditing Pierce to Texas. In Washington, Commissioner of Corporations Herbert K. Smith presented a three-volume report on the oil industry to President Roosevelt. The Smith Report strongly condemned the business practices of Standard Oil and Waters-Pierce. See *St. Louis Post-Dispatch*, May 15, 16, 17, 18, 20 1907; *Houston Post*, May 15, 16, 17, 18, 19, 20 1907.
be excused, forty offering special reasons. Judge Brooks had little sympathy for their plight, disqualifying only a few of those seeking special dispensation.\textsuperscript{20}

Both sides agreed to question the veniremen individually rather than en masse, a procedure that took the remainder of the day to create a panel of twenty-four. Selection of the twelve jurors from this panel took little time the next day, and was complete by late morning.\textsuperscript{21}

Once the jury was sworn in, Attorney General Davidson read the state's second amended petition. Replying for the defense, Robert Penn read portions of Waters-Pierce's lengthy answer. Then Lightfoot set forth what Texas intended to prove and by what evidence. The defense frequently interrupted this opening statement with trivial objections.\textsuperscript{22}

Lightfoot told how a conspiracy had come into being around 1870 in which individuals, companies, and corporations endeavored to create a monopoly and control the Texas petroleum industry. This conspiracy had continued uninterrupted until 1900. Then the successful antitrust suit by Attorney General Crane had resulted in the cancellation of the "original" Waters-Pierce permit to do business in Texas. But the dubiously reorganized company continued to operate in Texas and to violate the antitrust statutes. Referring to the alleged "Standard Oil agreement," Lightfoot declared that Texas would prove that the conspirators had divided the United States into marketing and operating areas for companies effectively owned and/or controlled by Standard Oil, with no real competition between the Standard concerns.\textsuperscript{23}

\textsuperscript{20} Houston Post, May 21, 1907. Of the one hundred special veniremen, approximately one-third were of Swedish origin, one-third were of German extraction, with the remaining third not being identified by ethnicity by journalists, save for eight African-Americans.  
\textsuperscript{21} Houston Post, May 21, 22, 1907. Nine of the twelve jurors were farmers, including one African-American farmer. The others were a stockman, a teamster, and a butcher. Notice that there were no merchants, businessmen, or manufacturers on the jury.  
\textsuperscript{22} Houston Post, May 22, 1907. The Second Amended Petition and Third Amended Answer can be found in their entirety at Transcript-1907, 3-113, TSA RG 302 Box 1989/41-85. Davidson's reading of the petition was a testament to his ability as a speaker and politician, as it took nearly two hours.  
\textsuperscript{23} Houston Post, May 22, 1907. That Standard Oil had effectively carved up the United States and Mexico into largely exclusive marketing territories for various subsidiaries and affiliates is undisputed. While their
Number 26 Broadway was the nerve center for this conspiracy. Its 1,200 offices were virtually all occupied by Standard Oil executives, officers, and agents. Following the U.S. Supreme Court decision in 1900 upholding the verdicts of Texas courts against Waters-Pierce, the "old" Waters Pierce Oil Company dissolved. Pierce had resigned as president of the "old" company, but was promptly restored to the same position in the "new" Waters-Pierce. Nothing had really changed. Lightfoot discussed the "purchase" of Standard Oil's interest in Waters-Pierce stock by Pierce, which transferred to Martin M. Van Buren, via Standard Oil director Charles Pratt, soon after the "new" Waters-Pierce obtained a permit to operate in Texas, yet the transfer was not registered on the corporate books until 1904. The son-in-law of John D. Archbold, a Jersey Standard director, Van Buren continued to hold the stock in his name after 1904. Robert H. McNall, suddenly went on the payroll of the "new" Waters-Pierce as its agent, but kept his old work space in H.M. Tilford's office, though his mail went to 75 New Street, the back entrance to 26 Broadway. Then special counsel George Allen began.

Allen offered into evidence documents, to each of which Penn unsuccessfully objected. The documents included certified copies of: the articles of incorporation of the Standard Oil Company, made in January 1870, with amendments; the Waters-Pierce charter of May 1878, with amendments; the Standard Oil Trust Agreement, with supporting stipulations granted by Archbold. Archbold stipulated that it was a true copy equivalent for evidentiary purposes to the originals and that sixty percent of the Waters-Pierce stock had gone into the Standard Oil Trust. When Allen tried to offer into evidence a certified copy of the Jersey Standard charter and amendments, Penn repeatedly objected, asserting that each

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24 Houston Post, May 22, 1907. McNall had been connected with Standard Oil firms for many years, and at various times served on the Export Trade Committee as an expert on Japan, and on the Domestic Trade Committee of Standard Oil of New Jersey. See Hidy and Hidy, Pioneering in Big Business, 495, 772. n.1.
item was irrelevant and immaterial to any issue in the case; that the "old" Waters-Pierce no
longer existed, nor did the Standard Oil Trust; that the events and agreements involved had
taken place prior to the antitrust statutes applied to this case; that Jersey Standard could
never have gotten a permit to do business in Texas as its powers were too great to operate
under Texas law. Brooks overruled each objection, and Penn excepted to each of the
Court's adverse rulings.25

Allen had less trouble introducing Ida M. Butts's deposition into evidence. She
was the widow of a partner of George Rice, a persistent opponent of Standard Oil. Rice
had held several Standard Oil Trust certificates, apparently for the more easily to instigate
lawsuits and obtain information about the Standard Oil Trust. As administratrix of Rice's
estate, Butts now held the trust certificates. Penn objected strongly to her testimony and to
her alleged quotations of Archbold's 1900 testimony as inadmissible hearsay. Judge
Brooks sustained the latter objection, but overruled the others. Butts called so-called
dissolution of the Trust a sham and a mockery.26

Over repeated, fruitless defense objections, Butts's copies of Rice's trust
certificates and related instruments went into evidence. Butts identified a number of
companies that had been part of the Standard Oil Trust Agreement. Waters-Pierce was not,
however, one of the firms she identified. Butts also testified about the difficulties that Ohio
had in enforcing the dissolution of the Standard Oil Trust.27

25 Transcript-1907, 224-31 TSA RG 302 Box 1989/41-85; Houston Post, May 22, 1907. Archbold made
the stipulations in order to avoid being deposed by Lightfoot and Allen. The defense counsel, usually Penn,
objected to nearly every profer of documents by the state, usually citing multiple grounds such as those
mentioned in the text, with "irrelevant and immaterial" being the most common objection. Judge Brooks
overruled nearly all of these objections, to which the defense would then except to preserve the objection for
appeals. Except as noted, assume that the defense objected to most of the evidence and testimony. that
Judge Brooks overruled the objections, and that the defense excepted.
26 Transcript-1907, 231-40 TSA RG 302 Box 1989/41-85; Houston Post, May 22, 1907.
27 Transcript-1907, 240-52 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907. Rice had
purchased the shares in the Standard Oil Trust after the 1892 dissolution with the goal in mind of proving
that Standard Oil was evading the Ohio Supreme Court's order. See Williamson and Daum, Age of
Illumination, 713-14. On Rice's prolonged opposition to Standard Oil, see Bringham, Standard Oil Cases,
22-32, 43-44, 115-17, 124-26. Rice had also been a friend of James S. Hogg, which doubtless contributed
to Hogg's push for an antitrust suit against Waters-Pierce and Standard Oil in 1895. See Cotner, James
Stephen Hogg, 167, 436.
Allen then tried to offer a document that should have been readily admitted, a stipulation executed by attorneys for Texas and Waters-Pierce concerning stock ownership by Standard Oil. Nevertheless, Penn immediately objected. All that he was willing to allow into evidence was the stipulation that Jersey Standard was chartered in New Jersey in 1882 and had never done business in Texas or sought a permit to do business there. 28

The stipulation had "confessed" that Jersey Standard had owned a majority of the stock of the "old" Waters-Pierce, and now owned a majority of the stock of the "new" Waters-Pierce, as well as a majority of the capital stock of Indiana Standard, Kentucky Standard, Socony, Conoco, and Republic Oil. Of these companies, only the Waters-Pierce firms had ever done business in Texas or applied for a permit to transact business there.29

Allen followed this by offering the charters of the various corporations named in the stipulation. The defense objected vociferously to the admission of each certified copy of those business charters, asserting: that the copies were all immaterial and irrelevant; that Texas could not inquire into the validity of a corporation granted a charter by another state; and that none of those corporations had operated in Texas, or ever applied for a permit. Allen replied that he was not questioning the charters' validity, but was offering them to prove that they were in a combination that was the successor to the Standard Oil Trust, and part of a general conspiracy to monopolize the petroleum industry. Texas also intended to prove that Waters-Pierce purchased all of its crude oil for shipment solely from Atlantic Refining.30

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28 Transcript-1907, 252-54 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907.
29 Transcript-1907, 252-54 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907. Defense lawyer N.A. Stedman also objected to the stipulation. If the various Standard companies listed in the stipulation could not legally hold the stock of other companies in the state of their incorporation, then Texas could raise the issue of illegal stockholding by Jersey Standard, otherwise it was irrelevant. He added that foreign corporations in Texas had all of the power there that they had in their charter state, and that they could effectively ignore Texas's restrictions on their corporate powers once they had a permit. This was nonsense. The court in Crane's Waters-Pierce ouster suit had expressly stated that a foreign corporation subjected itself to the laws of Texas when it obtained a permit to operate in the state. Further, other than Waters-Pierce, none of the companies listed in the stipulation had ever sought a permit in Texas, so their "capacities and functions" were irrelevant.
30 Transcript-1907, 255-58 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907.
Allen and Lightfoot offered the depositions of several Standard Oil and Waters-Pierce employees. Robert H. McNall was Waters-Pierce's commercial agent in New York. He shared Henry M. Tilford's office at Standard Oil. Although he suffered convenient memory lapses, McNall, under prodding recalled information which supported the allegation that Standard Oil had apportioned territories to its various subsidiary and affiliated corporations, with no competition between them.\textsuperscript{31}

E.M. Wilhoit's deposition followed McNall's. Wilhoit had worked for Consolidated Tank Line, a Standard affiliate that Kentucky Standard absorbed in 1892. He was a traveling agent out of Wichita and Topeka, eventually heading the office at Topeka. When testifying concerning Standard's territorial divisions, Wilhoit knew the areas in which Consolidated Tank Line and Standard Oil would sell and those they would avoid, and where Waters-Pierce sold and did not sell. He testified that his territories did not cross into Waters-Pierce's exclusive operating areas. Consolidated and Kentucky Standard often took orders from customers in the Indian Territory, but shipped them with Waters-Pierce labels, as that was Waters-Pierce territory. These shipments were always billed to Waters-Pierce, not the customers. Generally the companies respected each other's marketing areas.\textsuperscript{32} Penn objected that Wilhoit's deposition was "immaterial and irrelevant." The

\textsuperscript{31} Transcript-1907, 258-59 TSA RG 302 Box 1989/41-45; Houston Post, May 23, 1907. H.M. Tilford had also been on the Domestic Trade Committee of Standard Oil of New Jersey. For a brief biography of Tilford's career, see Hidy and Hidy, Pioneering in Big Business, 320-22. H.M. Tilford became a director of Standard Oil of New Jersey in 1909, succeeding his late brother, Wesley H. Tilford. McNall suffered from a selective memory. For example, even though he had worked for Standard for many years prior to becoming the Waters-Pierce commercial agent, and had assisted H.M. Tilford in his office much of that time, when asked about Tilford's career, he did not recall that Tilford had been a director of the "old" Waters-Pierce.

\textsuperscript{32} Transcript-1907 259-63 TG 302 Box 1989/41-45; Houston Post, May 23, 1907. Originally the firm had been Alexander McDonald & Company, and in 1878 Alexander McDonald and Ohio Standard formed Consolidated Tank Line, which took over the properties and personnel of Alexander McDonald and Company. McDonald was much like H.C. Pierce, and difficult to control, perhaps accounting for the raids into Waters-Pierce territory. Consolidated Tank Line was absorbed by Kentucky Standard in the reorganization which followed the Ohio Supreme Court's dissolution order to the Standard Oil Trust in 1892. See Hidy and Hidy, Pioneering in Big Business, 22, 47, 108-10, 113-16, 221 and Williamson and Daum, Age of Illumination, 545-46. Indiana Standard acquired the Kentucky Standard's marketing areas in Kansas, Missouri, Nebraska and Iowa in 1896 which the latter had acquired when it absorbed Consolidated in 1892. See Giddens, Oil Pioneer of the Midwest, 44. Wilhoit also testified that he had poached in Waters-Pierce's Texas territory on a few occasions, but stopped when Waters-Pierce had complained to Standard.
transactions in question occurred outside of Texas, either as intrastate commerce in a different state, or as part of interstate commerce, neither of which violated Texas laws. Again Brooks overruled.\textsuperscript{33}

The State then offered the deposition of Charles E. Hatfield into evidence. Hatfield had worked for Waters-Pierce from October 1889 to November 1904 in Texas and in St. Louis. Earlier, he had been private secretary to Standard executive William P. Thompson.\textsuperscript{34} Hatfield knew a great deal about territorial division arrangements with Waters-Pierce through Thompson's correspondence and his own managerial experience with Waters-Pierce. He testified to a dispute over territorial boundaries involving Waters-Pierce and Consolidated Tank Line over a county in Missouri that was referred to Thompson, as he was a director for both firms. Thompson had maps made up showing territorial divisions in Missouri, kept a copy and sent one to each company, which Waters-Pierce hung on its headquarters' walls. Another boundary dispute between Waters-Pierce and Standard's agents in New Orleans over the dividing line between their respective territories in southeastern Louisiana was resolved by making a boundary adjustment.\textsuperscript{35}

Over Penn's repeatedly overruled objections, Hatfield stated that Waters-Pierce had "a general knowledge of the movements of competitive [sic]." This information came from their own "agents" and from "friendly companies." He himself compiled statistical information acting under orders from the Waters-Pierce president and vice-president of the company, which was passed on to other officers of the company. Unlike many of the other witnesses, Hatfield was neither an ex-employee with a grudge and a lawsuit, nor a

\textsuperscript{33} Transcript-1907, 262-63 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907.

\textsuperscript{34} Transcript-1907, 263-64 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907. Hatfield had been assistant manager of the East Texas division before moving to corporate headquarters. In St. Louis, Hatfield first worked as assistant to the vice-president, then as chief clerk/manager in charge of the freight and claim department, as well as statistical work and special tasks which mainly pertained to railroads. On Colonel W.P. Thompson, see Hidy and Hidy, Pioneering in Big Business, 60-67.

\textsuperscript{35} Transcript-1907, 264-65 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907.
competitor that had been driven out of business, or nearly so, but a man telling the truth under oath, albeit reluctantly.36

Hatfield briefly discussed Standard Oil’s committee system for running operations among all of its companies. He noted that some individuals represented multiple Standard firms in New York. Thompson, for example, had been chair of the Domestic Trade Committee, and represented Consolidated Tank Line, Camden Oil, and Waters-Pierce. All Waters-Pierce correspondence went to, or through, Thompson.37

Batts requested that the defense attorneys produce the Waters-Pierce general ledgers of Waters-Pierce for 1900 and 1901. Penn replied that the ledgers were not present in court, and presumably, not in the State. The defense lawyers also did not produce other documents that the state requested. Brooks interpreted this as a refusal to produce the documents, but the court could do nothing about it unless the state’s attorneys sought the statutory remedy and moved for a default judgment, which it opted not to do.38

Instead, Texas continued its case, entering into evidence the 1897 judgment of ouster against the "old" Waters-Pierce. Special counsel Allen offered document after document chronicling the dissolution and reorganization of Waters-Pierce in 1900. The defense futilely objected to most of these documents, though it did not object to the

36 Transcript-1907, 265-67 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907.
37 Transcript-1907, 267-69 TSA RG 302 Box 1989/41-85; Houston Post, May 23, 1907. The committee system was the managerial/organizational system that evolved in an attempt to run the Standard Oil Trust companies in an efficient, organized fashion with an Executive Committee at the top, with a variety of other committees handling different aspects of the business. The major advisory committees between 1887 and 1892 were: Case and Can; Cooperage; Domestic Trade; Export Trade; Lubricating Oil; Manufacturing; Transportation; and Production. For a detailed explanation of how the committee system functioned, see Hidy and Hidy, Pioneering in Big Business, 55-68. Hatfield cautioned that his knowledge of Standard’s organization and operations was dated, as it had been many years since he had directly worked for Standard.
38 Houston Post, May 23, 1907. Recall that Brooks had previously issued discovery orders requiring Waters-Pierce to produce a variety of records and other documents, and to secure the appearance of several witnesses who were its employees. The refusal or inability of the defendant to comply with the discovery orders gave Brooks the power to sanction Waters-Pierce, but the state had to request sanctions. There are a number of reasons why the Texas Attorney General’s Department did not seek a default judgment. Presumably the lawyers felt that they had enough information to win a favorable verdict for Texas without the additional documents and live witnesses. As a general rule judges dislike default judgments, which are seen as depriving a person, real or corporate, of his/its fair day in court. It is seldom difficult to get a default judgment set aside, which means that all that the plaintiff would end up with was a delay of time, which Texas did not want, but which would not have bothered Waters-Pierce unduly.
introduction of the charter of the "new" Waters-Pierce, in which Pierce held 3,996 shares as of May 28, 1900.\textsuperscript{39}

The state's next proferral of documentary evidence was Pierce's affidavit of May 31, 1900, that his company was not a trust or other combination in restraint of trade. This affidavit triggered the pending charges against him for perjury/false swearing. Texas's lawyers declared their readiness to show that the affidavit was false when made and that he made it to get Waters-Pierce back into Texas without true changes in ownership or control. Judge Brooks could not see how the affidavit proved any of the acts complained of in the petition, which suggested that he would sustain the objection.\textsuperscript{40}

Arguing Pierce's affidavit was relevant and material, Batts declared that Waters-Pierce could not have gotten a permit without Pierce, or an equivalent officer, making the affidavit, hence it was made to gain readmission to Texas for the firm. If Waters-Pierce had applied for a permit without the affidavit, the attorney general would have investigated to determine if it was a trust, or connected to one. Penn and Stedman argued against the admission of the affidavit, and Judge Brooks sustained the objection.\textsuperscript{41}

Allen offered into evidence a certified copy of the U.S. Supreme Court mandate in the 1897 Waters-Pierce ouster suit. Penn objected that it was irrelevant and immaterial to the present suit. It was the judgment against the "old" Waters-Pierce, which was not now a defendant. Brooks again overruled the objection.\textsuperscript{42}

\textbf{II. Pierce Pontificates}

\textit{There is no question but that during the Tinsley interregnum the Waters Pierce Oil company was controlled by Standard interests, and there was nothing theoretical about that control. There is also no doubt that this was a conspiracy which had a temporary success because of the serious illness of Mr. Pierce, and the lesser force and aggressiveness of President A.M. Finlay. The plot melted into thin air with Mr. Pierce's recovery. He created}

\textsuperscript{39}Transcript-1907 269-70 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 23, 1907.

\textsuperscript{40}\textit{Houston Post}, May 23, 1907. Brooks observed that the affidavit declared that Waters-Pierce was behaving legally, and the state was trying to prove that Waters-Pierce violated the laws. He did not see how a declaration of innocence could be used to prove guilt, save in a perjury case.

\textsuperscript{41}\textit{Houston Post}, May 23, 1907.

\textsuperscript{42}Transcript-1907, 270 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 23, 1907.
for himself the supreme position of chairman of the board of directors, and
elected his son, Clay Arthur Pierce, to the presidency, offices both have
held since June 22, 1905.

Frederick Upham Adams, The Waters Pierce Case in Texas (1908)

Next day, May 23rd, the courtroom controversy was slight, a reporter marveling
that "[d]ramatic features were almost entirely lacking." But it was an important day. Henry
Clay Pierce's deposition from the Missouri antitrust suit was admitted into evidence.
Responding to questions about Standard Oil's connection to Waters-Pierce, Pierce
explained that 2,746 shares of Waters-Pierce stock listed on the corporate books as
belonging to M.M. Van Buren "has been admitted in this case to be the property of the
Standard Oil Company of New Jersey." Pierce held 1,250 shares of Waters-Pierce stock.
He then discussed the relations between Jersey Standard and Waters-Pierce. In the
1877/1888 winter, he had organized the Waters-Pierce Oil Company under Missouri law as
a successor the business of Waters, Pierce & Company, with an original capitalization of
$100,000. Waters, Pierce & Company took $40,000 in stock, and Horace A. Hutchins
and William P. Thompson, at that time Ohio Standard executives, each subscribed for
$20,000 of stock. In 1873, the pair had purchased a fifty percent interest in Chess, Carley
& Company, a Kentucky oil firm which acquired the remaining $20,000 of Waters-Pierce
stock, on behalf of Standard Oil, and after the organization of Waters-Pierce, all those
shares belonging to Hutchins, Thompson and Chess-Carley were placed in the Standard
Oil Trust. Then Pierce bought out Waters's interest in Waters-Pierce, which gave him a
forty percent interest. Matters stayed that way until the dissolution of the "old" Waters-
Pierce in May 1900.43

After his company's permit to operate in Texas was revoked, Pierce wanted to
reenter the very profitable Texas market. He was told by "a prominent citizen of Texas"
(Joseph W. Bailey) that any company controlled by Standard Oil would never be granted a

43 Transcript-1907, 270-76 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907; Chernow, Titan,
254-56. On the early years of Chess-Carley and Waters-Pierce, see Williamson and Daum, Age of
Illumination, 535-45.
permit to operate in Texas. Pierce had discussed this with Standard Oil's Executive Committee. An agreement resulted whereby he would organize a new Waters-Pierce and he would hold its stock and be absolutely free to manage and control it.\footnote{Transcript-1907, 273 TSA RG 302 Box 1989/41-85;\textit{Houston Post}, May 24, 1907.}

Pierce declared that Standard Oil had lived up to that agreement until the 1904 spring when the Waters-Pierce stock was officially transferred to Martin M. Van Buren, Archbold's son-in-law, and Standard Oil "began in other ways to assume a control over the affairs of the company [Waters-Pierce]." He had protested strongly against these actions. They violated their agreement and contradicted what he had sworn in his May 1900 affidavit.

It had taken a surprisingly long time for Standard executives to curb the excesses of Waters-Pierce. Ron Chernow, biographer of John D. Rockefeller, noted that Francis D. Carley of Chess-Carley "...set a new standard for pitiless methods in oil marketing" but H.C. Pierce "made F.D. Carley look like a cherub by comparison." Standard Oil officials had to have been aware of Pierce's ruthless and sometimes illegal business methods. The tremendously high profits Waters-Pierce generated had bought it autonomy; but the marketing tactics that produced them would contribute to Standard Oil's later legal problems.\footnote{Transcript-1907, 273-74 TSA RG 302 Box 1989/41-85;\textit{Houston Post}, May 24, 1907; Chernow, \textit{Titan}, 254-255; Hidy and Hidy, \textit{Pioneering in Big Business}, 448-51, 687-98. Publicly Standard Oil executives condemned marketing excesses, but apparently had no qualms about collecting dividends on the Waters-Pierce stock.}

Pierce discussed the Waters-Pierce and Ohio Standard territorial agreement. As early as 1878, when Pierce organized the Waters-Pierce Oil Company, an understanding prevailed that it would operate wherever Waters, Pierce & Company had operated. He described the Waters-Pierce territory in detail and admitted that he still had the original map. Stedman futilely objected to Pierce's testimony concerning territorial division as relating to the "old" Waters-Pierce, not the new one. Pierce continued. There had been no change in
that territory since the agreement. Pierce stated that no one associated with Waters-Pierce had ever tried to expand its business beyond its territory of 1878, that,

...neither myself or any one connected with the Waters-Pierce Oil Company, so far as I know, and certainly never with my authority, ever made any attempt to sell oil, to locate stations or in any manner transact business outside of the territory in which the present Waters-Pierce Company operates.

Pierce may have been a maverick, but he kept his bargain with Standard Oil about territory.46

Pierce testified that Waters-Pierce obtained almost all of its petroleum products from Jersey Standard and its subsidiaries and affiliates. Neither the old nor new Waters-Pierce had ever produced refined petroleum products, except some lubricants and greases. His company was exclusively a marketing concern for petroleum products within the United States, with several refineries in Mexico, Pierce being a pioneer in that market. Waters-Pierce purchased crude oil from Standard, which was shipped to the Mexican refineries to be refined and sold, chiefly to railroads. The "new" Waters-Pierce essentially succeeded to the business of it predecessor and since May 1900 had restricted itself to expanding its market in the "old" Waters-Pierce territory. It had not tried to become an integrated oil company but was content to market Standard Oil products.47

Pierce's deposition listed the changing boards of directors of both the "old" and "new" Waters-Pierce. Initially he had been the only resident director active in the firm's management. Three of the five directorships were "Standard Oil seats," and over the years various executives of Standard Oil companies rotated through these positions.48

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46 Transcript-1907, 273-80 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. There were no substantive changes in Waters-Pierce's marketing area, though minor adjustments were made in Louisiana and Illinois to resolve disputes over the precise boundaries.

47 Transcript of Testimony-1907, 275-77 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.

48 Transcript-1907, 278-79 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907; Hidy and Hidy, Pioneering in Big Business, 449-51. Based on Pierce's testimony, the composition of the board of directors was as follows:

<table>
<thead>
<tr>
<th>Directors representing Pierce</th>
<th>Directors representing Standard Oil interests</th>
</tr>
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<tbody>
<tr>
<td>1878-1885</td>
<td>H.C. Hutchins, W.P. Thompson, F.D. Carley</td>
</tr>
<tr>
<td>H.C. Pierce, W.H. Waters</td>
<td>Hutchins, Thompson, W.H. Tilford</td>
</tr>
<tr>
<td>1885-1887</td>
<td></td>
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<tr>
<td>Pierce, Waters</td>
<td></td>
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</tbody>
</table>
Pierce also testified concerning Waters-Pierce's purchases from Standard Oil companies in the United States and Mexico. Prior to 1878, the predecessors to the Waters-Pierce Oil Company had purchased from independent refiners as well as Standard firms. Since that time, he conceded, his company "had been, and now is dependent upon the Standard Oil Company for almost its entire supplies." Asked repeatedly why Waters-Pierce never sought to expand, Pierce eventually admitted that Waters-Pierce had agreed with Oliver H. Payne of Ohio Standard in 1878 to restrict operations to the established territory of its predecessors.\(^{49}\)

The subject turned to Pierce's stock interests in the old and new Waters-Pierce corporations. From 1878 to 1900, Pierce held under forty percent of the stock, and upon the dissolution of the "old" company the corporate assets were distributed based upon that basis. Pierce owned one hundred percent of the "new" Waters-Pierce stock at its organization, paid for by his personal check for $400,000. He subsequently transferred approximately 68.5 percent of the Waters-Pierce stock in blank to "Mr. Garth," cashier of the Mechanics National Bank, in New York City, because of a tacit understanding that he would transfer that interest in the new company. It was all arranged by his attorney, John D. Johnson. Pierce willfully and deliberately kept himself ignorant of any direct

<table>
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<tr>
<th>Directors representing Pierce</th>
<th>Directors representing Standard Oil interests</th>
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<tbody>
<tr>
<td>1887-1888 Pierce, Waters</td>
<td>Cowles, Thompson, W.H. Tilford</td>
</tr>
<tr>
<td>1888-1889 Pierce, Waters</td>
<td>Cowles, Thompson, H.M. Tilford</td>
</tr>
<tr>
<td>1889-1890 Pierce, Waters</td>
<td>Cowles, W.H. Tilford, S.H. Paine</td>
</tr>
<tr>
<td>1890-1891 Pierce, Andrew M. Finlay</td>
<td>Cowles, G.F. Gregory, S.H. Paine</td>
</tr>
<tr>
<td>1891 Pierce, Finlay</td>
<td>H.M. Tilford, S.H. Paine, C.M. Pratt</td>
</tr>
<tr>
<td>1892-1900 Pierce, Finlay</td>
<td>H.M. Tilford, C.M. Adams, J.P. Gruet</td>
</tr>
<tr>
<td>1900-1904 Pierce, Finlay, J.D. Johnson</td>
<td>C.M. Adams, J.P. Gruet</td>
</tr>
<tr>
<td>1904-1905 Pierce, Finlay</td>
<td>C.M. Adams, W.F. Taylor, R.P. Tinsley</td>
</tr>
</tbody>
</table>

Pierce's testimony about the changes in Standard Oil representation between 1888 and 1891 is not clear, and therefore board composition for those years is uncertain. His testimony also conflicts with Adams's assertion that there were always three directors representing Standard's interests, save for a brief period in 1905 following the removal of Tinsley, who was replaced by Johnson as a board member.

\(^{49}\)Transcript-1907, 279-83 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Oliver H. Payne (1839-1917) had been one of the driving forces in the formation of the Standard Oil group after his Cleveland refinery merged with Ohio Standard in 1872, serving on the Executive Committee, as a Standard Oil Trustee, and later as a director of Standard Oil of New Jersey from 1899-1911. See Hidy and Hidy, Pioneering in Big Business, 26-27, 314.
knowledge, and his name remained on the records as owner, and he retained voting control.

The picture that this testimony painted was not flattering. Pierce stated that he learned in June 1904 that Archbold's son-in-law, Van Buren, held the stock, after it had been transferred on the record. Pierce had faithfully transferred 68.5 percent of the large, frequent Waters-Pierce dividends to Samuel G. Bayne, president of the Seaboard National Bank at the request of either Wesley or Henry Tilford. Pierce stated that he thought W.H. Tilford was on Standard Oil's Executive Committee. The absurdities proliferated as Pierce claimed not to have known who actually held over two-thirds of the Waters-Pierce stock, yet he had sent millions of dollars of dividends to Bayne at Seaboard National.50

Deposition questions raised interest in the Waters-Pierce stock certificate stamps. The first three issued and canceled were for 2,748 shares of Waters-Pierce stock, and two more certificate stamps for one share each were also canceled on or about September 4, 1900. Pierce, naturally, was not sure of the date, as he had endorsed the stock certificates in blank. As it had turned out, at the time that the original Waters-Pierce dissolved, Jersey Standard held 2,748 shares of the former's stock. Pierce admitted that by agreement with Jersey Standard's general counsel he had transferred 2,748 shares in the new Waters-Pierce "to the Standard Oil Company or its representatives." Pierce conceded that while the books had listed him as the owner of record, the majority interest belonged to Jersey

50 Transcript-1907, 283-87 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Bayne had close ties to a number of Standard Oil executives, particularly Archbold, and Seaboard National Bank was reputed to be "a Standard Oil bank." The following exchanges sum up the absurdity of Pierce's dealings:

Hadley: Then if I understand you, you were informed by your attorney that an agreement had been made by which, upon the organization of the new company, you should transfer sixty-eight and one-half per cent of the stock to some unknown party?...

Pierce: Practically, yes.

Hadley: That was the information to you?

Pierce: Practically.

Hadley: Your testimony is now, that within a few months after the organization of the new company you parted with the controlling interest to some party whose identity was not disclosed to you and whose identity is not disclosed now?

Pierce: Practically, that is correct.

It is difficult that a businessman such as Pierce would have transferred millions of dollars of dividends to Seaboard National on the word of either Tilford without knowing that they had proper authority to direct the transfers. He later admitted knowing that Garth represented Charles M. Pratt of Standard Oil.
Standard "from the time of the organization of the new company up to the present time."
The dividends on the 2,748 shares of stock that he had transferred to Bayne at Seaboard
National had been for Standard Oil, he had presumed.51

Pierce had some difficulty explaining why Standard Oil's interest in the "new"
Waters-Pierce had not appeared on the corporate books, and why he had desired this
arrangement. He stated that his lawyer and Standard Oil's general counsel had agreed that
the stock should appear in his name. Pierce claimed that this had not been done to conceal
anything, but that the arrangement was "for the purpose of enahling me to absolutely own,
control and operate the Waters-Pierce Company." Though he had transferred the stock by
endorsing it in blank, and had not possessed the stock certificates, until the new holder's
ownership was recorded in the company books, Pierce voted the stock as he saw fit and
exercised control, rather than the true owner.52

The questioning shifted to Standard Oil's control of Waters-Pierce, and access to
the latter's business information. Pierce recounted the ways by which Standard Oil began
to exert control over the business in 1904, ousting personnel of Pierce's choice and
replacing them largely with former Standard employees, ranging from directors and
managers to agents in the field, and changing the conduct of operations "[v]ery materially."
The books of the "old" Waters-Pierce had been audited by two sets of accountants, one

51 Transcript-1907, 287-95 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Charles Millard
Pratt (1855-1935) had inherited the interests of his father, Charles Pratt, in Standard Oil, and was an expert
on the domestic oil trade. At various times he served as a Trustee for the Standard Oil Trust, as secretary,
treasurer, and vice-president of Standard Oil of New Jersey, and from 1899 to 1913, as a director of that
company. See Hidy and Hidy, Pioneering in Big Business, 314-16. Pierce's testimony in the Missouri
suit was clear:

Hadley: Then to come down to the facts in the case, and that is what I want to get at, the
Standard Oil Company of New Jersey, or the Standard Oil Company, continued to
have the same interest in the new company that it had in the old?
Pierce: I believe so.
Hadley: And you so understood at the time?
Pierce: I understood either at the time or shortly afterwards when I was informed by my attorney,
Mr. Johnson.

52 Transcript-1907, 295-96 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Hadley, who had
examined Pierce, had tried to help Davidson and Lightfoot by asking if the real reason that the stock was in
Pierce's name was to enable Waters-Pierce to get a permit to reenter Texas. Priest had objected to the
question as irrelevant to the Missouri case, and Special Commissioner Anthony sustained the objection.
which worked for that corporation, and the other for Standard Oil. After the 1900 reorganization, however, only auditors officially working for Waters-Pierce performed audits, at least until Tinsley took over in 1904.\textsuperscript{53}

Asked about Waters-Pierce representatives at 26 Broadway, Standard Oil headquarters, Pierce replied that his company had employed a number of Standard Oil agents over the years, typically in temporary capacities, especially to handle certain dealings between Waters-Pierce and the other Standard Oil companies. Reports on Waters-Pierce operations went regularly to Standard's officials at 26 Broadway, including the Tilfords, both having been directors of the "old" Waters-Pierce. After the creation of the "new" company, all Waters-Pierce reports and communications went to Robert H. McNall, who had been H.M. Tilford's assistant, rather than to different department heads of various Standard Oil companies and divisions. McNall was familiar with Waters-Pierce, which had appointed him as its commercial agent in New York to handle dealings with Standard Oil. Despite his new title, McNall still worked in Tilford's office. Although Pierce claimed that only a "meager percentage of the reports" went to McNall, he actually received diverse reports on Waters-Pierce's marketing, sales, and purchases. Pierce noted that McNall got whatever "he asked for as the representative of the Standard Oil Company and its various heads." Pierce also stated that he knew nothing about what happened during the upheavals of 1904 and 1905 when Standard Oil exerted control over the company.\textsuperscript{54}

Waters-Pierce was very profitable, at least until litigation expenses mounted, with dividends since 1900 at approximately 600 to 700 percent of capital stock per year. Asked why Waters-Pierce had not expanded into production and refining crude oil, Pierce denied that there was any agreement between Standard Oil and himself or his company to restrict

\textsuperscript{53}Transcript-1907, 297-300 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Though the auditors were on the Waters-Pierce payroll, they were sent by Wade Hampton of Jersey Standard, and were only on the Waters-Pierce payroll during the audit. Prior to and after the audit, the accountants worked for Jersey Standard and its subsidiaries. During Tinsley's period of control, Standard Oil sent auditors to St. Louis as it saw fit.

\textsuperscript{54}Transcript-1907, 300-07 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. McNall resigned as commercial agent in 1906.
operations solely to marketing. Waters-Pierce had several large refineries, Pierce noted, though he neglected to state that these were in Mexico. When asked why, given decreased costs to consumers, he had not established refineries in Texas, where there were new oil fields, he replied evasively:

Because the Waters-Pierce Oil Company was not prepared to establish oil refineries. It had no facilities for doing so, and it was receiving its refined products from the Standard Oil Company promptly and of good quality, and in a way to enable it to care for all of the business that I though it advisable for the Waters-Pierce Oil Company to engage in, and other people than the Standard Oil Company, as well as the Standard Oil Company, were refining oil in the State of Texas, and the Waters-Pierce Oil Company has taken from the Standard Oil Company the production of the refinery at Corsicana, and all the products of the Security Oil Company in Texas, and there was no occasion for the Waters-Pierce Oil Company to go into the refining business and invest capital when it could purchase oil from them more cheaply.

This answer explained nothing.55

Concerning the marketing of petroleum products in Missouri, Pierce testified that Ohio Standard had ceased operations in St. Louis after the territorial division agreement in 1878. Republic Oil took over Scofield, Schurmer & Teagle's marketing areas in 1901, and adjusted its territory, apparently in cooperation with Waters-Pierce. Pierce claimed that he had accused Jersey Standard of controlling Republic Oil, and that it had denied such ownership in the past. In fact it owned Republic Oil, and operated it as pseudo-competition to Indiana Standard and Waters-Pierce in Missouri to fool customers opposed to Standard Oil. Waters-Pierce played the same game, however, owning and operating the International Oil Works and Inland Oil Company and maintained separate offices and sold products under their own labels from their own tank wagons. Pierce denied that operating subsidiaries under different names of a subsidiary under a different name was subterfuge.

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55 Transcript-1907, 307-09 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Under Texas law production of crude petroleum had to be separate from the other aspects of the business, thereby prevented oil companies from being fully integrated, at least directly. The Texas Company and Gulf Refining both had separate production companies, nominally independent, but typically controlled through common stock ownership. These firms found it profitable to engage in production and refining as well as marketing.
"Business reasons, all of which are good and sufficient to the management," justified the practice.56

Pierce continued to deny familiarity with specific Waters-Pierce reports sent to 26 Broadway, though admitting that "a great many reports were sent." He denied any personal knowledge that Waters-Pierce and Indiana Standard accepted orders from customers in each other's territory and then transferred them to the other company in the territory where the sale was consummated. He claimed ignorance also of the fact that Wade Hampton, Jersey Standard's general auditor, sent accountants to the new Waters-Pierce to audit its books and ordered that they be paid by Waters-Pierce. Pierce insisted that he had not known of this practice until he read about it in the newspapers. His claimed ignorance of the affairs of his company was difficult to accept.57

Pierce described how Richard P. Tinsley became a Waters-Pierce vice-president and took over Waters-Pierce's accounting from Gruet in 1904. Pierce denied protesting Tinsley's joining Waters-Pierce. Tinsley had not come to take over. Wesley H. Tilford, representing Jersey Standard, had suggested Tinsley to Pierce to succeed Gruet, who "because of unfortunate infirmities had become disqualified to longer hold the position [of secretary and comptroller]." Pierce had accepted Tinsley as auditor/comptroller on the basis of Tilford's recommendation, much as he had accepted Gruet from Standard Oil on the basis of its general auditor's recommendation. It had been "distinctly understood" between Tilford and Pierce that Tinsley would exercise no managerial control, but would be vice-president merely to adjust for the vacancies created by Gruet's and Pierce's retirements and Finlay's advance to the presidency.58

Tinsley, however, did not abide by the alleged agreement between Tilford and Pierce. His refusal to perform his duties caused president Finlay so much mental and

56 Transcript-1907, 309-12 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
57 Transcript-1907, 311-20 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
58 Transcript-1907, 320-24 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Gruet was an alcoholic.
physical distress that his health broke and he left for Europe in the Fall of 1904. Upon Finlay’s departure, Tinsley arrogated to himself the role of acting president. Among his misdeeds, from Pierce’s perspective, he replaced several hundred experienced, reliable Waters-Pierce employees and officers, many in key posts, with “inefficient, incompetent and inexperienced men” nearly all former employees of Standard Oil. Tinsley personally took charge of Mexican operations, saddled the local general manager with one from Ohio Standard who knew nothing of the territory and its business and did not speak Spanish, which resulted in the resignation of the general manager for Mexico. Pierce, from his sickbed in New York, remonstrated with Standard Oil officials about what he saw as a breach of agreements dating back to 1878 and their implied continuation to the “new” Waters-Pierce.59

Contradictions existed in Pierce’s testimony regarding the protests to Standard Oil about the abrogation of its agreements with him. Pierce fell back on his limited memory. He did not now recall (but soon would) that he had objected to the June 1904 transfer of Waters-Pierce stock to Van Buren, claiming only that he might have protested about it as being contrary to his “understanding.” If he had complained it would have been to W.H. Tilford, Archbold, or Henry H. Rogers, and about removing the stock from Pierce’s name. Some time later, Pierce suddenly became sure that he had protested to Tilford, Archbold and Rogers about the stock transfer, though he could not remember when he had complained. Van Buren, he asserted, was nothing to him.60

Questions returned to Pierce’s transfer of his Waters-Pierce stock to Garth and Pierce’s “arrangement” with Standard Oil. Pierce knew nothing about the stock certificates that he had endorsed after they were given to Garth, the cashier. Garth gave Pierce a check

59 Transcript-1907, 320-24 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. From Pierce’s description of events, Tinsley was a strong-willed, forceful businessman, and Andrew Finlay was weak-willed, a poor choice for a corporate president. Tinsley was at Waters-Pierce headquarters in St. Louis from April 1904 until June 1905, when Pierce allegedly complained to Standard Oil executives. Pierce did not complain, however, until after Missouri Attorney General Hadley had started his investigation and antitrust suit against Waters-Pierce.

60 Transcript-1907, 324-26 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
for $274,800, the par value of the 2,748 Waters-Pierce shares, and Pierce handed over the endorsed stock certificates. Pierce denied receipt of any money from Garth or anyone connected with Standard Oil in May 1900. He had paid for the 4,000 shares in his company with his personal check for $400,000 and had not allowed any of the certificates to leave his possession until he transferred the 2,748 shares to Garth.61

Pierce denied that he directly had any sort of arrangement with the Standard Oil Executive Committee regarding the 2,748 shares of the "new" Waters-Pierce. Everything, he asserted, went through Johnson, his lawyer, and Pierce knew nothing of any "understanding." He had many conferences with Standard Oil's Executive Committee following the U.S. Supreme Court's ruling supporting the ouster of the original Waters-Pierce from Texas, but only about obtaining a new license to operate in Texas. Standard Oil controlled almost precisely the same interest in the new company as it had in the old firm. But Pierce discounted the significance of these matters.62

Lightfoot and Allen examined the situation at Waters-Pierce after Tinsley took over the firm in 1904. As far as Pierce knew, no change occurred in the marketing territory of Waters-Pierce, or in the type and quantity of business reports sent to 26 Broadway. Nearly all of the products that Waters-Pierce sold in its United States territory continued to be purchased wholesale from Standard Oil concerns. These conditions did not materially changed after Tinsley's departed in 1905.63

The focus shifted to dividends and notes, specifically about a hundred percent dividend made on May 21, 1900, less than ten days before the old Waters-Pierce dissolved and the new company was incorporated. Pierce claimed that he could not recall such a dividend payment to all of the stockholders. Dividend payments were so common that none, even hundred percent dividends, stood out, and they had nothing to do with the

61 Transcript-1907, 326-27 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. C.M. Pratt had accompanied Pierce to the Mechanics National Bank in New York when he "sold" the 2,748 Waters-Pierce stock to Garth.
62 Transcript-1907, 327-30 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
63 Transcript-1907, 330-31 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
dissolution of the old company and organization of the new one. Despite Pierce's weak memory, the point had been made. Waters-Pierce had declared a huge dividend shortly before it ceased to exist, thereby lowering its assets, and allowing the future shareholders of the new company to pay the par value of the new stock without really expending any money. Shortly after this dividend was declared, and the new company formed, it gave six notes to the old Waters-Pierce, which were transferred to the old firm's shareholders based on their stock holdings in the now dissolved corporation. These notes were paid off, apparently, by dividends from the new company, another means of transferring assets.64

The defense took the unusual step of requesting permission to offer portions of Pierce's deposition which Stedman declared the State had omitted, into evidence. Despite objections by Allen, Judge Brooks allowed it, not surprising, for in an ordinary trial with live testimony, the defense could have cross-examined any of the state's witnesses.65

Stedman and Penn read the questions of Hadley and the answers of Pierce, respectively. Pierce denied ever holding stock in Indiana Standard, Republic Oil, or Jersey Standard, the former two being "competitors" of Waters-Pierce in Missouri, or certificates of interest in the old Standard Oil Trust. He never held stock in any oil company other than Waters-Pierce. In another portion of Pierce's testimony omitted by the state, he told how he had refused to place his forty percent interest in the original Waters-Pierce in the Standard Oil Trust in 1878, though he had been strongly urged to do so. Yet all parties had agreed that Pierce would run and control the corporation, which he did until February 1900. Then alleged ill health made him step down as Waters-Pierce president. At the conclusion of the Tinsley interregnum at Waters-Pierce, Pierce and his lawyers restored control and management of the firm to Pierce and his son, Clay Arthur Pierce, who later became president.66

64 Transcript-1907, 331-33; TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
65 Transcript-1907, 333-35; TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
66 Transcript-1907, 335-38; TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
Pierce testified that since its creation in May 1900, an Executive Committee composed of directors, officers, and some managers of departments ran Waters-Pierce. Apparently he forgot that Tinsley had dismantled the Executive Committee, which Pierce subsequently replaced with an Advisory Committee. Pierce denied that he, or the current Waters-Pierce ever had any express or implied agreement with any company or individual to fix prices of petroleum products in Missouri. He declared that only Standard Oil firms had been capable of supplying Waters-Pierce’s large demand for refined petroleum products. Pierce’s deposition also delved into his activity in the oil business since 1869. An aggressive, efficient marketer, who had seen opportunity in rural areas where others saw wilderness, Pierce had followed the expanding railroads, establishing tank stations at rail termini and areas with navigable waterways for cheap transportation. He used tank wagons and iron barrels for the rural areas surrounding his tank stations, away from rail lines, to provide oil, kerosene, and lubricants to bucolic consumers. According to Pierce, he had invented the tank wagon and other devices for storing and delivering petroleum products. He was the first person to use these devices and iron barrels to market oil. His firms supplied markets far from railroad lines and fed the demand for illuminants and lubricants in those areas. No one disputed Pierce’s claims. His role in spurring the growth of the market for petroleum products was central.67

Pierce testified about factors affecting the price of refined petroleum products. Transportation costs were critical in determining prices. Oil fields and refineries near marketing areas greatly reduced costs, though that could be offset by the quality of the crude oil. Texas crude, for example, was inferior to that from Ohio, Pennsylvania, and Indiana, which suggested why Waters-Pierce had not gone gotten into the production and refining of oil in Texas and Oklahoma despite the discovery of significant oil fields there. He was proud because no competitor in Missouri had such an extensive network of tank stations and tank wagons, which ensured prompt delivery of high quality products. The

67 Transcript 1907, 335-42 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
value of Waters-Pierce, based on assets and good will, was approximately $45,000,000 to $55,000,000 though the par value of the stock was only $400,000. The company's physical assets he valued at about $12,000,000.68

Pierce claimed to compete against Indiana Standard in Illinois despite the fact that Standard Oil held a majority of Waters-Pierce stock. He stated that competition against Waters-Pierce by firms with tank stations and tank wagons had been growing since 1900, owing to the discovery of sizable oil fields in Texas, Oklahoma, and Kansas, and the growth of independent refineries to service those fields. Waters-Pierce, however, had continued to grow. He proudly stated that if Missourians had depended on his competitors "they would have been in darkness over ninety per cent of the time." 69

III. Depositions by the Dozen

Never ask a question of a witness if you don't already know the answer.
Old legal adage, commonly heard in courses on Trial Advocacy

Texas then sought to introduce into evidence the deposition of Wade Hampton, Jersey Standard's general auditor, and director of the teams of traveling auditors. Lightfoot opened by posing problems on which Judge Brooks would have to rule. Part of this deposition was covered by an agreement between counsels for Texas and Waters-Pierce, and part conflicted with that agreement. He proposed to offer the conflicting portion of the deposition to show that efforts had been made to conceal facts. Defense counsel Odell pointed out that Hampton was the state's witness. The prosecution could not impeach its own witness. Hampton was not a party to the litigation, or a Waters-Pierce employee. Hence his deposition was irrelevant and immaterial, despite the general allegations of the petition. Lightfoot countered, arguing that Texas was not trying to impeach its own

68Transcript-1907, 343-45 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907. Waters-Pierce's competition with Indiana Standard in Illinois was limited to the area around East St. Louis, which had been within the territory of Waters-Pierce's predecessors.
69Transcript-1907, 345-53 TSA RG 302 Box 1989/41-85; Houston Post, May 24, 1907.
witness, but rather to show that "an effort was made by this co-conspirator [Hampton] to conceal the true relations existing between these corporations." Brooks deferred ruling.\textsuperscript{70}

The essence of Hampton's testimony was that he was Standard Oil's general auditor, in charge of the traveling auditors that examined the books of the Standard affiliates. As he explained it, "[e]ach of the these [Standard] corporations through their board of directors appoint me general auditor each year, each separately." His office was located at 26 Broadway, and the reports of his auditors went to officers of the companies that they audited, but not to Jersey Standard. Hampton admitted that prior to May 29, 1900 he had audited the books of the original Waters-Pierce Oil Company, but he had not ordered such audits of the "new" Waters-Pierce. Each year he sent auditors who had worked for him to audit the Waters-Pierce books, but as temporary Waters-Pierce employees, not Jersey Standard auditors, and claimed that he did not receive copies of the audits, and that they were not sent to Standard Oil.\textsuperscript{71}

At this point, Texas introduced correspondence between Hampton and Gruet, and from Hampton to Pierce, which both sides stipulated as genuine. This correspondence contradicted Hampton's deposition statements that he had not directed the post-1900 audits of Waters-Pierce's books, and showed that he had tried to conceal Jersey Standard's role in the audits. In short, Jersey Standard, through Hampton, was keeping its ties to Waters-Pierce quiet. Waters-Pierce might not have instigated the concealment attempts, but it was a party to such efforts.\textsuperscript{72}

\textsuperscript{70} Transcript-1907, 353-56 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 24, 1907.
\textsuperscript{71} Transcript-1907, 356-70 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 24, 1907. The accountants that Hampton sent to St. Louis to audit Waters-Pierce were taken off the payrolls of Jersey Standard or its subsidiaries, and temporarily placed on the Waters-Pierce payroll. After the audits were complete, Waters-Pierce discharged the accountants, and Hampton re-hired them. This let Hampton declare that Standard Oil accountants did not audit Waters-Pierce after 1900. Presumably Waters-Pierce provided the audit results to Jersey Standard through its commercial agent, R.H. McNall, obviating the need for the accountants to do so.
\textsuperscript{72} Transcript-1907, 370-80 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 24, 1907. The letters to Gruet followed the tone of the first one of February 11, 1901:

For reasons which you undoubtedly will appreciate, it is best that Mr. Conroy be considered an employe [sic] of your company during his examination. Therefore kindly enter his name on your pay-roll from the date of his arrival at $191.67 per month, also kindly pay what expenses he is under from the time he left New York.
Most of May 24th was spent going through a series of relatively brief depositions of varied individuals, including Maywood Maxon of Decatur, Illinois. Maxon had spent most of his life in the oil business, his career becoming tied, though not always directly, with that of Alexander McDonald, who rose in Standard Oil affiliates and subsidiaries, becoming president of Kentucky Standard.73

Maxon had to observe territorial boundaries with Waters-Pierce. West of the Mississippi River was Waters-Pierce territory. Maxon was not allowed to sell there, or in the East St. Louis area, even though Kentucky Standard had a storage depot there, as this was within the marketing area of Waters-Pierce. Instead, he had orders to refer inquiries in East St. Louis to Waters-Pierce.74

G.J. Steigerwald, like Maxon, had spent most of his career in the oil industry, first Scofield, Schurmer & Teagle and eventually at Republic Oil, its successor. Scofield-Schurmer had been an independent competitor of Waters-Pierce and Indiana Standard. Publicly, Republic Oil claimed to be independent and aimed at selling to anti-Standard customers. When at Republic Oil, Steigerwald learned that its policies were apparently guided by Jersey Standard. Republic Oil purchased its supplies chiefly from Standard Oil companies. Reports were sent to the president, C.L. Nichols in New York, who shared an

In the context of the antitrust suit, this letter and the others offered in evidence, spoke for themselves. The stipulation which authenticated Hampton's signature on the letters also agreed that,

...said letters were written and the respective persons therein mentioned were sent at the instance of the Standard Oil Company, ..., which at the time said letters were written and said parties were sent, was the owner of shares of stock of the Waters-Pierce Oil Company, and for the purpose of getting such information as would be revealed by an audit of the books and accounts of the Waters-Pierce Oil Company by the respective parties designated in the respective letters.

73 Transcript-1907, 380-83 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. The story of Maxon's career showed how convoluted things could get. He began with Cochran & Fearing, which was reorganized as Cochran, Lyman & Company. Maxon went from Cochran-Lyman to the Peoria Oil Tank Line Company, owned by Alexander McDonald & Company, where he worked for two years as a salesman before moving on to the Iowa Tank Line Company as manager. Alexander McDonald & Company owned that firm as well, which sold all Standard Oil products, save for turpentine, which was produced by Waters-Pierce. Iowa Tank Line operated in parts of Missouri, including Trenton, but did not compete against the Consolidated Tank Line Company, a Standard Oil concern, which was forbidden to sell at Trenton. Consolidated Tank Line took over Iowa Tank Line around 1885, and Maxon became a manager there at Davenport, Iowa and Decatur, Illinois under McDonald, its president, and in turn Kentucky Standard took over Consolidated Tank Line in 1892, and McDonald moved up as well. Maxon stayed with Kentucky Standard until March 31, 1904.

74 Transcript-1907, 382-84 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
office with Lauren J. Drake, Sr., then a member of Standard Oil's Domestic Trade Committee.75

The deposition of A.H. Gardner met with a general objection from Stedman. All the questions and Gardner's answers concerned matters outside of Texas, involved companies other than Waters-Pierce, and related to transactions in which the defendant was not involved. Judge Brooks noted that those companies were alleged in the State's petition as conspirators and overruled the objection. Gardner had worked for Conoco in Denver and later for an independent oil company in Missouri. Conoco sent reports to H.M. Tilford at 26 Broadway. He concluded by stating that he had never seen Waters-Pierce and Standard Oil compete in the same locations.76

Most of the other brief depositions that day told stories similar to the previous ones. The witnesses discussed the existence of strict territorial divisions and of orders not to cross the boundaries and to confine "our business to what was known as our territory."77

Anthony V. Jockel was a Jersey Standard bookkeeper in 1904 and was transferred to Oklahoma City at the request of Waters-Pierce that year. Jockel testified that Waters-Pierce used Standard Oil forms for reports, and he did so in Oklahoma City and also kept track of the competition. The only processing that Waters-Pierce did to petroleum products in Oklahoma City was to remove Standard Oil labels and marks from barrels and tanks

75Transcript-1907, 384-94 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907; Wall and Gibb, Teagle of Jersey Standard, 40-46. The first president of Republic Oil was Walter Jennings. C.L. Nichols had been Drake's assistant. Though Nichols and Drake shared an office, Drake's address was 26 Broadway, and Nichols's address was 75 New Street, the rear entrance to the same building.

76Transcript-1907, 394-398 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. Gardner left Conoco to work for the National Oil Company in Kansas City. When he first went to work for National Oil, it competed with Scofield, Schurmer & Teagle, and Consolidated Tank Line. Republic Oil succeeded to Scofield-Schurmer, and National Oil competed with that firm, and Indiana Standard. He added that Republic Oil had tried to cut into National Oil's trade by giving rebates and cutting price, but did not solicit Indiana Standard's customers, though always ready to solicit customers that had ceased to buy from Indiana Standard. He told how Republic Oil had gotten into a price war with National Oil, and after several ruinous months, had offered to end the competition, and maintain prices.

77Transcript-1907, 398-403 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. Edward Pratt, for example, had worked in Kansas City for a succession of Standard firms that consolidated and traded territories. At no time did any of these companies operate in Waters-Pierce territory. Orders to these various Standard companies emanating from Waters-Pierce's marketing area were sent to Waters-Pierce, or else special arrangements were made to account for such sales.
before reshipping them. Jockel also told of special instructions that he had received concerning his employment.

Mr. Young, the manager of the Newark branch of the Standard Oil Company [of New Jersey], told me that after I had left New York I was to forget that I had been with the Standard Oil Company. Mr. McNall, the commercial agent of the Waters-Pierce Oil Company at 26 Broadway, also instructed me not to mention that I had been with the Standard Oil Company.

There was nothing illegal about those instructions, but it appeared that both Standard Oil and Waters-Pierce were trying to conceal something. 78

Harry Egbert Platt was a clerk at 26 Broadway for Jersey Standard. He worked for W.H. and H.M. Tilford jointly in the connecting office between the two brothers. He saw a great deal of R.H. McNall. Many Waters-Pierce reports came to McNall. Platt was responsible for forwarding some of them to other Standard Oil departments. Letters came to McNall at 75 New Street, the rear entrance to 26 Broadway. McNall often received unsigned letters from various Standard Oil departments, written on Waters-Pierce stationery supplied by McNall, which he would sign and forward to Waters-Pierce. McNall also received letters from Waters-Pierce addressed to him as its commercial agent, along with unsigned and unaddressed carbon copies apparently for redistribution at 26 Broadway. 79

Albert A. Smith, a former stenographer at 26 Broadway, had started at Standard Oil in 1903. Smith confirmed Platt's testimony. Reports from Waters-Pierce, among many other firms, passed through Bemis's office in the Statistical Department regularly, including material on competitors' shipments. Smith took dictation from Standard executives concerning the conduct of Waters-Pierce business, which McNall signed and sent to various departments at Waters-Pierce. This correspondence was on Waters-Pierce stationery, and after McNall signed the letters, they were mailed by their respective Standard Oil departments, which retained carbon copies. Smith had a large supply of

78 Transcript-1907, 403-07 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
stationery with Waters-Pierce's letterhead which he had obtained from McNall for his use as a stenographer. 80

The deposition of Francis D. Carley was then introduced. A dealer in securities in New York, Carley had been in the oil business from 1865 to 1886, operating Chess, Carley & Company, with an interest in Waters-Pierce. Chess-Carley was based in Kentucky and refined and sold petroleum products in contrast to Waters-Pierce, which was only a marketer. Chess-Carley had once competed with Waters, Pierce & Company in Texas but ceased competing once he acquired a twenty percent interest in Waters-Pierce. He sold his interest in Waters-Pierce through W.P. Thompson of Standard Oil and a fellow director of Waters-Pierce. 81

William N. Davis of Kansas City, Missouri, had been in the oil industry for many years, mostly with independents, but he had also been the Kansas City manager for Consolidated Tank Line, a Standard Oil company. Consolidated Tank Line had divided territory with Waters-Pierce. Consolidated agents were not permitted to solicit sales in Waters-Pierce territory, "in order to save any conflict between the two companies," and employees were ordered to observe the freight platforms of various railroads to note shipments from competitors and their destinations; thereafter traveling agents would try to obtain the business of those firms, "even if a cut in price was necessary." He had never encountered Waters-Pierce and Standard Oil working the same locations. 82

80 Transcript-1907, 413-18 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907; Hidy and Hidy, Pioneering in Big Business, 330-32. The Statistical Department at Standard Oil was an outgrowth of the Manufacturing Committee under the supervision of its developer, W.E. Bemis. Aaron Davis, the sole African-American juror, fell seriously ill that day, and was dismissed. Both sides agreed to allow the trial to continue with only eleven jurors.
81 Transcript-1907, 418-21 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907; Williamson and Daum, Age of Illumination, 535-45; Chernow, Titan, 254-55. Carley's reputation as a ruthless, sharp dealer was almost on a par with Henry Clay Pierce, and Standard Oil was only too pleased to buy out the remainder of Carley's interest in Chess-Carley in 1886, having acquired a fifty percent stake in the company in 1873. Kentucky Standard effectively succeeded Chess-Carley. Similar attempts to buy out Pierce failed. Defense counsel Robert Penn tried to enter a several questions and answers from Carley's deposition into evidence that the state had omitted. Judge Brooks sustained Texas's objections to those answers which contradicted evidence to which both sides had stipulated.
82 Transcript-1907, 422-24 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
William A. Morgan of Sedalia, Missouri, and formerly of Kansas City had worked for Indiana Standard at the turn of the century as a traveling salesman and local station agent. He was never in competition with any counterparts from Waters-Pierce. His supervisor had ordered him not to sell in Waters-Pierce territory. Those few times that he did make such sales, he received reprimands, and received no credit for the sales. Standard Oil's management in Kansas City, Missouri, also had instructed him about the Waters-Pierce and Standard Oil territorial boundaries in Missouri.83

Herman R. Knollenberg of St. Louis was an oil salesman for Waters-Pierce as a traveling salesman from 1893 until 1898 in Missouri and Illinois. He too had never run into Standard salesmen in Missouri, and a Waters-Pierce division manager had told him not to cross boundary lines on a Missouri map showing the territorial divisions. Standard Oil forwarded letters from dissatisfied Waters-Pierce customers seeking price quotes from Standard to Waters-Pierce, which assigned Knollenberg to find out why the customers were dissatisfied and then rectify matters so that the business would not go to other companies.84

T.R. Hopkins, of Lawrence County, Missouri, had worked for Waters-Pierce from 1887 to 1903 as an agent in Missouri. Hopkins recalled that in May, 1900 he had received a letter discharging him from the employment of the "old" Waters-Pierce, and in the same mail delivery, a letter hiring him on in exactly the same position with the "new" Waters-Pierce. There was no change in his employment at all; his duties were the same, and nothing had altered about the conduct of business. He even continued to use the same "old" Waters-Pierce stationery but eventually received a rubber stamp to use on the letterheads to indicate that it was the newly incorporated Waters-Pierce. During his employment, he was not aware of any competition with Standard Oil and had been instructed not to sell in Kansas as that was Standard Oil territory. His supervisor had told

83 Transcript-1907, 424-28 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
84 Transcript-1907, 428-32 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
him not to sell in Standard Oil territory, or Waters-Pierce would have to make up the price differential if Standard Oil discovered the sales. Hopkins noticed that in areas with no competition Waters-Pierce's prices were significantly higher than nearby areas with some competition. When Hopkins received orders from customers in Standard Oil territory, he forwarded them to the main office in St. Louis, which would pass them on to Standard Oil. Hopkins recalled that Standard Oil reciprocated on at least one occasion that he handled.85

Robert H. McNall, a portion of whose deposition had already gone into evidence, had proven to be a difficult witness who suffered from a defective memory about his twenty years of work in the oil business. He became H.M. Tilford's assistant in 1895. In 1900 he became the New York commercial of the "new" Waters-Pierce, still housed in H.M. Tilford's office at 26 Broadway.86

When asked about his duties prior to his joining Waters-Pierce, McNall became vague, eventually admitting that he mostly had handled correspondence with companies with which Tilford was associated. He claimed not to know that Tilford was a Waters-Pierce director for some time and could recall no correspondence with Waters-Pierce, a transparent falsehood, but one difficult to prove. Pierce had personally hired him to work for Waters-Pierce. McNall's name remained outside of the same Standard Oil door, with no Waters-Pierce title or designation as commercial agent. He had no idea who paid the rent, or even if any was paid to Standard Oil for the space in its building, and was no clearer about his duties Waters-Pierce commercial agent, which he stated were to "[t]ransact such matters as the home office might send on to me." Though he had worked at 26 Broadway for over twenty years, he insisted that he did not know that Standard Oil had various departments; nor did he know any of the department heads or managers of the

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85 Transcript-1907, 432-36 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
86 Transcript-1907, 436-39 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. Though McNall did not state it, mail to him as commercial agent originally went to 26 Broadway, until he apparently requested that Waters-Pierce send all correspondence to him at 75 New Street starting in 1904, against the advice of the general counsel of Waters-Pierce.
various departments that he dealt with. He had no idea of how Standard Oil's administration operated. 87

McNall could not recall any firms with which Waters-Pierce did business at 26 Broadway. This set of answers prompted the following semi-rhetorical question from Texas's attorney:

Then am I to understand from your testimony that you were employed as the representative and commercial agent of the Waters-Pierce Oil Company from May, 1900 or the early Spring of 1900, up until the Spring of 1906, and that you purchased supplies from parties located at 26 Broadway, and had general business transactions there, and never knew or learned the names of the parties with whom you had dealings?--is that your testimony?

A difficult tale to believe. McNall amended it by conceding that he knew a few Standard Oil people and that he regularly received detailed Waters-Pierce sales and salary reports. He denied receiving other sorts of reports. 88

Lightfoot "refreshed" his memory. McNall suddenly recalled seeing reports on deliveries and various comparative reports. When Lightfoot indicated that he had copy of the report or a letter concerning pricing, McNall admitted receiving pricing reports, but could not explain why he received reports from Waters-Pierce on its dividends, since he held no stock in the company, or why he received reports on Waters-Pierce salaries. He conceded that sometimes others at 26 Broadway saw the reports "as business required." 89

McNall readily admitted that other Standard offices at 26 Broadway wrote on Waters-Pierce stationery, supplied by him, which he signed and forwarded. He signed such correspondence because those letters were written in response to his requests for information from a Standard department. To save effort, he requested responses directly to Waters-Pierce so that he would not have to rewrite the information, "and they very kindly

87 Transcript-1907, 439-44 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. An assertion that a witness could not recall something, or did not remember an event is nearly impossible to charge as perjury, no matter how unbelievable such a lack of memory might be.

88 Transcript-1907, 444-47 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. McNall and Bemis served together on the Export Trade Committee in 1906. McNall and Bemis were the experts on Japan and China respectively. See Hidy and Hidy, Pioneering in Big Business, 495.

89 Transcript-1907, 447-52 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
did that in some cases.” His answers, however, did not credibly explain why the letters were not sent directly to Waters-Pierce on Standard Oil stationery instead of through McNall with his signature on Waters-Pierce stationery. 90

McNall also denied receiving letters from Waters-Pierce for distribution at Standard Oil but granted that he did forward letters to Standard officials nearly every day, the distinction being that they were not specifically “for distribution.” He did not reply when asked if he had requested that the St. Louis office of Waters-Pierce enclose carbon copies of the correspondence sent to him in order to “facilitate matters in sending the letters to the various departments...[at 26 Broadway.]” 91

The deposition again turned to the correspondence that McNall forwarded to Waters-Pierce with his signature, but written by others. McNall denied that they were marked for identification by himself or others, though he subsequently clarified that by stating that they were not marked to show the origin of the letter, but rather where McNall obtained the information, a distinction of such subtlety as to defy reason. He could not remember having ever received statements of accounts that Waters-Pierce owed to the various Standard Oil companies based at 26 Broadway, nor could he recall writing letters notifying Waters-Pierce of such accounts, as he did not keep any accounts in his office. 92

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90 Transcript-1907, 452-55 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. McNall claimed that only Standard Oil’s Purchasing Department and Lubricating Department had Waters-Pierce stationery. Yet earlier he had claimed that he did not know that Standard Oil had departments.
91 Transcript-1907, 454-56 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
92 Transcript-1907, 456-58 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907. McNall explained that marked the letters himself with the initials of his source of information, that is whoever actually wrote the letter, in the upper left-hand corner of the letter. If, for example, he received a letter from the Lubricating Oil Department, he would mark “S.H.P.” for Silas H. Paine or his office. McNall claimed that he assumed that the Waters-Pierce officials in St. Louis would understand this system of showing his sources of information, and recognize to whom the initials belonged. McNall also marked initials in the upper left-hand corner of letters that he might have written himself, if based on information from someone else. Silas H. Paine was a longtime Standard Oil executive in charge of the marketing of lubricants for the western portion of United States from at least 1885, if not earlier, to his retirement in 1907. See Hidy and Hidy, Pioneering in Big Business, 59, 69-71, 232, 330, 478-79.
McNall quit Waters-Pierce in 1906, and thereafter worked for Socony in the Export Department. His new duties involved the "supplying of certain countries with export oil." He denied knowing anything about Socony's "territory," or where it did business. 93

Allen offered into evidence some of McNall's signed correspondence with Waters-Pierce personnel. These letters revealed that McNall had committed many perjuries. For example, McNall had claimed not to know why he received dividend reports, yet he had written to Gruet in 1903 and asked for notice of each dividend. Gruet had been sending the dividend notices attached to the Waters-Pierce cash reports, which McNall apparently rarely examined. Yet he had stated that he examined the Waters-Pierce reports. If he was not reading them or receiving them, others at 26 Broadway were. McNall had also claimed that he did not know why Waters-Pierce salary reports came regularly to him, yet his own correspondence indicated that he discussed proposed salary changes at Waters-Pierce with Van Buren at Standard Oil, who approved raises. McNall also requested that Andrew M. Finlay send him salary lists. Surely he knew why he was requesting those documents. 94

The correspondence verified that McNall received a much broader variety of reports than he had acknowledged in his deposition, including information on competition and price schedules. McNall was closely involved in a great deal of Waters-Pierce's business affairs and decisions, much more so than a mere commercial agent would have been. He and H.M. Tilford, whose assistant he had been, and with whom he still shared an office, were enmeshed in the business operations of Waters-Pierce. 95

McNall's memory continued to be extremely defective. He could not adequately explain the language in some correspondence that suggested that he had regarded himself as a Standard employee. He explained that a letter of August 20, 1900, to Gruet, signed with

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93 Transcript-1907, 458-77 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 1907.
94 Transcript-1907, 458-77 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 26 1907.
95 Transcript-1907, 458-477 TSA RG 302 Box 1989/41-85; Houston Post, May 25, 26 1907. In several of these letters there were references to "we," which would be odd if McNall was writing as the sole Waters-Pierce employee. On the other hand, if the letters were being sent on behalf of Standard Oil, the use of "we" makes more sense, particularly in letters with Henry M. Tilford's initials on them.
H.M. Tilford's signature and McNall's initials, had to have been an oversight on his part—
that he must have written the letter and inadvertently signed Tilford's name above his
initials. McNall granted that he had signed letters for Tilford in the past, though he rejected
the contention that he had done so frequently, which produced this exchange:

Lightfoot(?): And you were so in the habit, you say, of signing them
[letters], that you unconsciously used his signature [H.M. Tilford]
instead of your own?
McNall: I might have signed his name just prior to that to some other letter,
and it was an oversight my signing that.

A possible explanation, but a likely one?

In a portion of McNall's deposition where he was being cross-examined by Waters-
Pierce's attorney Priest, McNall explained that though he was titled a "commercial agent,"
it had little relation to his actual duties, which included whatever needed doing at 26
Broadway. Waters-Pierce had had no other agent in New York, and his office had
handled large transactions as a matter of course, for convenience. Priest had also led
McNall to explain that his memory was so poor because he had had no idea what questions
would be asked of him. Therefore he had not briefed himself on the matters which had
been raised on direct examination. Regarding Van Buren, McNall explained that he knew
him personally, that he was a large stockholder in Waters-Pierce, yet that he did not know
that he was Archbold's son-in-law. Priest helped McNall explain his rather broad duties
and requests for information from Waters-Pierce:

Priest: Now, I will ask you whether it is not true that the most of those
letters which were written by you, without specifically enumerating
them, making inquiries as to the business affairs, the cash, the statement
of salaries, statement of improvements, and all questions of that kind,

96 Transcript-1907, 477-80 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. McNall also
claimed that a person discussed in some of his accounting correspondence, Walter Jennings was a clerk or an
agent for Socony and Atlantic Refining. Jennings (1858-1933) had been a director of Jersey Standard since
1903. Jennings had the good fortune to be born into a Standard Oil family, his father having been an early
investor in Ohio Standard. After graduating college and law school, Jennings had worked at a variety of
Standard Oil companies gaining experience. He spent a number of years at Socony before rising to
membership on the Domestic Trade Committee. He served as a director at Standard Oil of New Jersey from
1903 until 1933, and also as secretary from 1908 until 1911. In addition, Jennings had been the first
president of Republic Oil, which had not interfered with his other work at 26 Broadway. He was not credible
that McNall did not know who Jennings was. See Hidy and Hidy, Pioneering in Big Business, 314-18;
Wall and Gibb, Teagle of Jersey Standard, 46; Gibb and Knowlton, The Resurgent Years, 689.
were not inquiries which you were asked to make as the Eastern representative of the Waters-Pierce Oil Company in the interest of the shareholders of that company, either Mr. Van Buren or the Standard Oil Company of New Jersey?

McNall: Yes, sir.

Priest: And those inquiries were made, as a matter of course, assuming that the home office at St. Louis, if they were improper, would not answer them, and if they were proper would answer them?

McNall: Yes, sir.

More leading questions would be difficult to imagine. They also failed to explain why a Waters-Pierce commercial agent would be answering shareholders' questions. Their source of information should have been the Waters-Pierce board of directors.97

Under Lightfoot's redirect questioning, McNall continued asserting an inability to recall anything substantial regarding business transacted between Waters-Pierce and various Standard Oil concerns, or what firms and people worked at 26 Broadway. He could recall one firm there not connected to Standard Oil, Jessup & Lamont, stockbrokers. To refresh McNall's memory, Lightfoot showed him a phone directory for 26 Broadway. Lightfoot raised the question why Waters-Pierce needed a New York commercial agent when Pierce's office was convenient to 26 Broadway. It remained unanswered.98

Allen tried to introduce into evidence a set of documents that had been included in the state's petition. They included agreements of October 5, 1894 between Waters-Pierce, A.W. Clem, and the Eagle Refining Company, and derivative records. Stedman repeatedly made objections to this material. He said that the documents predated the "new" Waters-Pierce by nearly six years and the statutes for which it was being prosecuted; that they were generally irrelevant and immaterial to any of the state's allegations; that the agreement was an executed contract, completed well before the existence of the "new" company; and that the whole question had been litigated in the 1897 ouster suit. Allen alleged that both the

97 Transcript-1907, 480-84, 496 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Recall that Van Buren did not register his "ownership" of Waters-Pierce stock until 1904, and that it was not formally transferred to Jersey Standard until even later. Therefore McNall should not have provided purported shareholders with information until after the transfers were registered on the Waters-Pierce books.
98 Transcript-1907, 484-502 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. The firm of Jessup & Lamont in fact handled a variety of stock and bond matters for executives of Standard Oil, including a few shady deals a few years later involving the bonds of oil companies in Texas.
"old" and "new" Waters-Pierce had operated Eagle Refining as a pseudo-competitor, a shill or "blind tiger," until 1904. As for the defense argument that the 1897 case had made the matter moot, Allen conceded that in theory there was an executed contract, but insisted that

The courts have repeatedly held that the Legislature may, after a contract has been made, provide that the carrying out of a contract of that nature may be a violation of the law, where it is a continuing contract and calls for something to be done in the future by the parties.

Judge Brooks allowed the Eagle Refining agreements to be introduced in evidence.99

According to them, Eagle Refining, an Ohio corporation, sold its assets in Texas to Waters-Pierce for $10,494.19 in 1894, including goodwill, and the exclusive right to use its name, brands, and trademarks in the territory in which Waters-Pierce operated. Eagle Refining agreed not to engage in the petroleum business in Waters-Pierce territory for fifteen years. Waters-Pierce agreed to retain A.W. Clem, the Dallas agent of Eagle Refining, as an employee for three years at $250.00 per month. In fact Waters-Pierce kept Clem on as de facto head of Eagle Refining until 1904, while operating it ostensibly as a separate, independent company. But after the 1897 ouster suit against Waters-Pierce became public knowledge that Waters-Pierce owned Eagle Refining and Waters-Pierce terminated Eagle Refining in 1904.100

S.K. Wheeler, assistant general manager of Waters-Pierce, noted that as its "general representative" in 1903-1905 he had traversed the important cities of Texas, with authority to instruct managers regarding operations such as extending bulk deliveries to new areas, making capital improvements, and employing agents. Wheeler claimed that he did not know then that Clem or Roy Campbell, who operated another pseudo-competitor, were Waters-Pierce employees, even though he had the power to hire or fire the

99 Transcript-1907, 502-06 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907.
100 Transcript-1907, 503-06, 609-31 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907; Adams, Waters Pierce Case, 24-25.
representatives of Waters-Pierce. He had only recently heard that Eagle Refining was a
front for Waters-Pierce.101

Wheeler's superior, general manager Charles P. Ackert, set prices for petroleum
products in Texas. Unable to obtain the price change records from Ackert, Texas's
attorneys asked Wheeler about how prices were determined. Ackert set the prices in
consultation with other corporate officers, and occasionally Wheeler filled in for Ackert.
Wheeler stated, in essence, that competition in a region set the prices, but conceded that
competition was not the only factor. Under prodding, Wheeler admitted that the price of
crude oil was the primary factor in pricing, outside of competition. On redirect
examination, Johnson inquired what companies were competing with Waters-Pierce in
Texas. Wheeler named some smaller independents.102

Clay Arthur Pierce's deposition followed. Pierce had worked for his father's
company since 1898 starting off as assistant treasurer for the "old" firm and was re-hired as
assistant treasurer for the "new" Waters-Pierce, becoming president in 1905. Pierce
explained that Waters-Pierce ordered petroleum products directly from its suppliers'
refineries. The large Standard refineries at Whiting, Sugar Creek, and Neodosha supplied
Waters-Pierce, but refineries in Texas and Louisiana supplied most of the needs of Texans.
In addition to purchases from Corsicana Refining and Security Oil, Waters-Pierce bought
some refined products from Gulf Refining and The Texas Company. When asked if the
latter two firms were Standard Oil refineries, Pierce claimed ignorance.103

101 Transcript-1907, 506-508 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Roy
Campbell had operated the Texas Oil and Gasoline Company, which Waters-Pierce had also purchased and
operated as a shill. Both Clem and Campbell were on the Waters-Pierce payroll and Wheeler should have
known this unless upper management was trying to keep their employment a secret to preserve the illusion
that Eagle Refining and Texas Oil and Gasoline were independent. This suggests that public knowledge
that Eagle Refining was part of Waters-Pierce was not widespread despite the McLennan County and 1897
antitrust suits. Wheeler did not know that Clem had worked for Waters-Pierce until the former became
assistant general manager.

102 Transcript-1907, 508-16 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907.

103 Transcript-1907, 516-18 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. As assistant
treasurer, C.A. Pierce had also acted as secretary for the Executive Committee during its limited existence
(1900-1904), and had been one member of a three-person sub-committee which recommended prices in
Texas to the full Executive Committee for its final approval. The other two members of the sub-
committee had been Andrew M. Finlay and C.P. Ackert.
Young Pierce apparently did not know about Waters-Pierce business although its president. He claimed to know nothing of the territorial agreement between the "old" Waters-Pierce and Standard Oil, whose existence H.C. Pierce had admitted, or about "the practical workings of any agreement" regarding territory, or what his father had testified, not having read the testimony or attended much of Missouri hearings. All that he knew was "that we sell oil in such territory where we are equipped to handle it and sell it, and that there is other territory that we do not sell it." This did not explain why Waters-Pierce had never expanded to new areas, or why he had never discussed the subject with his father. Clay A. Pierce also was not aware of any territorial disputes relating to Texas since 1900. The state's attorney questioned Pierce about arrangements between Waters-Pierce and Standard Oil for the former to supply customers that had contracts with other Standard Oil firms. Again, Pierce claimed ignorance. The Lubricating Department of Waters-Pierce set the prices for transactions with shippers. It was relatively autonomous, and its manager had considerable authority to handle matters as he saw fit. In each instance Standard Oil sent a special request for Waters-Pierce to supply the ships. Kansas Standard did not dictate prices to Waters-Pierce, but only indicated what prices the Standard customers would pay. If the prices were agreeable, Waters-Pierce supplied the petroleum products and charged them to Standard Oil's accounts; if not, Waters-Pierce indicated what prices it favored, and Standard could accept or reject. Orders by customers outside of Waters-Pierce's territory would either be passed along to the proper Standard company as a courtesy, or quoted a price f.o.b. St. Louis. Standard generally reciprocated with orders in Waters-Pierce's territory.104

On direct examination John D. Johnson had the young Pierce clarify several matters, including the Waters-Pierce organizational structure. After stepping down as

104 Transcript-1907, 516-23 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Waters-Pierce supplied fuel oil and other petroleum products to steamers at ports along the Texas Gulf Coast that had contracts with Standard companies. Waters-Pierce also had an arrangement with Kansas Standard to supply the Central Coal & Coke Company in East Texas.
president. H.C. Pierce remained as chairman of the board of directors, still active in the management of Waters-Pierce. C.A. Pierce would regularly pass along "...matters as I have found advisable to refer to him for final decision." Those decisions were invariably final. H.C. Pierce also received the minutes of the Executive Committee, "and controlled the company through action taken there." Why did reports go to Standard Oil? Pierce answered enigmatically:

I have understood, without knowing, except through the testimony as it was presented through the Missouri case, that the Standard Oil Company owned about two-thirds of the stock of the Waters-Pierce Oil Company, and as such owner I have always understood that the Standard Oil Company had the right to ask for such statements as a two-thirds stockholder or a majority stockholder would be entitled to, and for that reason statements were sent to them at their request.

But until 1904 H.C. Pierce held all the stock on record. Standard Oil was not officially a stockholder. It was not entitled to exert majority stockholder's rights to request statements and reports.105

Allen next offered Andrew M. Finlay's deposition into evidence. Finlay confirmed the sequence of events involving Tinsley's election as Waters-Pierce vice-president, and his departure and resignation, soon after Missouri filed suit against Waters-Pierce in March 1905. Finlay explained that sales orders were handled by C.M. Adams's department upon request by the general manager. Regarding Texas orders, Finlay stated that Standard refineries both in Texas and elsewhere supplied most Waters-Pierce's needs.106

Finlay went into great detail about pricing practices. Among the factors that Waters-Pierce considered were "[t]he cost of oils..., freight, and local conditions, cost of

105 Transcript-1907, 523-28 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Andrew M. Finlay became president of the "old" Waters-Pierce not long before its dissolution in May, 1900, succeeding H.C. Pierce. Upon the organization of the "new" Waters-Pierce, H.C. Pierce resumed the presidency and held that position until February, 1904, when Andrew M. Finlay again took over as president. Finlay remained president until June 22, 1905. R.P. Tinsley, the Standard Oil agent, became vice-president on April 28, 1904, and resigned on June 22, 1905. On June 22, C.A. Pierce became president. From Clay Pierce's description of how Waters-Pierce operated, his father still ran the company, and he was more like a vice-president than the president. H.C. Pierce actually held 3,996 out of 4,000 shares on the record, as the other four directors of Waters-Pierce each had to hold at least one share to qualify as a director.

106 Transcript-1907, 528-31 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Finlay stated that Waters-Pierce also purchased refined products from Gulf Refining and The Texas Company. Like C.A. Pierce, he had no idea if Standard Oil controlled those companies.
marketing, handling and everything that pertained to the cost of the oil before it is marketed." The state's attorney insisted that the major factors in pricing were "the cost to you, including freights and markets, and the original refinery costs" and competition (or lack thereof). Finlay agreed that this was correct, again emphasizing local conditions as a separate factor.107

Yet quizzed further about pricing, Finlay admitted an astonishing ignorance for a company president and vice-president. He adamantly denied that Standard Oil fixed Waters-Pierce prices for lubricants and greases; claimed not to know that the head of Standard Oil's Lubricating Department, Silas H. Paine, had any contact with Waters-Pierce, much less fix its prices. But correspondence from McNall to Waters-Pierce bore Paine's initials, indicating that Paine had either written the letter or given McNall the information. Insisting that the initials meant nothing to him, Finlay denied knowing anything about how McNall obtained the information that he sent to St. Louis. Finlay had never bothered to investigate these matters because H.C. Pierce, "a very large stockholder," had hired McNall, and had told Finlay to provide him with whatever information he desired.108

Finlay denied McNall was representing Standard Oil, though H.C. Pierce had so testified. He explained in a roundabout fashion that most orders for products handled through McNall concerned lubricants, not refined oils, which Finlay handled, hence his lack of contact with the commercial agent. He denied that he had known in advance that orders placed with McNall would be placed with Standard firms. Could he remember any order not supplied by Standard Oil "or some of its allied companies[?]" Answer: he did not know what firms were "allied" to Standard Oil. He averred that he knew nothing about

107 Transcript-1907, 531-34 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907. Standard Oil price quotations on lubricants and greases went to Stephen Johnson, the manager of the Waters-Pierce Lubricating Department, while quotes and schedules on refined products went to Finlay via McNall in New York. As president, Finlay had participated in the consultations concerning prices along with C.A. Pierce and Ackert, which were passed to the Executive Committee, then to general manager Ackert, who passed the prices along to division managers.

108 Transcript-1907, 534-36 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907.
such matters, and that he had made no inquiries into it. Finlay was an executive of Waters-Pierce for nearly nineteen years, and if true, his lack of knowledge was abysmal.\textsuperscript{109}

Finlay confirmed that A.W. Clem and Roy Campbell had been employees of both the "old" and "new" Waters-Pierce, operating pseudo-independent companies until 1904. His discussion on the termination and rehiring of Eagle Refining's employees in May 1900 as part of the dissolution and reorganization of Waters-Pierce was illuminating:

State: They were discharged by the old company, and in the same mail were employed by the new company?  
Finlay: That is a legal proposition that I have nothing to do with.  
State: You were the President. Didn't you write the letters?  
Finlay: Mr. Pierce and Mr. Johnson handled that.  
State: But you were President of the old company at that time that it went out of existence?  
Finlay: I presume that letters were sent out that way.  
State: Didn't you send out letters under your signature discharging those employees [sic], and don't you know that Pierce sent a letter at the same time employing them in the same capacity and for the same salary in the new company?  
Finlay: I think that is correct.

Though Finlay was president, Pierce still ran the company, and the reorganization changed nothing of substance.\textsuperscript{110}

Johnson's redirect examination of Finlay had shown that McNall's original mailing address as commercial agent in 1900 was 26 Broadway, with no attempt to conceal it. Not until 1904 at McNall's request had his mailing address altered to 75 New Street, a change against the advice of Waters-Pierce's general counsel. The desired implication was that if anyone had concealed matters, it had been Standard, not Waters-Pierce. It also showed, however, that Standard had control over Waters-Pierce. His memory refreshed, Finlay elaborated to Johnson about price quotes on products that Waters-Pierce purchased for resale. Waters-Pierce obtained price quotes from Standard and independent oil companies.

\textsuperscript{109} Transcript-1907, 536-39 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 26, 1907. Finlay pointed out that Pierce was a large stockholder, but Jersey Standard held much more stock than Pierce in Waters-Pierce and presumably would have had more influence in the selection of the Waters-Pierce commercial agent in New York. While Standard's interest in the company was not recorded until 1904, that lack of officially holding the Waters-Pierce stock had not prevented the company's managers and agents from supplying Standard with whatever reports and information that it desired.

\textsuperscript{110} Transcript-1907, 539-43 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 26, 1907.
McNall sent Finlay quotes on the export prices from New York, including those on refined products, not only lubricants as he had previously testified.\textsuperscript{111}

Prosecutors compensated for Finlay's alleged lack of knowledge of the Lubricating Department by deposing Stephen Johnson, former long-term head of that department. The septuagenarian Johnson, now retired from Waters-Pierce, had worked for H.C. Pierce since the 1870's, marrying Pierce's sister and becoming manager of the Lubricating Department. When questioned about the pricing of products from his department, he noted that Waters-Pierce produced some of the lubricants and greases that it sold itself, but "quite a large extent" of so-called "trade mark brands" were manufactured by various Standard Oil companies.\textsuperscript{112}

The witness denied that Standard Oil's Lubricating Department had set the Waters-Pierce resale prices, claiming that he "almost always" had set them himself. He conceded that perhaps "some of the trade mark brands...had minimum prices" Paine set directly, or through McNall. Waters-Pierce seldom priced those products below that minimum. He denied that he "invariably conformed to... prices" to avoid trouble with Standard, and explained that he followed Standard's "suggested" prices if they were "consistent with our ideas of the profits that we could make on the oils." Waters-Pierce would lower prices below Standard's minimums when necessary to "hold the trade." Confronted with McNall's correspondence, Johnson conceded that his Lubricating Department occasionally received price "suggestions," but maintained that otherwise he promulgated prices without external suggestions.\textsuperscript{113}

In calculating prices, Johnson stated that principal elements were the cost of the oil, transportation, and a profit margin "that was warranted, in order to compete with other

\textsuperscript{111} Transcript-1907, 543-46 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 26, 1907.
\textsuperscript{112} Transcript-1907, 547-51 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 26, 1907. Waters-Pierce manufactured only low-grade lubricants and greases, and not much of those.
\textsuperscript{113} Transcript-1907, 551-53 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 26, 1907. One of the reasons that Standard allegedly set minimum resale prices was to avoid creating several different prices for the same product in nearby areas.
dealers." Sometimes the profit margin was negative, and Waters-Pierce sold below cost. Under redirect examination by John Johnson, Stephen Johnson again denied that anyone in the Waters-Pierce Lubricating Department had any "understanding" with anyone at Standard Oil concerning resale prices of Standard lubricants. Johnson had little more to add.114

A lively debate surfaced over Texas's demand that the defense lawyers produce all correspondence between Waters-Pierce and Roy Campbell, about his management of the Texas Oil & Gasoline Company, and on the suppression of competition. Penn argued that the statute undergirding the demand was unconstitutional. Waters-Pierce had provided some documents to the state's attorneys because John D. Johnson had promised to do so, not because of the Texas's discovery statutes for antitrust suits. Anyway, the defense lawyers did not have any documents that Texas demanded. Batts countered. The defense lawyers did possess other correspondence relevant to contracts between Waters-Pierce, Campbell and/or the Texas Oil & Gasoline Company, and denied that the demand for documents depended on the antitrust statute referred to by Penn, adding "We had not expected the Waters Pierce Oil Company to obey the law." Batts asked Judge Brooks for a subpoena duces tecum to serve on the defense attorneys, Penn replying that he would waive it, and that he and his fellow counsels were ready to swear that they did not have any such papers and proclaimed that the state's demands were a violation "of the confidential relation between counsel and client." Penn's assertion of the attorney-client privilege made little sense. If Waters-Pierce had such documents, it would have to produce them when properly demanded. Turning discoverable documents to the firm's lawyers did not make them privileged documents.115

Judge Brooks allowed the state's lawyers ten minutes to prepare a subpoena duces tecum specifying the documents that they wanted. Lightfoot, Allen, Brady, and Batts

114 Transcript-1907, 553-56 TSA RG 302 Box 1989/41-85; Houston Post, May 26, 1907.
115 Houston Post, May 26, 1907. Essentially attorneys cannot help clients conceal evidence subject to discovery.
presented a generalized demand to Penn for all correspondence relating to contracts between Waters-Pierce, the International Oil Works, Roy Campbell, and The Texas Oil & Gasoline Company, and relating to contracts between Waters-Pierce, A.W. Clem, and Eagle Refining. After extracting a defense promise that all relevant documents the defense had would appear in court, Brooks adjourned for the weekend.116

116 Houston Post, May 26, 1907.
CHAPTER 4: TERMINATING A TRUST

I have talked with hundreds of business men, lawyers, manufacturers and farmers in every section of Texas, and I state it as an absolute fact that I have never heard a bitter expression against the Waters Pierce Oil company or against Mr. Pierce.

Frederick Upham Adams, The Waters Pierce Case in Texas (1908)

I. Blind Tigers Bite Back

When court reconvened on May 27, 1907, Judge Brooks called for the defense counsels' reply the writ of duces tecum. Penn and his co-counsels declared that the Waters-Pierce correspondence, documents, and books had been given to them in their professional capacity to prepare for litigation. The defendant could not be compelled to produce evidence against itself, and its attorneys likewise could not be so coerced in proceedings which were penal in nature. The case at hand was quasi-criminal. Waters-Pierce could not be forced to incriminate itself, and the attorney-client privilege shielded them from having to produce the items in question. Stedman then requested that he and his co-counsels be sworn in as witnesses, and Brooks obliged him.¹

Stedman put John D. Johnson on the witness stand, by now a familiar spot for the attorney. He admitted that he had some papers relating to Clem and Campbell but was unable to state that they were documents which the vague writ of duces tecum had requested. These documents had come into his possession in the course of his preparation of the defense for this case. Cross-examining Johnson, Batts asked if the lawyer-turned-witness had papers covered by the writ. Johnson politely refused to answer until Judge Brooks ruled on whether or not he had to reply. Brooks asked both sides to argue this issue. Stedman asserted that an attorney could not be compelled to turn over evidence that a client did not have to produce, including books and papers entrusted to his care by the client, unless the client gave such documents and books to the attorney to prevent their production in court. This would be an illegal and unethical collusion. Judge Brooks noted

¹Houston Post, May 28, 1907. The suit was brought under the civil antitrust statutes, not the criminal statutes, but the defense lawyers were arguing that the penalties facing Waters-Pierce were so severe that the case qualified as being quasi-penal in nature.
that the first issue was whether the attorney-witness had to disclose what documents and books were in his possession. Encouraged, the defense lawyers added that the writ of duces tecum had not sufficiently identified any of the papers the state sought, and that Texas did not even know if such documents existed. Under these circumstances the writ did not suffice.\(^2\)

Not so, Judge Brooks ruled. Texas's lawyers could interrogate the defense attorneys regarding documents they had relating to subjects in the writ, in that way enabling the court to determine if those documents were of a character that they had to be produced. Johnson had no correspondence relating to Campbell or the Texas Oil & Gasoline Company, though he did have some contracts. He possessed correspondence between Clem and Waters-Pierce, and several contracts with Clem. Johnson refused to identify other documents or books in his possession, claiming that he was acting on advice of counsel and on his own views of the defendant's rights. The state's attorneys asked Johnson for correspondence of Finlay, Ackert, or Gruet, Sr. referring to the Campbell contract. He refused to answer such a general probe at first but then declared that he had no such correspondence. Texas's attorneys asserted that the court could compel Johnson to state if he had any documents concerning the contracts in question. Judge Brooks sided with the defense. Texas's lawyers then asked Johnson whether or not he, as an attorney, was familiar with the contracts between Waters-Pierce and Campbell or Texas Oil & Gasoline. The witness again refused to answer, expressing surprise that the state would ask such a question. Batts argued that because Johnson was the attorney for Waters-Pierce, he was familiar with its contracts, and could use this knowledge to avoid producing documents called for by the writ of duces tecum, but whose existence the State might not be aware of. In short Johnson used his knowledge of the contracts and documents, \(^2\)Houston Post, May 28, 1907.
coupled with his legal acumen, and the state's lack of information to circumvent the
discovery request by splitting "legal hairs."\(^3\)

Troubled by this controversy, Judge Brooks explained that he would rule on this
issue only reluctantly. But it had arisen and could not be avoided. He noted that the
legislature had only recently passed the statute on which its attorneys were relying. It gave
Texas "access to the character of every paper specified in this subject [antitrust],...the right
to require its production and also to go into the office of the defendant and make copies
thereof." Therefore the defense must turn over all documents, letters, and books relating to
the subjects contained in the writ.

The defense produced only three items: letters from Finlay to Clem, from Finlay to
Adams, and a contract between Eagle Refining and Waters-Pierce. Unsatisfied, Batts
vigorously condemned the defense for failing to produce all requested material. Brooks
pointed out that it was difficult to produce that which had not been described and implied
that he was not going to let the state waste any more time fishing for material whose
existence was uncertain. Yet he gave permission for the prosecution to issue another writ
of duces tecum, presumably one that would be more detailed.\(^4\)

Removed for the duration of the arguments between the attorneys, the jury now
reentered the courtroom. The state summoned its main witness for the day, Royer "Roy"
Campbell, who in 1893 had organized the Texas Oil & Gasoline Company as an
unincorporated company. A retail marketer selling directly to consumers, he did well
enough at first to add two 10,000 gallon storage tanks in March 1894 to branch out into
wholesale marketing. He faced considerable competition chiefly from his former supplier,
Waters-Pierce, which had stopped selling to him once he received tank car shipments from
the Independent Oil Company of Oil City, Pennsylvania.\(^5\)

\(^3\)Houston Post, May 28, 1907.
\(^4\)Houston Post, May 28, 1907. See Appendix for the relevant statutes on discovery in antitrust cases.
\(^5\)Transcript-1907, 556-60 TSA, RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Campbell had
lived in San Antonio since 1893, shortly before he had gone into the oil business. As of May, 1907 he
was an agent for the Onion Growers of South Texas, as well as managing several farms that he owned. The
Lightfoot asserted that Waters-Pierce destroyed competition by cutting its local prices in half after Campbell bought from an independent supplier, maintaining low prices which forced him to sell out and become a shill for Waters-Pierce. Judge Brooks overruled defense objections to questions about Waters-Pierce prices, and Lightfoot continued. Campbell then recalled that the wholesale oil price prior to receiving his first independent oil products was sixteen or seventeen cents per gallon. Waters-Pierce immediately cut its wholesale price down to twelve cents per gallon, and eventually down to eight to ten cents per gallon. Campbell characterized competition with Waters-Pierce as "[v]ery vigorous," while Lightfoot referred to it as "warfare." Campbell explained that the most powerful weapon that Waters-Pierce had turned on him was pricing. Waters-Pierce cut prices again and again, which it could easily afford to do in one location, using its market power and broad marketing area to offset any temporary losses that a local price war would cause.\(^6\)

Campbell added that Waters-Pierce established a local firm, the Consumers' Oil Company, to shill for it, and compete for the retail trade. It was managed by a Mr. Schunke, the brother-in-law of Louis Fries, the Waters-Pierce manager in San Antonio and a friend of Campbell's. Agents of Consumers' Oil followed Campbell's tank wagons to identify his customers, and then solicited their business, even trying to sell oil to Campbell's wife at his own house. Lightfoot asked the witness to explain how his company charged higher prices than Waters-Pierce, and still retained customers, leading to a hearsay objection from Odell. Judge Brooks overruled, resulting in the following exchange:

Campbell: Well, I claimed at that time, and I think that I was right, that I was selling better oil than they were, and there was a natural tendency, I think—

Brooks: Do you expect to prove prejudice against the defendant?

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Texas Oil & Gasoline Company was one of the few marketers which had tank wagons like Waters-Pierce, which were much more convenient for customers. Campbell fell out of favor with Waters-Pierce in the Spring of 1894.

\(^6\)Transcript-1907, 560-61 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Campbell sold out to Waters-Pierce in October 1894, only seven months after his business had done well enough for him to purchase two 10,000 gallon storage tanks.
Lightfoot: Well, Your Honor, the purpose of the testimony is to show that at that time it was known that he [Campbell] was an independent oil dealer there and that the Waters-Pierce Oil Company was trying to crush him out of business, and that a good many people patronized him and paid him these higher prices because of the fact that the Waters-Pierce Oil Company had enjoyed a monopoly prior to that time.

The Court: The objection will be sustained.

Brooks correctly recognized that the question and answer were not relevant, served only to prejudice the jury against Waters-Pierce, and to make the witness more sympathetic.7

A sharp battle ensued when Lightfoot tried to question Campbell about the ownership of Consumers' Oil. Judge Brooks sustained most of the defense objections. Questions Campbell answered indicated that he was a friend of Louis Fries, despite the competition between their respective firms. Fries was then in charge of all of Waters-Pierce's business operations in San Antonio, and they had discussed the struggle between the Texas Oil & Gasoline Company, and Waters-Pierce and Consumers' Oil. Fries "desired to eliminate trouble for himself [that] I was causing the Waters-Pierce Oil Company there at that time." Arguments between the attorneys on both sides so heated that Judge Brooks had the jury retire again. The state wanted to show that Fries, as an agent of Waters-Pierce, had told Campbell that his employer had created Consumers' Oil to wipe him out of business. That conversation had led to negotiations and the eventual sale of Texas Oil & Gasoline to Waters-Pierce, thereby driving out competition. Odell pointed out, repeatedly, that the alleged conversation went far beyond the scope of Fries's authority to bind the company; "...a thing that he could not know anything about by reason of the scope of his employment--powers that he derived by virtue of his agency." Allen retorted that sales and competition were within the scope of Fries's duties, and that his brother-in-

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7Transcript-1907, 561-63 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Consumers' Oil's prices were on a par with those of Waters-Pierce's prices to consumers, approximately four cents per gallon less than the Texas Oil & Gasoline Company charged. People who were not willing to buy from Waters-Pierce at a lower price were willing to buy from a company perceived as independent. Fries was native Texan, born and raised around San Antonio. He joined Waters-Pierce on August 15, 1887 as an agent at Laredo, Texas. He remained in Laredo for thirty-nine months before moving to San Antonio to be the local agent there, serving in that capacity for three years, and then rising to become assistant manager. Within one year Fries was a manager, based in San Antonio, and eventually relocated to the South Texas Division as manager there in September 1903.
law managed Consumers' Oil, a part of Waters-Pierce. Judge Brooks ruled that "[a] declaration made while doing that [overcoming competition], that he was doing it through the instrumentality of another company, would be a statement within the scope of his duties." He overruled the objection, Odell excepted, and the jury returned and Campbell's testimony resumed.8

Campbell had many conversations with Louis Fries concerning the oil business. He asserted that Fries had repeatedly urged him to make a deal with Waters-Pierce to sell out or Consumers' Oil Company would drive him out of business. Arthur M. Finlay, a Waters-Pierce division manager and another Pierce brother-in-law also encouraged Campbell to try to come to terms.9

Eventually Campbell sold out to Waters-Pierce, transferring the property on October 1st, 1894. Lightfoot then tried to enter the agreements into evidence, an action Odell objected to because the instruments predated the existence of the "new" Waters-Pierce and of relevant Texas antitrust statutes, and therefore were "immaterial and irrelevant." In 1894, he said

...they came within the law and were not in violation of either the law or good business morals at the time they were entered into, and are calculated to prejudice the rights of the defendant here, as being offered as a circumstance to show that they were in violation of the present laws that were enacted years after they were entered into.

Lightfoot found the relevant allegation in the state's amended petition, which claimed that the contracts were made "for the purpose of creating and maintaining a monopoly...and for the purpose of destroying all competition." Judge Brooks overruled the objections,

8 Transcript-1907, 563-69 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
9 Transcript-1907, 569-71 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Stedman objected to the use of Finlay's predictions, as he had no apparent or actual authority to make them. Judge Brooks agreed, sustained the objection, and ordered the jury to disregard Campbell's testimony about Finlay's statements to him about Consumers' Oil.
Stedman excepted, and Lightfoot read the "Synopsis of Agreement" into evidence before the jury.\textsuperscript{10}

This document did not endear Waters-Pierce to the jury. By its terms, Campbell agreed to sell the property and goodwill of the Texas Oil & Gasoline Company, for which Waters-Pierce agreed to pay a cash sum, and put Campbell on its payroll. Campbell agreed "to continue the Texas Oil and Gasoline Company's business in San Antonio locally, as long as they [Waters-Pierce] think necessary, under their direction, and for their account," and "not to re-enter the oil or gasoline business at any time in the future, without the consent of the Waters-Pierce Oil Company;..." provided his temporary position became permanent. On its face that agreement would have been void, or at least unenforceable at law or equity regarding the perpetuity of the anti-competition clause.\textsuperscript{11}

Before introducing the contract, Lightfoot noted that Section 2 of the defendant's original copy of the contract was scratched out. That section had been part of the original contract when Campbell signed it in 1894. After being discharged by the old Waters-Pierce when it dissolved in May 29, 1900, and promptly rehired at the same position at the same salary by the "new" Waters-Pierce, Campbell received Arthur M. Finlay's instructions that he take his copy of the contract to Fries, who would alter it by scratching out Section 2. Lightfoot then read the 1894 contract into the record. Similar to the Synopsis of Agreement, it specified monetary sums, and Campbell's agreement not to compete against Waters-Pierce now spanned a period of fifteen years. This latter provision was the core of Section 2, which Fries had struck out in the amended contract. Odell objected that it was not part of the amended contract and therefore inadmissible. Lightfoot countered. He planned to show that the business operations had not changed between 1894 and

\textsuperscript{10} Transcript-1907, 571-74 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. The trial court in the 1897 ouster case had held that the similar agreement between Waters-Pierce and Eagle Refining did not violate the antitrust laws of Texas. See Adams, Waters-Pierce Case, 24-25.

\textsuperscript{11} Transcript-1907, 574 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Contractual agreements not to compete following the sale of a business, or in an employment contract are enforceable only if they are reasonable in duration, scope, and area of effect, and not made for an improper purpose. Campbell's was unreasonable in duration, and hence would have been void, or unenforceable as a matter of public policy.
Campbell's discharge in 1904, and that Section 2 of the contract had continued in force after the "new" Waters-Pierce organized. Judge Brooks overruled the objection, and Odell excepted.

The Consumers' Oil Company, formed to exert pressure on Campbell, did not long survive the Campbell-Waters-Pierce agreement. It went out of business less than four months later, its equipment returning to Waters-Pierce, its supplier during its brief existence.12

Campbell explained that he had ordered his supplies and petroleum products from Waters-Pierce. They arrived in International Oil Works tank cars, not those of Waters-Pierce, or in Union Tank Line cars. One time a Waters-Pierce tank car was sent to the Texas Oil & Gasoline Company rail tracks. It was promptly removed, unemptied, after Campbell notified Waters-Pierce officials of its presence. The organization of the "new" Waters-Pierce barely affected the Texas Oil & Gasoline Company. Campbell put up a small sign on the stable that read "Waters-Pierce Oil Company." The sign was a mile from the center of town, inside the fenced property inaccessible to the public. There was no similar sign at the main office. Waters-Pierce never paid taxes on the San Antonio property; instead taxes were paid in the names of Campbell or the Texas Oil and Gasoline Company.13

The witness testified that he routinely, sometimes daily, reported to Waters-Pierce officers including Gruet, Adams, Arthur and Andrew M. Finlay, and Ackert. In addition to balance sheets and sales figures Campbell also provided information on competition in his area, though, as he observed, "we always had reports, but [often] no competition." When potential competitors emerged, he was under orders to gather intelligence and report it to St. Louis. If he discovered that "one of the fold [was] straying away, patronizing

12 Transcript-1907, 574-78, 583 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. There was no consideration on either side for the alteration to Campbell's contract by Fries in May 1900.
13 Transcript-1907, 578-80, 593 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. The petroleum products sent to Clem in Union Tank Line cars came from Corsicana Refining.
competition...[.]" then Waters-Pierce or Texas Oil & Gasoline would aggressively solicit the defectors, especially those customers who "had some grievance against the Waters-Pierce Oil Company." It did not matter which of the two firms got the business, as "we were all the Waters-Pierce Oil Company." 14

Campbell sent reports to Waters-Pierce on stationery with the heading "R. Campbell Division." Other reports were written on ordinary, unmarked stationery. The mailing envelopes for Waters-Pierce were blank, with no return address. It was impossible for an observer to tell that it came from Campbell or the Texas Oil & Gasoline Company, and letters from Waters-Pierce to Campbell had no external writing to show origin. 15

Some competition persisted in San Antonio. George Rice, an ardent foe of Standard Oil, had a local agent, Sam G. Eckols for some time. Another long-term competitor was John Locke, who set up a storage tank and distribution center in 1900. If a customer deserted Waters-Pierce or Texas Oil & Gasoline for them, Campbell stated, "we would get after him; in some instances we paid rebates to hold the trade." Texas Oil & Gasoline never competed against Waters-Pierce after the takeover in 1894. Campbell's firm was to pursue "the disgruntled fellows...[a]nti-trust shouters[,]" people opposed to Waters-Pierce, who thought that the Texas Oil and Gasoline Company "was all right." Occasionally agents of Texas Oil & Gasoline would try to sell to Waters-Pierce customers "to make a showing," or to make their sales quota. The Texas Oil & Gasoline Company received the credit for the sale, but "the money went to the Waters-Pierce Oil Company." Campbell kept close track of the competition and passed the information to Fries, who would compile statistical reports. For example, Campbell and his agents would spy on railroad shipments to independent dealers to determine how much oil and refined products they were handling and selling. Odell objected. There was nothing illegal about keeping track of competition. The purpose of this line of inquiry was to prejudice the jury against

14 Transcript-1907, 580-82 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
15 Transcript-1907, 583-84 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Waters-Pierce sent the stationery to Campbell from its headquarters in St. Louis.
his client. Lightfoot replied that this intelligence gathering and statistical compilations helped Waters-Pierce destroy its competition more easily and efficiently, "by a system of rebates and other things...and complete the monopoly which we have alleged that that method of trading that concern brought about." Judge Brooks overruled Odell's objection, and the subject turned to pricing, just where Lightfoot wanted to go.16

Campbell testified that after he sold out to Waters-Pierce, prices "kept on stair-stepping it up..." to a high point in 1896 nearly three times the price in September 1894. Prices did go down after that, and fluctuate a bit, which Campbell attributed to competition, though he facetiously remarked that perhaps decreases were due to "the inclination of the Waters-Pierce Oil Company to sell it cheap." Generosity to consumers was not in H.C. Pierce's nature. Executives in St. Louis set Campbell's prices, and not surprisingly, they usually matched those of Waters-Pierce, though at times the former's prices were lower to secure the business of "certain disgruntled fellows in the trade...chronic kickers." Waters-Pierce terminated Campbell's employment in March, 1904, and Texas Oil & Gasoline. Its property was turned over to its owner, Waters-Pierce.17

Campbell's direct testimony was extremely damaging to Waters-Pierce, both from a substantive legal view and from the perspective of jury reaction. For the defense, Odell had Campbell discuss other competitors in San Antonio. Locke had been in the oil business for many years prior to 1900, an implication that he had survived competition with Waters-Pierce, whereas Campbell had not been able to do so. With respect to the contract with Waters-Pierce, and the altered version of 1900, Campbell admitted that he had consented to the change, even if it was evoked by instructions from St. Louis. Asking about the sign which stated that Texas Oil and Gasoline was actually the property of Waters-Pierce proved to be detrimental:

Odell: ...Then on your warehouse you put up a sign, "Waters-Pierce Oil Company"?

16 Transcript-1907, 584-85 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
17 Transcript-1907, 586-93 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
Campbell: Yes, sir.
Odell: To give notice to the world that the warehouse was the property of the Waters-Pierce Oil Company?
Campbell: Yes, sir—and we put it under the eaves where nobody could see it.
Odell: Where nobody could see it?
Campbell: Except they went into our yard they could not see it, no sir.
Odell: Well, when they got in your yard they could see it?
Campbell: We didn't allow them in there—we had a high fence there.
Odell: Allowed nobody in there?
Campbell: Nobody but interested parties [i.e., employees]....
Odell: Was that the only sign you had anywhere?
Campbell: Yes, sir, only one reading "Waters-Pierce Oil Company."....
Odell: ...You gave instructions where to put it?
Campbell: Yes, sir.
Odell: Did you get instructions from any one about it?
Campbell: Yes, sir.
Odell: Who from?
Campbell: From some St. Louis official; I think it was Arthur Finlay.\(^\text{18}\)

Odell found a more fertile defense field. He interrogated Campbell about his motives for testifying for the state. Waters-Pierce terminated Campbell in 1904; in 1906 he sued his former employer. He denied Odell's insinuations that he had met with Gruet to discuss bringing his [Campbell's] suit against Waters-Pierce. He had written to Gruet about his plans to sue Waters-Pierce, but apparently Gruet did not write back, which had caused some harsh words to be exchanged when the pair met during the Bailey Investigation.\(^\text{19}\)

Did Campbell have an "understanding" with Gruet for the latter to testify in Campbell's suit, in return for Campbell's testimony in the state's case? Campbell declared that he had never asked Gruet to testify, and that Gruet had not solicited his testimony, and had not promised to help him in his litigation in San Antonio. Campbell did obtain Gruet's deposition, though not as a trade, and Gruet had suggested that Campbell would be "a valuable witness...in the prosecution of the State in this ouster case." Odell continued to press the witness to admit that he had had extensive contact with Gruet about suing Waters-

\(^\text{18}\) Transcript-1907, 593-98 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.

\(^\text{19}\) Transcript-1907, 598-603 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
Pierce. Campbell refused to admit this. However, he had filed suit against Waters-Pierce in San Antonio within a few weeks of having seen Gruet in St. Louis.\(^{20}\)

Having eroded Campbell's credibility by exposing his dealings with Gruet, whose own veracity had been tainted by the discovery of his forgeries in the Bailey Investigation and of his arrangement to share in the proceeds if the State won the case at hand, Odell continued to attack Campbell. The former oil man admitted that he had been on good terms with Waters-Pierce even after his termination in March 1904, to the point that he had regularly sought re-employment with that company for some time. Odell was trying to imply that Gruet had talked Campbell into filing a suit against Waters-Pierce out of spite and greed. Campbell mildly replied that "my feet got cold on the company before that." By the end of 1905 he no longer cared to seek employment with them. His income in 1906 through farming and his work with the onion farmers had been $10,000, a sum far greater than his salary from Waters-Pierce had ever been. He had no grievance against Waters-Pierce until he learned that his "alleged friend" Ackert had spoken out against retaining him. Odell had made his point: Campbell had a grudge against Waters-Pierce and reasons for testifying beyond altruism. Campbell left the witness stand.\(^{21}\)

Lightfoot followed this live witness with the deposition of H.J. Cohn, St. Louis oil salesman. Cohn had been a Waters-Pierce office boy, division auditor, and salesman under Cyrus L. Ackert, manager of the firm's Missouri Division. To Cohn's knowledge, Standard did not sell petroleum products in Waters-Pierce territory, and Waters-Pierce did not sell outside of its territory.\(^{22}\)

Cohn had also worked for the firm in Marshall, Texas, the Waters-Pierce divisional headquarters for its East Texas-Louisiana Division, encompassing East Texas, and nearly all of Louisiana west of the Mississippi River. He testified that he never met any

\(^{20}\) Transcript-1907, 598-603 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
\(^{21}\) Transcript-1907, 603 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907.
\(^{22}\) Transcript-1907, 604-05 TSA RG 302 Box 1989/41-85; Houston Post, May 28. 1907. Cyrus L. Ackert was a cousin of Henry Clay Pierce, and probably the brother of Charles P. Ackert, who eventually became general manager and a director of Waters-Pierce.
competition or representatives from other Standard Oil firms. He added that Corsicana Refining Company and Security Oil sold no oil products in that area to Waters-Pierce competitors.23

Lightfoot then produced the deposition of Harry C. Arnold, a Jersey Standard accountant at 26 Broadway. He was familiar with Waters-Pierce and McNall, describing the latter's position as nothing more than "[a] general clerk[.]") The subject turned to Tinsley, who in 1904, Arnold testified, was still officially a New York City resident and connected with Socony, though also in St. Louis and vice-president of Waters-Pierce. Arnold explained that he had sent instructions and forms for reports to Tinsley, presumably to ensure the standardization of accounting forms required of Standard Oil firms.24

Next day the state called A.W. Clem as witness. Clem estimated that Eagle Refining was shipping about 40,000 barrels of petroleum products per month in Texas until he ran into severe competition from Waters-Pierce. For example, in 1891 at Seymour nearly all of Clem's customers refused to accept delivery of orders unless he met the price of Waters-Pierce. One of his customers that reneged sold Waters-Pierce's oil at retail for less than Clem's wholesale price. Clem never tried to compete in Seymour again. Everywhere Eagle Refining sold oil products, Waters-Pierce undercut its prices.25

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23 Transcript-1907, 605-06 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. The companies which supplied Waters-Pierce were all Standard Oil companies, though Galena Signal Fuel Oil had a good deal of autonomy, and Standard Oil considered Corsicana Refining more as a private venture of executives Calvin N. Payne and Henry C. Folger, not bothering to keep the records of its output in the Standard Oil archives. Texas and the U.S. Department of Justice disagreed with that view, however. John O. King, Joseph Stephen Cullinan: A Study of Leadership in the Texas Petroleum Industry, 1897-1937 (1970), 51-53; Hidy and Hidy, Pioneering in Big Business, 415 n.3, 770 n.10.

24 Transcript-1907, 606-09 TSA RG 302 Box 1989/41-85; Houston Post, May 28, 1907. Harry C. Arnold was in charge of the Accounting Department for Marketing at Jersey Standard, having helped to establish it in 1904, though it was devoted principally to matters for Jersey Standard itself, not other Standard Oil companies. He was a longtime Standard employee that had also previously worked at Socony and Atlantic Refining, and had known McNall for twenty-five years. See Hidy and Hidy, Pioneering in Big Business, 330. In addition to sending accounting instructions and form books, Arnold send a "Mr. Preston," an accounting expert, to Waters-Pierce on several occasions to assist Tinsley in bringing Waters-Pierce's records and books in line with Standard Oil's practices.

25 Transcript-1907, 609-20 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Clem had started his career in the oil trade as an agent of the Eagle Refining Company of Cleveland, Ohio, marketing petroleum products principally in Dallas and the surrounding region. Between 1890 and 1894 the Eagle Refining Company had had three 6,000 gallon storage tanks in Dallas, and delivered products by iron barrel, lacking tank wagons at that time. In the incident at Seymour, Clem had shipped a tank car of oil based on
Clem and Eagle Refining sold out. Waters-Pierce bought out Eagle Refining's interest in its territory, and prices increased in the Dallas area over a five month period from approximately nine and a half cents per gallon for the highest grade of oil, to twenty-two cents. At Eagle Refining, there was no noticeable change in the business after Waters-Pierce took over. Now an employee, not a boss, Clem managed Eagle Refining with the same employees, equipment, and office, completely separate from local Waters-Pierce facilities.26

Travis County Attorney Brady next questioned Clem about the October 1894 contract between Waters-Pierce, Eagle Refining, and Clem. Under its terms, all Eagle Refining officers and Clem agreed not to engage in the oil business in Waters-Pierce territory for fifteen years, and the Dallas office became, in effect, a wholly-owned subsidiary of Waters-Pierce. In December 1903 Waters-Pierce terminated Eagle Refining.27

Eagle Refining never competed with the parent company, expanded its territory, sought business from Waters-Pierce customers, or moved into areas already dominated by Waters-Pierce. Clem had orders not to do these things. All money Eagle Refining made went to Waters-Pierce. Waters-Pierce paid Clem's salary and Eagle Refining's bills, while keeping its ownership of Eagle Refining as quiet as possible, especially after the ruckus raised during McLennan County and 1897 antitrust suits. Yet "Eagle Refining Company" remained on the letterhead of the stationery; the equipment was in its name, and taxes were paid by and for the Eagle Refining Company. After the 1894 takeover, Clem made "daily reports, and weekly reports, and monthly reports, and semi-annual reports, and all kinds of reports" to the officers and executives of Waters-Pierce. Most of Clem's reports went to Gruet, Sr.. Clem identified copies of reports and correspondence that he had sent, many of

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26 Transcript-1907, 613-16 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
27 Transcript-1907, 620-22 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
which were in his "private letter-book" which he used sometimes for Waters-Pierce business. Clem's correspondence with Waters-Pierce went on blank stationery and blank forms that had, at most, "Home Office" printed on them, and everything went in plain envelopes with no return address. In turn, he received Waters-Pierce correspondence in similarly plain envelopes with no return address. All these tactics were to prevent prying eyes from learning of connections between Eagle Refining and Waters-Pierce. 28

In 1903, C.A. Pierce and C.P. Ackert met with Clem in the local offices of Waters-Pierce. They informed him that because Eagle Refining was losing money, a decision had been made to shut down its operations. Given the restrictions on its operations, it is not surprising that Eagle Refining was unprofitable. Pierce and Ackert promised Clem that Waters-Pierce would give him a new post, as a salesman, a job incurring a substantial cut in pay. 29

On the issue of Eagle Refining's losses, Clem explained that profits had been at the same low rate for two to three years prior to the decision to shut it down. He had frequently complained about the restrictions that Waters-Pierce imposed on his efforts to win Eagle Refining more business, but Clem was not permitted to attract Waters-Pierce customers, only to hold on to his old trade, with no price discretion. Those orders came directly from H.C. Pierce and Finlay. In fact, Clem was told to raise his prices in areas where Waters-Pierce also sold to "[t]ry to lose the trade." The result was that Eagle Refining's customer base steadily declined. 30

Brady questioned Clem about the oil industry conditions in Texas between 1894 and 1903. After Waters-Pierce bought out Eagle Refining in 1894, Clem recalled, there

28 Transcript-1907, 622-30 TSA RG 302 Box 1899/41-85; Houston Post, May 29, 1907.
29 Transcript-1907, 622-30, 639-41 TSA RG 302 Box 1899/41-85; Houston Post, May 29, 1907. From 1894 to 1897 Clem received $250 per month, or $3,000 per year. He took a voluntary pay cut of $500 per year after that, reducing his salary to $2,500 per year until Eagle Refining shut down. His salary as a city salesman for Waters-Pierce was only $2,000 per year. The experiences of John P. Gruet, Sr., Clem, and the other employees of Eagle Refining showed that Waters-Pierce, or more likely H.C. Pierce personally, rewarded loyalty by finding positions for each of the above when their old jobs had to be eliminated. Alternatively, Waters-Pierce might have merely been trying to buy the silence of these employees.
30 Transcript-1907, 626-31 TSA RG 302 Box 1899/41-85; Houston Post, May 29, 1907.
had been virtually no competition in North Texas. Then the Wyse Oil Company started operations which spread over Texas and the Indian Territory. Next, the Southwestern Oil Company, a refining and marketing firm, was organized in 1899 with backing from the influential Texas business mogul John Henry Kirby, who was one of its directors. Clem described Southwestern as "quite active competitors of the Waters-Pierce Oil Company for the last three years that I was in business." Clem was seemingly unaware that the Southwestern Oil Company had become a wholly-owned subsidiary of the Houston Oil Company in 1901, though still with its own officers and directors.\(^{31}\) Southwestern ceased operations in 1904 and 1905, and the Wyse Oil Company had shifted most of its efforts from the oil to the paint business. The Richardson-Gay Oil Company had leased a refinery at Corsicana in January 1903, and were still operating in 1907. Having established that some competition faced Waters-Pierce, Brady asked Clem how much of the trade it controlled in North Texas, the area with which he was most familiar. Clem had no idea.\(^{32}\)

Shifting tacks, Brady asked how the "new" Waters-Pierce affected the Eagle Refining's operations. "[N]o change at all," Clem replied, adding that the U.S. Supreme Court decision in the 1897 Waters-Pierce antitrust suit had troubled him. His lawyer advised him to ask Waters-Pierce for instructions. John D. Johnson had replied that Clem should do business as usual.\(^{33}\)

After resigning from Waters-Pierce in early 1904, Clem became an independent marketer, and had dealings with another Standard affiliate, Security Oil. It and other Standard companies apparently blacklisted him, quoting him wholesale prices that exceeded the retail price in Dallas.\(^{34}\)

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\(^{32}\) Transcript-1907, 632-35 TSA RG 302 Box 1989/41-85; *Houston Post*, May 29, 1907. Regarding Houston Oil's ownership of Southwestern Oil, see King, *Houston Oil Company*, 62, 73-76.

\(^{33}\) Transcript-1907, 635-37 TSA RG 302 Box 1989/41-85; *Houston Post*, May 29, 1907.

\(^{34}\) Transcript-1907, 637-39 TSA RG 302 Box 1989/41-85; *Houston Post*, May 29, 1907.
On cross-examination, Odell quizzed Clem about his connection to Eagle Refining. Clem obligingly recounted his history with the firm before and after Waters-Pierce acquired it. The defense counsel elicited from Clem that Waters-Pierce cut his salary sharply when it closed Eagle Refining, and hired him as a city salesman in Dallas, which gave him reason to harbor a grievance against the company.\textsuperscript{35}

Did Clem remember the suits against Waters-Pierce in Waco and Austin in 1895 and 1897? Clem had testified in the criminal cases at Waco and his deposition was taken for the civil antitrust suit, which led Odell to observe that the connections between Waters-Pierce and Eagle Refining had therefore been public and there was no concealment of Waters-Pierce ownership of the Dallas firm. Indeed, the relations between the two had been published in newspapers. Waters-Pierce could not have been operating Eagle Refining as a "blind tiger." The public knew that the latter was a subsidiary of the former. Clem agreed that the information had been published, but added, "at the same time there are a great many people that don't read the newspapers, and I didn't make it my duty to go out and tell them of this." Odell continued to try to chip away at Clem, pointing out that Eagle Refining had been losing money, therefore the decision to terminate it made business sense, and that when Eagle Refining was independent, Clem had made an exclusive dealing contract, similar to that which resulted in Waters-Pierce's ouster in 1900. Odell pointed out that Clem's exclusive dealing contract in Lancaster forced other merchants either: (1) to buy from Clem's competitor, Waters-Pierce; (2) to purchase at a mark-up from Clem's retailer; or (3) not to have any oil or petroleum products.\textsuperscript{36}

Odell also devalued the testimony of H.A. Dennett, who had provided Clem with a damaging letter from Andrew M. Finlay, at a time when Dennett was a "number tramp" of the M.K. & T. Railroad, whose track ran alongside Clem's office. Did Clem know that

\textsuperscript{35} Transcript-1907, 639-41 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
\textsuperscript{36} Transcript-1907, 641-44 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Clem testified in the Hathaway case in December 1895, and presumably was deposed in the Henry and Stribling's civil antitrust case in McLennan County, though he did not testify at trial.
Dennett had stolen the letter from Waters-Pierce? Clem stated that the letter had been addressed to Dennett, and seemed to be personal. He paid $2.50 to Dennett for the letter, and canceled a $2.50 debt as well. Odell put a nasty spin on the matter, asking several times if Dennett had put a price on other letters. Clem denied this. Dennett had merely told him that he had some other good letters and never offered to show them to him or to sell them. Clem showed the letter to several people, including some oil men, and ultimately to Lightfoot.37

Clem stated that he was testifying because Lightfoot had asked if he would come voluntarily, implying that he would otherwise be subpoenaed. Clem did not know that he could not be compelled to appear in a civil matter. Odell asked what Clem was being paid by the state. Clem replied that he thought he deserved to be reimbursed for his car fare from Dallas to Austin, and added that as a witness he thought he might receive a dollar per day. Apparently he had not cut a deal like Gruet, despite what Odell tried to suggest, and he was not testifying for money, though his chances in his own lawsuit against Waters-Pierce would probably be improved by a favorable outcome in the state's case.38

Odell continued unsuccessfully to try to discredit Clem as a witness. Why had Clem torn pages from the letterbook when he resigned from Waters-Pierce's employ? Clem had cut pages from "a personal book of my own" which he kept at home. He had kept copies in order to prove that he had turned over to Waters-Pierce all Eagle Refining's property for which he was responsible. Half the correspondence in the disputed letterbook was personal. Odell questioned Clem's motives, implying that he had kept the letterbook in case he decided to sue Waters-Pierce, asserting: "you deliberately kept this book for the purpose of some future use." Clem repeated that he had kept the book to protect himself, as he was responsible for the final inventory of materials. The defense lawyer's

37 Transcript-1907, 644-47 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
38 Transcript-1907, 647-48 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
persistence in attacking Clem backfired. Clem came across as honest and plain-speaking, and Odell as a word-twisting shyster:

Odell: [You] [p]ut them [personal letters] in the same book with the company's letters?
Clem: I had put these in my book, not the company's book; put them in my book; I consider that personal business, those last reports, because when the Eagle Refining Company [had] taken its flight all business relations or correspondence ceased between the home office and A.W. Clem Company. Now I preserved those there in case the auditor should come around and say that here is seven or eight hundred dollars which you ought to have on June 30th; what have you done with it. I have got those to show I sent it in. It is the only pay records that I kept there because I was responsible to the company for everything, and in that, if you will examine it, you will find it is a general inventory of everything turned over, and I kept it to protect myself.
Odell: Well, if you kept it for that purpose, what did you cut it out and bring it down here for?
Clem: Well, I knew that I would be questioned about the character of reports I made up there and the question has been asked what character of reports we made to St. Louis.
Odell: You knew what was going to be asked you?
Clem: Well, I supposed it would be; it has been asked me.
Odell: Why didn't you bring the book and not mutilate it?
Clem: The book is too large to carry in my pocket, and I didn't think it amounted to much, and in fact as evidence it hasn't, as far as that is concerned. That is why, and now if you want to know the character of reports that we made to the home office, there they are right there, every one of them.39

Odell tried to get the him to admit that he held a grudge against Waters-Pierce for driving him out of business, and then for their harsh competition against Clem's independent company. Clem confessed that their severe undercutting of prices resulted in merchants reneging on orders had been "enough to make a man feel hot." But he had not remained "hot." He left Waters-Pierce in 1904 "with a kind feeling toward them," adding that he sympathized with Waters-Pierce's legal troubles, to which Odell retorted that Clem had been "helping work this case up." Clem denied allegations that he had seen a lawyer to promote litigation efforts, for he had "a very kind feeling toward the company and sympathized with it," and repeated the disclaimer that he had left Waters-Pierce on good terms. Clem had given Lightfoot the Dennett letter because Lightfoot had requested it.

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39 Transcript-1907, 648-50 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
Odell's attack on Clem was partially successful. Having scored lightly, Odell shifted focus again.40

He asked Clem about oil companies then operating in Dallas. There were four or five, Clem replied, including his own, and he would only state authoritatively that his was actually independent. Among the others Gulf Refining did not yet have a plant in the area. Only Waters-Pierce and Clem Oil had tank wagons in Dallas, which put them in a superior marketing position. Odell made his point: despite allegations that Waters-Pierce was a monopolist, competitors operated. With respect to Waters-Pierce's relationship to Eagle Refining, Odell got into the record the fact that a site sign read, "A.W. Clem, Agent of the Waters-Pierce Oil Company." H.C. Pierce had personally ordered Clem to post the sign. Waters-Pierce had not tried to hide its control of Eagle Refining, or trick the public.41

Brady's redirect examination amplified and clarified points that Odell had raised. Referring again to the sign, Clem stated that in its original location it was visible only from a distant railroad track. After it was rehung, it was theoretically visible from a street car one block away, but not to the average person. Given these visual limitations, the sign could hardly have informed many that Eagle Refining was run by a Waters-Pierce agent.42

About his role in the Waters-Pierce litigations, Clem testified that his previous testimony in the 1897 ouster suit was a well-known matter of public record. As for "helping get up the case," Clem stated that Lightfoot had sought him out, not the other way around. Had he been promised anything, directly or indirectly, beyond traveling expenses that he had earlier stated that he hoped to receive, in return for his present testimony? No,

40 Transcript-1907, 650-52 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. It was possible that Clem sympathized with Waters-Pierce's legal woes, but had responded to Lightfoot's inquiries out of a sense of duty and justice, not revenge.

41 Transcript-1907, 652-54, 656 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. The firms that Clem stated as still operating in Dallas besides Waters-Pierce were: the Clem Oil Company, Gulf Refining, the Independent Oil Company, the Oriental Oil Company, the Ira O. Wyse Oil Company, and the Richardson-Gay Oil. Wyse Oil no longer sold much in the way of refined products and lubricants, but rather sold mostly paint.

42 Transcript-1907, 654-55 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. The lettering of the sign had "A.W. Clem" in two-inch high letters, and "Agent of Waters-Pierce Oil Company" in one inch high letters, much less visible from one block away.
Clem replied: he was promised "nothing whatever." He had used his letterbook only to provide a few copies for the present case.43

II. Suspect Substitutes

The state summoned C.W. Cahoon to the witness stand, but only after four other witnesses, all employees of Waters-Pierce, failed to appear in court. A resident of Dallas and manager of the Waters-Pierce Central Texas Division since January 1, 1903, Cahoon had worked for both the "old" and "new" Waters-Pierce companies since 1888, steadily climbing up the corporate ladder. Concerning the reports that he made to Waters-Pierce's home office, Cahoon declared that he sent an "absolutely correct record" of his division's sales and whatever information his employees and agents provided to him concerning competitors. At that time the Waters-Pierce Central Texas Division received most of its supplies from Corsicana Refining, but earlier from the Standard refinery at Neodosha, Kansas. He never ordered directly from the refineries; rather, orders went to headquarters, presumably for approval, then to the various suppliers.44

Brady focused on Corsicana Refining's dealings with Waters-Pierce. Cahoon was quite familiar with the refinery's products and its superintendent/manager, Edwy Brown. Did Waters-Pierce consume the entire output of Corsicana Refining? Cahoon conceded eventually that "we have handled a very large percentage of the output[,]" and his division alone tried to obtain the entire output of the highest grade. But all orders went through St. Louis, never directly to a refinery. He had no control over purchases. He could only

43 Transcript-1907, 655-56 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
44 Transcript-1907, 656-60 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. The four Waters-Pierce that failed to appear when summoned to testify were: Louis Fries, a divisional manager; Charles P. Ackert, general manager; Andrew M. Finlay, vice-president; and Charles M. Adams, treasurer. Fries had been attending the trial, but had been suddenly called away on urgent business, and would later return. Ackert was in his Austin hotel room, and would arrive in court that afternoon. As for Finlay and Adams, the defense lawyers declared at that time that their absence would be explained in the return to the writ of duces tecum filed to compel their attendance. Cahoon also stated that his division had also received shipments from Security Oil and Gulf Refining, but not for some time.
recommend purchasing from Corsicana, if only to lower freight costs. All orders went through St. Louis, never directly to a refinery.45

Brady then sprang a trap. Cahoon claimed not to remember what his division had marketed in January 1906, guessing about 15,000 barrels of Eupion, its highest grade of oil. Brady refreshed his memory. A copy of a letter written by the witness in mid-January 1906 showed a figure of 52,000 barrels of different grades of oil sold. The figure was incorrect, Cahoon declared, he did not recall writing it. Overcoming defense objections that the letter lacked authentication, Brady made Cahoon recall Brady's own visit to Cahoon's office, when the witness had his stenographer copy documents and letters the state had requested and provide copies to both the state and defense lawyers. Suddenly Cahoon's memory revived. Corsicana Refining production figures in the letter were likely correct, though he still could not recall writing that letter but conceded that he probably had done so. Brady tried to submit copies of Cahoon's correspondence into evidence. The defense objected that these documents were irrelevant and immaterial, "only indicative of the company's method of doing business; it is private correspondence of the company…" and did not show or illustrate any illegal acts or purposes. Brady pointed out that the state's petition alleged that Corsicana Refining was a Standard Oil company in a conspiracy with Waters-Pierce.46

Judge Brooks excluded two letters from Cahoon to Ackert, but otherwise overruled the objection and allowed the other matter into evidence. Batts, however, wished to enter one of the excluded letters, that of December 4, 1905, into evidence on another theory. In order to try it, he had to read the letter to the court. Judge Brooks briefly removed the jury. The petition had alleged that the defendant had engaged in a variety of illegal, anti-

45 Transcript-1907, 660-65 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Corsicana Refining produced three grades of refined products: White Water ("W.W.") Oil, the highest grade; Prime White ("P.W.") a medium grade; and Standard White ("S.W.") a lower grade. Waters-Pierce marketed W.W. under the trade name of "Eupion," and Cahoon's division allegedly marketed Eupion almost exclusively.
46 Transcript-1907, 665-69 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. It became clear that Cahoon's division purchased nearly all of Corsicana Refining's products at all grades. Eupion was Waters-Pierce's trademark brand of the highest grade of oil, made from Water White quality oil.
competitive practices "...by its underhand method of doing business, of taking advantage everywhere by misleading people and for the purpose of absolutely destroying competition of every character," Batts averred. Evidence had shown, and Pierce himself had testified, that the firm won business because of the high quality of its products, particularly Eupion. The disputed letter of December 4, 1905, would show

[T]hat whenever it could be done, that an inferior quality of oil was put in and sold as [high-grade] Eupion Oil; and especially where they were compelled, by reason of competition, to reduce the price of oil, that they immediately sold an inferior grade of oil as Eupion Oil....I would hate to designate it as swindling, but it is certainly a very sharp practice; and that this sharp practice is a part of the general business of destroying competition....It is just one of those circumstances that go to make up their business—all of their business being directed to the absolute destruction of competition.

This switching enabled Waters-Pierce to cut prices below that of the competition without losing money. Judge Brooks noted that the letter merely asked permission of Waters-Pierce management to sell a lower grade product as Eupion, not that permission had been granted. This was correct, Batts replied. The state intended to show that recommendations from the Waters-Pierce division manager at Dallas were ordinarily followed by the Waters-Pierce manager in St. Louis. Judge Brooks, however, determined that, "the letter is more calculated to arouse the prejudice of the jury on an immaterial matter, than on the question as to whether the antitrust law has been violated." Accordingly, he sustained the objection, and excluded the letter, and the jury returned.\textsuperscript{47}

Brady then read five of the six letters that had been admitted in evidence to the jury. They generally dealt with Corsicana Refining's output, local demands of the oil trade, and regional marketing conditions. Concerning the labeling of products, and market shares and competition, Cahoon was the information conduit to the Waters-Pierce home office. Although his positions gave a good idea of the "new" Waters-Pierce's market share, Cahoon could provide only "an approximate idea" of it, which he estimated at eighty percent. Pressed, Cahoon added that the estimate was only for 1906, not the average since

\textsuperscript{47} Transcript-1907, 669-71 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 29, 1907.
the formation of the "new" company in 1900. Brady had evidence of higher market shares: from eighty-two to eighty-eight percent of refined products sold in 1903-1904. Concerning gasoline in 1903, Brady wondered if Waters-Pierce's share was not near ninety-five percent. Cahoon repeatedly claimed that he did not know. Was anyone else furnishing Waters-Pierce with statistics and other data. No, Cahoon replied. Despite his ignorance, somehow Waters-Pierce had this information. It became the source for similar market share figures in Commissioner of Corporations Herbert Knox Smith's report on the petroleum industry, officially submitted to Congress on May 20, 1907.48

The oil man insisted that the market share of his Division was only eighty percent for the last year, though he conceded that competition had been steeper and fiercer in the past two years, which could account for a figure lower than those of 1903 and 1904. Cahoon admitted that as supervisor he was responsible, in his territory, for meeting the competition. Cahoon sent agents' reports on competition and business to St. Louis. When asked how Waters-Pierce met competition in his area, he asserted piously that the firm did not generally cut prices to meet the competition, instead relying on excellent service, high-quality products, and reputation. He strongly denied frequent price-cutting, or systematic rebates and discounts. But when faced with evidence that his correspondence files regularly dealt with rebates and discounts, his response was a tepid claim of ignorance.49

Brady shifted his inquiry to Waters-Pierce product lines. Cahoon's division marketed two brands of refined oils, Eupion and Brilliant, the former being the highest grade and selling wholesale for three cents per gallon more, and retailing about five cents more than the latter. He claimed to have no idea what the cost difference was at the refinery, an odd bit of ignorance for a man in his position. Brady wondered if Waters-Pierce had sold lower grades of oil as Eupion, the highest grade of product. Odell

48 Transcript-1907, 671-74 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907; United States Bureau of Corporations, Report on the Petroleum Industry, Vol. 1 (1907) 300-05. The Bureau of Corporation compiled statistical tables on the dominance of Waters-Pierce in its marketing areas drawn from tables supplied to it by Waters-Pierce. If anything, Brady's figures on Waters-Pierce were too conservative.
49 Transcript-1907, 674-76 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
objected that such a practice was not illegal or a violation of antitrust law and that the sole purpose of the question was to inflame the jury and prejudice it. The objection was overruled, and Cahoon answered. This practice had occurred only once for a sixty day period in 1906. He was careful to provide an answer that could not be cited as perjury by limiting it to the best of his knowledge.50

Brady then asked how the "new" Waters-Pierce differed from the "old." All that seemed to change, Cahoon replied, was the date of incorporation on the company stationery. He worked as before the dissolution, and his salary remained the same.51

Jumping to Waters-Pierce contracts and the contract forms, Brady stipulated that the contracts that he had inspected were "regular contracts made by your company in the course of its business," thereby getting some examples into evidence. Not all, however. Brady had tried to get a contract between Waters-Pierce and the Greenville Water Company into the record. In it Waters-Pierce bound itself to supply all of Greenville Water's requirements for lubricating oil for a year. The defense objected to its admission in evidence, because Texas courts had held on multiple occasions that such requirements contracts were legal and proper, and therefore the contract was irrelevant and immaterial. Brady agreed that such contracts were not necessarily illegal, but rather that contracts in which a buyer bound himself to buy exclusively from one seller for a period was a tactic Waters-Pierce used frequently to achieve its illegal objective of monopolization. Noting that the contract did not violate the law, Judge Brooks sustained the objection, and Brady shifted to standard forms, rather than specific contracts.

He gave Cahoon a copy of Waters-Pierce Form 707-G, and asked him if he recognized the final contract clause, and its relevance to the proceedings, which he did.

50 Transcript-1907, 676-78 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Cahoon's division had sold lower grade oil as Eupion because Waters-Pierce had been unable to get a supply of Water White from Corsicana, or apparently anywhere else. He denied that meeting competition had had anything to do with the decision to sell the lower grade oil as Eupion. The oil man granted that he might have written the home office about substituting Prime White and Standard White for Water White as Eupion to deal with competition at some time, but he could not recall having done it.
51 Transcript-1907, 678-81 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
The clause in question made the agreement effectively a requirements contract, like the excluded one with Greenville Water. According to Cahoon, these agreements were typically of one year duration, a few longer, and the customer supplied the estimated amounts.\textsuperscript{52}

Brady then tried to submit into evidence a letter of Cahoon's to Ackert in St. Louis, the first of a group of such letters. Penn objected. Argument engaged the lawyers of both sides. The letter, dated February 10, 1906, concerned a wholesale grocer who wanted a rebate to do business with Waters-Pierce. Cahoon had advised Ackert to authorize a lower rebate to secure the grocer's business. This would drive the Richardson-Gay Oil Company out of the area, and Waters-Pierce increase prices in several locations. The defense lawyer asserted that nothing in the letter indicated that Waters-Pierce had acted on Cahoon's suggestion. For the state, Batts countered that Ackert's testimony would prove that the Waters-Pierce management had acted on the proposal.\textsuperscript{53}

Judge Brooks admitted the letter. It showed the proper weight to give Cahoon's testimony. Brady then read the letter to the jury and offered several more into evidence to the same effect, and in one of these letters, Cahoon had suggested that Waters-Pierce buy up the gasoline being produced and sold by The Texas Company and Gulf Refining, thereby preventing those gasoline supplies from coming on to the Texas market for sale by competitors.\textsuperscript{54}

Next, Brady queried the witness about prices and competition, suggesting that Waters-Pierce prices were lower in areas of aggressive competition and higher where Waters-Pierce had an effective monopoly, or less vigorous competition. Cahoon conceded that at many locations in his territory competition played a factor in lower prices, though he would not admit that it was the prime factor regulating prices. Brady hammered at the point

\textsuperscript{52} Transcript-1907, 681-84 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 29, 1907.
\textsuperscript{53} Transcript-1907, 684-85 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 29, 1907.
\textsuperscript{54} Transcript-1907, 685-86 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 29, 1907.
that Ackert had the final authority on price increases and decreases, with Cahoon only making recommendations, which Cahoon admitted were usually followed.55

Odell cross-examined Cahoon concerning the allegedly unchanged business methods after the Waters-Pierce reorganization, and the lack of efforts to disguise its operations. Cahoon briefly described how Waters-Pierce marketed its products and explained that it could not have changed its basic methods of marketing and stay in business; it required the same equipment, plants, and employees. There was no gain in changing the stationery, forms, labels, or trademarks, so no changes were made.56

Cahoon discussed Waters-Pierce facilities and equipment compared to those of their competition. Essentially he explained that Waters-Pierce provided greater convenience, less mess and waste from leakage, and reliable service to most of rural and urban Texas; and these advantages enabled it to maintain its prices. Waters-Pierce had much more of everything than its competitors: more storage, plants, warehouses, transportation, employees and agents spread throughout Texas, with large supplies to meet almost any demand.57

Odell switched to the "new" Waters-Pierce's policy regarding prices cuts. According to Cahoon, Waters-Pierce policy was not to cut prices "until it became a

55 Transcript-1907, 686-91 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
56 Transcript-1907, 691-94 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Cahoon described the majority of Waters-Pierce marketing as follows:
Well, the oil is shipped to the various stations in bulk in tank cars, and the very large percentage of deliveries are made by tank wagons; in some territory practically all by tank wagons. We not only deliver to the local trade that way, but in many places we deliver to every little town within a radius of fifteen and sometimes twenty miles of the central station, and the oil is measured into the country merchant's tank just as in the city.
As Odell pointed out, there had not been any recent major innovations in marketing technology since Pierce began using tank wagons.
57 Transcript-1907, 694-99 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. In Cahoon's Central Texas Division, nearly all of the competition, save for a few companies like Clem Oil, relied on wooden or iron barrels for deliveries, whereas Waters-Pierce had numerous storage stations and tank wagons. Barrels, particularly wooden ones, leaked which meant a loss of oil, and consequently a higher per gallon effective cost to purchasers. Purchasing a barrel also meant that a merchant had to buy in fifty gallon quantities. Waters-Pierce's tank wagons could dispense as little as five gallons, up to as much more as the merchant might want. In the Central Texas Division, Waters-Pierce had one hundred and two tank stations and eighty-five tank wagons, whereas all competitors combined had perhaps twelve tank stations and ten tank wagons.
question of meeting a competitor's price or permanently losing the trade."
Prices were rarely reduced to a competitor's level, Waters-Pierce's service and reputation being enough to keep prices slightly higher without losing business. Cahoon declared that undercutting competitors' prices was never knowingly done, except that discounts to jobbers might lower prices below that of the competition. Guided by leading questions from Odell, Cahoon explained that the per gallon cost of making tank wagon deliveries to small dealers was higher than that of delivering products to jobbers in large quantities, which resulted in higher prices to small dealers. Because jobbers' traveling salesmen marketed petroleum products, Waters-Pierce did not have to maintain agents and salesmen in those regions. Jobbers paid Waters-Pierce directly, and Waters-Pierce did not have to carry accounts receivable for sixty to ninety days. All reduced Waters-Pierce's marketing costs and it factored these savings into the price discounts to jobbers.58

Having laid his groundwork, Odell then had Cahoon discuss the Rotan Grocery and Walker-Smith Grocery, which the state had used to illustrate Waters-Pierce discounts and rebates purportedly given to drive out competition. Rotan Grocery did an extensive wholesale business in a large marketing area in a region difficult for Waters-Pierce to serve with tank wagons. Rotan's traveling salesmen drummed up business for Waters-Pierce products and knew the merchants/customers well. This spared Waters-Pierce the expense of operating in the area and advertising costs. Closely tied to merchant-customers, Rotan willingly extended credit for long periods to merchants that Waters-Pierce would not qualify for credit. And Rotan paid Waters-Pierce promptly. Therefore, Waters-Pierce granted price concessions to Rotan and, for similar reasons, to Walker-Smith, which effectively rebutted part of the state's contentions.59

Asked about Clem, the former Waters-Pierce employee turned competitor, Cahoon replied that in 1896, newspapers had reported widely that Clem was merely a Waters-

58 Transcript-1907, 699-700 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
59 Transcript-1907, 700-02 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
Pierce agent, not a truly independent competitor. Concerning competition facing Waters-Pierce in the Dallas area, Cahoon described four rivals there selling to the retail trade: Clem Oil, Oriental Oil, Bonner Oil, and Independent Oil. Of the four, Bonner Oil was the best-established; "Coal Oil Johnny" Bonner was a pioneer of the Texas oil industry. Independent Oil was the newest, scarcely one month old. Waters-Pierce's competitors included Gulf Refining and the Richardson-Gay Company, which sold to jobbers like Clem Oil and Oriental Oil, but had not yet moved into the retail trade. Southwestern Oil had withdrawn from Dallas, but it had been a competitor there. In nearby Fort Worth, Gulf Refining and the Muskogee Refining Company had plants and were marketing. The discovery of oil fields in Indian Territory, Texas, Kansas, and Arkansas had spurred the emergence of independent oil companies, and competition had become more aggressive. Odell's point was that competition existed in Texas, despite any efforts by Waters-Pierce to eradicate it.60

Aware that Odell had not asked his witness why Waters-Pierce had kept Eagle Refining operating for so long, Batts resumed interrogating Cahoon. What benefits had Texas consumers received from the recent flood of crude oil from new oil patches? Cahoon stated that "there was no marked difference" in the price of refined oils ordinarily used, though he noted that naphtha and gasoline prices had dropped. Cahoon, despite his position at Waters-Pierce, claimed to know little about oil production and refining in Texas, which inspired Batts, who pointed out that Gulf Refining and The Texas Company, among others, had established several large refineries within the past five years. Nevertheless, Cahoon maintained that little difference had resulted in prices, which to Batts suggested that something was wrong. Batts also succeeded in eroding Cahoon's testimony about Rotan Grocery by raising a few facts that the witness had neglected to mention under Odell's examination.61

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60 Transcript-1907, 706-09 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
61 Transcript-1907, 709-14 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Nationwide the average price per gallon of gasoline did not decrease between 1899 and 1914, but it was becoming
Cahoon allowed that Waters-Pierce business had grown considerably since he began working for it, though he claimed to know nothing of large dividends, and reinvestment of capital into equipment and real estate. Batts challenged the harried Cahoon to admit that so-called superior Waters-Pierce products were myths, that "you sell any grade of oil whatever as Eupion that you can," which Cahoon strongly denied. He had recommended only once that Waters-Pierce label an inferior grade as Eupion, and only because Waters-Pierce could not obtain an adequate supply of Water White, the highest grade oil. Cahoon could not recall ever suggesting that a lower grade oil be sold as Eupion to recoup losses from price wars. He did not deny that Waters-Pierce had not informed their customers that it had substituted a lower grade oil for Eupion, but replied that the "oil was not necessarily bad," not a ringing endorsement.

Batts then asked if was not illegal to sell the inferior grade of oil that had been labeled Eupion, S.W. 112, in most states due to its low quality. Over Odell's objections, Cahoon answered the question, again claiming ignorance. Batts pursued the matter, getting Cahoon to admit to selling a few tank carloads of even lower quality oil from Security Oil's refinery to unsuspecting customers, though asserting that Waters-Pierce ceased the practice once it discovered that the Security product was unsatisfactory.62

Switching tacks, Batts asked again about changes after the dissolution of the original Waters-Pierce and organization of the "new" company. Cahoon admitted that the only change that he noticed was on letterheads. Batts jumped from that topic to Eagle Refining, recalling that Cahoon had stated on cross-examination that everyone knew that Clem was a Waters-Pierce employee and Eagle Refining not an independent company since 1896. Why did Waters-Pierce maintain Eagle Refining as a separate firm? Cahoon could not think of a plausible reason. Batts wondered if the witness, given his position, had

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62 Transcript-1907, 711-19 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
known anything about Standard Oil's ownership of a majority interest in Waters-Pierce? Cahoon responded that he heard about it in the newspapers. Brooks sustained Odell's objections to more questions on that point. Batts moved to a different topic

He observed that a number of independent firms had tried to get established in Dallas, but had fallen before the Waters-Pierce juggernaut. Cahoon agreed that some had folded but maintained that there were still a few competitors in the market. Cahoon also agreed with Batts's observation that Standard Oil did not appear to be selling products in his Central Texas Division, at least not openly.63

Re-cross-examining Cahoon, Odell made a brief but telling point. Asked from where had copies of the letters come that Brady and Batts had gotten into evidence, Cahoon replied that his stenographer had made them at Brady's request. He had given Brady access to all requested correspondence, and furnished copies at no cost to the state. Concealing nothing, and cooperating freely with the state, Waters-Pierce was a far cry from the shadowy conspiracy using underhanded methods to destroy competition. Texas had nothing to fear from its behavior.64

Batts refused to leave the jury with this impression, and re-examined Cahoon. When inspecting Cahoon's correspondence, Brady had written authorization from the court to inspect the letters and documents. Waters-Pierce was indeed helpful, but only because he had had the power to compel cooperation. Brady had only a very limited time to inspect the records, and Waters-Pierce could easily have hidden sensitive material. Cahoon had had a lawyer present during Brady's search on orders from Waters-Pierce headquarters. Cahoon left the witness stand.65

III. Of Prices and Willful Ignorance

The state then returned to the use of depositions instead of a live witness, and offered more of E.S. Horn's deposition in evidence concerning pricing and certain Waters-

63 Transcript-1907, 719-24 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
64 Transcript-1907, 724 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
65 Transcript-1907, 724 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
Pierce transactions. Horn, in contrast to Cahoon's testimony, stated that whenever a competitor with a similar line of products sold at a lower price than Waters-Pierce, "we reduced our selling price to meet the conditions," and whenever the refineries changed selling prices, Waters-Pierce echoed the changes. Horn also discussed arrangements that Waters-Pierce had with Kansas Standard to supply and deliver lubricants to the latter's customers. Waters-Pierce honored requisitions from these Kansas Standard customers, and sent billing invoices at Waters-Pierce's prices to Standard Oil. In effect a sale to Standard Oil had occurred. Standard Oil affiliates did not compete, they cooperated.66

In Horn's cross-examination he discussed the pricing of lubricants. Waters-Pierce purchased approximately fifty percent from Standard Oil firms, ready to sell after relabeling. Standard Oil did not set minimum resale prices on lubricants sold to Waters-Pierce, he insisted. If a Standard Oil company did set a resale price, Waters-Pierce ignored it. But he knew that Standard sold some lubricants more cheaply than Waters-Pierce in the same general territory, and that it was cheaper, for example, to buy certain brands of lubricants in Illinois in Standard territory, than equivalent oil in Missouri, in Waters-Pierce territory, a fact implying collusion. Horn also stated Waters-Pierce charged all that the market would bear in areas of no competition, which gave an indication of how it would behave if competition ceased to exist in Texas entirely.67

The state then offered the testimony of Charles M. Adams, the Waters-Pierce secretary and treasurer, and a member of the board. Adams did his best to avoid more than literally correct answers to questions. Asked if it was true that Standard had consistently dictated the selection of a majority of the Waters-Pierce board of directors, Adams replied:

Adams: I can't say that I know that--that they were dictated by them [Standard Oil interests].
Attorney: What is your information about it?

66 Transcript-1907, 725-26 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. This arrangement between Waters-Pierce and principally involved the Louisiana & Texas Lumber Company at Kennard, Texas in Waters-Pierce territory, which nevertheless had a contract with Kansas Standard to supply all of its requirements for lubricants and greases.
67 Transcript-1907, 726-29 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907.
Adams: Well, I can't say that I have any positive information.
Attorney: Well, information that is not positive? What have you
information in regard to that? Why do you hesitate about it? You were
one of the men that were supposed to represent the Standard Oil on the
Board, were you not?
Adams: I am a director of the Company.
Attorney: Aren't you one of the men who were supposed to represent the
Standard Oil interests on the Board and always have been, and so
considered by yourself and by every one connected by the Company?
Now, why do you hesitate about that? Don't you know that to be a
fact?
Adams: I cannot exactly say that my election as a director was dictated by
them, or that any other one or two people were. The election was held
by the stockholders and the Board of Directors are elected.
Attorney: Oh, that is a mere formality; don't you know that, Mr. Adams?
Adams: I can't say that I do, no.
Attorney: No? Why, don't they prepare in advance what you are going to
do at the meeting? As to who shall be elected directors or officers?
Adams: No, sir, I don't think that is the case.
Attorney: It is not done?
Adams: That is, unless it is done with some one before the meeting is held
that I know nothing about.

Adams admitted that at the last election he had received a proxy from M.M. Van Buren,
son-in-law of the vice-president of Jersey Standard, who had told him that "he would be
pleased to see the old Board re-elected." Van Buren was admittedly acting for Standard
Oil. Of the re-elected board, three of the five members, including Adams, had ties to
Standard Oil.68

Adams gave legally correct but minimal answers as long as he could. Asked if he
had custody of the firm's stock book in order to determine how directors became holders of
qualifying shares, he would not admit possession. Instead he stated that the stock book
was in a safe in his office. Exasperated, the state's attorney stopped asking for rock-solid,
provable-beyond-any-doubt facts, and instead asked for Adams's impressions of events
and circumstances. Adams then conceded that it was his impression that about "old"
Waters-Pierce that he, H.M. Tilford, and Gruet, Sr., represented the Standard's interests

68Transcript-1907, 729-31 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. Adams was
sixty-three at the time of his deposition, and had worked for Waters-Pierce as an executive for twenty-nine
years. He had been a director much of that time, and had also been a member of the Waters-Pierce
Executive Committee and later, the Advisory Committee that was its replacement. Despite his long years
at Waters-Pierce, Adams remained more loyal to his original employer, Standard Oil, which became
somewhat apparent in this case.
on the board of directors, and that several board members of the "new" company still represented Standard's interests. There had always been three board members representing Standard's interests.69

Somewhat later the defense introduced portions of Adams's deposition that the state's lawyers had omitted. Essentially, Adams denied that Standard Oil exerted any real control over Waters-Pierce, and definitely not over the latter's pricing. He briefly explained how purchase orders were processed, with all domestic trade orders passing through his office twice; once when he placed the purchase order with a refinery, and a second time, when he received the purchase order in his capacity as treasurer, for payment. He stated that Waters-Pierce continued to maintain a commercial agent in New York after McNall resigned, though the subsequent agents were located at 25 Broad Street, Pierce's New York office address, not 26 Broadway/75 New Street. Like C.A. Pierce, Adams claimed that Waters-Pierce reports were sent to Standard because they were entitled to them as stockholders. He did not explain why reports were sent to Standard prior to Van Buren's registration of the Waters-Pierce stock in 1904.

Despite his long years with the company and his executive positions, Adams claimed that there was a great deal of information that he did not know. He knew that Waters-Pierce operated in a limited marketing area that it had not expanded its bounds since he joined the company in 1878, but he knew nothing of any territorial agreements, explicit or tacit, between Waters-Pierce and Standard. Adams initially acknowledged that Tinsley had made many changes in his brief tenure at Waters-Pierce, and declared that all had been acquiesced to by the Waters-Pierce board of directors. Having said this, he denied that Tinsley had been in charge and could not recall any major personnel changes or changes in account and record-keeping procedures. The only act of Tinsley's that Adams deemed

69 Transcript-1907, 731-33 TSA RG 302 Box 1989/41-85; Houston Post, May 29, 1907. According to Adams, for a brief period in 1905 when John D. Johnson replaced Tinsley on the Waters-Pierce board of directors, there were three Pierce directors and only two directors representing Standard's interests. Note that Adams's assertion that there were always three directors representing Standard's interests conflicts with Pierce's somewhat muddled testimony regarding the composition of the board of directors over the years. See Chapter 3, note 48 and accompanying text.
noteworthy was the abolition of the company restaurant. Adams tried to downplay any signs that Standard exerted control over Waters-Pierce and to minimize the personnel and policy changes made by Tinsley at Standard's behest, implying that all changes were approved by the board of directors. Adams's answers to questions by Johnson suggested that he was almost as hostile to Waters-Pierce as he was to the state.70

Allen for the state read more excerpts from Adams's deposition to rebut the implications that Tinsley's influence had been minor. Adams essentially admitted, or would not deny, that during his tenure at Waters-Pierce, Tinsley had dominated the board of directors, and it had rubber-stamped the changes that he suggested with the backing of Standard. After Tinsley left Waters-Pierce, many of his changes were undone.71

H.C. Pierce was optimistic despite apparent reversals, and expected Missouri to oust Indiana Standard, Republic Oil, and Waters-Pierce and to cancel Waters-Pierce's corporate charter. Pierce allegedly planned to start a new, truly independent oil company to compete against Standard Oil, counting on enforcement of the state antitrust laws to protect the new firm against Standard's wrath. Pierce's ties to John "Bet-a-Million" Gates gave some credence to the rumors, or so journalists thought. Gates was one of the chief financial backers of The Texas Company, a successful independent. It was well-known that Gates had recently acquired vast lease interests in Indian Territory for exploratory drilling. Given Pierce's optimistic outlook on the Missouri case, he probably looked forward to a similar result in the Texas litigation, including the ouster of Waters-Pierce.72

70 Transcript-1907, 761-72 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Adams had been unable to recall that the president, Finlay, had left on extended medical leave, that Gruet had "resigned," and that E.T. Hathaway, manager of the Oklahoma Division, had been forced to retire. As for other changes, Adams replied that he had heard about them "in a general way," or that the matter was irrelevant to him.
71 Transcript-1907, 772-75 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. After Tinsley returned to Standard, Waters-Pierce fired many of the personnel that he had hired, and formed an Advisory Committee to determine prices to replace the Executive Committee that Tinsley had abolished.
72 St. Louis Post-Dispatch, May 24, 25, 26, 27, 29 1907; Houston Post, May 29, 1907. Special Commissioner Anthony had recommended that Indiana Standard and Republic Oil be ousted from Missouri, and that Waters-Pierce lose its corporate charter, and that all three firms receive fines. Gates was a good friend of Pierce, and coincidentally happened to be traveling to Beaumont at this time with a coterie of potential investors to attend The Texas Company's stockholders' meeting. Rumors would also persist that the Rothschilds were allied to Pierce. On Gates's connections to The Texas Company, see King, Joseph Stephen Cullinan, 104-11, 114-17, 134-36, 163-67 and Marquis James, The Texaco Story: The First Fifty
Returning to the Texas suit, on May 29th, Allen offered the deposition of Charles S. Keith into evidence. Keith was in the lumber business, vice-president and general manager of the Central Coal & Coke Company, and the general manager of the Louisiana & Texas Lumber Company. Between 1903 and 1907 both firms had exclusive requirements contracts with several oil companies at different times: Waters-Pierce, Bonner Oil, and Standard Oil. Keith had no idea who was actually furnishing the oils; bills were paid to the companies with which they had contracts, not to whatever firm might have been delivering the goods. The companies accepted the lowest bids for the contracts each year. Allen successfully got copies of thirteen contracts with the oil companies into evidence, over defense objections. He argued that in conjunction with Keith's testimony, supported the contention that Waters-Pierce and Standard Oil divided territories and did not compete. As for the competitive bidding process, Allen noted that "...whenever two people bid on a contract and it don't [sic] make any difference which one gets it, the other one fills it, it shows those facts."73

The court granted the defense permission to read portions of the depositions of Horn and Adams that the state's lawyers had omitted in their presentations. The effort to use Horn's deposition to rebut the state's implications that Standard set prices for Waters-Pierce products was not particularly effective. Adams's deposition showed that he was still loyal to Standard, more so than to Waters-Pierce and H.C. Pierce.74

Batts then summoned Charles P. Ackert, Waters-Pierce's general manager, to the witness stand. As general manager, Ackert supervised the division managers, general

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73 Transcript-1907, 733-56 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
74 Transcript-1907, 757-75 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Penn and Stedman for the defense tried to follow up the Horn and Adams depositions by reading from C.A. Pierce's. Judge Brooks refused to let them interrupt the state's presentation of its case further. Had the defense counsels requested to read from C.A. Pierce's deposition immediately following the state's use of it, Brooks would have permitted it so that the jury could follow his testimony more easily. Brooks would not allow the defense to disrupt the state's presentation further through its own failure to act in a timely manner. Penn and Stedman would have to wait until the defendant's turn to present its case to use C.A. Pierce's deposition.
marketing concerns, personnel decisions, salary decisions, and pricing. He claimed not to be aware of any territorial divisions between Standard Oil and Waters-Pierce. Pressed on the issue of a territorial dividing line by his own testimony in Hadley's suit in Missouri, Ackert declared that he could not remember making any relevant statements and that the marketing territory of the "new" Waters-Pierce was the same as it had been prior to the reorganization.75

Which led Batts to ask if it was not part of his duties to expand business into new territory? Ackert agreed. Did Waters-Pierce expand into Standard companies' territories? Ackert did not know of any such expansion by Waters-Pierce, though Standard had trespassed into Waters-Pierce's Louisiana territory the previous year, and Waters-Pierce had resisted the incursions. The incident was not reported to Jersey Standard. Ackert had reported it to Waters-Pierce president C.A. Pierce, who ordered more sales agents into the contested territory, "the same as we would [against] any other competitor." He did not know of any Standard incursions into Texas. Despite his position as general manager, Ackert claimed near-total ignorance about the refineries from which Waters-Pierce purchased products for resale: it was not his department, and he would testify only on facts, not hearsay. Yet all Waters-Pierce departments were under his supervision. Ackert was particularly reluctant to answer questions concerning purchases from certain Standard refineries, the same ones supplying the Standard territory in Louisiana and the alleged area of competition between the two. Annoyed, Batts asked sarcastically:

Batts: It's a part of the business plan of the concern, is it, to confine knowledge of the employees to their particular department?
Ackert: Not altogether.
Batts: But notwithstanding your long stay there and notwithstanding you are an important officer of the company and member of the executive [advisory] committee, you don't know anything at all about the prices or from whom the oil is bought; is that true?

75 Transcript-1907, 775-78 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Ackert had worked at Waters-Pierce since March 1883, and at the home office in St. Louis since 1893. In St. Louis he had worked for five years as assistant manager in the semi-autonomous Lubricating Department under Stephen Johnson. He did not become General Manager until July 1, 1903. Ackert also had some experience with Waters-Pierce's Mexican operations.
Ackert: I have stated that the oil was bought from the Corsicana refinery and Neodosha and Whiting; they are placed on those refineries—I could not say with whom they are placed.

Ackert continued to hedge his answers. He did not "definitely" know that Waters-Pierce purchased virtually all of the output of Corsicana Refining, though Cahoon had told him so. He had learned about Standard Oil's controlling interest in his own company from the newspapers and H.C. Pierce, his brother-in-law, had never discussed it with him.76

A member of Waters-Pierce's Advisory Committee, Ackert, when asked about its dealings with Standard, recalled none, and implied that the Waters-Pierce agent in New York might have been the conduit. Instead he stated that Waters-Pierce had a commercial agent at 25 Broad Street, who had been at that location for fifteen months. Ackert claimed to know nothing of the first commercial agent, McNall, who had been at 26 Broadway, save what he had read in the news, and had never communicated with him. None of the commercial agents had extensive powers, Ackert claimed, and were concerned principally with the Mexican market and operations.

Pursuing the matter, Batts inquired about the work of the Waters-Pierce Executive Committee and its successor, the Waters-Pierce Advisory Committee. Numerous small details went to the two committees, including rebates to individual firms, the location of tank stations, even the purchase of a single horse. Yet Ackert could not recall that either committee had any contact with McNall, despite the latter's extensive actions. Batts continued to hammer away at Ackert and his evasions, over Odell's objections, until the witness admitted that the signature in correspondence shown to him was McNall's and that the Executive Committee honored it. Contradicting his own earlier testimony, Ackert admitted further that he read many of McNall's letters that circulated in the Waters-Pierce

76Transcript-1907, 778-85 TSA RG 302 Box 1989/41-85: Houston Post, May 30, 1907. Note that Ackert grudgingly admitted that a few tanks of inferior oil from Security Oil had been sold as Eupion in Texas, confirming the allegation made during Cahoon's testimony. Security's products were generally not good enough for the market in Louisiana.
office. Batts then tried to introduce approximately forty letters with McNall's acknowledged signature.77

Odell and Penn objected strenuously to the introduction of these letters into evidence, and the questions to Ackert about them. Penn suggested that the judge order Lightfoot to the witness stand to testify how the Texas Attorney General's office had obtained the letters. If Gruet, Sr. had provided the letters, then he had stolen them from Waters-Pierce files, and should identify them. Penn wanted the thoroughly discredited Gruet on the witness stand, where he could be cross-examined, and presumably embarrass the state more than Waters-Pierce. But Judge Brooks denied the request. Penn continued to protest the unproved authenticity of the letters, and wondered if they had ever been mailed or received by anyone at Waters-Pierce. Brooks overruled the objection. The evidence was sufficient to permit its introduction, and showed that McNall wrote them, but not that they had been received at Waters-Pierce. Batts had Ackert identify various office stamp marks and initials that showed what departments and individuals received the correspondence, though Penn persisted in denying authenticity.78

Batts reviewed several letters with Ackert in order to verify their authenticity, and that they had been received at Waters-Pierce. The letters dealt with topics unusual for a commercial agent of limited duties and authority to handle. These included advances in the billing price of several grades of gasoline and the costs of barreling and marketing. Again proclaiming that he had no idea of what commercial agent McNall might have included in correspondence, as he still claimed never to have received any, Ackert said that costs were Gruet's department, not his, so he knew nothing. Then Penn requested that Judge Brooks

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77 Transcript-1907, 785-96 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. The first Waters-Pierce commercial agent was McNall at 26 Broadway/75 New Street. He was succeeded in 1905 by Adams's former clerk, Rundel. Rundel died in February 1906, followed temporarily by a "Mr. Williams" as an interim agent, and then J.J. McGuire. Everyone after McNall worked at 25 Broad Street, which housed Pierce's office, and was close to 26 Broadway.

78 Transcript-1907, 796-800 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
adjourn so that the defense could examine McNall’s correspondence and try to work out an arrangement on the introduction and identification of the letters with the state’s lawyers.\textsuperscript{79}

They did. The defense was willing to stipulate that Ackert had identified each of the remaining letters, though not all of the letters in question were stamped or endorsed. Penn would still object to each of these letters that Ackert’s stipulated identification of them was not the best evidence of authenticity and receipt by Waters-Pierce. He wanted Gruet to identify the letters. Judge Brooks again overruled the objections. Batt then outlined the central subject-matter of each of the letter to the jury. That limited reading showed that McNall handled a very broad range of subjects.\textsuperscript{80}

Though Ackert was officially a witness for the state, Batt repeatedly aspersed his credibility. Batt wondered how Waters-Pierce tracked competitors’ shipments. Waters-Pierce salesmen and agents kept track of such matters, as they always had, Ackert replied, but he denied that special payments were made for such information. Batt countered with a letter from a Waters-Pierce agent in Houston whose signature Ackert recognized, which contradicted what Ackert had just testified, based on his knowledge.\textsuperscript{81}

He admitted that Waters-Pierce bought out some of the assets of a competitor, Southwestern Oil. Batt compelled Ackert to admit that Waters-Pierce owned the International Oil Works in St. Louis, which was not a competitor though kept separate from Waters-Pierce. It was not a secret, Ackert insisted, and International Oil Works was not a shill, but he was unable to explain why Waters-Pierce kept the firm in operation: “I couldn’t explain that; that is a part that I don’t have anything to do with.”

Moving to the Eagle Refining Company, Ackert stated that he was familiar with it, and had arranged for its termination because he thought that Cahoon in Dallas could take

\textsuperscript{79} Transcript-1907, 800-03 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 30, 1907. The examples in the letters that Batt reviewed showed that McNall’s duties were far more than handling the Mexican trade for Waters-Pierce.

\textsuperscript{80} Transcript-1907, 804-07 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 30, 1907.

\textsuperscript{81} Transcript-1907, 807-08 TSA RG 302 Box 1989/41-85; \textit{Houston Post}, May 30, 1907. Ackert denied having ever seen the letter from the Houston Waters-Pierce agent, denied knowing anything about its subject matter, and denied that it had been received while he was general manager.
care of the trade handled by Eagle Refining. But when asked why Eagle Refining was not closed earlier, Ackert gave another non-answer: "Just because it wasn't. It got to a point where we made up our mind to do away with it." Yet when closed, Eagle Refining was still making money. When asked the question again, Ackert gave the odd reply: "... Mr. Clem's services were not altogether satisfactory and we decided to do away with it." Clem had apparently been deemed adequate for a decade prior to the closure of his company. Batts wondered why it had been impossible to replace Clem with a more satisfactory manager, and why Ackert was so dissatisfied with Clem as to terminate Eagle Refining, yet gave him a new position with Waters-Pierce in Dallas. Ackert denied that Eagle Refining was a shill to obtain the "dissatisfied trade," customers who did not like dealing with Waters-Pierce.82

Batts looked next at Waters-Pierce's purchasing practices. Acknowledging that nearly all Waters-Pierce's supplies came from Standard firms, Ackert claimed ignorance of any contracts between Waters-Pierce and Standard Oil. Waters-Pierce also bought from Gulf Refining and The Texas Company. He stated that his company would try to raise its prices as much as possible when Standard companies raised theirs. Therefore, Batts asserted, Waters-Pierce adjusted its prices "to the prices fixed by the Standard Oil Company." Ackert agreed that the purchase price was a main determinant of Waters-Pierce prices. Asked about purchases from Security Oil, a Standard Oil company, Ackert claimed not to know about its true ownership. Had purchasing practices and pricing changed since antitrust suits were filed against Waters-Piece? Ackert could not remember practices going back to August 15, 1906: "all I know is the way the orders are placed now."83

Ackert's memory was poor on many subjects. Concerning a territorial dispute between Waters-Pierce and Standard Oil in Illinois, Ackert could recall none, though he had testified about it in Hadley's case. Concerning audits of Waters-Pierce's books,

82 Transcript-1907, 808-12 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
83 Transcript-1907, 812-17 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
Ackert declared that he had no knowledge, for these were not in his department. Who paid the auditors from New York? Batts tried to introduce Waters-Pierce pay vouchers into evidence to show that Standard Oil auditors had been "hired" temporarily by Waters-Pierce. Penn objected. Batts's sole purpose was to cause prejudice to Waters-Pierce.

Batts conferred with the defense lawyers. An agreement was reached whereby the state did not enter the vouchers into evidence or read them to the jury, and the defendant agreed that since June 15, 1900, expenditures authorized by Pierce had been audited by Standard Oil auditors. Ackert claimed ignorance of several more issues, which seemed to be willful ignorance at best. Then John D. Johnson proceeded to cross-examine the witness.84

Ackert's memory returned under Johnson's friendly questioning. He filled in gaps in his first direct examination by Batts, which made his previous lapse seem more suspect. Ackert admitted that his twenty-four years with Waters-Pierce in a variety of positions had given him "a pretty thorough knowledge" of its plants, operations, business conduct, employees, and equipment.85

As general manager, Ackert had charge of the marketing divisions. Waters-Pierce received products from refineries in and out of Texas by tank cars, of which it owned about one hundred, and it rented tank cars from Union Tank Line, a Standard company. Waters-Pierce continually improved facilities and expanded its marketing areas within its existing

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84 Transcript-1907, 817-22 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
85 Transcript-1907, 822-25 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Waters-Pierce was riddled with nepotism. He was Pierce's first cousin. His brother, Cyrus L. Ackert, was manager of the Missouri Division. Stephen Johnson, who had headed the Lubricating Department until his recent retirement, was married to Pierce's sister, while Andrew M. and Arthur M. Finlay's sister had married the oil magnate. All had been connected with Waters-Pierce for many years. Charles P. Ackert had started off working for Waters-Pierce in 1883 as an agent at Fort Smith, Arkansas, rising to the position of traveling salesman for the Arkansas Division in 1888, based out of Little Rock, where he stayed until September 1888. Thereafter Ackert was transferred to St. Louis with the home office, where he was a city salesman for another six months before being transferred to Marshall, Texas to be the assistant manager for the East Texas-Louisiana Division until September 1890. He subsequently rose to be manager of the Arkansas Division for several years before returning to St. Louis as the assistant manager of the Lubricating Department under Stephen Johnson, his brother-in-law's brother-in-law in June 1894. In 1899, Ackert shifted to work for J.P. Gruet, Sr. in the Accounting Department for a few months, moving on to become the assistant to then General Manager Andrew M. Finlay in early 1900, just prior to the dissolution of the "old" company. He remained A.M. Finlay's assistant until July 1903 when he became general manager.
territorial bounds. By his estimation, since May 1900 new facilities had expanded the service area by fifty percent. In nearly all sizable towns in which Waters-Pierce had facilities, it usually owned the realty as well. This well-developed marketing system and delivery facilities gave Waters-Pierce a tremendous advantage over competitors.86

Ackert admitted keeping track of the competition but stated that Waters-Pierce prices generally were higher than its competitors for similar grades of products, owing to high overhead and transportation costs. The reputation of the firm and its products, along with its ability to meet the requirements of demand easily and reliably allowed it to charge higher prices than smaller, more localized competitors.87

Johnson then led Ackert to discuss the history of the Waters-Pierce Executive Committee and its successor, the Advisory Committee. Since 1900, prices were a matter for the Executive Committee. It reviewed all correspondence. If a division head suggested price alterations to Ackert, he brought it to the Executive Committee for consideration. It examined costs and related information and decided how to act. Standard Oil, he declared, had absolutely nothing to do with prices. The Advisory Committee set prices in a similar fashion.88

86 Transcript-1907, 825-31 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. In Texas, according to Ackert, Waters-Pierce had about four hundred fifty stations, which included approximately two hundred fifty tank stations. It had one hundred fifty tank and can wagons. Every station had an agent with assistants. About one hundred fifty agents were salaried, the rest were on commission. Each of the divisional headquarters in Texas also had managers and staff. C.W. Cahoon headed the Central Texas Division in Dallas; Louis Fries managed the South Texas Division out of Houston, and D.A. Vann was in charge of the East Texas and Louisiana Division, based in Shreveport, Louisiana. The Oklahoma Division also covered North Texas and the Panhandle area. Each division manager basically had power over virtually anything in their area, subject to final control in St. Louis. Ackert estimated that about sixty to sixty-five percent of total refined oil sales came from tank or can wagon related-sales. For those areas too isolated to receive wagon service, Waters-Pierce would send products in iron barrels, of which the company had approximately 15,000 in Texas alone.
87 Transcript-1907, 831-32 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
88 Transcript-1907, 832-34 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. The Executive Committee was formed following the organization of the "new" Waters-Pierce. It was originally an informal body, composed essentially of the Waters-Pierce department heads and the president. The board of directors formalized the Executive Committee in 1902, with Andrew M. Finlay, C.A. Pierce, C.M. Adams, J.P. Gruet, Sr., Stephen Johnson, C.P. Ackert, J.D. Johnson, and H.C. Pierce as its members. Tinsley dissolved the Executive Committee in September 1904. It had handled "[a]ll matters of a general character" pertaining to the running of the company, acting as an advisory body to the president. It generally dealt with strategic planning and operations rather than day to day details. In late 1906, it re-emerged as the Advisory Committee, with a slightly changed membership of department heads, plus president C.A. Pierce.
Shifting to a slightly different topic, Johnson inquired into the Tinsley period. Tinsley arrived in St. Louis in March 1904, as a vice-president with some vague duties in Accounting. Finlay, Waters-Pierce president, took a prolonged sick leave in early 1905, and Tinsley became acting president. During his reign, he, Ackert, and C.A. Pierce set the Waters-Pierce prices. Tinsley resigned in June, 1905, and C.A. Pierce became president, Finlay became vice-president, positions they continued to hold. Over Batts's objection, Johnson then tried to ask if Waters-Pierce had always been an independent company since the organization of May 1900, but Judge Brooks sustained the objection. It called for a legal conclusion.89

Johnson asked about companies connected to Waters-Pierce. Ackert repeated that Waters-Pierce had bought the plant of the Southwestern Oil Company after it had gone out of business—it had not bought the company out. Waters-Pierce had not tried to hide its control of International Oil Works or operate it as a "blind tiger" to deceive the public. Ackert claimed that he did not know that Standard controlled Republic Oil, which if true, did not speak well for his intelligence sources, though he stated that he had had suspicions for several years. Waters-Pierce's policy was to compete as hard as possible against Republic Oil.90

Johnson carefully led the witness to state that Standard Oil companies controlled the market price of petroleum products throughout the United States due to the size and productive capacity of its refineries. Ackert agreed that nearly all other dealers and refineries in the country followed the pricing leads of Jersey Standard and "its allied companies." However, he claimed that Standard's market price quotations to Waters-

89Transcript-1907, 834-36 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Between the dissolution of the Executive Committee and the creation of the Advisory Committee, a group of Waters-Pierce corporate officers set prices following market fluctuations and the recommendations of divisional managers.
90Transcript-1907, 836-38 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Ackert claimed that merchants in St. Louis knew the relationship between Waters-Pierce and International Oil Works, but it is unlikely that people in Texas knew of this connection when they saw International Oil tank cars delivering petroleum products to Eagle Refining.
Pierce had no relation to Waters-Pierce prices for its products in Texas. "We make our own prices."

Trying to clear up what he perceived as Ackert's misunderstanding of questions from Batts on direct examination, Johnson carefully led the witness to testify that he had no direct, personal knowledge of the 1878 agreement between H.C. Pierce, W.P. Thompson and Standard Oil concerning territorial divisions and boundaries. All that he knew was that the "new" Waters-Pierce operated in the same boundaries as the "old" company. All that meant, however, was that Ackert was not a party to the agreement and did not witness it—it did not mean he did not know of its effects, whether it had been honored, or even discussed by Waters-Pierce management. Concerning Standard Oil moving into Louisiana west of the Mississippi, Ackert stated that he knew only that Standard was trying to compete in Western Louisiana. Waters-Pierce fought back and had largely repulsed Standard. He discussed Standard Oil's 1906 incursion into the East St. Louis region, where Waters-Pierce had operated for years. Its reply was to compete aggressively against Standard. The competition was no sham.91

Johnson also delved into the different varieties of Waters-Pierce's Eupion brand sold in different states according to various state laws, with a view towards showing that the quality of the various types was roughly equal. Ackert declared when Cahoon had used a lower grade of oil to substitute for Eupion, the home office had promptly ordered him to stop. Since that incident, steps had been taken to insure that such an event would not take place again. Waters-Pierce, he declared, had a policy of "strict integrity" that was important to its reputation, as assertion that led to the following exchange:

Johnson: Now, of your knowledge and the present state of business of the Waters-Pierce Oil Company, state whether or not the amount of the Company's business in Texas to-day--state what it results from, and your ability to hold the trade or to do the business that you do against the competition that exists.

Ackert: It is the quality of our oils, the men that we have, and the strict integrity and open manner in which we go after the business. It enables

91 Transcript-1907. 838-40 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
us to hold as large a percentage as it does. We try to have in every position men of strict integrity, men whom the people at large can place confidence in, and as soon as we find that any of our men are not of that class, that are not treating the people as they should, in a strict integrity, in a manner which makes or has the trade feel full confidence in the Waters-Pierce Oil Company—that they are able to give first-class oils, to give first-class service—we simply make a change; we do that as soon as we can after we find that they are not that calibre of men.92

Batts was less kind on re-direct examination. Had there been any change in the business relations between Waters-Pierce and Standard Oil since the former had been incorporated? Ackert responded again that he had had almost nothing to do with "matters of that kind," and knew next to nothing regarding Standard Oil. Batts observed sarcastically that, "...[n]ow, you seem to know most everything about the business when you are interrogated by your counsel, and you have been on the Executive Committee all the time, and you state that everything that pertains to the Company comes before the committee." Yet somehow Ackert never knew anything about the business when the state's attorneys asked questions. Ackert insisted that Waters-Pierce always ran things itself, and that was how it had always been. Asked about the Standard Oil auditors, he stated he had not heard anything about such auditors for two years, which, Batts noted, was when Hadley filed suit in Missouri against Waters-Pierce, Indiana Standard, and Republic Oil. Ackert knew nothing about connections between Hadley's suit and the Standard auditors, the antitrust suit and relations between Waters-Pierce and Standard had not been discussed by the Executive Committee. He did not even know that Jersey Standard held a majority of Waters-Pierce stock until he read about in the newspapers.

Batts mocked Ackert's credibility to the jury, asking in tones of utter incredulity.

Notwithstanding you are a member of the executive committee; notwithstanding you knew about the affairs generally; notwithstanding the letters received daily from 26 Broadway; notwithstanding you are a relative of H. Clay Pierce; notwithstanding you met all these persons every day there—you didn't know anything about it?

92 Transcript-1907, 840-42 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. States had differing laws regarding the grading of some petroleum products, and most states required a higher fire test level than Texas did. Johnson was trying to make the point that a higher fire test level, or flash point, did not mean that an oil was otherwise superior to a product with a lower flash point. A flash point is the temperature at which a substance will ignite.
Yet Ackert claimed that Waters-Pierce's policy was to be completely open and honest with the people of Texas.93

Batts refreshed Ackert's memory with a statement from Pierce's testimony, that the latter had been told that "Standard Oil Company methods" would not be tolerated any more in Texas. What changes had the 1900 reorganization made in the conduct of Waters-Pierce's business in Texas? Ackert averred that he had nothing to do with Texas prior to May 1900, and had no idea what Pierce had meant in his testimony. Ackert had stated that the Executive Committee had "absolute charge" of Waters-Pierce until Tinsley arrived, and that the Executive Committee had not altered Texas operations. Did this mean that Standard Oil methods were still in use by Waters-Pierce? Had Waters-Pierce, for example, tried to obtain supplies from sources other than Standard companies? No other company could meet the demands of Waters-Pierce's business, Ackert replied. Yet he had no idea of the output of alternative refineries, those of Gulf and The Texas Company, but he "understood" that they could not supply Waters-Pierce's needs. No information had ever been sought by the Executive or Advisory Committees to see if alternate supply sources existed, because Ackert added, the products of Gulf and The Texas Company were not satisfactory, that was why the issue had not been investigated; only Corsicana Refining produced refined oil adequate for Waters-Pierce's Eupion brand. Ackert knew only what he had "heard" and "understood," about Gulf and The Texas Company, yet declared their products to be unsatisfactory.94

Batts noted that Waters-Pierce had refineries in Mexico but none in Texas. Ackert asserted that it was somehow cheaper to buy refined oils rather than produce them in Texas. He knew no details, only what he had heard from other people. Yet apparently it

93 Transcript-1907, 842-44 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.  
94 Transcript-1907, 844-46 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907. Between 1903 and 1906, Gulf's refinery runs were more than twice that of Standard's affiliate, Security Oil. See Ralph Andreano, "The Emergence of New Competition in the American Petroleum Industry Before 1911 (Ph.D. dissertation, Northwestern University, 1960) 126, 141.
was cheaper to refine in Mexico with imported crude than to purchase it. Again, this issue had not been discussed by Waters-Pierce's Executive Committee, to his knowledge.95

Could Ackert reconcile some inconsistencies? In the morning, on direct examination, he had stated that the 1878 agreement between the original Waters-Pierce and Standard Oil was observed even after the May 1900 formation of the new corporation. But on cross-examination that afternoon, Ackert claimed not to know anything about the agreement. He claimed that he had misunderstood Batts's question, refused to admit that there was a territorial dividing line between Waters-Pierce and other Standard Oil companies, and would not draw "an imaginary line." Instead, he knew only where the firm had agencies and tank stations, and where not. Had he ordered agents and salesmen not to expand the Waters-Pierce territory? No, Ackert replied. The agents knew where to operate, apparently without instructions, passed along like a family secret from one agent to the next.96

What had Waters-Pierce done in response to the alleged incursions of Standard Oil into Waters-Pierce territory in Louisiana, St. Louis, and East St. Louis? Supposedly real competition existed, not a sham. Ackert again pleaded ignorance, insisting nonetheless that competition was too fierce to fake. Maybe, Batts pointed out, the ferocity was faked. Batts marveled that neither Pierce nor Ackert seemed to know that Republic Oil was a Standard Oil subsidiary. Did Waters-Pierce violate clandestinely the agreements with Standard Oil? Ackert again denied that there were such agreements. Yet Waters-Pierce never invaded Standard Oil's territory. Batts wondered that many things discussed between Pierce and Standard executives were not passed along to Ackert, despite his position. Again denying knowledge, the witness nevertheless insisted that no agreement existed, which led Batts to note sarcastically that the witness knew as much about an agreement as he did about Waters-Pierce stock ownership, that is, nothing.97

96 Transcript-1907, 847 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
97 Transcript-1907, 847-49 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
Switching topics upon Stedman's objections that he was badgering the witness, Batts turned back to prices. Ackert had stated previously that Standard effectively set petroleum prices due to the tremendous output of its refineries. He denied, however, that it had a monopoly so great that it could fix the price of oil throughout the United States; rather its output made it the price leader. Batts observed that when Tinsley, Pierce, and Ackert had determined the Texas price, they based it on Standard prices. Ackert disagreed, declaring that the Standard's prices had "[a]bsolutely nothing" to do with Waters-Pierce's prices, which, Batts noted, conflicted with Ackert's previous statement. When trying to show that advances and declines in Standard Oil's sales prices to Waters-Pierce were matched by advances and declines in Waters-Pierce's prices, Batts exhibited a letter to Ackert of September 1, 1904, notifying him of a price increase. Ackert then had circulated a memo to all Waters-Pierce division managers similarly raising prices. Ackert could not recall the letters. Batts repeatedly asserted that Standard determined prices in Texas, bringing an objection from Penn that the former was arguing with Ackert, not questioning him.98

Who, Batts wanted to know, selected the Waters-Pierce Executive/Advisory Committee? Waters-Pierce officers determined composition, and H.C. Pierce determined who would be corporate officers. Normally, Batts remarked, the stockholders elected officers, implying that since Jersey Standard controlled a majority of the Waters-Pierce stock, then it must have selected the officers, who in turn selected the Executive/Advisory Committee, which set prices for Waters-Pierce. If Pierce selected the officers on his own it was with Standard's permission. Ackert replied that it was his belief that Pierce selected the officers and directors, and as far as he knew, had always done so except for the Tinsley interregnum. Who, then, appointed Tinsley or Finlay? Ackert supposed that Pierce had

appointed the latter, and admitting that he could not name the Waters-Pierce directors, he assumed that Pierce must have appointed them also.99

Ackert could not "state exactly" what changes took place when Finlay was president. Batts asked who set prices during Tinsley's rule, to which Ackert replied: Clay Arthur Pierce and Andrew M. Finlay. Ackert acknowledged that though the Executive Committee had ceased to exist, the same officers still determined prices informally. Recalling C.A. Pierce's testimony that when he lost control things changed, Batts wanted to know what these changes were. Batts noted that new directors were named. Ackert did not know who they were. Annoyed, Batts marveled that Ackert could recall the minutiae of Texas operations, "...yet you can't tell us about those things that take place in your office and under your immediate and direct supervision and within your own view?" Ackert replied that he knew what was needed for his job, Batts retorting that it must be a part of Ackert's job not to find out about anything else.100

Ackert estimated that Waters-Pierce did between one-third and one-half of its total business in Texas alone and admitted that Waters-Pierce faced no competition from Standard companies in Texas, Oklahoma, or the Indian Territory. His memory for marketing details faltered again when Batts insisted that Waters-Pierce had in excess of fifty percent of its tank wagons and tank stations in Texas alone; Ackert was sure the correct amount was less than fifty percent, but could not say what the proper percentage was. Sarcastically, Batts recalled Ackert's statement that Waters-Pierce's policy was complete honesty with its Texas customers. Was Waters-Pierce candid in closing Eagle Refining? Batts asked Ackert about whether the decision to terminate Texas Oil & Gasoline reflected a desire to be honest. Ackert repeated that Waters-Pierce ownership of the companies had been public knowledge for years. Regarding Cahoon's request to market substandard oil

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99 Transcript-1907, 852-54 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
100 Transcript-1907, 854-55 TSA RG 302 Box 1989/41-85; Houston Post, May 30, 1907.
as Eupion, Ackert abdicated responsibility and blamed Cahoon. After a few more questions, Batts rested the state's case, and court adjourned for the day. 101

Texas had failed to call John P. Gruet, Sr. as a live witness, or to use his deposition, surprising because it had been Gruet's information to the Texas Attorney General that had resulted in the filing of Waters-Pierce ouster suit. His failure to testify was perceived as a sign that the state feared that he would damage its case more than Waters-Pierce's. It was now publicly known that Gruet had altered some documents he had taken with him when he was forced to resign from Waters-Pierce, a fact making Attorney General Davidson look gullible, and tarnishing Gruet's credibility. Gruet's deal with the state made him eligible to receive a portion of the penalties that Travis County Attorney John Brady would receive if the State won and collected fines. Gruet was both a forger and a paid witness. A journalist commented that the failure to use Gruet indicated that Lightfoot and Davidson lacked faith in their own witness and/or feared that his testimony and character would reflect badly on them. This estimate was bleaker than the reality deserved. Gruet had indeed destroyed his own credibility. But he had also provided the state with essential insights into the operations and methods of Waters-Pierce, numerous unaltered documents, and strategies to use in the investigation. While Gruet did not testify at the trial, his information if motivated by greed and spite, were essential to the prosecution. 102

IV. Defenses and Decisions

Sharply contrasting to the state's case, the defense occupied less than a day. It consisted of portions of three depositions and brief appearances by two live witnesses, with some documentary evidence. Stedman opened the defense (May 30th) by offering

102 Houston Post, May 30, 1907. See Chapter 2 on the Bailey Investigation, and Gruet's admissions of forgery, notes 111, 112 and accompanying text. A deposition of Gruet taken in April 1907 confirmed the deal to split the county attorney's statutory share of the penalties collected in the case. Note that the Texas Attorney General's Department was investigating Waters-Pierce prior to making the deal with Gruet, and had been greatly assisted by the Missouri Attorney General's investigation and antitrust suit. Gruet's information provided the extra impetus to file the Texas suit.
into evidence portions of C.A. Pierce's deposition to clarify matters that his deposition had allowed the state's lawyers to exploit. Pierce's deposition discussed the role of the Waters-Pierce Executive Committee in determining prices. He had said that a sub-committee, himself as assistant treasurer, Andrew M. Finlay, then president, and Ackert, general manager, recommended prices to the whole committee. After Tinsley resigned on June 5, 1905, until the formation of the Advisory Committee in the Fall of 1906, an informal committee of Finlay, demoted to vice-president, Ackert, and himself, promoted to president, adjusted prices, with final authorization in his hands. Since then, the Advisory Committee, consisting of C.A. Pierce, Finlay, Ackert, Adams (secretary and treasurer), Mr. Harris (Lubricating Department manager), and Edward Stanley (controller), considered and voted on price adjustments, which were in turn passed on to president Pierce for final approval.\footnote{Note C.A. Pierce's slip in referring to the president as different from himself, Transcript-1907, 860 TSA RG 302 Box 1989/41-85.} He denied Standard Oil had any input on price determination and declared that Waters-Pierce had always been totally independent and managed solely by its executives.\footnote{Transcript-1907, 858-61 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. In this portion of the deposition, C.A. Pierce stated that after the formation of the Advisory Committee in 1906, it passed along pricing recommendations that it had voted for final adjustment "by myself and the president." At that time Clay Arthur Pierce was president, at least in name, and what he probably meant by that was that he and his father, Henry Clay Pierce, set final prices. This slip of the tongue suggests where the younger Pierce, nominal president of Waters-Pierce, considered the final power to rest, and it was not in himself, but rather in his father's hands. The younger Pierce also qualified his statement about Waters-Pierce's independence, limiting it to his personal knowledge.}

Shifting to Waters-Pierce's purchases from Corsicana Refining, Pierce stated that purchases there were made as at any refinery, Standard Oil or independent, with the same routine procedures. He added that sales of marine lubricating oils to Standard were made as to any other customer, with no special treatment.\footnote{Transcript-1907, 861-62 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. Waters-Pierce filled the contract orders for Standard Oil for shipping at Galveston, then billed Standard Oil whatever price Waters-Pierce had negotiated with Standard Oil, not the contract amount between Standard Oil and the ships. The ships in turn paid Standard Oil directly rather than Waters-Pierce.}

The younger Pierce stated that H.C. Pierce's word on issues was always final, even after he was no longer president. As for Standard Oil's role in Waters-Pierce
management and pricing, C.A. Pierce replied that it had none. Granted, Standard was
ettitled to reports, and its auditors checked the books, only because it was a large
shareholder. Standard executives would occasionally offer suggestions on management
and pricing, most of which Waters-Pierce management ignored unless consistent with their
ideas. Standard Oil had no direct control over Waters-Pierce prices or management.
During most of Tinsley's tenure, C.A. Pierce had little to do with the operations of the
firm, so could not add much on that score. Except during the Tinsley period, his father,
H.C. Pierce had controlled Waters-Pierce policies and operations, through its officers, "of
course." 106

Reading from Finlay's deposition, Stedman recounted the former's long career with
Waters-Pierce and his experience with the Southwest. Finlay knew the Texas trade, and
implied that Waters-Pierce was important to the economy and citizens of Texas as a
provider of a "prime necessity," as an employer, and as a taxpayer. He stated that Ackert,
himself, and H.C. and C.A. Pierce had set the prices in Texas. Tinsley had kept
interfering, acting as if he were Waters-Pierce president, not Finlay. Tinsley "would insist
on things being done that I did not think was to the interest of... the Waters-Pierce Oil
Company," including firing veteran employees and replacing them with new men. Even
during that troubled period, Waters-Pierce ran as an independent concern. But he did not
explain why, if Tinsley was so uncongenial and Waters-Pierce was truly independent,
Tinsley was appointed in the first instance, or how a vice-president could "insist" on policy
and personnel changes over the wishes of the president and the general manager, and why
he was not terminated. 107

Stedman reread a portion of Finlay's deposition in which he discussed dealings
with R.H. McNall, who, it will be recalled, in 1904 had requested that all Waters-Pierce

106 Transcript-1907, 862-67 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. This did not
explain why Waters-Pierce sent reports to Standard directly and via McNall prior to Van Buren's registration
of the majority of Waters-Pierce stock in 1904. Until that time no one at Waters-Pierce had official
knowledge that entitled Standard to Waters-Pierce reports.
107 Transcript-1907, 868-72 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
correspondence go through him at the Standard headquarters building, but at the rear entrance address of 75 New Street. Waters-Pierce's lawyers had worried that this thin camouflage was a poor idea, presumably because it made it seem that Waters-Pierce was hiding the fact that McNall, its commercial agent, worked in the Standard Oil Building. Yet McNall had continued to insist on the address change. Guided by careful leading questions, Finlay did try to explain why Waters-Pierce allowed Standard auditors to audit its corporate books. Finlay asserted that the Standard auditors had nothing to do with Waters-Pierce management or operations. But he did not explain why the auditors were placed on Waters-Pierce's payroll, or how he could claim ignorance of Standard Oil's control of the majority of Waters-Pierce stock yet allow Standard's auditors to inspect the books. 108

Stedman then offered portions of the deposition of S.K. Wheeler, Waters-Pierce assistant general manager and general supervisor of marketing under Ackert, which included operations in Texas. Wheeler explained Waters-Pierce's marketing structure in Texas in detail, showing how its breadth and depth enabled its people and products to reach practically all the state. 109

Regarding prices, Wheeler testified that the general manager, in consultation with other officers, set prices for the various divisions. Generally competitors sold comparable products at the same price as Waters-Pierce, though some spots lowered prices to win business away from the better-known, well-established Waters-Pierce. Waters-Pierce usually ignored such challenges until it became necessary to keep trade, when it then met lower prices. In Wheeler's estimation, his company had far superior facilities and services for marketing petroleum products, which gave it a considerable edge over its would-be competition, supplying customers promptly, and conveniently. 110

108 Transcript-1907, 872-73 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. The Standard accountants had letters from McNall indicating that they were acting to gather information for the majority stockholders. Yet how could McNall officially and legally know that this, given that Van Buren did not register his control of the stock with Waters-Pierce until 1904? Nor did Finlay explain why these accountants were placed on the Waters-Pierce payroll if they were not acting at the request of Waters-Pierce.

109 Transcript-1907, 873-83 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.

110 Transcript-1907, 883-84 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
Defense counsel Odell briefly recalled C.W. Cahoon, manager of the Waters-Pierce Central Texas Division. Displaying the wooden sign that Cahoon saw outside of Clem's Eagle Refining office in 1900, Odell made sure that the jury could see the wording: "A.W. Clem, Agent of the Waters-Pierce Oil Company." Cross-examining for the state, Battls asked about its visibility to the general public, which it appeared, was almost nil. The sign was also atypical of those for Waters-Pierce agencies, which never identified the name of the agent.111

Odell then recalled Louis Fries to the stand. A veteran Waters-Pierce employee, Fries was the Waters-Pierce South Texas Division manager. He and Roy Campbell, owner of the Texas Oil & Gasoline Company, an independent firm, became good friends despite being competitors. Fries stated that after Waters-Pierce bought out Campbell's firm in 1895, Campbell continued to operate it under that name for Waters-Pierce until 1904.112

Odell asked about the alterations made to Campbell's copy of his contract with Waters-Pierce. Fries averred that his boss, Finlay, told him to delete the clause excluding Campbell from competing against Waters-Pierce for fifteen years, and this was done with Campbell's consent in April 1900, prior to the reorganization of the "new" Waters-Pierce. He claimed that the date stuck in his mind because he had reviewed his correspondence in 1905 after Campbell sued Waters-Pierce. Odell implied that Campbell's grievance and litigation against the defendant made him an unfriendly witness to Waters-Pierce.113

Fries asserted that Campbell had been glad that Waters-Pierce terminated Texas Oil & Gasoline: "...he knew he [Campbell] hadn't done the [Texas Oil & Gasoline] Company justice for a number of years, and he could not do so without sacrificing more in the other direction than his salary would amount to[.]" Campbell had not really been running the company during its last five years. It had been "a second rate bookkeeper and a stenographer" that operated it. Yet Campbell drew his salary from Waters-Pierce, while

111 Transcript-1907, 884-87 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
112 Transcript-1907, 887-90 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
113 Transcript-1907, 890-95 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
spending time on other ventures. Campbell had no problem with Waters-Pierce until after Gruet advised him to sue the company for firing him and terminating the Texas Oil & Gasoline Company.\textsuperscript{114}

Batts's cross-examination explored Campbell's lack of success with Texas Oil & Gasoline. Lack of effort, Fries asserted, not Waters-Pierce policies, caused Campbell's failure. Lack of profit and Campbell's outside activities resulted in termination. However, it took ten years for the company to decide on termination. Fries could not explain Waters-Pierce's patience with Campbell, only that it existed. Had it been up to him, he would have fired Campbell much earlier, friend or not. Batts recalled that when Texas Oil & Gasoline was still independent, Waters-Pierce opened a rival retail operation in San Antonio, Consumers Oil. Consumers Oil did not have signs showing that it was an agency of Waters-Pierce, and Fries "didn't run around and advertise it." Waters-Pierce shut down Consumers Oil after buying Campbell out in 1895.\textsuperscript{115}

Batts wanted to know more about Waters-Pierce's altered contract with Campbell. A letter that Fries had received on that subject from Finlay had been destroyed in 1906, when Waters-Pierce moved into a new office building in Houston, which Batts noted was around the time hearings in Hadley's Missouri investigation began. Fries claimed that he and his chief clerk had gone through the old correspondence and records and destroyed many items that were no longer of any use, but he denied that he had received orders to destroy the correspondence and records, claiming that storage space had been at a premium. The letter from Finlay had been personal, even though it had been sent to Fries as manager. The letter contained instructions to get Campbell's contract and delete the second paragraph, and that was all.\textsuperscript{116}

\textsuperscript{114} Transcript-1907, 895-97 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
\textsuperscript{115} Transcript-1907, 897-901 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. Apparently Texas Oil & Gasoline had managed to increase its gallonage over the years, despite Campbell's alleged lack of interest in running the company.
\textsuperscript{116} Transcript-1907, 901-02, 904 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. In the absence of this destroyed letter, there was no written evidence confirming Fries's story. The letter from Fries to Finlay that Odell had earlier used to refresh the witness's memory was vague, with no references to
Again seeking information on Waters-Pierce's pseudo-independent tributary companies, Batts got Fries to affirm that Waters-Pierce did own another store in Houston when Fries went there in September 1903, the Texas Lamp & Oil Company. Fries claimed to know little about it. Yet he had shut down that company in 1904. He declared that Waters-Pierce was not now running any companies in Texas by other names, as far as he knew, prompting Batts to ask when Waters-Pierce had changed its "[p]olicy of running concerns in somebody else's name in a kind of sham competition[.]") Fries denied knowledge of any such policy, despite evidence to the contrary.117

Batts went back to the subject of correspondence and the reorganization of Waters-Pierce in 1900. Batts asserted that not much changed after the organization of the "new" Waters-Pierce. The stationery of the old firm had a header that read "Waters-Pierce Oil Company, San Antonio, Texas." Subsequently, a rubber stamp with "Incorporated under the laws of the State of Missouri on May 29, 1900" updated the old stationery. Was this the only change after the reorganization? There had been many changes since then, Fries declared, though he could not specify which were results of the reorganization. Instructions had become more detailed and agents and managers had lost a great deal of authority. On June 1, 1900, his office began to use new ledgers for the new company and transferred all the old account to the books of the new one. But no one notified Waters-Pierce's customers of the changes in organization and transfer of accounts. Evidently most employees under Fries did not know for what firm they were working for several days following the reorganization.118

The defense next offered in evidence the judge's charge to the jury in the 1897 ouster suit. It set out what Judge R.E. Brooks had determined to be the final issues of fact

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117 Transcript-1907, 902-04 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907. Batts observed that Waters-Pierce had stopped running pseudo-competitor around the time that Tinsley took over Waters-Pierce.
118 Transcript-1907, 904-06 TSA RG 302 Box 1989/41-85; Houston Post, May 31, 1907.
for the jury to consider. Penn tried to introduce the receipts for Waters-Pierce annual franchise taxes paid to Texas from 1900 to 1907, as proof that Waters-Pierce had lived up to its part of the "contract" it entered when it received its 1900 permit which allowed it to do business for ten years, payment of taxes being a condition of the "contract." He contended that Texas, by accepting the tax payments, had recognized Waters-Pierce as a valid foreign corporation permitted to operate in the state. Brooks sustained Batts's objection. The defense closed its case shortly thereafter.119

Both sides announced their readiness to submit the case to the jury without further arguments. The jury withdrew to await the charge from Judge Brooks. But lawyer T.B. Cochran, local counsel for Waters-Pierce wished to submit some legal points on the subject of penalties. Cochran argued that the 1903 Anti-Trust Act had repealed the 1899 Anti-Trust Act, and therefore limited penalties to $50.00 per day. Also, the statute of limitations should apply to an action like the present one, which was essentially penal. Authorities ranging from Texas cases to ancient English precedents supported his position. Judge Brooks should instruct the jury to limit penalties to those within the statute of limitations for criminal antitrust actions. Finally, Cochran argued that since penalties on a business were based on business days, then all Sundays should be excluded as Waters-Pierce did not operate on Sundays. An interesting point, but not one explicitly stated in the statutes.120

Brooks asked if the state's attorneys intended to request separate penalties for each alleged violation of the antitrust laws and for each allegedly illegal contract. The State sought one penalty for the several concurrent alleged violations, Batts replied, adding that Texas requested that Brooks peremptorily instruct the jury to direct part of the verdict. The state had clearly demonstrated and proved that Waters-Pierce had violated the antitrust laws. Stedman for the defense opposed this. On that note, Judge Brooks adjourned the court.121

119 Houston Post, May 31, 1907.
120 Houston Post, May 31, 1907. Cochran was Penn's partner in the Austin firm of Cochran & Penn.
121 Houston Post, May 31, 1907.
Next day, May 31st, Brooks gave a relatively straightforward charge to the jury. It largely summarized the state's allegations, explained the antitrust laws, and his own rulings on legal points relevant to the trier of fact. Brooks managed to displease both the plaintiff's and defendant's lawyers. The former, particularly Attorney General Davidson, were unhappy that Brooks did not instruct the jury that the contracts between Waters-Pierce and Campbell/Texas Oil and Gasoline, and between Waters-Pierce and Clem/Eagle Refining, violated the Texas antitrust laws, and order it to return a verdict for the state on those allegations. Instead, Brooks instructed the jury that those contracts did not violate the antitrust laws of Texas, and that it should find in the defendant's favor on those issues. However, the jury could still consider those agreements with other evidence to determine that Waters-Pierce violated the antitrust laws under the other allegations.

Similarly, Brooks instructed the jury that the evidence of various rebates and discounts, and practices used by Waters-Pierce to meet competition did not tend to show a violation of the antitrust laws, except to the extent that such evidence helped to prove guilt on any of the issues raised elsewhere in the charge to the jury. Also displeasing the state's lawyers was Brooks's charge that Waters-Pierce's operations and actions outside of Texas could be considered only as shedding light on the defendant's business dealings within Texas. However, if Waters-Pierce's dealings outside of Texas tied it to any sort of trust, combination, or pool which affected business, restricted or tended to restrict the sale of petroleum products in the state, or to fix or increase the price of such products in Texas, then the jury would have to return a verdict for the state.

The gravamen of Judge Brooks's charge were the allegations that Waters-Pierce had entered into or continued agreements or understandings with Jersey Standard on or after May 31, 1900, agreements that restrained trade and/or affected prices of petroleum products in Texas; that the defendant was part of a conspiracy, combination, pool, or trust in restraint of trade and/or which affected those prices in Texas; that Jersey Standard and Waters-Pierce were effectively under common management or direction, which restricted
the petroleum trade in Texas, and/or which affected prices; and that Jersey Standard had acquired a majority of Waters-Pierce stock, effecting a combination with the intent to monopolize/restrain the petroleum trade in Texas and/or control the prices of petroleum products in the state. If the jury found by a preponderance of the evidence that any of those charges were true and proven, then it was to return a verdict in favor of the state. Essentially Judge Brooks stated that the substantial issues were Waters-Pierce's ties to Standard Oil, and the effects of those connections on local (intrastate) trade in Texas. Thus Brooks's charge to the jury vindicated Waters-Pierce in a number of areas, especially his restricting the charges to the "new" company's actions on or after May 31, 1900, when the "new" Waters-Pierce obtained its permit to do business in Texas.122

Nevertheless, Judge Brooks's charge to the jury still upset the defense lawyers. Brooks charged that the jury could find the defendant guilty of violations under the 1899 antitrust statute from May 31, 1900 to March 31, 1903, when the 1903 antitrust statute came into effect. This made possible a total of 1,033 days subject to possible fines of from $200 to $5,000 per day. The jury could also find Waters-Pierce guilty of violations under the 1903 antitrust act from April 1, 1903 until April 29, 1907, i.e., 1,488 days at $50 per day. In sum, because Judge Brooks had not found the defense's arguments to limit penalties persuasive, Waters-Pierce faced a potential fine of $5,239,400. With Brooks having managed to annoy both sides, the jury retired to render a verdict.123

It returned the next morning with its decision:

We, the jury, find for the plaintiff against the defendant on each of the issues submitted to us for each of the days between May 31, 1900 and March 31, 1903, being 1,033 days and for penalties of $1,549,500.

And we find for the plaintiff against the defendant on each of the issues submitted for each of the days between April 1, 1903 and April 29, 1907, being 1,488 days, and fix the penalties at $74,400. We further find that the

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122 Houston Post, June 1, 1907.
123 Houston Post, June 1, 1907. Davidson complained that the charge was very favorable to the defendant. Johnson considered the charge to the jury to be fair, but thought that Brooks was in error in holding that the 1903 antitrust statute did not repeal the sizable penalties of the 1899 antitrust statute, and in not charging that the statute of limitations should have applied regarding any violations, as the litigation was penal in nature.
permit of the defendant to do business in the State of Texas should be canceled.

We find for the defendant on all issues made by the pleadings and not submitted in the charge of the court.

The verdict powerfully vindicated Davidson and Lightfoot. The jury had found Waters-Pierce guilty on eighteen counts of continuous antitrust violations from the first day of the "new" Waters-Pierce until Texas filed the second amended petition, a total of 1,521 days. It stripped away the defendant's permit to do business in Texas, ousting it, and levied fines totaling $1,623,900, more than the federal Justice Department had recovered in all of its antitrust actions since 1890 combined. Under the 1899 and 1903 antitrust statutes Brady was to receive $391,145, leaving Texas a windfall of $1,232,755. Special counsels Gregory, Batts, and Allen would share in Brady's bounty, and according to the contract between Gruet, Sr. and Brady, made via Lightfoot, Gruet was entitled to one-third of the latter's statutory share, or $130,381.67. Understandably pleased, Brady stated to the press his pleasure at the verdict, and made a bold prediction, "We believe it undoubtedly means the expulsion for all time from Texas of a corporation which has offended against our laws with greater frequency and more flagrantly than any other." Flush with victory, County Attorney Brady was overly optimistic.124

While unpleasant for Waters-Pierce, the result was far from the worst possible outcome. The jury had been convinced that Waters-Pierce was guilty, but had apparently had compromised on the degree of guilt, which was reflected in the penalties that it assessed against the defendant. The jury had no discretion under the 1903 antitrust statute, which set the fine at a straight $50 per day. But it fined Waters-Pierce only $1,500 per day under the 1899 statute rather than the maximum $5,000 per day.

The defense attorneys also had a few tricks left to play. The evening the verdict came, they filed the first of many post-trial motions, requesting that Judge Brooks grant a

124Houston Post, June 2, 1907; St. Louis Post-Dispatch, June 1, 2 1907; "Jury in Texas Case Fines and Ousts Waters-Pierce Oil Company," OII, June 5, 1907, 16.
new trial and citing fifteen reasons for granting the motion. It was a long shot, but it indicated that Waters-Pierce was not destroyed and intended to fight in the appellate courts for as long as it could drag the matter out. Aware of this determination and that Waters-Pierce possessed funds much greater than the Texas Attorney General’s budget, Davidson took steps to guarantee that Texas would get its penalty money. Applying for a temporary receiver in Judge Brooks’s court to ensure the continued operation of Waters-Pierce in Texas until the fine was paid off, the state also filed for a writ of injunction to prevent the removal of any Waters-Pierce assets Texas. Brooks set a hearing on the application for a receiver and injunction for June 8th, and issued a temporary restraining order prohibiting Waters-Pierce or its agents from removing any assets from Texas.125

V. Aftermath

Congratulatory letters and telegrams poured into the Texas Attorney General’s Department over the summer of 1907, from politicians, friends, citizens, and most significant, from several attorneys general of other states who were thinking of imitating the antitrust success of Texas. Hadley of Missouri, for example, proposed more joint antitrust investigations and litigations to pool several states’ resources against the corporations’ seemingly bottomless coffers. He proposed a conference of the attorneys general of interested states to be held in St. Louis that summer to address common problems. The Sherman Act had envisioned that antitrust enforcement would be the province of both the federal government and the states, and Hadley intended that Missouri and Texas carry their weight and inspire others to do likewise.126

125 Houston Post, June 2, 4 1907: “Jury in Texas Case Fines and Ousts Waters-Pierce Oil Company.” OIT, June 5, 1907, 16. The attorneys for Waters-Pierce tried to file a supersedeas bond for the appeal to avert the appointment of a receiver. The bond was rejected as the surety company, allegedly tied to Standard Oil, had only $50,000.00 in assets in Texas, as required by law. This took time to sort out, and while the State applied for a receiver in state court, Waters-Pierce’s lawyers hurried to federal court to request a federally-appointed receiver, which was granted. Ultimately Texas prevailed on the receiver issue, and a state appointed receiver took over from the federal receiver, but only after much more litigation.

126 See all antitrust correspondence received by the Texas Attorney General’s Department from June 1, 1907 until July 27, 1907, TSA RG 302 Box 4-8/386. This constitutes approximately thirty relevant letters and telegrams on the subjects listed in the text. Among the more interesting letters was one from A.W. Clem to Lightfoot, June 6, 1907, in which Clem offered his services as a experienced oil man to be the receiver of Waters-Pierce’s property in Texas. He was not selected.
Some who were pleased at the verdict, and credited Davidson and Lightfoot for their legal skills were yet disturbed by aspects of the investigation and litigation. The Houston Post, solidly pro-Bailey, applauded the outcome of the suit and antitrust enforcement:

Texas will not submit to lawlessness on the part of corporations if the fact of transgression can be established and the sooner this is understood the better it will be for those who enjoy the hospitality of the State. There is always a welcome for law-abiding corporations, but the people will not permit transgressors to remain here if they know it.

But that same editorial criticized the political elements involved in the investigation of the case, observing that if “this unfortunate and wicked phase of the litigation could have been omitted, the State's victory would have reflected everlasting credit upon him [Davidson].” The fact that the state did not call Gruet as a witness or even use his deposition was disturbing to some. Similarly, the fact that no evidence had come to light that Waters-Pierce had paid off Senator Bailey was proof that there had been a conspiracy against him, and that the ouster suit had its origins in politics, not antitrust enforcement.127

Critics observed that Brady, the Travis County Attorney, stood to receive a fee over $100,000, more than the total salaries of all of the presidents and governors of Texas combined received, yet he had apparently done little work on the case. His huge fee derived from the financial incentives the state offered to county and district attorneys to investigate and prosecute antitrust violations, real or imagined. This penurious attitude kept the cost of state government down by effectively making local law officials into investigators for the state Attorney General at no cost. At the same time, the potential shares in fines encouraged greedy low-level county attorneys to instigate nuisance antitrust suits against corporations and force settlements. As the Houston Post noted, the solution to the problem was not simply reducing the percentage of fines that county or district attorneys shared, but rather to pay government lawyers adequately. The need to rely on three special counsels to investigate and prosecute the case also highlighted the need to

127Houston Post, June 2, 3, 1907.
expand the Texas Attorney General's staff to cope with its increased responsibilities and workload. Monta J. Moore, an unsuccessful candidate for governor in 1906, made antitrust enforcement a regular part of his campaign speeches with particular attention to Waters-Pierce. He also criticized the statutory fee arrangements while applauding the results of the litigation. While Waters-Pierce had been the most visible and notorious tentacle of the Standard Oil octopus, it was hardly the only oil company with ties to Standard. Something needed to be done about those companies as well, for "Standard Oil is bad enough to be punished four times as much [as Waters-Pierce] and driven from the State also." 128

Roy Campbell stated that he had testified because it was right to tell what he knew about Waters-Pierce, and he noted with approval that competition in the oil industry in Texas was growing rapidly and strongly, tempting him to reenter the fray. He predicted presciently that even if the higher courts upheld the jury's ouster verdict, Waters-Pierce would be back, through some new loophole, or through the organization of a new company. Texas was too good a market, "and the profits are too large for H. Clay Pierce and his apostles to retire from such a lucrative field." 129

John D. Johnson denied to the press that Waters-Pierce was guilty of any of the charges. The only issues on which the jury had found against his client were those relating to Standard Oil's ownership and control of a majority of Waters-Pierce stock. Under the charges submitted by Judge Brooks to the jury, that was sufficient for them to return a guilty verdict. He noted that Waters-Pierce was found not guilty on all other counts, which he declared to be "a complete vindication of H. Clay Pierce" on charges that had circulated in the press that Waters-Pierce was illegally incorporated, that it had obtained a permit to operate in Texas by fraud and perjury, and that it had engaged in illegal business practices and transactions. Johnson found the result remarkable and refreshing given the state's resources including recent laws that let the attorney general's agents examine corporate

128 Houston Post, June 2, 4, 7 1907. On the need to reform and expand the offices of states' attorneys general, see Chapter 5, note 26.
129 Houston Post, June, 3, 1907.
records at will, and the role of the traitorous Gruet, "they failed to establish a single
transaction which was violative of the Texas anti-trust law. The result of the case on this
point is highly gratifying to the officers of the company." Johnson expressed
disappointment, but not surprise, that Texas did not have Gruet testify. He had been
prepared to impeach Gruet thoroughly, noting that it was easy to guess why Davidson and
Lightfoot had not used him, which proved to Johnson that Gruet had been useless to the
state. He predicted that the contract between Gruet and Brady would be repudiated on that
basis.130

Johnson praised Judge Brooks, whose rulings were fair, given the court's theory
of the law. Johnson and his fellow defense lawyers thought that Judge Brooks's legal
theory was wrong. Accordingly Waters-Pierce planned to appeal the case in Texas, and if
that failed to obtain a reversal then on to the U.S. Supreme Court. Last, the attorney
observed that if Waters-Pierce complied with the judgment and immediately ceased to
operate in Texas, "it would work [a] very great inconvenience to the consumers of oil
throughout the State." No competitors had the marketing facilities to compensate. It was
not a threat, only a word of caution that Texans might have to reap what the Texas Attorney
General had sown.131

To no one's surprise Brooks overruled the defense motion for a new trial on June
7th. Immediately thereafter, the defense lawyers gave notice that Waters-Pierce would
appeal the case to the Texas Court of Civil Appeals. The following day, after prolonged
arguments by attorneys for the state and Waters-Pierce, the district clerk, D.J. Pickle,
turned down Waters-Pierce's $3,275,000 supersedeas bond, a requirement for the appeal,
as the surety for the bond, the American Surety Company, only had $50,000 on deposit in

130 Houston Post, June 4, 1907; St. Louis Post-Dispatch, June 4, 1907. In fact, Brady's fees were reduced
substantially by Texas courts, and accordingly the amount of Gruet's fee shrank as well. See Galveston
Daily News, April 15, 1909.
131 Houston Post, June 4, 1907.
Texas. After listening to arguments for and against the state's application for a receiver, Brooks deferred his decision for two days.\textsuperscript{132}

On June 10th, Brooks named Robert J. Eckhardt as receiver, but delaying issuing the order for forty-eight hours to allow either side to object. While defense lawyers objected to granting the application without continuing the matter to let the defendant obtain adequate sureties to file an appeal, no objections to Eckhardt were forthcoming. Both sides had agreed to postpone the appointment for a while longer pending the arrival of more Waters-Pierce attorneys from St. Louis. However, word reached Austin that defense lawyers were meeting with Federal Judge David E. Bryant, and the state petitioned for the immediate appointment of a receiver. Brooks promptly appointed Eckhardt as receiver of all Waters-Pierce property in Texas, including any that might thereafter come into the state, and transformed the temporary restraining order against Waters-Pierce and its agents into a temporary injunction. Cochran for the defense gave notice that Waters-Pierce would appeal the appointment of a receiver to the Texas Court of Civil Appeals.\textsuperscript{133}

Eventually Waters-Pierce executed a supersedeas bond acceptable to District Clerk Pickle, and perfected its appeal from the judgment for penalties and cancellation of its permit. Waters-Pierce also had to file a $100,000 bond to appeal the appointment of Receiver Eckhardt, which it did on June 19th, the same date that Eckhardt officially qualified as receiver by filing a receiver's bond of $250,000. Waters-Pierce had another surprise for the state later that day. Attorneys for Bradley L. Palmer of Massachusetts filed an application for the appointment of a federal receiver in the federal circuit court for the Eastern District of Texas. Palmer claimed to hold one hundred shares of Waters-Pierce stock, and requested that Judge David Bryant appoint a federal receiver to operate Waters-Pierce and protect the stockholders' interests as it wound down its business in Texas.

\textsuperscript{132} Houston Post, June 8, 9, 1907. Texas law only required that a surety company have $50,000 on deposit in Texas, as no one had ever imagined the need to post a bond for $3,275,000 when the surety requirements were established.

\textsuperscript{133} Houston Post, June 11, 1907; "Receiver for Waters-Pierce Oil Company in Texas," OJ, June 19, 1907, 17; Waters-Pierce Oil Co. v. State, 103 S.W. 836 (1907)
Surprisingly, Judge Bryant promptly appointed Chester B. Dorchester as the federal receiver of Waters-Pierce, and the latter immediately took possession of its assets after posting bond. It would take the state's lawyers nearly twenty-one months and a ruling from the U.S. Supreme Court that the state, not federal, courts had proper jurisdiction of Waters-Pierce's Texas assets to oust Dorchester and put Receiver Eckhardt in possession of Waters-Pierce's assets. Until his ouster in April 1909, Dorchester ran Waters-Pierce as if it were business as usual.134

Meanwhile, as the appeal from the trial judgment slowly progressed and the Texas Attorney General's Department devoted attention to other matters, complaints began to filter in to Lightfoot and Davidson about another Standard firm in Texas that they had ignored, the Security Oil Company. Testimony in the federal antitrust suit against Standard Oil in mid-September confirmed that Jersey Standard, via a subsidiary, controlled a majority of Waters-Pierce stock, and that Standard executives had interests in oil companies in Texas. Rumors abounded that Waters-Pierce planned to sell out to The Texas Company, which C.A. Pierce vigorously denied, while The Texas Company said nothing.135

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134 "Receiver for Waters-Pierce Oil Company in Texas," OII, June 19, 1907, 17; "Federal Receiver for Waters-Pierce in Texas," OII, July 5, 1907, 21; "Status of Waters-Pierce Case," OII, July 19, 1907, 9; "First Report of Waters-Pierce Receiver," OII, September 5, 1907, 17; "Status of Waters-Pierce Case in Texas," OII, November 5, 1907, 22; "The Waters-Pierce Receivership Case," OII, November 19, 1907, 17; "A Decision in Waters-Pierce Case Against Federal Receiver," OII, December 5, 1907, 14; "Waters-Pierce Case Becomes More Involved," OII, December 19, 1907, 5; "Mr. Dorchester Remains in Charge of Waters-Pierce Property," OII, January 5, 1908, 6; "Waters-Pierce Case Certified to Federal Supreme Court," OII, January 19, 1908, 32; "The Texas Supreme Court Upholds Lower Courts in Waters Pierce Case," OII, March 5, 1908, 16; "All Waters-Pierce Cases Now Before Federal Supreme Court," OII, April 5, 1908, 19; "Federal Supreme Court Affirms Texas Cases Against Waters Pierce," OII, January 20, 1909, 20; "Final Decision is Adverse to Waters Pierce Company," OII, April 20, 1909, 20. Presumably Palmer was a front man for either Waters-Pierce or Standard, as no individual besides H.C. Pierce owned one hundred shares of Waters-Pierce stock at that time. See the following cases on the receivership issue: Waters-Pierce Oil Co. v. State, 103 S.W. 836 (Tex. Civ. App. 1907); Waters-Pierce Oil Co. v. State, 105 S.W. 851 (Tex. Civ. App. 1907); Waters-Pierce Oil Co. v. State, 106 S.W. 326 (Texas 1907); Waters-Pierce Oil Co. v. State, 212 U.S. 86 (1909); State of Texas v. Palmer, 158 F. 705 (5th Cir. 1907); Palmer v. Texas, 212 U.S. 118 (1909). The only court that thought that the Texas state courts did not have jurisdiction of the property of Waters-Pierce was the federal circuit court. Dorchester got along well enough with Pierce to visit him during a vacation to St. Louis.

135 On complaints about Security Oil, see John Smith to Davidson, August 20, 1907, RG 302 Box 4-8/396, TSA; Lightfoot to Smith, August 31, 1907, RG 302 Box 1984/67-65, TSA. On testimony in federal antitrust suit see Houston Post, September 18, 19, 10, 21, 1907; "Testimony as to the Corsicana Refining Company," OII, October 5, 1907, 20; "Testimony at New York Concerning Security Oil Company," OII, October 19, 1907, 14. On the rumors about The Texas Company taking over Waters-
It took public attacks by Senator Joe Bailey in late October 1907 against Davidson for failing to drive other Standard affiliates from Texas to prod the Texas Attorney General and Lightfoot into open action. Once again, Davidson and Bailey traded barbs in the newspapers. On November 6th, Davidson, Brady, and Travis District Attorney John Hamilton filed an antitrust suit against multiple firms and people associated with Standard Oil: Security Oil, the Navarro Refining Company (formerly Corsicana Refining), Union Tank Line, Indiana Standard, Socony, Jersey Standard, and National Transit, and several individual defendants, including Folger, C.N. Payne, W.C. Proctor, and E.R. Brown. The suit sought $55,204,000 in penalties from these defendants and the forfeiture of their permits and/or charters (for those corporations which had either) to operate in Texas. The state applied for the appointment of a receiver to administer these companies' Texas assets, as well as special commissions to take depositions outside of Texas, and for injunctions to prevent the removal of assets. The court granted the injunctions, issued the special commissions, and set a hearing date for on the appointment of a receiver. The injunction was modified after Security's refinery shut down, allegedly due to the restrictions of the original injunction. In early January 1908, Judge George Calhoun appointed Guy Collett of Austin, Davidson's close friend, as receiver for the tank cars of Union Tank Line. No receiver was appointed for Navarro Refining or Security Oil, and the other defendants had no assets in Texas. After the initial burst of investigatory zeal, matters bogged down, and little progressed in this suit, save for the occasional deposition.136

Bailey, flush with his apparent success, declared that The Texas Company was part of Standard Oil. He called for an investigation, claiming that Attorney General Davidson had not pursued the company because his brother, Colonel W.S. Davidson, president of the First National Bank of Beaumont, owned stock in the company. W.S. Davidson publicly denied having ever owned any stock in The Texas Company, while that firm's general counsel, James L. Autry, offered to let Governor Campbell and Attorney General Davidson, or agents of their offices, inspect the corporate stock books and records anytime.

See Autry to Cullinan, April 25, 1907, Autry Papers, Box 27 "The Texas Company Legal Correspondence—1907" WRC. The temporary shutdowns by Security Oil, and the consequent complaints of businessmen and leaders of Beaumont to Davidson put tremendous pressure on the Texas Attorney General to handle the suit against Security Oil carefully. Unlike Waters-Pierce, Security Oil was not widely unpopular despite its deserved reputation as a Standard Oil company. Security employed many people, and spent a great deal of money in the Beaumont area, and did not sell directly to consumers, so it did not have the opportunities to offend that Waters-Pierce had. Apparently Standard executives had a good idea that Davidson would file suit against its remaining Texas affiliates. Navarro Refining was not organized as a Texas corporation until October 12, 1907. It was the successor in interest and properties to the Corsicana Refining Company. Corsicana Refining had been founded by Joseph S. Cullinan, with funding from Payne and Folger (and National Transit) in 1898 as J.S. Cullinan Pipeline Company, which became in turn J.S. Cullinan & Company, and the Corsicana Refining Company. Cullinan sold out his interests prior to founding The Texas Fuel Company, which became The Texas Company, and eventually Texaco. King, Joseph Stephen Cullinan, 31-39, 48-51, 95-96; Mobil Oil Corporation, "History of the Refining Division, Magnolia Petroleum Company, Beaumont, Texas," n.d., 5-15, 34-37. Note that at the time that Davidson filed suit until the dissolution of Navarro Refining, neither Payne nor Folger were stockholders in the company that they had bankrolled. This did not mean that they or Standard Oil no longer controlled the company. Out of two thousand shares of Navarro Refining stock, W.C. Proctor held 1798 and 2/3 shares, or approximately ninety percent of the stock. W.C. Proctor had worked for Cullinan's company in 1898 as assistant treasurer, and became treasurer in 1900, and thereafter with the Corsicana and Navarro Refining Companies. Proctor had been an accountant in Oil City, Pennsylvania for the Marion Oil Company, until Calvin N. Payne sent him to Texas to work for Cullinan. The Marion Oil Company was a Standard affiliate. Charles B. Wallace asserts that the Corsicana properties were owned and controlled by the National Transit Company until October 2, 1907. At about that time National Transit conveyed all of the assets of Corsicana Refining to Payne and Folger, though what they paid for them, if anything, is not recorded. This enabled Payne and Folger to convey the properties to Proctor on October 3, 1907. On October 7, 1907, Texas granted a charter to the Navarro Refining Company, which was filed with the Secretary of State on October 12, 1907, and the firm was officially organized. Proctor transferred all of the Corsicana property to Navarro Refining that same day, which issued 2,000 shares of stock at $100.00 per share par value. 1,955 of these shares were issued to Proctor on behalf of Folger and Payne. According to Wallace these transfer were made so that Proctor could transfer the property to Navarro once he had organized it. Wallace also avers that though no change occurred in the management or character of the business, these transfers made a difference in the ownership and control. This seems questionable, at best. The changes in organization occurred after the institution of the federal suit in Missouri that ended in the 1911 dissolution decree against Standard Oil, and less than five weeks before Davidson filed the antitrust suit against Security Oil and Navarro Refining. Note that the stock, which Wallace admits was issued to Proctor for the benefit of Folger and Payne, remained in Proctor's name on the official records from October 12, 1907 until the dissolution of Navarro Refining on December 6, 1909. Charles B. Wallace, Nine Lives: The Story of the Magnolia Petroleum Companies and the Antitrust Laws (1953), 12-14, 22-24. The termination of Corsicana Refining's partnership, and the organization of Navarro Refining was to limit the potential fines in an antitrust suit to the duration of the corporate existence of Navarro Refining, that is from October 12, 1907 until Davidson filed suit on November 6, 1907.
that they wished to do so. Autry declared that The Texas Company respected the state's laws and welcomed an investigation. Texas Company investor and executive John "Bet-a-Million" Gates, resentful that his company was being hauled into a political fight between Bailey, Davidson and Campbell, demanded that the governor retract his assertions that the oil company was part of Standard. He stated to the press that "[t]he trust prosecution mania adopted by the Campbell administration is driving capital and industries from Texas[,]" and that state officials ought not to publish every rumor that a firm was part of a trust as a fact. Gates was backed by statements from the U.S. Department of the Interior, which declared that it was satisfied from its investigations that The Texas Company was independent. Bailey, however, continued to press his public attacks against The Texas Company throughout the winter of 1907-1908, armed with what he thought was irrefutable proof of his charges: letters and statements from an insider, A.C. Hall, a former employee of The Texas Company. Bailey had quickly forgotten the embarrassment that Davidson had suffered from his reliance on Gruet's letters and statements, and now it was his turn. Autry denounced the contents of Hall's published letters as a pack of lies and repeated his offer to let state officials examine the corporate records. Autry refused to let The Texas Company "be tried and condemned even in public and political opinion based upon hearsay evidence or the vaporings of a disgruntled ex-employee." Hall was much like Gruet, save that the latter actually had access to secret information, whereas the former had merely been a right-of-way agent. Bailey, exorciated in many papers, was forced to retract his allegations, and lost the support of several oil men.137

Meanwhile on December 11, 1907, the Court of Civil Appeals affirmed the verdict and judgment of the district court against Waters-Pierce which canceled its permit to operate

in Texas, and imposed $1,623,900 in fines. A majority of the court declared that Judge Brooks had committed no positive errors in his handling of the case. The court unanimously upheld the 1899 and 1903 antitrust acts against multiple charges of unconstitutionality by the defense lawyers. The defense claim that the statutes were too indefinite and uncertain was untenable, and the court noted that the Sherman Act was less definite and specific than the Texas statutes, yet it had repeatedly been held constitutional. As for the claim that the laborer's exemption in the 1899 antitrust laws made the latter unconstitutional as a denial of equal protection, the court noted language of limitation in the statutes and concluded that the exemption did not apply to the 1899 antitrust statute. The court also held that the claims that the judgment imposed an excessive fine that amounted to a deprivation of property without due process and that the 1899 act was void because it authorized excessive fines were without merit. Texas courts in previous cases had decided against the latter claim, and the court noted that while the verdict against Waters-Pierce was large, it was well under the maximum penalty allowed by the statute, observing:

Its magnitude is mainly attributable to appellant's [Waters-Pierce's] repeated and long-continued violations of the law, covering a period of six years. Hence we have reached the conclusion that the verdict is not so large as to render it manifest that the jury were actuated by prejudice or other improper motives.

The court agreed with the defense counsel that the antitrust statutes which provided for the $1,623,900 in fines were penal. They provided a punishment for acts detrimental to the public interest, but this did not make the suit a criminal case. The language of the statutes, despite referrals to "prosecutions" in some places, made it clear that an action to collect penalties was a civil suit, not a criminal one. Therefore the criminal procedure statute of limitations did not apply to restrict the period for which the state could seek penalties. The court also dismissed the alternative defense assertion that the statutes of limitations for civil cases should apply to limit the scope of time for penalties. Civil statutes of limitation did not apply to the state in cases in which the state sought to protect the public interest and
preserve public rights absent an express provision to the contrary in the statute which the state was enforcing. The antitrust statutes had no such express provision.138

The Court of Civil Appeals denied the defense motion for rehearing early in January 1908, and Waters-Pierce sought to appeal to the Texas Supreme Court, which refused to hear the case, leaving only one more venue, the U.S. Supreme Court. On March 27, 1908 the U.S. Supreme Court agreed to hear the ouster case on a writ of error, along with the associated receivership case. Meanwhile Judge Calhoun repeatedly continued the Security Oil antitrust suit as the state slowly gathered information. Undeterred by the prospect of losing its corporate charter, Navarro Refining kept expanding its operations and investments, while rumors declared that Gulf intended to purchase the Texas assets of Waters-Pierce. As with the 1907 rumors that The Texas Company intended to buy out Waters-Pierce, representatives of Gulf and Waters-Pierce denied the story.139

The Supreme Court heard arguments on the Waters-Pierce ouster and receiver cases for two days in early November, 1908, and issued an unanimous opinion on January 18, 1909. Justice William R. Day opened his opinion by pointing out that the Supreme Court had limited jurisdiction in reviewing state court decisions limited to the denial of federal rights and observed that the Texas Court of Civil Appeals did not appear to have decided a federal question adversely to Waters-Pierce. He proceeded to discuss each of the defense's assertions that the Texas antitrust laws, as applied, denied federal rights. Justice Day

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138 Waters-Pierce Oil Company v. Texas, 106 S.W. 918, 924-30 (Tex. Civ. App. 1907). Waters-Pierce was trying to use either the criminal or civil statutes of limitations to prevent the state from seeking penalties for antitrust violations more than two years prior to the filing of the suit, which would have severely reduced the fines.

139 "The Texas Supreme Court Upholds Lower Courts in Waters Pierce Case," OII, March 5, 1908, 16; "All Waters-Pierce Cases Now Before Federal Supreme Court," OII, April 5, 1908, 19; "Case Against Oil Companies Continued," April 19, 1908, 15; "Navarro Refining Company Enjoins Clayco Trustee," OII, September 6, 1908, 14; "Navarro Refining Company Buys Clayco Stock," OII, November 6, 1908, 8; "Report of Negotiations for Waters-Pierce a Fake," OII, September 6, 1908, 17. Though the Security Oil antitrust suit was continued, Davidson filed writs of garnishment directed towards Waters-Pierce, Security Oil, Navarro Refining, and the Gulf, Colorado & Santa Fe Railway Company as garnishees, alleged to be indebted Jersey Standard, Socony, National Transit, and Indiana Standard respectively, with Navarro Refining also allegedly indebted to Payne, Folger, and Socony. Nothing much came of this action, save a minor inconvenience to the defendants. "Davidson Files Writs of Garnishment," OII, July 6, 1908, 19; "Security and Navarro Companies File Answers," OII, October 6, 1908, 8.
quickly dismissed the contention that the antitrust statutes were given a retroactive effect in violation of Article 1, Section 10 of the federal Constitution by condemning the "new" Waters-Pierce for the 1878 agreement between Standard and the "old" Waters-Pierce. He noted that the facts of the case showed that the "new" Waters-Pierce had carried out the old agreement dividing territory and suppressing competition, and made itself a party thereto, and carried it out after the enactment of both the 1899 and 1903 Texas antitrust statutes. Therefore there was no retroactive effect. The Court also determined that the statutes were not so indefinite, vague, and uncertain as to be unconstitutional because they punished behavior "reasonably calculated" to violate the law, or would "tend" to monopolize, restrain trade, or fix prices. Justice Day stated:

...[T]here is to be remembered that we are dealing with an act of the legislature, sustained in courts of the state, with reference to its validity in view of the prohibitions of the Federal Constitution against deprivation by state action of liberty or property without due process of law. In this case the defendant has had a trial in a court of justice duly established under the law of the state; the question of its liability has been submitted to a jury. The judgment has been reviewed in an appellate court, and the correctness of the findings of fact and rulings of law in the lower court affirmed. We are not prepared to say that there was a deprivation of due process of law because the statute permitted, and the court charged, that there might be a conviction not only for acts which accomplished the prohibited result, but also for those which tend or are reasonably calculated to bring about the things forbidden.

Justice Day echoed the Texas Court of Civil Appeals in dismissing the contention that the fines imposed in the case were so excessive as to constitute a deprivation of property without due process. He noted that the record showed that Waters-Pierce was a large company with a great deal of assets, had been very profitable and generated annual dividends of up to seven hundred percent. Absent something more, the fact that fine was huge was not sufficient to make the laws unconstitutional as applied, for Waters-Pierce had violated the antitrust laws for a number of years, and conducted business throughout Texas. The Supreme Court affirmed the ouster and fines.\footnote{\textit{Waters-Pierce Oil Company v. Texas}, 212 U.S. 86, 97, 104-11 (1909); "Federal Supreme Court Affirms Texas Cases Against Waters-Pierce," \textit{OIL}, January 20, 1909, 20.}
With the overruling of the defense motion for a rehearing on April 13, 1909, Waters-Pierce had run out of options and delaying tactics. On April 19th, federal district court Judge Randolph Bryant ordered federal Receiver Dorchester to turn over Waters-Pierce's Texas property to state Receiver Eckhardt, which was done on April 21st. Three days later Waters-Pierce paid its entire fine plus interest, totaling $1,808,753.95, to the state treasurer in Austin, in cash. Eckhardt was ordered to prepare an inventory, whereupon the Texas assets of Waters-Pierce would subsequently be sold at auction on the courthouse steps in Austin. Until that time, Eckhardt was to keep the business running, which he did well enough to cause complaints from customers that Waters-Pierce was as bad as ever.141

Meanwhile Security Oil, which had been cutting back operations in late 1908, laid off many employees in January and February 1909 and shut down operations in late February. Vice-president O.C. Edwards blamed the antitrust suit, which hampered Security's ability to raise capital to build pipelines to new oil fields. The Oil Investor's Journal predicted if matters did not improve Security would be forced from Texas. The impact of the shutdown in Beaumont was immediate. Security had spent an estimated average of $10,500 per working day in 1908, with a monthly payroll of $25,000. A contingent of local businessmen traveled to Austin to try to get Davidson to lift restrictions on Security, with limited success.142

Suddenly in October 1909 the state's lawyers and the defense attorneys in the Security antitrust case pressed Judge Calhoun to set aside his criminal docket and hold the antitrust trial immediately. Calhoun refused to do this, and the trial did not begin until

141 "Final Decision is Adverse to Waters-Pierce," OIL, April 20, 1909, 20; William H. Gray, The Rule of Reason in Texas (1912), 40. For complaints against Waters-Pierce under Eckhardt's administration see, Speed Oil Company to Davidson, July 13, 1909 and D.M. Garvin to Davidson, September 23, 1909, RG 302 Box 4-8/396, TSA. Garvin, manager of the Lone Star Oil Company in Houston, complained that since the receiver took over "there has been more cutting of prices in the City of Houston, than at any other time during the last eighteen years," and declared that Waters-Pierce had to be operating at a loss to maintain its "ruinous prices."
October 24th. By previous agreement between the lawyers for all parties, the state and the defendants could read from transcripts from the ongoing federal antitrust suit in St. Louis against Standard, and from the 1907 Texas antitrust trial of Waters-Pierce, which they did for two days. At the end of the transcript readings, the attorneys for Security, Navarro Refining, and Union Tank Line admitted the guilt of their clients, and Attorney General Davidson asked for the dismissal of claims against all of the other defendants, save Indiana Standard. Under the 1903 antitrust law fines were limited to $50 per day, and Judge Calhoun fined Security $78,300; Navarro Refining $1,300; Union Tank Line $75,000 (or whatever less could be recovered from the sale of tank cars in Receiver Collett's possession); and Indiana Standard $62,070 (to be satisfied by its assets in Texas). Calhoun appointed Collett as receiver for Security, Navarro, and Union Tank Line and directed that the properties be sold at a courthouse auction in December 1909.\textsuperscript{143}

The records of the Texas Attorney General fail to explain the peculiar handling of this case, leaving only the contemporary criticism of anti-Standard lawyer and independent oil man William H. Gray. Gray concluded that the trial was a sham, and that Davidson and Lightfoot had reached a compromise with the attorneys representing the Standard Oil companies long before October 1909, though he denied accusing Davidson or any lawyer associated with the case of misconduct. He noted that the trial took place less than a month before the judge in the federal antitrust suit against Standard issued his decision and decree ordering the dissolution the Jersey Standard holding company. By forfeiting their charters, Security and Navarro Refining no longer existed, save as assets under the common management of a friendly receiver, Collett, and were immune to the results of the federal antitrust suit. Security and Navarro Refining had their complete inventories prepared by

\textsuperscript{143}"Security and Navarro Companies to be Sold December 7," \textit{OIL}, November 6, 1909, 22-23; Gray, \textit{Rule of Reason}, 42-46. As an interesting side note, around this same time two private suits were filed under the state antitrust laws against The Texas Company, Gulf Refining, and Waters-Pierce through Receiver Eckhardt, one by A.W. and H.H. Clem, and one by the Clem-Ballard Oil Company, which claimed that the defendant oil companies were all part of Standard Oil, and engaged in conspiracies to monopolize the oil industry in Texas. Nothing much came of these suits. See "Oil Companies Sued at Dallas," \textit{OIL}, November 6, 1909, 25-26.
October 25th and 28th respectively, ready for Receiver Collett as soon as he was appointed, suggesting collusion. The Standard companies and individuals against whom the largest fines could be assessed were all dismissed. Thus Standard benefited by the alleged compromise and sham trial.

If the case had been compromised prior to final judgment, District Attorney John Hamilton and County Attorney John Brady would have received only fifty percent of the statutory share in the penalties that they were entitled to by trying the case. Presumably the outside counsel retained by the state, the law firm of Allen & Hart, shared in Brady's and Hamilton's share of the fines. Allen & Hart were made the attorneys for Receiver Collett, and so received additional fees, as did the latter for taking charge of Security and Navarro Refining. Gray noted that 'very little of the "swag" got away from the attorney general's camp.'144

The auction of the Texas assets of Waters-Pierce, Security Oil, Navarro Refining, Union Tank Line, and Indiana Standard was scheduled for December 7, 1909, which was immediately after the conclusion of H.C. Pierce's trial for perjury/false swearing. There were peculiarities associated with the auction. Receivers Eckhardt and Collett advertised the auction in several major Texas newspapers, yet refused to advertise in the leading petroleum trade journal, The Oil Investor's Journal, despite repeated solicitations from its editor, Holland Reavis, and others. The receivers claimed that the court orders on promoting the auction restricted them to advertising in newspapers and that they could not advertise in journals. Yet neither receiver apparently tried to get the court orders modified.145

Meanwhile Edwy Brown, general manager of Navarro Refining, contacted prominent Galveston banker and businessman John Sealy in late November 1909. Brown

144Gray, Rule of Reason, 42-46. Arguing against the contention of greed is the fact that the state and Brady, Hamilton, and Allen & Hart stood to receive much more if fines were collected from the defendants dismissed from the case, even if the case were compromised prior to the trial.
145Holland Reavis to Davidson, October 29, 1909, TSA RG 302 Box 4/8/396.
told Sealy that Calvin Payne, general manager of National Transit, wanted to meet with him to discuss purchasing the non-Waters-Pierce properties at the December 7th auction and forming a new company. Several meetings between Sealy and various Standard Oil executives and attorneys in Galveston and Fort Worth and a tentative deal to form a partnership was struck. A final meeting was to be held in Austin at the Driskill Hotel on December 6-7, 1909.146

H.C. Pierce had arrived in Austin on November 28th with several attorneys to face his trial for perjury/false swearing. While he lived in his private railroad car, two of his Texas lawyers, E.B. Perkins and Samuel Canty checked into the Driskill Hotel. They were joined by Pierce's friend, Samuel W. Fordyce on December 4th, who was traveling incognito and had registered as Ramon del Garde of Mexico. A wave of oil men and attorneys arrived in Austin and registered at the Driskill Hotel on December 6th, the day before the great auction. Among those present were: C.N. Payne of National Transit; Walter C. Teagle, a director of Jersey Standard with Texas connections; O.C. Edwards, vice-president and general manager of Security Oil; E.R. Brown, general manager of Navarro Refining and other firms; Courtenay Marshall, secretary and treasurer of Security; John Sealy; E.D. Cavin, Sealy's attorney; Henry C. Coke, attorney Union Tank Line; George C. Greer, attorney for Security; and William McKie, attorney for Navarro Refining. This group also brought their own private stenographer. Meetings were held throughout the evening of December 6th, and deals finalized, almost.147

Sealy's lawyer, Cavin, had not seen any legal impediment to the plan to buy the oil properties and form a new company, but the banker himself balked at signing the written

agreements until he could check with his old Galveston friend, Davidson. Sealy, Cavin, and Greer met with Davidson and Lightfoot on the morning of December 7th, not long before the scheduled auction, and set forth the proposal to purchase the oil company properties and form a new firm, a partnership of individual investors that would purportedly compete with everyone in Texas. Lightfoot and Davidson gave the plan their blessing but warned that the new oil company and its owners would be liable for any future violations of Texas's antitrust laws. Reassured, Sealy returned to the Driskill Hotel, signed the agreement, and headed to the courthouse stairs that afternoon to attend the auction. 148

Receiver Collett put the assets of Security Oil on the block first, stating that properties were subject to bonded debt of $2,500,000, with $1,000,000 in accrued interest. Collett's invoice valued the properties at only $1,500,000. There was no explanation or discussion of the bonded debt, which was in fact held by Socony. Sealy was the only bidder, and offered $85,000, enough to cover the company's fine and court costs. Collett then auctioned off the assets of Navarro Refining and the tank cars of Union Tank Line. Sealy was the only bidder for both of those items, bidding $750,000 and $40,000 respectively.

Receiver Eckhardt auctioned off the Texas assets of Waters-Pierce at approximately the same time as Collett's auction. Behind Eckhardt stood Pierce and Perkins, facing Fordyce and Canty. As soon as Eckhardt opened the bidding, Perkins stepped forth to declare that the property was subject to an unrecorded mortgage of $5,000,000 against Waters-Pierce, $3,500,000 held by parties for value (presumably bond-holders). Fordyce

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148 "Transcript of Testimony," State of Texas v. Magnolia Petroleum Company, No. 10,232, 2465-75 TSA RG 302 Box 1989/41-46; Houston Post, June 28, 1913. Sealy knew that who his fellow investors from Navarro Refining were, but claimed in 1913 that he had not known that Howard Bayne represented the stockholders of Security Oil, that is, Standard, or that Socony held the Security bonds. He also did not know in 1909 that Archbold of Jersey Standard intended to acquire a sizable interest in the new company. He could not tell Davidson and Lightfoot what he did not know. In Rule of Reason, Gray stated that Sealy was chosen as a front man because he could honestly swear to any affidavits required by the Texas antitrust statutes, and because of his social and economic prominence in Texas, not to mention his friendship with Davidson.
bid the odd figure of $1,431,741.78. There were no opposing bidders. Eckhardt asked Fordyce for whom he was bidding, to which the latter answered himself "and associates." Despite questioning from Eckhardt, Fordyce refused to identify his "associates." The receiver could do nothing more, and the sale was concluded.

The sales, however, had to be confirmed by the judges in charge of the receiverships. Sealy and attorneys went before Judge George Calhoun, who gave permission to Lightfoot to ask a few questions, which the assistant attorney general had prepared. Lightfoot asked Sealy if he bought the properties as agent for Indiana Standard, Jersey Standard, Waters-Pierce, or any subsidiary corporation of those companies, or for "any other corporation incorporated and doing an oil business in this State[Texas]." The reply was negative. Lightfoot then asked,

Have you any contract, agreement, or understanding to hereafter transfer any interest in the property or business you are purchasing to the Waters-Pierce Oil Company of Missouri, the Standard Oil Company of Indiana, the Standard Oil Company of New Jersey or any of their subsidiaries or to any other corporation incorporated and doing an oil business in this State?

Sealy replied that he did not, and that concluded the questioning. W.H. Gray, who attended the auction and this courtroom scene, had tried to get Lightfoot to ask more questions inquiring about partnerships with particular people like Payne, and stockholder and executives of other oil companies, whom Gray had seen conferring with Sealy before the auction. Lightfoot told Gray, "I can't do it." No further explanation was offered. The same scene was repeated in a different courtroom to confirm the sale of the Waters-Pierce properties. Lightfoot asked Fordyce questions similar to those he had asked of Sealy, and Fordyce responded in the negative. Despite Fordyce's refusal to identify his "associates" to Eckhardt minutes earlier, Lightfoot did not probe any deeper.149

149Gray, Rule of Reason, 46-51; Galveston Daily News, December 8, 1909; Houston Post, December 8, 1909. It is impossible to know with certainty why Davidson and Lightfoot acted as they did in the conduct of the Security antitrust suit, and in the auction, though Gray gives the impression that Lightfoot was constrained by orders from Davidson. It seems more likely that practical considerations rather than sinister conspiracies and corruption dominated the December 1909 auction.
The receivers began transferring the properties to Sealy and Fordyce the following day, and Sealy announced that the new firm, John Sealy & Company would retain the same management, executives, and officers of the companies whose assets he had purchased, and would operate not as a corporation but as a partnership. Similarly, Fordyce formed the Pierce-Fordyce Oil Association, likewise a partnership, with H.C. Pierce. Pierce-Fordyce would limit itself to marketing petroleum products in Texas, purchased primarily from John Sealy & Company, and the latter's successor in interest, the Magnolia Petroleum Company, a joint stock association formed in April 1911. John Sealy & Company and Magnolia sold primarily to Pierce-Fordyce and Standard Oil companies. John Sealy & Company did not engage in marketing at all, and Magnolia did not begin marketing until 1912, when Waters-Pierce began its fight for independence from Standard.150

Why was the Texas Attorney General so dilatory in prosecuting Security Oil and the other Standard Oil affiliates? Why was the auction allowed to take place without any serious probing into the bidders? It is safe to say that the Panic of 1907, and the resulting economic depression in 1908 played a significant role in the decision not to press further antitrust litigation following the victory against Waters-Pierce in June 1907. Financial markets were taking a downturn by early fall 1907, and by late October 1907, a full-fledged panic set in following the insolvency of one of New York's leading banks, the Knickerbocker Trust. Davidson and Lightfoot went ahead and filed the antitrust suit against Security et al., but the economic conditions suggested against too vigorous a prosecution, which temporary shutdowns at Security's refinery emphasized. Further, if the Texas Attorney General did shut down all of the defendants, it would have been impossible for other oil companies in the state to fill the void for some time. While Gulf Refining refined nearly twice as much as Security in 1907, it could not have replaced the latter's output, and neither Gulf nor The Texas Company, the two largest independents,

150Gray, Rule of Reason, 50-51; Mobil, "History of the Refining Division," 37-46.
had the statewide marketing network of Waters-Pierce. To have driven Waters-Pierce, Security Oil, and Navarro Refining out of the state would have worked a hardship on Texans and the Texas economy, nor was it necessary to do so to ensure that oil companies took the antitrust laws and antitrust enforcement seriously. It is also worth noting that Davidson's third and final term as Texas Attorney General ended December 31, 1909, and that he planned to run for governor, a position with a different mandate and perspective on big business. Economic and political realities combined to produce the results of the December 1909 auction. The decision by Standard to build a large refinery at Baton Rouge, Louisiana, rather than in Texas with its harsh antitrust laws and antitrust enforcement suggests that it was not necessary to go further to send the message to Standard Oil and other oil companies--obey the antitrust laws and cooperate with state officials.151

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151 Cullinan to Arnold Schlaet, June 19, 1907, Autry Papers, Box 27, "The Texas Company Legal Correspondence, 1907," WRC; Pratt, Growth of a Refining Region, 200-04; Piott, The Antimonopoly Persuasion, 131-40; Hidy and Hidy, Pioneering in Big Business, 418-20; Chernow, Titan, 542-45; Andreano, "Emergence of New Competition," 126-41. In his letter to Schluet, Cullinan notes that Texas officials were concerned that

The Texas Company or others were not in [a] position...to supply the trade with its requirements...and that had we been in such position they might have assumed a more aggressive attitude in dealing with the Waters Pierce Oil Company; that is, having in mind that the people of the state were to a considerable extent dependent on the Waters Pierce for supplies, and that if their business had been closed down entirely it might have been quite a hardship on many of the Texas people.

As Waters-Pierce received much of its Texas supplies from Security and Navarro Refining, it would not have helped Texans to close down those institutions either. It is also worth noting that Rockefeller was one of the key figures that served to calm down the Panic of 1907.
CHAPTER 5: POLITICS, PERJURY, AND MR. PIERCE

The fine certainly is large. But I am not prepared to say, from my knowledge of the case, whether it is excessive. If the fine is inadequate to compel compliance with the law, the incarceration of the Standard Oil Co.’s guilty officials, with its attendant disgrace, would prove the more effective remedy. I do not think moral suasion would have effect on these officials. Fine sermons might be preached, but these men would continue to accumulate millions. But the disgrace of imprisonment would prove a certain remedy for the crimes charged against them.

Cardinal Gibbons, on the $29,240,000 fine imposed on Standard Oil by Judge Kenesaw Mountain Landis for illegal railroad rebates, St. Louis Post-Dispatch, August 12, 1907

I. Affidavits and Extradiations

Most antitrust cases are civil suits seeking monetary penalties and/or equitable relief, such as an injunction or ouster of the offending company or companies, but federal and state antitrust statutes include criminal penalties, although the latter have seldom been applied. Yet large fines meant little to major trusts. Such firms had ample cash reserves, and could pass the cost of the fine to the consumer. Sending some trust officials to jail would have been more deterring than a fine, or ousters of trusts from states that effectively lasted all of two days, or were suspended altogether.¹

The reluctance to pursue criminal prosecutions stemmed from the vagueness of antitrust statutes. Often it was unclear whether actions by corporate officers were permissible or illegal. For example, many of the business practices of Standard Oil that opponents condemned, such as rebates, were commonly accepted contemporary business

¹The public and press were well aware that fines would be passed along to the consumers, as an editorial cartoon of the St. Louis Post-Dispatch of June 5, 1907 made abundantly clear. It showed John D. Rockefeller, Sr. putting a consumer through a wringer and squeezing money out of him, which then dropped into the ten gallon hat of a cowboy figure designated “Texas.” Violation of the Sherman Antitrust Act was a misdemeanor, punishable by a fine not exceeding $5000, and/or imprisonment not exceeding one year. Violation of the Texas antitrust statutes of 1903 constituted a felony, punishable by imprisonment in the state penitentiary for a period between one to ten years. Under Texas law, any crime punishable by death or imprisonment in the state penitentiary was, by definition, a felony. On the brief duration of the ouster of Waters-Pierce from Texas in 1900, see Chapter I. In Missouri, Attorney General Herbert Hadley had succeeded in ousting the new Waters-Pierce, the Standard Oil Company of Indiana, and the Republic Oil Company in 1907, but the Missouri Supreme Court suspended the ouster of all three companies. See 26 Stat. 209, 15 U.S.C., § 1 (1890); General Laws of the State of Texas (1903), Chapter 94, § 13; Bringhurst, Antitrust and the Oil Monopoly, 50-54, 89-107; Piotti, The Antimonopoly Persuasion, 105-51; Giddens, Oil Pioneer of the Middle West, 89-97; Hidy and Hidy, Pioneering in Big Business, 448-451. See also Holcomb, “Senator Joe Bailey,” 206-208, 223-228.
practices. It was often difficult for businessmen and their lawyers to tell if they were being tough competitors or criminals.

Unreluctant, Texas was an exception. As previously discussed, in October 1894 a McLennan County grand jury indicted fifteen Waters-Pierce and Standard Oil officers and agents, including Henry Clay Pierce and John D. Rockefeller, Sr. for violating state antitrust statutes. Ultimately only one defendant was convicted and the Texas Court of Criminal Appeals overturned that conviction.

Unlike the Sherman Antitrust Act, the Texas antitrust statutes were extremely detailed, and local antitrust sentiment strong.² It was no surprise that Texas pressed criminal charges against Pierce, the founder and chairman of Waters-Pierce, in addition to a civil antitrust action against the corporation (September 20, 1906). The ineffective 1900 ouster of Waters-Pierce had shown that stronger measures were needed.

On November 14, 1906, shortly after Texas filed a civil antitrust suit against Waters-Pierce, Assistant Attorney General Jewel P. Lightfoot indicated to journalists that his office intended to pursue criminal charges "against some of the oil magnates" if Texas won in the civil antitrust. He added,

If the State is successful in its suit, and I am confident that it will be, then we may start something sensational. We want the people to obey the laws of Texas, and the Attorney General proposes to see that it is done....

The "something sensational" proved to be lawsuits prosecuted by the attorneys general of several states against Standard Oil and its subsidiaries, and criminal charges against Pierce.

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²On the McLennan County cases, see Chapter I, and the accompanying notes, as well as Hathaway v. State of Texas, 76 S.W. 465 (Tex. Crim. App. 1896), In Re Grice, 79 Fed. 627 (N.D. Tex. 1897), and Baker v. Grice, 169 U.S. 284 (1898). The Sherman Act was deliberately vague, and quite unlike the detailed bill proposed by Senator John Sherman of Ohio. Interpreted in a broad fashion, the Sherman Act could have outlawed a wide range of common, accepted business practices. As the recent investigation and trial of Microsoft has shown, the situation has not much improved at the federal level, since 1890, and even the best corporate attorney would hesitate to state a particular business practice did not violate the antitrust laws, or whether a proposed merger would be legal. See generally Robert H. Bork, The Antitrust Paradox: A Policy at War with Itself (1978) and Richard A. Posner, Antitrust Law: An Economic Perspective (1976). On political sentiment in Texas regarding antitrust in the late nineteenth and early twentieth centuries, see Barr, Reconstruction to Reform, 111-124, 209-228; Cotner, James Stephen Hogg, 160-67, 436-43; Holcomb, "Senator Joe Bailey," 86-129; Martin, People's Party, 52-57.
Within a week of the Lightfoot interview, a grand jury in Travis County, Texas returned an indictment against Pierce.\footnote{\textit{Galveston Daily News}, November 15, 1906. Lightfoot was in St. Louis conducting depositions and gathering information for the civil suit against Waters-Pierce, which had been filed on October 10, 1906. Like other attorneys prosecuting suits against Standard Oil and its affiliates, Lightfoot was publicity conscious. He routinely released public statements about the progress of the cases, and the intent of the Texas Attorney General’s office. In this instance, Lightfoot mentioned that he did not intend to use Pierce as a witness in the ouster suit, but that he would use Pierce’s testimony before Missouri Attorney General Herbert Hadley as an admission. Lightfoot might have wanted to avoid duplication of effort, but it seems more likely that he was concerned about possibly giving Pierce immunity from criminal charges if he called Pierce as a witness for the State (albeit a hostile one). See \textit{General Laws of the State of Texas} (1903) Chapter 94, § 15, “Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this Act about which he may testify fully and without reserve.” It appears that the Travis County grand jury actually indicted Pierce on November 1, 1906, but the names of those indicted by the grand jury were not disclosed immediately as none were under arrest. Lightfoot was in a position to know if the grand jury had indicted Pierce on November 1st, and when the information would be made public. \textit{Austin Statesman}, November 2, 1906; \textit{St. Louis Post-Dispatch}, November 22, 23 1906.}

This indictment had several peculiarities. The grand jury indicted Pierce for perjury/false swearing, not for criminally violating the antitrust laws, probably because the Texas antitrust statutes did not specifically deal with acts done outside of the state. Pierce administered his company from St. Louis and New York, and this meant the Texas prosecutors had to find other means of pursuing him.\footnote{The newspaper accounts referred to a perjury indictment, but in fact it was not clear whether the grand jury had indicted Pierce for perjury, for false swearing, or for both. The difference between perjury and false swearing is minor, but the two acts were separate felonies under Texas law. Perjury is deliberately making a false statement about a past or present event while under oath, or the legal equivalent of an oath, where such oath is required by law, or is necessary “for the prosecution or defense of any private right, or for the ends of public justice.” Art. 304, \textit{Vernon’s Criminal Statutes of Texas} (1915). False swearing, in distinction, occurs when a person “shall deliberately and willfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration of affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of false swearing....” Art. 312, \textit{Vernon’s Criminal Statutes of Texas} (1915). The critical distinction seems to be whether or not the oath or affirmation was required by law or because of a judicial proceeding, or if it was voluntary. False swearing was still a felony, but the duration of imprisonment was only two to five years, whereas perjury could result in a sentence from two to ten years. There was a very real problem in trying to charge Pierce for acts that he had done outside of Texas which had consequences in Texas. Texas law in 1906 made no provision for such criminal offense, and trying to stretch the statutes to accommodate such would have been stretching the bounds of constitutionality. The 30th Legislature of Texas plugged this loophole on May 16, 1907, when it approved a measure to make acts done outside the state that have an effect in Texas, which if done in Texas, would violate the antitrust law, a crime under Texas law. \textit{General Laws of Texas, 1st Called Session} (1907), Chapter 10, § 19. This law also raised constitutional questions.}

On May 31, 1900, Pierce, as part of his application for a permit to do business in Texas, had sworn an affidavit that the new Waters-Pierce Oil Company was not part of a trust. But in Missouri’s 1906 antitrust suit against Waters-Pierce, Pierce had stated that his
attorney, John D. Johnson, had "an understanding" with Standard Oil attorneys regarding control of the stock of the new "independent" Waters-Pierce Oil Company, before it even existed. By September 1900, Pierce had endorsed a majority interest in his company's stock in blank to Standard Oil agents at par value, well below market value. The new stockholders had not registered the transfer with Waters-Pierce. Officially Pierce still held the stock, received dividends, and voted the shares. Then in April 1904, Standard Oil, upset at Pierce's management, registered the stock transfers. Standard Oil's agent, Richard P. Tinsley, became Waters-Pierce vice-president and, soon, de facto president. He discharged old Pierce employees and harmonized policies and practices with those of Standard Oil. Standard did not then openly control Waters-Pierce. Martin M. Van Buren, John D. Archbold's son-in-law held the stock, and Archbold was a Standard Oil director.\(^5\)

Pierce could technically claim that Waters-Pierce was not part of a trust or controlled by Standard Oil. He did not "actually know" who held the transferred stock that or who ultimately received dividends. Pierce merely sent dividends that he received on the transferred stock to the Seaboard National Bank in New York. Seaboard was considered to be "a Standard Oil bank," and its president, Samuel Gamble Bayne, had strong ties to Archbold. He could honestly say that he did not know to whom they ultimately went. Pierce's "ignorance" was willful. Hadley's and Lightfoot's investigations showed a tremendous flow of routine managerial documents between Waters-Pierce and Standard Oil. They indicated that Pierce knew more than he had admitted, and Texas was determined not to let him hide behind this transparent subterfuge.\(^6\)

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\(^5\) Transcript--1907 270-353, TSA RG 302, Box 1989/41-85. See Chapters 2-3 on the stock transfer and Standard Oil's assertion of control in 1904-1905. See also Brinthurst, Antitrust and the Oil Monopoly, 52-60; Hidy and Hidy, Pioneering in Big Business, 448-51. Pierce endorsed over sixty-eight percent of the stock of the new Waters-Pierce delivered the same to "Mr. Garth, Cashier of the Mechanics National Bank, New York." The Mechanics National Bank was one of several "Standard Oil banks," institutions controlled or strongly influenced by Standard Oil, its directors, or stockholders. Selling the stock at par value was like giving it away, as the stock typically earned six hundred to seven hundred percent on its capitalized par value, per year.

\(^6\) The testimony and depositions of Waters-Pierce officials compiled in the transcript of the civil antitrust suit in Texas (Transcript--1907) are too ridiculous to be believed when they discuss why so much information was sent to and from New York, the subterfuges used to mask the relationship between Standard Oil and Waters-Pierce, and the actual control exerted by the former in pricing and marketing.
For some time confusion existed about the Pierce indictment. As late as November 30, 1906, a journalist mentioned "that the alleged indictment against Mr. Pierce had no terrors for him and that he would permit the State of Texas to serve upon him any process that it may have." Whether or not the indictment would deter Pierce from returning to Texas was relevant. With marvelously poor timing, the Texas Legislature decided to investigate activities of U.S. Senator Joseph Weldon Bailey after the civil and criminal suits had been filed against Waters-Pierce and Pierce. In part this came about because the Texas Attorney General released information to the press that purported to tie Bailey to Waters-Pierce. Bailey, an attorney, had performed legal services for people and firms associated with Standard Oil and been paid over-generously. Foes on the legislative committee investigating Bailey wanted Pierce to testify.

Pierce was reluctant to go to Austin. The indictment pending against him in Travis County could have resulted in his arrest and imprisonment until his trial for perjury/false swearing. Advised by counsel, he reneged on an earlier offer to go to Austin to assist Bailey. Texas then had no statutory procedures for legislative investigations. The legislature lacked power to grant immunity from arrest to witnesses before investigative committees, or to compel the production of evidence. Pierce's attorney, Johnson testified

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Explanations for why Waters-Pierce did not engage in competition with Standard Oil or its affiliates were equally ludicrous. See Chapters 2-4.

7 *Galveston Daily News*, November 11, 30, 1906. Evidently the indictment against Pierce issued by the Travis County grand jury was so poorly worded, and verbose, that when conjoined with the confused welter of amended antitrust statutes, it became nearly impossible to determine the crime with which Pierce had been charged. Was the affidavit, in fact, one absolutely required by law? No one seemed to know, and the Texas Attorney General's office declined to make clear which charge it was pursuing for quite some time.

8 Bailey was also under fire for having done legal work for several corporations for large sums, including Security Oil, a Standard owned refinery, and for John H. Kirby, Texas lumber man and oil millionaire who also had some ties to Standard. On the Texas Attorney General's Department and Senator Bailey, and the "Bailey Controversy," see Chapter 2, with accompanying notes: Holcomb, "Senator Joe Bailey," 351-449; *Bailey Investigation Committee*, 1-1090. Though Bailey was a lawyer, he had not practiced extensively, and had no claim to expertise in corporate law, which made his large fees more suspicious.

9 Directly following the Bailey Investigation, the Texas Legislature enacted a statute setting forth formal procedures for investigating public officials. These procedures included the ability to compel testimony and the production of documents, to send members of the investigating committee outside of Texas to obtain testimony, and immunity from prosecution upon the basis of testimony given. What it did not do was protect witnesses from arrests upon other charges, which is what Pierce would have needed. This became law on February 18, 1907, shortly after the termination of the Bailey Investigation. See *General Laws of*
at length on behalf of Bailey, but said little, frequently invoking the attorney-client privilege. His answers did little to help Bailey, or Pierce:

Johnson: ...It was mentioned that Mr. Pierce had advised Mr. Bailey either that day or very shortly before that time of the fact that he had deceived Mr. Bailey or concealed from Mr. Bailey the facts that the Standard Oil Company owned shares of stock in the Waters Pierce Oil Company. Mr. Bailey said he was very much shocked and surprised at that information. Mr. Pierce said he was very sorry that the fact had been kept from Mr. Bailey. I made some remark myself that I regretted it exceedingly, that I had felt all along that Mr. Bailey should have been apprised of the facts....

Senter: Do you know that Mr. Pierce had advised him that the Standard Oil Company had no interest in the Waters Pierce Oil Company?
Johnson: I think I did at that time.
Senter: Did you, yourself, have any conversation on that subject with Senator Bailey in respect to that matter?
Johnson: No, sir; I do not recall any conversation with Senator Bailey. My idea was that the whole thing was strictly in conformity with the law and that the end to be obtained, namely, the preservation of Mr. Pierce's and the Waters Pierce Oil Company interests in the business in Texas justified the means. I understood that the fact was concealed from Senator Bailey.

Johnson made Bailey look like a naive fool, Pierce an avowed liar, and himself a shyster. 10

Johnson stated that he had advised Pierce not to come to Texas "under the circumstances" despite the latter's alleged desire to aid Bailey, lest he become an easily extraditable fugitive from justice. He implied that Pierce could not get a fair trial in Texas "under the existing conditions" exacerbated by "[p]ublic sentiment, the political agitation of this question, the affairs of the Waters Pierce Oil Company." Johnson claimed that all that he knew about the indictment was what he had read in the newspapers. Neither the Travis County District Attorney, John Hamilton, nor the Texas Attorney General's office had

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10Johnson's complete testimony is in Texas Legislature, Bailey Investigation Committee, 85-153, the excerpts are at pages 129 and 145. See also Galveston Daily News, January 27, 1907. The attorney-client privilege provided Johnson with a shield, even though the Bailey Investigation Committee did not utilize all of the courtroom rules of evidence, allowing in all manner of hearsay testimony. If Pierce had testified, he could have spoken freely, and not been constrained as Johnson had, for he could waive the attorney-client privilege. It hardly seems possible that he could have painted a worse picture of himself for the upcoming criminal trial than Johnson had: a blatant, manipulative liar.
made any effort to contact Pierce or his attorneys in St. Louis, Pierce's legal residence, or New York, where Pierce he spent most of his time.\(^{11}\)

Since Mohammed would not go the mountain, the mountain considered going to Mohammed. On February 2, 1907, the legislative committee made tentative arrangements with Johnson to meet with Pierce in St. Louis on Friday, February 15, 1907.\(^{12}\) This meeting never took place. Pierce had departed for New York, and had good reason to do so. On February 11, 1907, just as Johnson and the Bailey committee were planning a meeting with Pierce, Texas Governor Thomas Campbell sent a requisition to Missouri Governor Joseph Folk to extradite Pierce on the perjury/false swearing indictment. Pierce and his attorneys deemed it likely that the requisition would be granted, so he headed to New York, became a guest of the Waldorf-Astoria, and told reporters that he was "stopping here permanently."\(^{13}\)

Clay Arthur Pierce, the oil magnate's eldest son and president of Waters-Pierce, asserted that neither the criminal nor civil charges had influenced the elder Pierce's behavior.

My father has been living in New York for five years...That is his home and has been for a long time and it will continue to be such. This is a fact

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\(^{11}\)Texas Legislature, *Bailey Investigation Committee*, 138; *Galveston Daily News*, January 27, 1907; *St. Louis Post-Dispatch*, January 27, 1907. To enter and leave Texas with the knowledge that a grand jury had indicted him, and not submitted himself to arrest would qualify Pierce as a fugitive from justice. As matters stood, Pierce had not been in Texas since May, 1900, long before the indictment was issued. It would have been difficult to claim that he truly had fled the jurisdiction. On the other hand, his absence from the state could be deemed to have tolled the statute of limitations for prosecution.

\(^{12}\) *St. Louis Post-Dispatch*, February 3, 1907; *Galveston Daily News*, February 3, 1907, February 13, 1907. The special sub-committee was to have consisted of Representative J.A.L. Wolfe of Grayson County, and Thomas. H. McGregor of Harris County (who would reappear as a defense lawyer in the Allied antitrust case of the 1930s), along with Judge Poindexter, special counsel to the Senate committee investigating Bailey, and Senator Bailey himself. The situation got more confusing when it was announced that several witnesses from St. Louis (but not Pierce) would be arriving in Austin on February 14, 1907 to testify before the Bailey Investigation Committee. If the sub-committee had gone to St. Louis, they would have missed other testimony. Wild rumors even had it that Pierce was going to disregard Johnson's advice, and come to Austin himself and testify.

\(^{13}\) *St. Louis Post-Dispatch*, February 19, 20, 1907. For Pierce's problems in Missouri, see Piott, *The Anti-Monopoly Persuasion*, 105-30; Brinshurst, *Antitrust and the Oil Monopoly*, 89-101; Giddens, *Oil Pioneer of the Midwest*, 89-97. Governor Folk granted the extradition request on February 21, 1907, and issued a warrant to the Chief of Police of St. Louis to arrest Pierce and turn him over to the Texas authorities. Note that it still was not clear at this point for which crime the grand jury had indicted him.
irrespective of any legal matters. The legal affairs in which the company is involved had nothing to do with his determination to live in New York.

Yet his father had moved back to St. Louis in 1906 with the intent of resuming his actual residence in his mansion there and more active control over the affairs of Waters-Pierce, and left only after the indictment issued.¹⁴ Johnson's protests also lacked credibility when he denounced the request for Pierce's extradition as a "political trick," and simple persecution of his client. His anger was justified, but it served his client poorly. Johnson's efforts got Pierce lampooned repeatedly in the St. Louis Post-Dispatch as a "millionaire martyr" seeking "to escape the rascally minions of the law," and he was compared unfavorably to Bailey.

If Mr. Bailey was willing to risk his political future, why should not Mr. Pierce be willing to risk his well-groomed hide in the hands of the Texas Legislature? Is he afraid that they will lynch him or send him to jail on general principles?

Johnson and Pierce's other attorneys would prove to be much more effective when sticking to purely legal issues, as they fought the untimely extradition request.¹⁵

Governor Folk required Johnson to present arguments against granting the Texas extradition request. Johnson rapidly assembled a brief on the subject. In his brief, and in a telephone conversation with Folk, Johnson presented three arguments for refusing to honor the extradition request. First the statute of limitations for perjury had run. Pierce had made the affidavit in question on May 31, 1900, but the grand jury had not issued the indictment until November 1, 1906, well past the three year statute of limitations. Second no witnesses had testified before the grand jury; the only evidence was the affidavit. Third, Pierce had not committed perjury or swearing to a false statement because he had lacked the

¹⁴St. Louis Post-Dispatch, February 20, 1907. Pierce evidently had been ill for several years, and had lessened his own role in the management of the company, but his health had improved, and after the fiasco of 1904 and 1905 when Standard Oil had exerted active control, it seems plausible that he would have wanted to exert his own firm hand again and set things right. Pierce was fifty-seven years old in 1907, and Clay Arthur Pierce was only thirty.
¹⁵St. Louis Post-Dispatch, February 20, 1907. The other major newspaper in St. Louis, the St. Louis Globe-Democrat, was solidly in the Waters-Pierce camp, and published Adams's articles on Waters-Pierce versus Texas.
requisite intent to commit the crime. Johnson claimed that Pierce had not read the affidavit before he signed it. Instead he had relied on Johnson's advice that it was legally proper. 16

Several legal problems riddled Johnson's arguments, and perhaps a more important political one. It was not clear that the statute of limitations had run on the alleged offense. Pierce had not been in Texas since he swore the affidavit on May 31, 1900, and this placed him beyond Texas jurisdiction. Consequently the statute of limitations did not necessarily run during that period. Or did it? The answer depended upon the legal interpretation of Pierce's absence from Texas, a question that a court must resolve, not Governor Folk.

Johnson's other arguments were equally questionable. The information that Campbell had sent to Folk indicated that Texas had several witnesses testify to the grand jury that had indicted Pierce. These included Dermott H. Hardy, an attorney and former Secretary of State, Nano M. Nagel, a notary and stenographer in Hardy's office, and Gruet, Pierce's nemesis. Gruet alone could have provided enough evidence for indictments against Pierce. In 1902 and 1903 Gruet had made the same affidavit that Pierce had made on May 31, 1900, that Waters-Pierce was not part of a trust. If Pierce merited an indictment for perjury or false swearing, Gruet knew about it. However, what these witnesses said was sealed. 17

16St. Louis Post-Dispatch, February 19, 21, 1907. Johnson faced a tough fight in trying to convince Folk not to honor Texas' extradition of Pierce. Folk had started his career as a labor attorney, acquiring prominence in the strike against St. Louis streetcars in 1900, and the boycott associated with that strike. He parlayed that notoriety into elevating himself to the position of St. Louis Circuit Attorney. In that office Folk had launched a number of investigations and successful prosecutions for bribery and corruption involving local government and streetcar corporations, in fine urban Progressive tradition. He also conducted investigations into the Beef Trust for selling tainted meat. Having acquired a national reputation, Folk successfully ran for governor of Missouri, winning as a Democrat on a reform platform. It did not bode well for Johnson that in January 1907, the Missouri Legislature had passed a new, tougher antitrust law, and that Folk had introduced a bill aimed at Standard Oil and its practice of charging sliding rates at different locations throughout the state. Plott, The Anti-Monopoly Persuasion, 70-71, 84-85, 123-25.

17St. Louis Post-Dispatch, February 19, 1907; February 20, 1907; Houston Post, May 10, 1907. Gruet's ties to Waters-Pierce and Standard Oil are discussed in Chapters 2-4. He provided the information that led to Hadley's investigation in Missouri. Lightfoot's investigation in Texas, the grand jury indictment against Pierce, had testified before the Bailey Investigation Committee, and had a civil suit against Pierce personally. St. Louis Post-Dispatch, February 20, 1907; Galveston Daily News, March, 28, 1907, May 11, 1907; Holcomb, "Senator Joe Bailey," 399-420.
The last argument was the trickiest. A claim that Pierce had not read the affidavit would not excuse him. Willful ignorance is not a shield against the element of intent. But if he had believed Johnson's assurances that he could legally swear out the affidavit, then perhaps he had not knowingly made a false statement. None of these issues were clear cut, and they required determinations by a competent judicial authority.

Folk, though an attorney, had no way of making such determinations. He labored under intense political pressure. Although Waters-Pierce was a Missouri corporation and Pierce a prominent citizen, the oil company was exceedingly unpopular in Missouri. There, as in Texas and several other Midwestern states, it was open season on trusts. Missouri Attorney General Hadley, a Republican, had been campaigning vigorously against several trusts. Standard Oil, the most notorious of all, had been under a highly publicized investigation by Hadley since 1905. To deny the extradition requisition and rule in favor of Pierce would have gone against Folk's own views and exposed him to charges of "selling out" to Standard. The close association that several Missouri politicians had with Pierce and Standard, most notably former governor David R. Francis, would have made such charges the more believable. The Republican Party of Missouri was trying to convince Hadley to run for governor and would have welcomed a denial of extradition by Folk, a Democrat.18

Folk waited a few days, and then on February 21, 1907 issued a state warrant to the St. Louis City Chief of Police, Edmund P. Creecy to arrest Pierce. However, Pierce was in New York. The question of extradition could also still be litigated in the federal courts, the state courts of Missouri, or both, provided Pierce returned to Missouri. On May 8, 1907, Pierce returned to St. Louis, just as the trial of the Texas civil antitrust suit

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18 See generally Piott, The Anti-Monopoly Persuasion; and St. Louis Post-Dispatch for this time period of 1906-1907. Francis had introduced Bailey to H.C. Pierce, had participated in several of the "loans" between Bailey and other businessmen, including Pierce. When Bailey was under investigation, Francis denounced the investigation, and went to Austin to testify on behalf of Bailey. See Holcomb, "Senator Joe Bailey," 223-61, 399-449.
against Waters-Pierce was about to begin. It was a clever move that threatened to divide Texas's efforts between the civil and criminal cases.¹⁹

Pierce's attorneys, Johnson and Henry S. Priest, had arranged the details of Pierce's return and surrender to the St. Louis police on May 8, 1907, aiming to insure that Pierce would not have to go to Texas to stand trial. Pierce remained in custody less than three hours. Soon after he was released on a writ of habeas corpus directed to the police issued by Judge Elmer B. Adams of the United States Circuit Court, the police promptly took Pierce and his lawyers, to Judge Adams's court. Adams directed them to appear in court three days later, May 11, 1907, to argue the question of extradition and allowed Pierce to post a $10,000 bond and go free.²⁰

Lightfoot was present as observer. Technically, the criminal charge against Pierce involved the office of Travis County District Attorney James R. Hamilton, and not the Texas Attorney General's office. Missouri procedure required that Governor Campbell appoint an agent to represent Texas in the habeas case. Campbell had not done so, apparently not having had advance notice of Pierce's return and the need for an agent.

It was another example of poor communication among Texas officials. On May 6th, Travis County Sheriff George Matthews had received a telegram from Chief Creecy of St. Louis, "Do you still want H. Clay Pierce? Answer quick." Matthews promptly replied, "Yes, and wire at my expense." Creecy telegraphed again on May 8th. His men had arrested Pierce, and Matthews should come at once. Matthews had evidently assumed that because Lightfoot was in St. Louis, he would handle the habeas matter, and the sheriff

¹⁹Governor Campbell had also sent a requisition for extradition to the Governor of New York, Charles Evans Hughes, a staunch Republican, favored regulating business and permitting "reasonable restraints of trade." The requisition for Pierce there fell on deaf ears. Sklar, Corporate Reconstruction, 214. Hughes would join the Supreme Court in 1910, and participate in the breakup of Standard Oil in 1911.
²⁰Galveston Daily News, May 9, 1907, Houston Post May 9, 1907. Pierce could easily have avoided the criminal charge simply by not returning to St. Louis. From descriptions of his character, however, he was not a man to avoid a challenge. Charles Higgins, a longtime executive of Standard Oil, described Pierce in the following manner, "He was a brilliant man. There was no equal to him. But he wouldn't play ball with the crowd, and he liked to pull fast ones. He wouldn't do a thing straight if it could be done crooked. He was cordial and polite enough but when he got into a jam with people ... they knew they were fighting a Tartar. he was the nastiest fighter you ever saw." Nevins, Study in Power, Vol. I, 42, quoting a letter from Charles Higgins to Nevins, October 24, 1938.
had not informed Governor Campbell’s office about Pierce’s return. Lightfoot’s telegram and press release in St. Louis, May 8th, stating that "the attorney general’s department ha[s] nothing to do with criminal matters, and that the governor [Campbell] would have to appoint someone" surprised Matthews. He conferred hurriedly with Campbell and Hamilton late on the 8th, just before entraining to St. Louis, but had no idea what would happen there, or with whom he would be working.21

Pierce was to appear in Judge Adams’s court on May 11th. Johnson, having secured his client’s liberty on bond, denied that Pierce had committed perjury or false swearing and attacked the Texas Attorney General’s integrity:

This indictment appears to be part of a campaign by the attorney general of Texas against Waters Pierce Oil Company, for yesterday in the examination of John P. Gruet, Jr., in the suit of the State of Texas against the Waters Pierce Oil Company it appeared that Mr. Lightfoot, assistant attorney general, had entered into a written contract with Mr. Gruet, Sr., to produce testimony to convict the Waters Pierce Oil Company and also to convict H.C. Pierce in a criminal proceeding then contemplated to be brought.

In consideration of which Mr. Gruet, Sr. was to receive a large share of such penalties as might be recognized against the Waters Pierce Oil company in the State of Texas.

Johnson quoted from an alleged copy of that contract. It stated that Gruet was to obtain evidence against both Waters Pierce and Pierce and was to receive one third of the county attorney’s fee, which was twenty-five percent of the total penalties. Pierce would fight

21 Houston Post, May 9, 1907; Galveston Daily News, May 9, 1907. According to the Texas Attorney General’s office, Lightfoot was too busy taking depositions in St. Louis to spend time wrangling with the extradition matter. Lightfoot, as his statement to the press had indicated, was not about to get involved in what promised to be a distracting sideshow to the main event, the ouster suit in Austin. There is no obvious reason why Matthews failed to act on the first telegram from Chief Creecy, other than that he assumed Lightfoot would handle things. Another area of confusion is the distinction between the functions of John Brady, County Attorney of Travis County, and James R. Hamilton, District Attorney of Travis County. The responsibilities of the two officers are remarkably similar, and normally there should not have been both a district attorney and a county attorney for the same county. The statutes on the two offices seem to conflict somewhat, and are unclear, though they make provision for the two offices coexisting. This lack of clarity should not surprise anyone familiar with Texas statutes. See Vernon’s Sayles Annotated Civil Statutes of the State of Texas (1914), Title 13 "Attorneys--District and County."
extradition in the federal courts in Missouri, which, Johnson claimed, "will result virtually in a trial of the perjury charge in St. Louis."\footnote{Houston Post May 9, 1907; Galveston Daily News May 9, 1907. There are slight differences between the two newspapers in the quotations attributed to Johnson, but not affecting the substance of his statements. It is interesting to speculate on how Johnson managed to obtain what purported to be a copy of the contract between Gruet and the State of Texas. Perhaps there was a leak in the Texas Attorney General's office. Johnson knew about the contract from Gruet's testimony in the Bailey Investigation, in which Gruet admitted that a written memorandum had been drawn up specifying that he was to get one-third of the attorneys' fees. Gruet's testimony on this point made it look that Lightfoot and County Attorney Brady had tried to keep the agreement secret, particularly since Gruet had not mentioned this agreement in his deposition. No copy of the actual contract is in the records of the Texas Attorney General which would indicate when the parties entered into the contract, and its actual terms. The figures that Johnson cites are not far off the mark from what Gruet would receive. Given that Texas sought $5,000,000 in damages from Waters-Pierce, of which County Attorney Brady was to receive approximately one-quarter, or $1,250,000, Gruet stood to make about $417,000. Holcomb, "Senator Joe Bailey," 407-11; Texas Legislature, Bailey Investigation Committee, 252-59.}

His shrewd ploy discredited both Gruet and the Texas Attorney General. Lightfoot reluctantly admitted that a contract between Texas and Gruet existed, but refused to disclose its terms. Lightfoot could do little else to mitigate the damage, without further lessening Gruet's usefulness, his credibility already seriously undermined by his appearance before the Bailey Investigation Committee.\footnote{The contract was actually between County Attorney Brady and Gruet, Sr., with Lightfoot representing Brady. The Texas Attorney General's Department did not have the power to dispose of fines collected from antitrust cases, but the county attorney could do as he wished with his statutory share. See Chapter 2, notes 8-9, 12-13, 76 and accompanying text. A copy of what purports to be the contract can be found in Adams, Waters Pierce Case, 45. Reaction in the Texas press was swift, and concomnatory. See the Houston Post, May 11, 1907 ("But surely we shall soon hear all about this most wonderful contract which a confessed perjurer and purloiner of private papers made with the officials of Texas; and we shall see just how much loot of this character our trusted officers are going to turn over to a man who stands so discredited before the world"), and Houston Post, May 12, 1907.}

Pierce made his first public statement on the facts of the case on May 10th as the Houston Post put it, "from the defendant's point of view." He pointed out that the affidavit had not asked if Standard Oil owned Waters-Pierce stock. The affidavit asked only if Waters-Pierce was part of a "pool, trust, agreement, contract, or confederation to fix the price, or limit the quantity of any article of merchandise." The question,

...what is a pool and trust or a combination or contract in restraint of trade is a legal question and one of fact and law, upon which every layman must, as I did in this case, take the opinion of counsel, and I was then and now am advised by my attorneys that, under the laws of Texas, as interpreted by them, and as I now know them, the affidavit was then and is now literally and exactly the truth. [emphasis added]
In essence Pierce stated that he had followed the strict letter of the law. He attacked Gruet, Lightfoot, and their contract, noting that in 1902 and 1903 Gruet had made the same affidavit that Pierce himself had made on May 31, 1900. But Gruet had not been indicted for perjury. Pierce read what purported to be the Gruet-Lightfoot contract and termed it a subornation to perjury and against public policy, then referred to his long association with Gruet and the latter's ingratitude for all the "favors" that Pierce had done for him.24

Texas agents present in St. Louis were confident that Pierce would be sent to Texas. Sheriff Matthews had arrived Friday morning, May 10, 1907, ready to escort Pierce to Austin to stand trial.25 Texas special counsel George Allen was also in St. Louis gathering information for the civil antitrust suit. Governor Campbell had asked him to retain Missouri counsel to represent Texas in the Pierce habeas case. Allen retained Shepard Barclay, a former justice of the Missouri Supreme Court, and his partner, Thomas T. Fauntleroy. A well respected jurist with political influence, Barclay exuded confidence. Refusing to request a continuance, though Allen had retained him only a day before the hearing, Barclay, after examining the pleadings and talking with Allen and Matthews, proclaimed that the entire burden of proof was on Pierce's lawyers to prove the indictment faulty. There would not be "a virtual trial of Pierce on the perjury charge." If Barclay had his way, Pierce would be on the next train to Texas. Barclay smiled as he referred to Pierce as "any other prisoner."26

24 Houston Post, May 10, 1907; Galveston Daily News, May 11, 1907. Pierce painted a convincing portrait of Gruet as an ungrateful thief who had stabbed his longtime employer in the back, purely for spite and money. Pierce had, in fact, stood by Gruet after Standard oil had him removed from Waters-Pierce for being a chronic alcoholic. See Chapter 2, note 8 and accompanying text. While he succeeded in making Gruet look like a low-down spy, Pierce could not make himself look like a righteous martyr. His own testimony about Waters-Pierce, the collusive conduct with Standard, and the vast profits that Waters-Pierce generated did not make Pierce a sympathetic victim.

25 Galveston Daily News, May 11, 1907. Matthews's quest to bring Pierce to Texas brought him some minor notoriety for his homespun, no-nonsense quotes in the newspapers, and the photographic contrast that he made standing in his boots and cowboy hat next to the dapper millionaire. Matthews and Pierce would prove to get along quite well during the course of the various hearings, chatting amiably, and leaving the courtroom for a smoke when the legalese became too much for laymen.

26 Galveston Daily News, May 11, 1907. Nearly every lawyer involved in this case on both sides was entitled to use the honorific "Judge" before his name. Most had held only minor judicial posts briefly, Shepard Barclay, and Henry S. Priest, who had been a federal district court judge, being the notable exceptions. Pierce also was not above using political clout, having retained Texas State Senator Odell of
Meanwhile, the criminal case was affecting the civil suit against Waters-Pierce in Austin. Lightfoot had filed stipulations regarding Standard's stock ownership, in which Standard admitted that its companies had never competed with Waters-Pierce in Texas. Standard also stated that it regularly sent its auditors to check the Waters-Pierce books. These sudden admissions caused concern for Waters-Pierce's attorneys. They used Pierce's arrest and the extradition proceedings as excuses for requesting a continuance of the civil suit. Any postponement would have delayed the civil trial back until October 1907 at the earliest. Judge Victor Brooks refused to continue the civil case.\(^{27}\)

Attorneys for Pierce and Texas faced each other in Adams's courtroom on May 11, 1907. Priest, Pierce's attorney, contended that Pierce had told the truth as he understood it in his affidavit. The new Waters-Pierce Company was only two days old when Pierce had

Cleburne as a special counsel in the civil ouster suit in Texas. In Crane's antitrust suit against Waters-Pierce, the oil magnate had hired George Clark, former Texas Attorney General, and a leader in the Texas Democratic Party. There was nothing unusual about Texas hiring special counsel to represent them in other states, nor to supplement the Texas Attorney General's office in conducting major litigations. The office of attorney general was undergoing a transformation throughout most of the states in the country at this time that placed attorneys general and their assistants in awkward positions. The responsibilities of the office for investigation and litigation were steadily increasing. Yet state legislatures proved reluctant to increase the number of personnel in both attorneys and other staff to handle the increased workload, and were reluctant to increase the salaries paid to lawyers to attract better attorneys. Many legislators still regarded the office as it had been for the 18th and most of the 19th centuries—a necessary office, but one that was only a part-time job. Most states expected their attorneys general to do outside work, which presented the potential for conflicts of interest, particularly in matters involving corporations. This issue so concerned the Texas Attorney General at that time, Robert V. Davidson, that he wrote to all the other state attorneys general about the sizes of their offices, salaries, and whether they performed outside legal work. Only the Wyoming Attorney General, W.E. Mullen stated that he had an adequate salary, due to a new state statute designed to make the office a full-time job, a result of previous conflicts of interest and scandals. In responding to Davidson, Mullen also stated that

\[\text{Inasmuch as the duties of the office are sufficient to occupy the time of the incumbent, if the work is given faithful attention, I am persuaded that it is a benefit to the office to remove it from the influence and from that disagreeable cloud of suspicion that always attaches where public officials engage in serving the interests of a private practice in connection with matters that frequently conflict with public duty. In fact, most of the reforms inaugurated in the different states have been initiated by the legal department...}\]

Mullen to Davidson, May 9, 1908, TSA RG 302 Box 4-8/334. See generally "Letters from Attorneys General of the United States Relative to Holding Office of Attorney General and Practicing Law at the Same Time," dated May and June 1908, TSA RG 302 Box 4-8/334. Few offices had more than one attorney general and three attorneys at that time, and most less than this. See also Keller, \textit{Affairs of State}, 289-370.

\(^{27}\)The admissions were no surprise to Pierce's lawyers, who had signed the stipulations in New York on April 30 and May 1, 1907. The surprise had been that Standard Oil had been willing to make admissions so plainly damaging to Waters-Pierce. Speculation ran that Standard Oil officials preferred making limited, controlled admissions in stipulations, rather than undergo depositions and cross-examinations by Lightfoot and Allen. See \textit{Houston Post}, May 10, 17 1907; \textit{Galveston Daily News}, May 11, 1907. On the new law permitting these depositions, see Chapter 3, notes 1, 13 and accompanying text.
signed the affidavit and had not done anything illegal in that brief span. The sins of its predecessor, however great, were irrelevant. He argued also that the statute of limitations had run; over three years had passed since the affidavit. Therefore, the indictment should never have issued. Priest attacked on several grounds the sufficiency of the grand jury indictment. Despite his comments to the press only a day earlier, there would be no virtual "trial of the perjury charge in St. Louis."\textsuperscript{28}

Priest charged that the grand jury had not reviewed sufficient evidence. All it had was the May 31, 1900, affidavit, and no live witnesses. The foundations for the grand jury's indictment for perjury/false swearing were the 1906 newspaper stories about Waters-Pierce and Standard Oil. Blending fact, rumor, and innuendo, these stories had stirred up Texans' emotions and produced hostility to Waters-Pierce and Standard. He read the affidavit, emphasizing what Pierce had sworn to, insisted that it represented Pierce's opinion about the true state of facts at that time and that it was one opinion against another, the grand jury and Pierce calling each other liars. The grand jury had based the indictment on a mere difference of opinion, and an indictment for perjury or false swearing could not be based on "a statement of facts based on an opinion prevailing in the mind of the defendant when he swore to the affidavit." Priest concluded that the poorly worded indictment failed to charge Pierce with a crime, but in a confusing, haphazard fashion merely expressed the opinion of the jury.\textsuperscript{29}

\textsuperscript{28}Houston Post, May 12, 1907; Galveston Daily News, May 12, 1907. There was no testimony presented at the hearing before Judge Adams, merely oral arguments by Priest and by Barclay. Priest's arguments regarding the truth of the affidavit and the Texas statute of limitations for crimes were valid issues. The main problem with these issues is that they would best be determined by a Texas court, whose rulings could then be appealed if they were adverse to Pierce. It seems premature to take these issues to federal court, particularly as the question of the truth of the affidavit involved questions of fact as well as law, and ought to be determined by a jury. The statute of limitations for most criminal charges in Texas, with the notable exception of murder, was three years, after which prosecution would be barred. Certain situations, however, could toll the statute of limitations and prevent it from running. The absence of the alleged criminal from the state was be one of these conditions. Priest's contention that his client had told the truth "as he understood it" is reminiscent of President Clinton's defense to allegations of perjury.

\textsuperscript{29}Galveston Daily News, May 12, 1907; Houston Post, May 12, 1907. Priest had no clear idea of what evidence the grand jury had before it. His assertions that the only evidence before the grand jury came from his analysis of the structure and language of the indictment itself. There is some evidence to the contrary that there were witnesses, or at least other evidence, in the information given to Governor Folk of Missouri by the State of Texas. See infra note 17 and accompanying text. The indictments did not receive a great
Barclay's ammunition was different. He asserted that the federal courts lacked jurisdiction. The only questions of substance were for Texas courts. He argued that the case raised no federal questions. Priest had asserted that interstate extradition created federal jurisdiction because it was made possible by Article 4, Section 2 of the U.S. Constitution. Barclay countered by claiming that the treaty admitting Texas to the Union "gives the governor of Missouri the right to deliver a prisoner to the State of Texas independent of the federal government." 30

Barclay briefly rebutted Priest's contentions about the sufficiency of the indictment. It contained a number of statements of fact upon which to base a criminal charge, and Barclay acerbically noted that every statement of facts was an expression of opinion. He concluded:

Can't you see, your Honor, what a scandal would ensue to our judiciary system if Federal judges were in the habit of interfering with indictments returned against persons by the State and where would the matter end? Probate judges have jurisdiction in habeas corpus cases. They, too, might take to passing upon the sufficiency of the indictment, rather than the mere matter of bail and collateral details within their province.

Habeas corpus should never be resorted to until other methods of defense have been resorted to. Think of the scandal, the chaos to justice that would ensue if the contentions of the opposing counsel were recognized as sound law. No ingenuity or ability can disprove the indictment that the Waters Pierce Oil Company is a member of a trust—a statement of facts, and not merely an opinion.

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30 U.S. Constitution, Art. IV, §2, cl. 2 reads as follows:
A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

See Galveston Daily News, May 12, 1907 and Houston Post, May 12, 1907. While Barclay's argument is an intriguing one taking advantage of the history of Texas and its admission to the United States, it neglects two points. First, that it was not clear under what authority that Texas sought to extradite Pierce: it could have been the treaty, or it could have been under the aforementioned provision of the Constitution, so it could have been a federal question. Second, the federal courts have jurisdiction over the interpretation of the legal effects of a treaty made by the United States, and accordingly there would be federal question in that fashion. Judges are, as a general rule, extremely reluctant to take a narrow view of the scope and magnitude of their jurisdiction.
A writ of habeas corpus was not a writ of error, and should not be used in place of one. Barclay's final points were potent, though not legal arguments, per se. 31

Priest's closing argument repeated his previous assertions, and he conceded that the prosecution of Pierce in Texas was made in good faith. But his client had been indicted "for an ulterior purpose." He implied that Pierce was a mere pawn in a political power game. Priest closed by appealing to emotion, recounting Pierce's humble origins, and his rise to wealth through honesty, and his own efforts. Pierce's success was proof of the American Dream. He pleaded that Pierce "should not be manacled like an ordinary criminal and dragged one thousand miles away." 32

Adams reserved his ruling until May 15, 1907. This gave him time to review the arguments. Sheriff Matthews wanted a prompt decision, and debated simply returning without his prisoner. Pierce wanted the decision delayed longer so that he could attend to "pressing business" in New York. Priest's persistence in making this request for a delay annoyed Judge Adams:

31 Galveston Daily News, May 12, 1907; Houston Post, May 12, 1907. While Barclay's arguments made sense from the state-oriented federalism that prevailed at that time, fear of opening the floodgates of litigation has seldom deterred courts from rendering decisions. Consider Gideon v. Wainwright, 372 U.S. 335 (1963), in which the State of Florida argued against finding a constitutional right to counsel in the Fourteenth Amendment, in part because it could cause "as many as 5,093 hardened criminals...to be eligible to be released in one mass exodus in Florida alone, not to mention those in other states." Anthony Lewis, Gideon's Trumpet (1964) 167 (quoting from Florida's brief in that case). Barclay devoted virtually no time to the statute of limitations issue, noting only that Pierce had not been in the Texas since he had made the affidavit, and therefore the statute did not run. Pierce, however, was not a fugitive from justice who had fled the state, so the issue was open to various interpretations.

32 Houston Post, May 12, 1907; Galveston Daily News, May 12, 1907. There were possible political implications involved in the case. First, that the Pierce indictment was being used to cause problems for U.S. Senator Joseph Bailey, who had just survived a controversial investigation by the Texas Legislature, discussed earlier, in which Pierce should have been a witness. Bailey had emerged from victorious from that investigation, but not unscathed nor unscathed. His opponents among Texas Democrats would have welcomed a chance to drag his name through the mud again. The second implication was that the Texas Attorney General, Robert V. Davidson was using the criminal action against Pierce and the antitrust suit against Waters-Pierce to propel himself into the governor's chair, or higher. Two of his recent predecessors as Texas Attorney General, James S. Hogg, and Charles A. Culberson, had successfully used the position of attorney general as launching point for higher political office. Davidson did eventually run for governor in 1910, unsuccessfully. He would not be the last Texas Attorney General to use his office in such fashion. See Dickson, "Law and Politics," 206-60. Contrast the image of Pierce, who had shown up in court "immaculately dressed in a long Prince Albert coat, flashy green tie, and high collar, painted by Priest, with that presented by Charles Higgins in note 20, infra. Regarding Priest's final plea to respect the dignity of Pierce, it is more likely that the public in Missouri and Texas would have preferred to see Pierce treated "like an ordinary criminal" than as a millionaire trust magnate, receiving special treatment because of his wealth. Such pleas were not wise to make in a politically charged, trust-busting atmosphere.
The respondent must conform to the rules of the court. I would like to accommodate him, but I shall render my decision not later than Wednesday. He may then go to New York, if he is permitted to do so. I want to go to St. Paul, Judge Priest wants to go to Texas and Mr. Pierce to New York. We must all respect the court.

Pierce would have to remain in St. Louis until May 15th. Both sides prepared appeals to higher federal courts. 33

On May 15th, Judge Adams read his brief opinion to a fully packed courtroom. Not far into the reading Pierce began to flush with anger as it became obvious that Judge Adams was ruling decisively in favor of Texas on all legal points. Adams declared that the U.S. Constitution made two facts essential for extradition: that a court of competent jurisdiction in the state demanding extradition had charged the person with some offense, and that the person sought had fled the state, and been found in another. Pierce’s only defense to this was that he had not been charged with an offense under Texas law. Accordingly, Adams had found it necessary to review the sufficiency of the indictment. 34

Adams concluded that the Travis County grand jury had not skillfully drawn up the indictment. It might have contained technical errors. But modern jurisprudence did not require extreme precision in indictments. Constitutional due process required that an indictment apprise a defendant of the nature and cause of an accusation so that he could make a defense and have a fair trial, but it did not require "impractical or useless standards of technicality... which tend to defeat justice or embarrass its administration." He criticized Pierce’s legalisms:

In the light of the foregoing controlling and reasonable rules it would seem that if a president of a corporation, whose duty it was as its chief executive officer to know what kind of agreements his company had made, should pursuant to a law requiring him to do so, make an affidavit that the company was not on a given day a party to an agreement with any other company to

33Galveston Daily News, May 12, 1907. Regarding preparation by both sides for an appeal, see Houston Post, May 12, 1907.
34St. Louis Post-Dispatch, May 15, 1907. Judging from Adams’ opening statements, Priest would have done better to have argued that Pierce had never fled Texas, not having known that he had committed a crime when he left the state. From Pierce’s reaction to Judge Adams’ reading of the opinion, he had been expecting a more favorable result.
fix the price or limit the production of an article of manufacture, the affiant could hardly say, when charged with false swearing in that particular, that he could not understand the nature of the charge; that its meaning was not apparent to common understanding; that it was only the expression of an opinion without knowledge of its meaning when taken in connection with the law governing the same.

Judge Adams would not permit a man successfully running a multi-million dollar business to hide behind willful ignorance. There was enough in the indictment for a state court to rule. A shaken Pierce remarked as he left the courtroom, "Judge Adams didn't understand the case." 35

Pierce's attorneys, Priest and Johnson, had prepared for this outcome and had a surprise in store as well. That same day they filed a double appeal: one to the U.S. Court of Appeals on a writ of error alleging all the legal points; the other directly to the U.S. Supreme Court, solely on the question of jurisdiction, an extremely unusual legal procedure. But it worked, keeping Pierce free from a train ride to Texas with Sheriff Matthews for at least six more months. The U.S. Supreme Court would not rule on Pierce's appeal until its Fall Term in October 1907, while the federal Court of Appeals would not meet until December 1907. Matthews had to return to Texas empty-handed.

Petulant, Barclay demanded that Judge Adams require a large bond for each appeal, which he did, setting bond at $20,000 per appeal, a mere drop in the bucket to Pierce. 36

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35 _St. Louis Post-Dispatch_, May 15, 1907; _Houston Post_, May 16, 1907. The result was not particularly surprising, once it became apparent that Judge Adams intended to address the sufficiency issue. Missouri, the seat of Adams' court, had long been in the forefront of the movement to abolish technical rules of pleading, having adopted the Field Code of Civil Procedure in 1849. The Field Code, devised by prominent attorney David Dudley Field in 1848, aimed at simplifying the way in which lawyers brought and pleaded cases in court, giving greater weight to the substantive issues of a suit, rather than the precise technical forms used. See Kermit Hall, _The Magic Mirror: Law in American History_ (1989), 126-28. It did not take much to extend this idea of substantive pleading from civil procedure to grand jury indictments. Adams had ample precedent behind his ruling, that is a matter of law, the indictment contained a criminal charge discernible to one of ordinary intelligence, sufficient for the indictment. Judge Adams understood the case all too well for Henry Clay Pierce.

36 As indicated, both sides had prepared for the worst, with Priest and Johnson making the best of a bad situation. Having lost the first round, Pierce's lawyers were in a position to delay the issue in federal court for a long time through the appeals process, and potentially by filing a habeas corpus actions in state courts. It was a decision which displeased most of the parties. Sheriff Matthews had to return to Austin with nothing to show for his efforts other than some friendly chatter with the oil magnate. Pierce was stuck dealing with the issue for the foreseeable future. The lawyers on both sides had to cope with the additional distraction of the criminal action not having been resolved as the trial date of the civil ouster suit got ever nearer. On the other hand, the minimum delay of six months bought Pierce more breathing room, and time for the dust to settle in Texas, by which time the accumulated prejudice against Pierce and his
The *St. Louis Post-Dispatch*, an ardent antitrust proponent, and overtly hostile to both Waters-Pierce and Standard Oil, praised Judge Adams's "common sense view of the law" and his support of state courts, closing with a blast at trusts and "captains of industry."

This decision moves Mr. Pierce a long step nearer the trial which is awaiting him in Texas. It supplies another gratifying evidence that the possibility of evading court processes and trials, under charges of violations of State laws by men of wealth and influence is limited. It is another proof of the length and efficiency of the law's arm.

Had the author known how long it would be before Pierce would actually stand trial in Texas, he might not have written those words.37

**II. A Tortuous Trail to Texas**

*Please announce through the press that although I have appealed from Judge Adams' decision, I will as soon as I can arrange my business affairs in New York, go to Texas to have the indictment against me and questions involved tested by the Texas courts.*

Henry Clay Pierce to John D. Johnson, telegram dated May 15, 1907

Meanwhile the lawyers for Texas filed a motion with the U.S. Supreme Court to refuse jurisdiction and to remand the case. Pierce and his attorneys quickly restated Priest's courtroom argument that the indictment as applied to the affidavit did not state an offense if both were construed properly (i.e., in a light most favorable to Pierce). The decision on the writ of habeas corpus had no bearing on the merits of the indictment and would not affect a criminal trial in Texas. Pierce, leaving for New York, released two statements to the press, the first a telegram he sent to Johnson, in Austin. It announced that...

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37 *St. Louis Post-Dispatch*, May 16, 1907. The *St. Louis Globe-Democrat*, the leading rival of the *Post-Dispatch* in St. Louis, was generally more favorably inclined to Pierce. One of its reporters was Frederick U. Adams, whose series of Sunday articles in 1907 about the ouster suit in Texas were decidedly favorable towards Waters-Pierce, and subsequently published as a separate book. It was a bit premature for the editorial writer to praise the efficiency of the law in extraditing and prosecuting Pierce, given that the double appeal that his lawyers had filed would keep him out of Texas and out of jail at least until December, 1907.
despite the appeals, Pierce would come to Texas to face the charges as soon as he finished
business in New York. A second statement denounced the indictment and protested that he
had not lied in his affidavit.

The indictment against me is outrageous and is the result of a conspiracy. It
was returned against me without being based upon the testimony of
witnesses, and the charge it places against me is wholly wrong....My
affidavit was truthful in every sense and I would make it again and again,
every day, if necessary, for it was absolutely true and the facts will be
demonstrated before this matter is finished.38

Meanwhile, Johnson, Pierce’s other principal attorney, was in Austin, attending to
the preliminary legal skirmishes in the civil antitrust suit against Waters-Pierce. In
comments on the hearing in St. Louis, he downplayed the potentially negative impact of
that decision, noting that all that Judge Adams had decided was that the grand jury
indictment met the minimum requirements to charge his client with an indictable offense.
Adams’s decision "d[id] not pass upon or in any way relate to the truth or falsity of the
charge itself." He also released Pierce’s telegram of May 15th stating his intention to come
to Texas to stand trial. Johnson claimed that Pierce had wanted to come to Texas since the
November 1906 indictment, but legal advisors and friends had dissuaded him. If Pierce
was afraid of facing the perjury/false swearing charge, he would not have gone to Missouri
and been arrested. Johnson neglected to note that by going to Missouri, Pierce had
succeeded in postponing any trip to Texas by at least six months. Johnson’s claims that
Pierce was merely exercising the right of any ordinary citizen in applying for a writ of
habeas corpus did not quite fit with the oil magnate’s alleged eagerness to go to Texas.39

38 Houston Post, May 16, 1907; St. Louis Post-Dispatch, May 16, 1907. This constituted a rather bold
statement by Pierce in light of the revelations of the previous year resulting from the joint investigations of
Hadley and Lightfoot. Standard Oil might have held the reins of Waters-Pierce loosely, but as 1904-1905
showed, Standard Oil could and did exert control. In fairness to Pierce, he was the most independent of the
Standard affiliates, the one most difficult to control. Normally this would not have disturbed Standard, as
Waters-Pierce was extremely profitable. But the investigations in Missouri, Texas, and by the federal
government (to a lesser extent) into Standard Oil between 1905 and 1907, and the antitrust suits instituted
thereafter can be traced to the conduct of Waters-Pierce. See Hidy and Hidy, Pioneering in Big Business,
447-51.

39 Houston Post, May 17, 1907. Certain practical legal reasons suggest why Johnson might have advised
Pierce to avoid coming to Texas to face the criminal charges. If Pierce had gone to Texas in January, 1907,
stood trial on perjury, and been convicted, the outcome of the ouster suit against Waters-Pierce would have
been absolutely certain, particularly as the burden of proof in a criminal case was higher than that of a civil
But, as Johnson pointed out, in 1896 Pierce had gone alone to Waco when he and
John D. Rockefeller, Sr. had been indicted for alleged violations of the Texas antitrust
laws, when he could have easily avoided going to Texas. Pierce had signed the affidavit in
good faith on advice of counsel (namely Johnson), also acting in good faith. Pierce lacked
the element of intent for perjury. Johnson castigated the Texas journalists for misreporting
a variety of facts, chiefly that the affidavit stated that Waters-Pierce had no connection with
Standard Oil, and that Pierce had to make the affidavit in order to get the permit for the new
Waters-Pierce to operate in Texas. Waters-Pierce had the permit before Pierce took the
affidavit, and "it could not have been withheld even though Mr. Pierce had refused at that
time to make the affidavit." In other words, he claimed that swearing the affidavit was not
a prerequisite for a foreign corporation to get a permit to conduct business in Texas. 40

Politicians and newspapers, claimed Johnson, had politicized the entire affidavit
issue to generate controversy and political ammunition. This had aroused "bitter prejudice"
against Waters-Pierce and Pierce because they had not disclosed all the facts and the true
state of affairs. He wanted "to appeal to "their Texas sense of justice in Mr. Pierce's behalf
and ask that they treat him fairly and not judge or condemn him without learning all the
facts...." Johnson did not explain why, if Pierce were so eager to face trial in Texas to
clear himself of "a charge which reflects upon his integrity," he had retained Joseph H.
Choate, Sr. to assist in resisting the extradition from Missouri. 41

40 Houston Post, May 17, 1907. Texas law regarding foreign corporations was somewhat confused. In
order for a foreign corporation to get a permit to do business, all that the statutes on foreign corporations
required was that the corporation file a copy of its articles of incorporation with the Texas Secretary of
State, and pay the appropriate permit fees. See Sayles' Annotated Civil Statutes Arts. 745, 2439 (1897).
But the Antitrust Act of 1899 had required that an appropriate officer of all foreign corporations swear an
affidavit that the corporation was not part of a trust, as defined under Texas law. General Laws of the State
of Texas (1899), Art. 146 §8 (effective January 31, 1900). This raised the question of whether it created an
additional requirement for foreign corporations seeking permits to do business in Texas. The answer was
not obvious when the new Waters-Pierce Oil Company applied for a permit in 1900. On the McLennan
County antitrust cases to which Johnson alluded, see Chapter 1.

41 Houston Post, May 17, 1907. If Johnson had such faith in the "Texas sense of justice," he would not
have been in Austin, along with other attorneys of Pierce trying to change the venue of the ouster suit from
Meanwhile, the Texas Legislature had passed a law directed at removing the only legitimate objection Pierce could have had if he wanted to face trial. Under prior Texas law, Pierce would have had to remain in jail or under custody of Sheriff Matthews once the trial began, even if he had been free under bond before it started. Priest and Johnson had both claimed that this was one of the main reasons that Pierce had been avoiding Texas and his trial. But under the new law "Regulating Bail in Felony Cases" (March 15, 1907), if a defendant was already free on bail or under bond when he went to trial, he could remain on bail until and unless the jury found him guilty. However, it would be nearly another year and a half before Pierce would set foot in Texas.42

Pierce had lost the first skirmish in his fight to avoid extradition to Texas. But his lawyers had several more weapons in their arsenal to keep their client far from the long arm of Texas law. Priest had filed appeals of Adams's decision both in the 8th Circuit Court of Appeals and directly to the U.S. Supreme Court mere hours after Judge Adams denied Pierce's application for a writ of habeas corpus and remanding Pierce to the custody of the St. Louis Police Chief. Priest posted two $20,000 bonds for Pierce, one for each appeal, to keep him out of jail pending the outcome of the appeals. The immediate result was delay, for neither court could hear the respective appeals for a minimum of six months until they were again in session and had space on their dockets.43

\[42\text{St. Louis Post-Dispatch, May 20, 1907. Pierce had told Matthews that he would come to Austin voluntarily as soon as he "settled some urgent business affairs in New York." The Texas Legislature had passed the law in question, titled "Criminal Procedure—Regulating Bail in Felony Trials," on March 15, 1907 as emergency legislation, which made it effective immediately, rather than the normal ninety days after adjournment. See General Laws of the State of Texas (1907), Chapter 19. This piece of legislation was one of several statutes enacted by the Thirtieth Legislature in 1907 in response to the Waters-Pierce litigation in order to facilitate the lawsuit and the prosecution of Pierce.}

\[43\text{St. Louis Post-Dispatch, May 15, 1907; Houston Post, May 16, 1907. Both the Circuit Court of Appeals and the U.S. Supreme Court were recessing for the summer, and already had heavy dockets. This ensured that it would be many months before either tribunal could hear the appeals of the Pierce case.}\]
Delay favored Pierce. The longer the criminal trial had to wait, the greater the likelihood that some event or court decision would intervene and reduce the odds of a criminal conviction for perjury/false swearing. Whether the event might be the breakup of Standard Oil by the Justice Department, or even less likely, that Waters-Pierce would be vindicated in the concurrent Texas ouster suit, time was on the defendant's side. Pierce looked forward to the ouster suit in Austin, for no matter what the result, he gained. If Waters-Pierce won the civil suit, then Pierce would not likely be convicted in the criminal case, in which the standard of proof was higher. If Waters-Pierce got ousted and had to pay a large fine, then the probability of a jury convicting Pierce on criminal charges, particularly long after the furor had died down also decreased for popular antitrust frustrations would have been vented.44

Pierce allegedly indicated that he would be pleased if Waters-Pierce was ousted from Missouri and Texas, as this would give him the opportunity to start up a new company not dominated by Standard Oil. Relations between Pierce and 26 Broadway, always somewhat tense, had deteriorated steadily since 1904. Rumors were that Pierce was in cahoots with his financier friend from New York, John "Bet-a-Million" Gates, who was visiting Texas in late May 1907, ostensibly to attend The Texas Company's annual stockholders' meeting, but actually to form a new oil company to compete with Standard in the Southwest. Gates had recently purchased extensive drilling rights in Oklahoma and Texas. Articles sympathetic to Pierce's "struggle" with Standard Oil appeared even in Texas.45

44 See Galveston Daily News, June 4, 1908, for the observation that Pierce would have gone down to Texas as fast as he could have if Waters-Pierce had won the ouster suit.
45 St. Louis Post-Dispatch, May 27, 29 1907; Houston Post, May 29, 1907. On the problems between Pierce and Standard Oil, see Hidy and Hidy, Pioneering in Big Business, 447-51. His vengeance, if it can be called that, was that the investigations into Standard Oil by several state and the federal government between 1905 and 1907 can largely be traced to the conduct of Waters-Pierce. The rumors that Pierce and Gates intended to form a company proved to be just that, rumors. On Gates's connections to The Texas Company, see Chapter 4, note 74 and accompanying text.
There was no sympathy for Pierce's company. On June 1, 1907 a Travis County jury found Waters-Pierce guilty of violating the antitrust laws, determined that it was to be ousted from Texas, and pay a $1,623,900 fine for 2,521 days of continuous violation of the laws.46

Yet Pierce's situation on the perjury/false swearing charges looked increasingly favorable. Doubts had arisen about the validity of the affidavit provision of Texas antitrust laws. Prosecutor C.H. Yoakum in Fort Worth asserted that Pierce should never have been indicted because the 1899 Texas antitrust statutes which had required the affidavit had been unconstitutional and accordingly repealed in 1903. Why bother trying Pierce? This question prompted a St. Louis Post-Dispatch editorial to ask:

Why was not the Yoakum question asked before the ponderous machinery of justice in State and Federal courts and in State executive offices had been put in motion to grind out a vast grist of opinions and documents on the subject of a non-existent law? Between laughs we pause for a reply from the stately array of Governors, Judges, attorneys, public prosecutors and Sheriffs, who have been busying themselves over a blank in the Texas statutes.

Yoakum had made a mistake. The only constitutionally dubious portions of the 1899 Texas antitrust statutes were the exemptions from the antitrust laws granted to agricultural cooperatives and unions. Nothing was wrong with the affidavit or penalty provisions of the 1899 law which accounted for $1,549,500 of the fine (over ninety-five percent) assessed against Waters-Pierce on June 1, 1907, only a few days after Yoakum's pronouncement.47

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46 Houston Post, June 2, 1907; St. Louis Post-Dispatch, June 1, 3 1907. Waters-Pierce would fight this verdict all the way up to the U.S. Supreme Court for another two years before the determination of that tribunal against the oil company finally ended the matter. See Chapter 4.

47 St. Louis Post-Dispatch, May 29, 1907. Yoakum's view appears to have been an extremely isolated one. The confusion about the 1899 law, and every previous and subsequent Texas antitrust law was caused by the poor legal drafting habits of the Texas Legislature. It was, as a practical matter, difficult for the best legal minds in Texas to ascertain what portion of the Texas antitrust laws were valid or could still apply from year to year. As an example of poor drafting, consider the reduction in the potential per diem fines for violation of the antitrust laws in the 1903 amendments (reduced from $1000 to $50). A $50 per day fine was not much of a deterrent to firms such as Waters-Pierce and Standard Oil. This was not what the Legislature had intended to do.
Among doubters that Pierce would ever spend a day behind bars was former independent oil man and Waters-Pierce employee Royer Campbell. One of the state's star witnesses in the recently concluded ouster suit, Campbell predicted that Waters-Pierce would soon be back in Texas and that it would never pay the million dollar fine. As for his nemesis, Pierce, Campbell said,

I cannot conceive of H. Clay Pierce wearing convict stripes and peering from behind the bars....H. Clay Pierce behind the bars? Well, hardly. If he is convicted of the charge of perjury, the jury might as well make it discretionary with him as to whether or not he shall pay a colossal fine or spend a limited period "doing time" for the State of Texas. No doubt he would pay the fine as his choice.

Campbell would prove to be a fair prophet.48

Johnson was also optimistic. He claimed to reporters that Judge Brooks's instructions exonerated Pierce on the charge of perjury. Brooks had instructed the jury to find in favor of Waters-Pierce on several issues, and only the issue of stock ownership formed a basis for any findings of antitrust violations. Given Brooks's actual instructions and the perjury/false swearing charges against Pierce, Johnson's declaration that the Waters-Pierce ouster vindicated Pierce was a strained interpretation of the instructions and of the pending criminal allegations against the latter. The question, who actually controlled Waters-Pierce, went to the heart of the truth of the affidavit.49

While the legal battles of the corporation, dragged on, Pierce enjoyed a lull. Little happened in the criminal case until the U.S. Supreme Court decided the appeals from Judge Adams's decision to allow the extradition of Pierce from Missouri. He seemed quite

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48 Houston Post, June 3, 1907. Campbell proved correct regarding the presence of Pierce in the Texas oil business. Pierce had made too much profit to stay out of Texas merely because of a hostile judicial verdict. Nothing prevented the oil magnate from doing what he had done in May, 1900, that is, dissolve the old corporation, and form a new one the next day that did exactly what the old one had done. Campbell was wrong on one point, Texas succeeded in collecting the fine, plus interest, from Waters-Pierce, which meant that in one suit, Texas had collected more under its antitrust laws than the United States, and the rest of the Union, under their respective antitrust laws, had collected in twenty years. On Campbell's dealings with Waters-Pierce, and his role in the ouster suit, see generally Chapters 2-4.

49 St. Louis Post-Dispatch, June 4, 1907. While any legal document is open to interpretation, Johnson's claims that the instructions and verdict exonerated his client completely are untenable. For the charges to the jury, and the judgment that it rendered see Transcript–1907, 114-26, 134-35, TSA RG 302 Box 1989/41-85, and Chapter 4, notes 134-38, and accompanying text.
confident of his vindication and that of his company, entertaining at his St. Louis mansion Charles B. Dorchester, the federal receiver initially appointed to manage Waters-Pierce affairs in Texas pending appeals from the ouster verdict. Pierce told Dorchester that he looked forward to a Texas visit before and after his trial. Meanwhile the Texas Attorney General continued the effort to remove Dorchester as receiver and replace him with the Robert J. Eckhardt, the receiver appointed by the state courts.50

One half of Pierce's attempt to avoid extradition to Texas failed on February 3, 1908. In a brief decision, the Supreme Court denied the petition for a writ of certiorari to the Eighth Circuit Court of Appeals that two of Pierce's lawyers, Joseph H. Choate, Sr. and Jr., had requested. This was not a serious setback for Pierce, for his other appeal, this one to the Supreme Court, remained.51

The two Choates, joined by Priest, faced the agents of Texas before the Supreme Court on April 20 and 21, 1908. Their arguments echoed Priest's previous ones, bolstered by legal research and citations, the essence of which was that:

The validity of the warrant on which the appellant [Pierce] was arrested depends upon the substantial sufficiency of the indictment on which it was based. Unless that indictment, when tested as on motion in arrest of judgment, is capable of supporting a conviction, the requirements of the Constitution, are not fulfilled and the extradition is unauthorized.

Choate, Sr., who made the argument before the Court, detailed six ways in which the indictment, from their view, was "fatally defective," and therefore inadequate to charge

50Galveston Daily News. October 12, 1907. On the struggle over the receivership of Waters-Pierce, see Chapter 4. Dorchester ran the company as Pierce would have, retaining all of the old employees, and all of the pricing practices and marketing strategies that had made Waters-Pierce so offensive to so many Texans. For complaints about practices under the federal receiver, see Jewel P. Lightfoot to B.J. Bean of Wichita Falls, Texas, September 23, 1907, and Lightfoot to Messrs. Cureton & Cureton of Meridian, Texas, November 25, 1907, TSA, RG 302, Box 1984/67-65.
51Henry Clay Pierce vs. Edmund P. Creecy, 208 U.S. 616 (1908). This was a brief decision denying Pierce's petition for a writ of certiorari to the 8th Circuit Court of Appeals. There appears to be no written opinion at the Circuit Court of Appeals level on the extradition issue, which evidently did no go in Pierce's favor. For more detail on this appeal, see the following: Petition for Writ of Certiorari; Brief in Support of Petition for Writ of Certiorari; Brief Opposing Petition for Certiorari, Henry Clay Pierce vs. Edmund P. Creecy, 208 U.S. 616 (1908).
Pierce with a crime "within the meaning of Art. IV, §2 of the Constitution." This interpretation justified federal court jurisdiction for the extradition question.52

Shepard Barclay, Thomas Fauntleroy, and Assistant Texas Attorney General Felix J. McCord represented Texas. Barclay had enjoyed ample time to research the issues. He contended that no federal court jurisdiction existed because none of the defects alleged by Choate involved federal issues. All that federal law required was a "mere charge of a crime." This did not require indictment by a grand jury--a simple affidavit before a magistrate was sufficient. According to Barclay, if defects existed, they were defects under Texas law, should be interpreted by its courts, and appealed through the state's judicial system unless the relevant laws of Texas were unconstitutional. Otherwise the sufficiency of the indictment could not be challenged through a collateral attack by habeas corpus, which would involve federal courts interpreting Texas law. Only if Texas courts lacked jurisdiction should federal habeas corpus be permitted to make a collateral attack on the indictment.53

The Supreme Court's unanimous decision (June 1, 1908), by Justice Moody, was a firm statement supporting the views of Texas on nearly every point, save that of the question of jurisdiction. Often quoting Barclay's arguments and endorsing Barclay's views on federalism and state and federal courts.

Moody found jurisdiction for the federal courts and for the Supreme Court. Governor Campbell's extradition request of Missouri specifically asked that Pierce be turned over to Texas "in pursuance of the provisions of the Constitution and laws of the United States." Moody's opinion implicitly rebuked attempts at hair-splitting by Pierce's lawyers and by Choate. All sides agreed that nothing more was necessary under Article

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52 Houston Post, April 21, 22, 1908; Galveston Daily News, April 21, 22 and June 2, 1908; Pierce vs. Creecy, 210 U.S. 387, 394-97 (1908). Those attorneys who attended the arguments before the Supreme Court to hear Choate's much anticipated speech were sorely disappointed by its lack of energy and force.
53 Pierce vs. Creecy, 210 U.S. 387, 398-99; Houston Post, April 21, 22, 1908; Galveston Daily News, April 21, 22, 1908. For Barclay's similar argument in the extradition hearing before Judge Adams in 1907, see Houston Post, May 12, 1907, and Galveston Daily News, May 12, 1907.
IV, Section 2 than that a crime be charged, not an indictment sufficient to constitute a
criminal pleading that could sustain a conviction. Yet Pierce's attorneys had argued for an
extradition standard that required virtually what they had agreed was unnecessary.
Choate's test would be impossible to administer as the procedural requirements for
indictments and criminal pleadings varied from state to state. Such a test also could not
deal with charges of crime by affidavit, which were recognized as constitutionally sufficient
for Article IV, Section 2. According to Moody, the only viable test would show
satisfactorily "that the fugitive has been in fact, however inartificially, charged with a crime
in the State from which he has fled." Moody then went through Choate's alleged defects in
the indictment against Pierce, dismissed two as beyond the power of the Supreme Court to
determine, and then looked at the remainder of the "defects." Even assuming that all was
as Pierce's lawyers claimed, and that the indictment would fail utterly as a criminal
pleading, nonetheless, read as a whole, Moody concluded it "unmistakably describes
every element of the crime of false swearing, as it is defined in the Texas Penal Code...."
This met the standard of the Constitution. No more could be required, for to do so

...would impose upon courts, in the trial of writs of habeas corpus, the duty
of a critical examination of the laws of States with whose jurisprudence and
criminal procedure they can have only a general acquaintance. Such a duty
would be an intolerable burden, certain to lead to errors in decision, irritable
to the just pride of the States and fruitful of miscarriages of justice. The
duty ought not to be assumed unless it is plainly required by the
Constitution, and in our opinion, there is nothing in the letter or the spirit of
that instrument which requires or permits its performance,

All that remained was for the Supreme Court to issue a mandate to Pierce to surrender to
the U.S. Marshal in St. Louis.54

Pierce and his attorneys had at least thirty days to decide what to do. Many legal
maneuvers were available. For example, it was assumed that Pierce's lawyers would move

54Pierce vs. Creecy, 210 U.S. 387, 400-05; Galveston Daily News, June 2, 1908. This result did not
mean that the effort of Pierce's many attorneys had been in vain. The legal maneuvering had delayed
matters for over a year from the date of the hearing in Judge Adams courtroom in St. Louis, and many other
delaying options were still available to Pierce's attorney. At the rate that Pierce's journey to Texas seemed
to be progressing, he was more in danger of death from ill health or age than danger of imprisonment in
Texas.
for a rehearing before the Supreme Court. The Court began its summer break in June 1908. It could not hear the motion until the October 1908 term. Pierce would remain free on bond until a decision was reached. Another possibility would have been for Pierce to seek a writ of habeas corpus from the Missouri state courts, or from the courts of any state in which he might happen to be when taken into custody. With an appeal possible through a state judicial system, Pierce was in a position to postpone his "trip" to Texas for at least a year, if not indefinitely.55

His lawyers had no intention of letting him stand trial in Texas unless forced to do so. The normally reticent Priest stated to the press that "[y]ou can say that he has not started for Texas yet." Pierce had nothing to fear from a fair trial on "such a flimsy indictment." Texas's conduct in obtaining the indictment had been "decidedly unusual, if not altogether illegal." The whole affair was "a political game." His client could not get a fair and impartial trial in Texas. Priest mused about the prospects of a long European vacation for both him and Pierce. In short Priest, while an able attorney, was not good at public relations. Many of his statements to the press seem almost to have been calculated to inflame the Texas public. Both Pierce and his eldest son, the president of Waters-Pierce, wisely declined interviews, as did the two Choates. Meanwhile, Sheriff Matthews waited in vain for the message to come to St. Louis to escort his charge back to Austin. It would not come because Pierce remained in New York City.56

55Motions for rehearing of arguments in the Supreme Court are seldom granted, but can always be requested. The Supreme Court has to go through the actions of denying the motion, which takes time, particularly if the argument was heard at the end of a term. Thus motions for rehearing provide a convenient delaying tactic in some cases. As for applying for writs of habeas corpus in state courts, the decision of the federal courts, even the Supreme Court, did not preclude that option, as federal habeas corpus and state habeas corpus are two separate creatures administered by two separate systems of courts. Conceivably Pierce could take a state habeas corpus suit through the state system, and back up to the U.S. Supreme Court. Galveston Daily News, June 2, 3, 1908; Houston Post, June 2, 3, 1908.

56Galveston Daily News, June 2, 4 1908; Houston Post, June 2, 1908. On several occasions Priest made statements to the press that impugned the honor and honesty of Texans, and the integrity of their judicial system.
On June 3, 1908, only two days after his first announcement, Priest indicated that while the attorneys were contemplating filing habeas corpus motions in state courts if needed, both he and Pierce wanted to go to Texas and face the criminal charges.

The personal inclination of Mr. Pierce and my own personal inclination would be for Mr. Pierce to go to Texas now. I am confident that there is nothing in the charge against Mr. Pierce that we would be speedily acquitted thereof. But friends of Mr. Pierce have an opinion that there is a disposition in Texas to convict him there, whether he is innocent or guilty.

Priest had finally realized that Pierce would have to face trial in Texas eventually and that it was unwise to proclaim before the trial that Texas juries were unfair and biased. Attacking the state’s prosecutors for grandstanding for the press was acceptable and expected; impugning the fairness and honor of the rest of Texans was not.  

Reactions in Texas ranged from amusement to offense. Several leading Austin attorneys laughed at the idea that the indictment was "decidedly unusual, if not altogether illegal" because of the alleged lack of live witnesses before the grand jury that had indicted Pierce. Texas lawyers found the introduction of documentary instead of live evidence before the grand jury, as had been used extensively in the civil antitrust suit against Water-Pierce, to be significant. Such evidence, whether ordinary documents or depositions, was legally as "adequate...as bona fide flesh and blood witnesses."

Others were offended by Priest and Pierce. A Galveston Daily News editorial noted that Pierce had profited greatly by his business in Texas, and should be subject to its statutes "just as any ordinary Texan." Instead, the magnate and his high-priced legal team were "resorting to every conceivable subterfuge to prevent a hearing of the charge against

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57 Galveston Daily News, June 4, 1908; Houston Post, June 4, 1908. Priest's sudden about face was not particularly convincing. The amazing thing is that he kept making statements to the press, despite his proven inability to deal with reporters.

58 The issue of whether or not there had been live witnesses before the grand jury which had indicted Pierce in October 1906 was a public relations smoke screen to make it appear that the State of Texas (at least its legal officers) were out to get the oil millionaire and reap publicity. The witness list for the grand jury seemed to indicate that there had been some live testimony. And as the members of the Austin bar pointed out, live testimony was not necessary if there were sufficient documentary evidence. Galveston Daily News, June 4, 1908. Priest's protests also ignored the fact that indictment could have been obtained by affidavit, without going before the grand jury at all with any evidence.
him..." in an effort to avoid justice, yet he had the nerve to joke and insult the officials, judicial system, and people of Texas.

[If there exists any serious reason why Mr. Pierce can not expect to be treated fairly in Texas such reason is to be found in insults like this one coming from Mr. Pierce's counsel and in the conduct and business methods of Mr. Pierce himself....He has poured thousands of dollars in his efforts to mold public opinion in his favor during recent years, and has used freely a generous contingent of the press of state organs to that end. He and his counsel and his organs have deceived, misused and slandered the people of Texas and have done more to scandalize the institutions of this state than any other set of men have ever done before....

... But for these shrewd schemes of trying the case out of court The News might have had none of this to say; but it is deemed a duty to present at least enough to keep the public mind alert and the eyes of the people open to such sharp work as has been going on, and to the other facts that Mr. Pierce should be compelled to answer to our laws just as other men are....

Priest's attempt at damage control in his statement of June 3, 1908, was too little and too late. He and his minions now seemed to fit the public stereotype of "captains of industry": arrogant in their wealth and power, sure of the unaccountability of their actions, contemptuous of the consumers they bilked and the states that permitted them to conduct business.59

The public outcry resulting from Priest's ill-chosen words may have contributed to the decision not to fight Pierce's extradition to Texas. Pierce made no attempt to obtain a writ of habeas corpus from any state court. His attorneys contented themselves with filing the customary motion for a rehearing in the U.S. Supreme Court on the original appeal from Judge Adams's order. This had the effect of keeping Pierce out of the reach of Sheriff Matthews until the Fall 1908 term of the Supreme Court.

It heard the motion early in November, 1908. E.B. Perkins of Dallas, another of Pierce's many lawyers, handled the argument, which was denied as expected. Perkins made light of this result, stating to reporters that having to argue the motion before the

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59Galveston Daily News, June 4, 1908. While Pierce had learned the lessons from Standard Oil and John D. Rockefeller about buying "editorial" ads in newspapers and journals, he failed to learn the value of hiring an agency to handle public relations for him and his firms generally. If Priest had some concern about his client receiving a fair trial in Texas earlier, his statements made that concern real.
Supreme Court was the only work that marred his otherwise enjoyable vacation in the North and East. The result meant little other than Pierce would have to go to Texas eventually. The question, when, Perkins answered:

When will Mr. Pierce come to Texas? Well, really, I don't know. He is not at all well. I'm very sure he will come as soon as he can, and I believe it will be only a few days.

Oh, he'll go at once to Austin. I suppose that the first proceeding will be the placing of a bond and the setting of a time for trial of the case. I hardly think it likely that the case will be heard at once. I don't believe there is anything of interest in this.

Unfortunately for Pierce, Priest again insulted Texas and Texans as "densely ignorant."

Despite the best efforts of his legal team, Pierce would finally have to go to Texas.60

III. Trudging Towards a Trial

Fines may be a deterrent toward continued lawlessness of great corporations, but the imprisonment of a proven malefactor from the realms of high finance would be a beacon light of warning and have a better moral effect than much litigation, however successful. I do not mean underlings, but their superiors, under whose orders they act.

United States Attorney General Charles J. Bonaparte, September 2, 1907

Both sides prepared for Pierce's arrival in Texas. On November 6, 1908, Governor Campbell appointed Assistant Attorney General Felix McCord to assist Travis County District Attorney James Hamilton in preparing for trial on the perjury/false swearing charge. Rumors were that Campbell was also considering prominent special counsel to assist in the prosecution. Hamilton indicated that he intended to demand that Pierce post a substantial bond once he appeared in court. Speculation grew about who would be the local sureties on the bond. Pierce meanwhile had left his summer home in

60Galveston Daily News, November 6, 9, 1908; Houston Post, November 6, 1908. Perkins was a marked contrast to Priest in his ability to deal with the press. Priest gave the impression of being an arrogant, high-paid, big city corporate lawyers, insensitive and uncaring—a perfect tool for trust magnates like Pierce, which he was. Perkins, in contrast, came across as an affable, country lawyer. He was able to make jokes about his reverses before the Supreme Court, and able to deflect the interview to safe topics than his client.
Massachusetts for St. Louis, with Priest in tow aboard his private railroad car, the Zamora.61

Pierce arrived in St. Louis on November 7th and spent the day in Priest's offices in the Waters-Pierce headquarters building. He eluded reporters and went to Priest's offices. The frustrated reporters learned only that Pierce was leaving for Texas and did not expect to be arrested at the border. The elusive Pierce gave a brief statement when he and his small party departed for Austin that evening. His major concerns were business affairs, not the trial, which he expected would be fair, and he would be vindicated:

I am making this trip voluntarily. It is my desire to show the state that I am placing no barrier in its way for a consideration of the charge against me. I can not see how the public can judge otherwise than I shall be vindicated in view of the fact that I go there voluntarily.

In view of the two-year attempts to get Pierce to Texas to stand trial, attempts including two appearances before the Supreme Court by some of the nation’s leading attorneys, Pierce's claim to be going to Texas voluntarily rang hollow.62

Pierce arrived in Dallas without incident. Unlike earlier predictions, he made no fuss, remaining in his car, shades drawn, politely refusing to discuss the case. His party included notables Colonel Samuel W. Fordyce of St. Louis and lawyers Samuel Canty of Fort Worth, E.B. Perkins and E.G. Perkins of Dallas. While chatty, none of Pierce's party talked to reporters about the criminal charge against him. Even Priest had nothing to say.63

Arrangements had already been made for Pierce to appear in the 53rd District Court, presided over by Judge George Calhoun. Pierce and his retinue arrived in Austin early on

61 Galveston Daily News, November 7, 8, 1908; Houston Post, November 7, 8, 1908. Pierce owned the Mexican Central Railway, which is why he had his own private railroad car. The mandate from the Supreme Court was the order which would compel Pierce to surrender himself to the authorities of Texas. Until the officials had the paperwork, Pierce could not be coerced.

62 Galveston Daily News, November 8, 1908; Houston Post, November 8, 1908. Since Pierce was coming to Texas before the Supreme Court issued a mandate that would force him to go there in the company of lawmen, Texas had nothing to gain by trying to humiliate Pierce by arresting him at the border.

63 Galveston Daily News, November 9, 1908; Houston Post, November 9, 1908. Fordyce had several old acquaintances in Texas, having been captured by Texans during the Civil War.
November 9th, and headed to the state courthouse to surrender to Sheriff Matthews. The hall outside Matthews's office and the sidewalks around the courthouse were packed with the curious. Pierce acted as if it were an ordinary business day, shaking hands and chatting with people he knew. Matthews did not make a display of arresting Pierce, merely shaking his hand and renewing their previous, brief acquaintance. Nothing was said about Pierce being under arrest; it was silently understood that he was in the sheriff's custody until Judge Calhoun signed the $20,000.00 bond that District Attorney Hamilton had requested. After a few minutes, Matthews, Pierce, and the latter's party went to the courtroom.64

It was crowded with litigants, jury members, lawyers, and spectators. The long wait for Calhoun to get to the matter of Pierce's bond was punctuated by several moments of levity. The reading of the jury list for the week included a Henry Pierce. And while he waited patiently, fashionably attired as always, an ambitious huckster tried to sell him a patent on a railroad coupling device until deterred by Sheriff Matthews.65

After a wait of nearly three hours, the moment finally arrived. Both sides were amply and ably represented at this routine bond signing. Pierce had over seven lawyers present with him, and the state had three: District Attorney Hamilton, County Attorney John Brady, and, by special request of Governor Campbell, Assistant Attorney General Lightfoot. Agreed to earlier, the posting of the $20,000 bond caused no controversy. The public was more interested in the names of the guarantors of the bond, which read like a list of Austin's wealthiest citizens including all of its prominent bankers. If the ordinary

64 Galveston Daily News. November 10, 1908; Houston Post, November 10, 1908. Hamilton had earlier stated that he would request "a substantial bond." $20,000 was a great deal of money for most people in 1908. But for Pierce the millionaire, who had no problem posting $40,000 in bonds in St. Louis in Judge Adams's court in 1907, it was less than substantial. It is unlikely that Hamilton could have gotten a bond requirement that would be a problem for Pierce, given the nature of the charges and Pierce's standing, which made him an unlikely prospect for flight.

65 Galveston Daily News. November 10, 1908; Houston Post, November 10, 1908. For some reason, Texas newspapers seemed fascinated by Pierce's fashion sense when he appeared in court, as his sense of sartorial splendor was regularly commented on in an approving manner.
citizens of Texas were hostile to Pierce, its wealthier ones were not. With the signing of the bond by Judge Calhoun, Pierce was free to go.66

As he left the courtroom, Pierce once again shook hands with Sheriff Matthews, inviting the lawman to visit him anytime and promising to "give you one of the most pleasant times you ever had." Pierce paid courtesy calls on all signers of his bond, and then headed off to vacation in Houston and Galveston, showing off sights to his friend and lawyer, Priest, granting interviews to the press about anything that did not involve his criminal case, oil, or politics. Then Pierce headed back to St. Louis to conduct business and await the next legal step, which should have been appearing before Judge Calhoun to stand trial in January 1909.

For unknown reasons matters were delayed again. Pierce would not have to appear in Austin until May 1909 near the end of the court term. Other events, however, proceeded quickly. In Missouri, according to rumors Standard Oil had proposed a plan at the annual Waters-Pierce shareholders meeting to divest itself of its Waters-Pierce stock, which would leave Pierce in full, independent control of the company. Herbert S. Hadley, the new Governor of Missouri, accused Pierce of lying. The company had failed to present evidence by the February 16, 1909, deadline set by the Missouri Supreme Court that it had stopped violating the state's laws. It had merely filed a statement that it would comply with the court order. But beyond that, Hadley had been

....reliably informed that a proposition was made by the Pierce interests in the Waters Pierce Oil Company to conceal the Standard Oil ownership of a majority of stock, and in that way enable that company to do business in the state.

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Priest fired back a reply attacking Hadley. It was a plan by Standard Oil to wreck Waters-Pierce. He demanded that Hadley reveal his source and the alleged plan. "Publicity is courted." 67

The source revealed himself in a public interview. On February 21, 1909, Frank Hagerman, a Kansas City attorney for Standard Oil, stated to the press that Priest had suggested a plan to him to leave Standard secretly controlling sixty percent of the Waters-Pierce stock. Now Priest hid from reporters, leaving Johnson, Picrcc's other principal attorney, to handle damage control. Much more in control of his language than Priest, Johnson admitted having several meetings with Standard lawyers, but only to work out a plan to comply with Missouri law and the court rulings. Several proposals had been made, but no secret arrangements had ever arisen. Johnson declared that Hagerman was not telling the whole truth. 68

This publicity did no good for Pierce's reputation. Events in the ensuing months combined further to complicate matters. In April, Pierce and his attorneys received partial vindication of their determination to fight extradition. The prosecution decided that the

67 The annual stockholders meeting of Waters-Pierce held in St. Louis indicated that Pierce had some plan to resume control of Waters-Pierce, and eliminate Standard Oil's influence, but what that plan consisted of was unknown, as the meeting was closed, the stockholders few and uncommunicative. St. Louis Post-Dispatch, February 18, 1909; Galveston Daily News, February 19, 1909. Herbert Hadley had advanced politically since his victory against Standard Oil and Waters-Pierce, and had become Missouri's governor. Having propelled himself to this post in good part by his antitrust record, he did not give up the cause even though he had different responsibilities as governor that could, and did conflict with his old goals as Attorney General. For details of Missouri's struggles against Waters-Pierce see Piott, The Anti-Monopoly Persuasion, 105-56; Giddens, Oil Pioneer of the Midwest, 89-97; and Brinthurst, Antitrust and the Oil Monopoly, 89-107, 204-22. For Hadley's accusations, see St. Louis Post-Dispatch, February 19, 1909; Galveston Daily News, February 20, 1909. Little effort had been made to comply with the court orders to change their practices and cease violating the Missouri antitrust laws. The Missouri Supreme Court had decided to suspend the order of Waters-Pierce, Standard Oil of Indiana, and the Republic Oil Company, pending good behavior. Missouri was not in a rush to get rid of the services and revenue provided by Standard Oil and its allies. Standard Oil had a large refinery in Missouri at Sugar Creek, very near Kansas City, that was extremely significant to the economy. The Panic of 1907, which many supposed had been deliberately caused by the leaders of big business, also made many states reluctant to attack important elements of their economies. See Chapter 4, note 151.

68 St. Louis Post-Dispatch, February 21, 1909; Galveston Daily News, February 22, 1909. Between the statements of Hagerman and Johnson, it is difficult to know the truth. Despite the rough relationship between Waters-Pierce and Standard Oil, the ties had benefited both. Priest, who had stuck his foot in his mouth again, had the servant at his mansion in St. Louis tell reporters that he had left town on Saturday. Newspapermen tracked him down to the Log Cabin Club, perhaps the most exclusive private club in St. Louis, but he refused to see the representative of the press sent in to speak to him.
original indictment was defective and legally insufficient to use to obtain a conviction in a criminal case. Consequently, the matter was turned over to the Travis County grand jury, which issued a second indictment against Pierce on April 11, 1909. It was much more specific. This grand jury indicted Pierce for both perjury and false swearing, two distinct crimes, as they were unable to determine whether or not the affidavit that he had sworn to in May 1900 was required by law (perjury), or an oath not required by law (false swearing). A court would have to determine this matter. The grand jury's new indictment also alleged that Pierce had been a fugitive from the state since 1900. Therefore the statute of limitations for either crime had not yet run out.

This new indictment questioned whether Pierce could be forced to Texas in the near future. The original extradition order by Missouri Governor Folk that the U.S. Supreme Court had upheld was for the first indictment of November 1, 1906, not the one of April 11, 1909. Pierce had never been arrested on the new charges. Conceivably, he could force Texas and Missouri to go through the entire extradition process again for an indefinite length of time. Some opinion favored the view that Pierce would not fight the matter further and would show up in Texas again voluntarily, having done so in November, 1908.69

Other events soon aided Pierce's cause. On April 12, 1909, the Supreme Court decided the Waters-Pierce civil antitrust suit, sustaining the verdict of the Texas courts against the oil corporation, including the substantial penalty of $1,623,500.00, plus accumulated interest. This made Pierce's punishment much less important to public officials. They could bask in the glow of the largest antitrust award in history. And the citizens of Texas could be content with ousting the oil trust and collecting the penalty.

69Galveston Daily News, April 12, 1909; Houston Post, April 12, 1909. Pierce had little to gain by fighting extradition again beyond further delay. If anything, attempts to do so would likely have proved futile as they had been on the first, poorly drafted indictment, and generated more hostile public opinion in Texas.
Punishing a sick, elderly man who was on the outs with Standard Oil seemed less important.

The Texas Supreme Court also slashed the fees that County Attorney John Brady could collect for having aided the prosecution of the Waters-Pierce ouster suit. The Texas Supreme Court had held that the fee provisions of the 1899 antitrust law, under which Brady would have received $425,000 (split with Gruet and the numerous special counsels), did not apply after the legislature in 1903 had amended the antitrust statutes. Brady had merely been doing his duty, as required by law, and did not merit such large compensation. He was to receive $90,000.00, to be split among the attorneys and Gruet. Brady's fee-splitting squabbles with District Attorney Hamilton aired the state's dirty linen rather publicly. April proved to be a good month for Pierce, if costly financially. 70

No one was sure what would happen on May 17, 1909, the date that had been set for Pierce's trial on the original indictment, which had not actually been dismissed. District Attorney Hamilton predicted there would not be a trial on the defective indictment, but that nothing could be done until Pierce was formally arrested on the second indictment. This meant more delay. Adding to the chaos, Senator Joseph Bailey, friend and occasional debtor of Pierce, in a speech to the U.S. Senate called for prison sentences for trust magnates instead of fines passed on to the consumer. Bailey had no problem reconciling his support for Pierce on one hand with his stand against trusts on the other. It was merely one more public relations problem for Waters-Pierce and its founder. 71

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70 Waters Pierce Oil Company v. State of Texas, 212 U.S. 86 (1909); Galveston Daily News, April 13, 1909; Houston Post, April 13, 1909. With accumulated interest, the total amount that Waters-Pierce would have to pay came to over $1,800,000. The Supreme Court did not consider this an excessive figure, in view of the firm's estimated $40,000,000 in assets, and dividends of several hundred percent per year. Incidentally, Brady had sworn affidavits to the effect that he was entitled to $425,000 under the 1899 law. In theory he could have been charged with perjury or false swearing, just like Pierce. Galveston Daily News, April 13, 1909; Houston Post, April 15, 1909.

Meanwhile Pierce prepared for his return to Texas. On May 13, 1909, he headed to Austin via St. Louis, appearing calm and affable in his interludes with the press, refusing only to discuss his current troubled relations with Standard Oil. Arriving in Dallas, he exuded confidence, and with reason. His attorneys had informed him that all he had to do in Austin was to obtain a new bond with sureties on the second indictment, with any possible trial months away in the future. As Pierce told reporters,

I am feeling splendidly. My visit to Texas is in response to a summons from these gentlemen [indicating his legion of lawyers]. I shall stay as long as they say stay and then return to St. Louis, where business demands my attention. It would give me pleasure to remain longer in this state, for I have know it and its people for thirty-three years, and it is a matter of regret that I cannot do so.

Pierce refused to discuss his plans for business in Texas, and seemed undisturbed by the Supreme Court ruling in April that had confirmed the ouster of his company and the sizable fine associated with it. In Austin he repeated the procedure of the previous November, surrendering to Sheriff Matthews, then going to Judge Calhoun's court to get his $20,000 bond and sureties approved, followed by a return to St. Louis and points East. Pierce's next tentative date with the Texas courts was October 13, 1909, unless something else intervened.72

Nothing did over the summer. The various government attorneys were occupied by their other tasks, particularly Lightfoot and McCord. Lightfoot was still in charge of antitrust investigation and pursued that task with diligence, while the ever-increasing duties and workload of the attorney general's office kept McCord busy, a problem shared by the attorneys general of all of the states.73

Texas was ready to duel with Pierce's attorneys by the fall of 1909. The state's first list of witnesses to be subpoenaed included Louis Fries of Houston, a former Waters-Pierce employee now working for Chester B. Dorchester, the federal court-appointed receiver, and Dermott H. Hardy, former Secretary of State of Texas, now practicing law in

73 See Chapter 5, note 26 on the burden on the Texas Attorney General's Office.
Beaumont. The defense attorneys did not release a witness list early, with good reason. On September 24th, the trial of Pierce was delayed again. This time there appeared to be no legal trickery. Pierce's health, oscillating wildly during the preceding seven years, deteriorated over the summer. Concerned that the trip to Texas and the stress of the trial might kill him, he had spent part of August and all of September in Europe at mineral baths and health spas under a physician's care, allegedly disregarding business while he recuperated. The prosecution waived any formal motions and did not object to the Court granting a continuance to Pierce on grounds of poor health until November 29, 1909. In addition to allowing Pierce time to regain his strength, whether from poor health or over-vacationing, this placed the perjury/false swearing trial close to early December, when the sale of the Texas assets of Waters-Pierce had been scheduled in the civil antitrust case.74

Pierce arrived in Texas on November 28, 1909, seemingly in perfect health. He was all smiles and warmth, chatting and joking with reporters about his upcoming trial, stating that he was glad to be back in Texas, and that he "might be in this state for some time." Pierce talked about the oil business and his plans to do business in Texas. He showed no inclination to stay out of a market that had profited him so greatly in the past and was still making money for him, stating, "I am not deserting it [the oil business of Texas] now and want to be in at the death, if there is to be one." When asked if he intended to bid on the Waters-Pierce properties at the December 7, 1909, auction, he joked about the difficulties of trying to run an oil business from jail. With that, Pierce continued to Austin to face trial the next day, November 29, 1909.75

74Galveston Daily News, September 21, 1909; Houston Post, September 21, 1909. The initial list of witnesses for the state consisted of the following: A.W. Clem of Dallas, an oil dealer and former employee of Waters-Pierce; Royer Campbell of San Antonio, a vegetable commission merchant, and former employee of Waters-Pierce; C.W. Cahoon, of Taylor, a divisional manager of Waters-Pierce; Louis Fries of Houston, also a divisional manager of Waters-Pierce; Dermott H. Hardy of Beaumont and Houston, attorney and former Texas Secretary of State; and Nano Nagle, of Houston, stenographer, who had allegedly taken Pierce's affidavit in 1900. On September 24, 1909, Henry Priest and Samuel Canty appeared in the 53rd District Court of Travis County before Judge George Calhoun, and requested a continuance due to Pierce's health. The State, represented by Jewel Lightfooot, James Hamilton, and John Brady agreed to a continuance without a fuss. Galveston Daily News, September 25, 1909; Houston Post, September 25, 1909. See also Galveston Daily News, November 29, 1909.

The remainder of November was spent wrangling over problems with the jury. The trial did not start as planned, because, through a mix-up in the sheriff's office, the wrong group of jurors had been notified to show up for the week. This mistake had not been noticed until November 27th, a Saturday. The sheriff's department had been able to contact only seventeen of the jurors. Many of the pool of jurors might be disqualified from the Pierce trial due to the publicity and strong feelings generated in the previous three years about Waters-Pierce and Senator Bailey. The failure to summon all of the correct jurors in advance enabled either side to force the Court to postpone the case, already doomed to be delayed as D.H. Hardy, a critical state witness, was still in trial in Houston. Both sides agreed that "We are not fighting on technicalities." The defense lawyers did request that an additional fifty talesmen be summoned to deal with the expected disqualifications, a wise precaution.76

Both sides declared ready for trial on November 30th. But when the prosecution read its witness list, three were absent, causing the court to issue an attachment order for two of the three, C.W. Cahoon and Louis Fries, Waters-Pierce employees. The missing witnesses turned up minutes after Judge Calhoun had issued his order: no one had remembered to summon them that morning. D.H. Hardy reached Austin that morning, moments after Calhoun issued the attachment order. Examination of the jury panel for the week proceeded. Surprisingly eight of the seventeen members of the regular jury pool were selected as jurors, lessening the need for so many talesmen. One member of the regular panel successfully claimed a statutory exemption from jury duty, and was excused. Another was not a citizen, and Judge Calhoun dismissed him. Four members of the panel were black males; the prosecution and the defense mutually consented to strike those jurors, presumably for racist reasons. Three potential jurors admitted that the flood of information on the defendant and his company over the preceding three years had caused

76Galveston Daily News, November 30, 1909; Houston Post, November 30, 1909. Kirby was a friend of Pierce, and founder of the Southwestern Oil Company, which had earlier that year been removed from receivership, and touted as a firm ready to fill the void left by the ouster of Waters-Pierce.
them to form an opinion about the case, and the Court dismissed them for cause. The Court had to rely on the fifty additional talesmen who had been summoned the day before. Sixteen failed during the preliminary voir dire, twelve being excused for miscellaneous reasons, and four who had formed opinions of Waters-Pierce, the perjury case, or had formed opinions about the case. This left forty-two potential jurors, which prosecution and defense whittled down to twelve, using a number of strikes on both sides. At last the great trial was ready to begin on December 1, 1909.77

From Tuesday, December 1, to Friday, December 4, 1909, the lawyers on both sides argued fiercely, with only a brief interlude on December 1 for actual testimony. District Attorney Hamilton started by reading the lengthy indictment against Pierce. Even at this late date, Texas refused to indicate which charge it intended to prove against Pierce, false swearing or perjury. Pierce's high-priced attorneys, who now included George Allen and Gregory Batts, former special counsels for Texas in the ouster suit against Waters-Pierce, responded with the expected plea of "not guilty," and added a special plea claiming immunity from prosecution for Pierce78

77Galveston Daily News, December 1, 1909; Houston Post, December 1, 1909. It is difficult to believe that so few people in Travis County had formed opinions about Henry Clay Pierce or Waters-Pierce that would interfere with a fair judgment. The mass of publicity over the previous three years concerning the perjury/false swearing charges, the ouster suit against Waters-Pierce, the nationwide attacks against Standard Oil, had to make it impossible for so many to be so ignorant or uncaring, unless Priest had been correct in calling the jurors of Travis County, "densely ignorant." Despite the advent of Jim Crow laws and efforts to disenfranchise blacks, there stills seems to have been a noticeable number of black males in the jury pool for Travis County. In the trial of the ouster suit against Waters-Pierce, there had also been a black member of the jury panel who had actually been a member of the jury, until illness forced him to quit early on in the trial.

78The State did not have to elect which charge it wanted to pursue against Pierce because it had no way of knowing how the court would rule on a critical question of law. If the affidavit that Pierce had made on May 31, 1900 had been required by law, then the correct charge should have been perjury; if had made the oath in question voluntarily, then the proper charge was false swearing. The problem lay in the poorly drafted laws of Texas. The statutes on foreign corporations did not require an affidavit to get a permit, but the antitrust laws allowed the Secretary of State to demand one. See Brinburh, Antitrust and the Oil Monopoly, 50-54, 89-107; Holcomb, "Senator Joe Bailey," 206-08, 223-28. Given these two provisions of the law, it was not clear whether the affidavit was required by law, or not, and no court in Texas had previously ruled on this question. Until the court decided this question of law, the State had no idea what criminal charge it could actually prove, so it would have been unfair to force the State to make an election. Note that the defense team included two attorneys who had worked as outside counsel for the State in the ouster suit against Waters-Pierce that had finally been resolved by the U.S. Supreme Court only shortly before the perjury/false swearing trial in December 1909. This did not create a violation a conflict of interest in violation of the code of ethics for attorneys in Texas for two reasons. Texas did not have a code of ethics binding upon attorneys at this time; there were only statutes prohibiting certain kinds of conduct.
The basis for this unexpected plea was Pierce's deposition of the fall of 1906 in the Missouri antitrust suit against Waters-Pierce and Standard Oil. Under Missouri law, Pierce could not be criminally prosecuted on the basis of any testimony that he was compelled to give in the civil case. By agreement of the parties, that same deposition had been used in the Texas ouster suit against Waters-Pierce in 1907. The Texas Legislature had also enacted a law in 1907 granting immunity from criminal prosecution for testimony given in a civil antitrust suit. Accordingly, Pierce's lawyers claimed that he could not be prosecuted using evidence that he had given involuntarily, and that:

[He now]...invokes the protection of [the] constitution and laws of the United States, and especially of the fifth amendment and of the fourteenth amendment of the constitution of the United States, and he invokes the protection of the constitution and laws of the state of Texas, especially section 10 of the bill of rights of [the] constitution of the state of Texas, and Section 7 of the said act of 1907, and protests against the further prosecution of this cause.

Legal technicalities enabled Judge Calhoun to avoid ruling on this issue immediately.79

The defense team refused to let even the prosecution's opening statement run smoothly. A steady stream of defense objections, some mere technicalities designed to

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79Stenographer's Report, 36-40, Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909. Judge Calhoun avoided ruling on the question at the start of the trial by holding that the proper time to rule on the immunity issue would be when and if the State tried to introduce Pierce's testimony into evidence. This kept Calhoun from the potentially embarrassing position of ending the trial without allowing the prosecution to present its evidence to the jury, which would have looked bad in the media and to the public. The Court could rule in favor of defense at any point in the trial, so no damage was done to Pierce by the initial deferral of the issue.
interfere with the flow of Lightfoot's statement, others raising serious legal points, stopped him. According to the code of criminal procedure, only the district attorney could make opening statements, or in his absence, someone appointed by him. District Attorney Hamilton was present. Therefore, according to Pierce's lawyers, he had to make the opening statement, not Lightfoot. After a prolonged discussion before the bench, Judge Calhoun overruled the objection in favor of the prosecution's interpretation of the code, which permitted Lightfoot to make the opening statement. Many of the defense's objections were similarly trivial, while others legitimately served to rein in Lightfoot when he crossed the vague boundary from making statements to making arguments, such as his attempt to expound upon Texas antitrust law. James Robertson, lead counsel for the defense raised the most serious objection during Lightfoot's monologue. When Lightfoot began talking of the history of Standard Oil from 1870 to 1909, Robertson objected to any statements or attempts to introduce evidence of anything that had happened prior to the formation of the second Waters-Pierce Oil Company on May 29, 1900, and after May 31, 1900, when Pierce had made the affidavit. He stated that the successor company should not be held responsible for the actions of its predecessor, and events which had taken place after the affidavit were irrelevant, as it was the basis of the perjury/false swearing charges.80

This issue had been raised and settled in the Texas ouster suit against Waters-Pierce in 1907. The court had allowed the introduction of nearly all of the evidence pertaining to the activities of Standard Oil and the original Waters-Pierce Oil Company prior to May 29, 1900, and evidence regarding the successor Waters-Pierce from May 29, 1900, to April

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80 See 2 Code Cr. Proc. Tex., Art 717 (1915). Calhoun decided that the rule requiring that the District Attorney had to be the one to make the opening argument was a minor technicality, and the objection from the defense a frivolous one. It does seem to be a minor point, yet at the same time, the language did clearly state that the district attorney had to make the opening statement in a criminal prosecution if he were present. See Stenographer's Report, 40-84 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.
20, 1907. Although the district court's rulings on this evidence had been upheld by higher courts, this did not settle the matter in a criminal proceeding.

Before this issue could be settled, Robertson demanded that the state elect with which charge it was proceeding, perjury or false swearing. He argued that since the law "knows no fraction of a day," the state should be limited to presenting evidence only about May 30, 1900, excluding May 29th, the day that the second Waters-Pierce was incorporated, and May 31st, the date that Pierce signed the affidavit in Texas. May 30, 1900, was Decoration Day, a holiday. He objected to Lightfoot's attempts to say what the state was going to exclude as evidence on the grounds that the sole purpose of such statements was to inflame the jury against his client. E.B. Perkins and R.L. Batts added their objections as well. 81

Prosecutors Hamilton, Brady, Lightfoot, McCord, McLean, and Jenkins joined together to argue against the defense objections. They succeeded in persuading Judge Calhoun that they expected to prove all of the Lightfoot's claims, and that they could show that the new Waters-Pierce Oil Company was party to a combination and conspiracy in violation of the antitrust laws of Texas from the moment of its creation on May 29, 1900. Calhoun overruled all of the defense's objections. He felt obliged to rely on the prosecution's good faith claims that they expected to prove all that Lightfoot claimed in his

81 The ouster suit was a civil case against the corporation, Waters-Pierce, this case was a criminal matter against the man, H.C. Pierce—different defendants, with different burdens of proof, and different charges. On the matter of making the State elect what crime it was charging Pierce with, see infra note 1. Robertson was correct in noting that the law "knows no fraction of a day." That usually refers to requirements of timing for questions of civil procedure, such as when pleadings and responses need to be filed. It's application in the manner in which Robertson was trying to use it was unusual. As Brady noted, if May 29 and May 31, 1900 were excluded, that left May 30, 1900, which was a legal holiday, Decoration Day. In addition to the law not knowing a "fraction of a day," the law also does not know holidays or weekends: any timing deadline that falls on a recognized holiday or a weekend is automatically extended to the first non-holiday and non-weekend date. Decoration Day was the original name for what became Memorial Day, and was intended to commemorate the dead of the Civil War. Lightfoot's attempt to state what the State was not going to include as evidence, and what it was not going to try to prove was improper, and a trick to try to make the jury think about evidence that was inflammatory, but legally irrelevant. Stenographer's Report, 40-84 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909. The defense team for Pierce now consisted of seven attorneys: lead counsel James Robertson; George Allen and Robert L Batts, both of whom had worked for the State in the civil antitrust suit; Samuel Canty, a former judge and figure of some importance in Texas politics; E.B. Perkins, another local attorney and former judge; Henry S. Priest, Pierce's friend and counsel from Missouri, a former federal district court judge; and a Mr. Templeton, apparently a Texas attorney.
statement. The defense made a bill of exceptions. Notwithstanding Calhoun’s rulings, the
defense lawyers repeated a number of the same objections several more times during the
remainder of Lightfoot’s opening statement.

Another legal wrangle broke out immediately when Hamilton read the notice to
produce documents that had been filed with the defense on November 22, 1909, in open
court. This prompted an objection from Robertson, who, when asked to produce the
documents, tartly replied that Pierce did not have to produce evidence against himself, “in
violation of the constitution of Texas, the United States, Mexico, or any other country
where civilization exists.” Robertson followed this with another request for a bill of
exceptions, this time for Hamilton having read the notice before the jury. 82

IV. Female Notaries and Other Legal Incompetents

Just put one of the men in the penitentiary and you will see the anti-trust law
enforced without further violations. Send one of these men who may be
violating either the interstate commerce law or the anti-trust law to the
penitentiary and you will stop these violations by others. You can not do it
by fine, because when the court fines a trust, the trust fines the people, and
as long as the punishment is measured in dollars and cents they will
continue to violate the law. Men take the chance of a pecuniary loss in the
hope of a greater pecuniary gain. Send one of them to the penitentiary and it
will work like magic.

The millionaire values one thing more than his fortune and that is his liberty.
Senator Joe Bailey on U.S. Steel, Galveston Daily News, May 14, 1909

At 2:40 p.m. the first witness, W.B. Townsend, Texas Secretary of State, verified
that a document presented to him, the alleged affidavit of Pierce of May 31, 1900, was one
of many similar documents turned over to him in February 1909 when he had assumed his

82 Making a bill of exceptions was the old-fashioned method of making a formal written objection for the
record for higher courts to consider. The attorney was “excepting” to the judge’s ruling on an objection or
motion. In contemporary usage, the attorney would simply make an objection, and would not need to go
further, though some states, including Texas, still require that attorney make “exceptions.” Regarding the
notice to produce documents, which Hamilton read in open court, the defense had evidently failed to comply
with the notice, and had failed to object to the discovery request. If the request were legally improper, then
the proper method of dealing with it would have been to file a motion with the court, not simply to ignore
the request. Hamilton’s actions also seem a bit rash, though presumably done with the consent of his
fellow prosecutors. Such an action today could result in a mistrial. The defense does not appear to have
had to produce the documents in question. Galveston Daily News, December 2, 1909; Houston Post,
December 2, 1909.
office. A major witness of the day was Nano Nagle, a stenographer for the Texas State Department from 1899 until 1907. The key portions of her testimony involved Pierce's affidavit. The defense's efforts to exclude the alleged affidavit from being admitted as evidence dominated her testimony. Pierce's lawyers gave Nagle a hard time by frequent objections and by tough cross-examination. Robertson even objected to Nagle's statement that she had been a notary in 1900, citing the best evidence rule. Though Judge Calhoun overruled the objection, Robertson laid the foundation for a significant legal question—could women be notaries under the constitution and laws of Texas?83

Brady asked Nagle on direct examination what she remembered about the circumstances surrounding Pierce making the affidavit before her on May 31, 1900. Initially she stated that she had asked him if he had read the document and understood it, to which he had replied, "Yes." She had then asked Pierce if he swore to it, which he did, and signed the affidavit, to which she then affixed her seal as a notary. Nagle stated that she could not recall the exact words spoken eight and a half years earlier, nor could she recall who else was present that day in May, 1900. She merely remembered the general substance and tenor of the conversation and swearing.84

Robertson attacked Nagle without mercy on cross-examination. He asked her if she had "refreshed" her memory before testifying, insinuating that the prosecution had "coached" her on what to say, which she denied vehemently. Robertson then sought to refresh her memory about a conversation which the stenographer had had with him a year earlier in which, according to Robertson, Nagle had stated that Pierce had "acknowledged"

83 Nagle's first name has been reported as Nano, Nanon and as Nance according to various contemporary accounts. Nano is the version used in the stenographer's report of the trial. The legal question of whether or not women could be notaries public in Texas will be discussed later Stenographer's Report 85-92 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.
84 Nagle's honesty in admitting that she could not remember precisely what was said years earlier was good from the viewpoint of the prosecution. The exact words used would not be critical to a jury, and because there was no legally prescribed form of oath that she had to administer, her precise words were unlikely to be significant legally. On the other hand, admitting that she was human, and did not have an eidetic memory, but that she could remember the general events helped establish her credibility with the jury. Stenographer's Report, 87-92 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.
the affidavit, which implied that Pierce had not actually sworn it. Nagle said that if she had said "acknowledged" then she had meant that Pierce had sworn to the affidavit, though she could not recall if he had raised his right hand. Robertson then produced a statement about the affidavit Nagle had written on September 15, 1908 at Robertson's instigation (and after a long conversation with him), and requested that she read it to the court and jury. The statement did not actually say that Pierce had taken the oath; it used the word "acknowledged."

Brady asked her to clarify what she meant by "acknowledged," prompting an objection from Robertson that the letter "spoke for itself," and another insinuation that the prosecution had coached the witness. Judge Calhoun overruled the objection. Irate, Nagle said that "acknowledged" meant that she had sworn Pierce. Robertson then re-cross-examined Nagle about their meeting. She denied that Robertson had told her up front that he was Pierce's lawyer, and stated that she had only met and talked with the prosecutors once, not the multiple times that Robertson had claimed. Brady then asked Nagle on re-redirecct examination if a "gentleman" had not that very morning asked her to talk to defense counsel before the trial, prompting an angry accusation from Robertson that Brady was insinuating that the defense had tried to tamper with the witness. Brady coolly replied that the question was as proper as that just posed to Nagle by Robertson regarding "coaching" by the prosecution.

It developed that Robertson had visited Nagle in her office in Houston in September 1908 to discuss the events of May 31, 1900, and to get a written statement from her. Initially Nagle had thought that Robertson was a lawyer or investigator for the State of Texas. He had not corrected this misapprehension. It was not until later in the conversation, when he had told her to be careful in her recollection, lest she have it on her
conscience that she "sent a man to the penitentiary," that she realized Robertson worked for Pierce.85

The next witness for the prosecution was Dermott H. Hardy. In December 1909 he was practicing law in Houston and Beaumont, and had come directly from a trial to testify. In May 1900, Hardy had been Texas Secretary of State. Brady probed into the events of May 31, 1900. Hardy's recollection was that Pierce, Clark, and Johnson had stopped at his office and requested a permit to do business in Texas. Hardy had given them the standard form. Pierce filled out the paperwork, showing Hardy the documents to prove that the original Waters-Pierce was legally dissolved and a new Missouri corporation of the same name was created on May 29, 1900. Somewhat uneasy that this "new" company seemed to be an exact replica of the "old," Hardy consulted with Texas Attorney General Smith. Smith told Hardy that there was nothing that they could do to keep the new Waters-Pierce out of Texas--the slate was clean on the "new" oil company, and the issuance of permits was a ministerial function, done routinely. Later that day, when Pierce and his lawyers returned, Hardy informed them of Smith's view. He had told Pierce that if the new company's stock was controlled by any of the companies that had held the stock of the old Waters-Pierce, he would bar the admission of the new company. Pierce responded that he held all but four shares of the reborn Waters-Pierce. Hardy felt that he could trust Pierce and his lawyers, but also felt "his responsibility to the people of Texas," and told Pierce to make an affidavit. Hardy's assistant drew up the forms, which he gave to Pierce and

85Both sides were hitting below the belt with their insinuations about the each other's conduct in respect to Nagle's testimony. "Coaching" a friendly witness is fairly common. It is worth noting that Nagle was no longer an employee of the State of Texas, and not subject to pressure from the State in that fashion; there was little incentive for her to lie. Whereas Robertson's behavior in not identifying himself immediately as an attorney for Pierce would deserve a reprimand at the least today. Regarding what Nagle meant by "acknowledged," a witness can generally explain what he or she meant by the use of particular language in previous statements. Whether such clarification is to be believed in a credibility matter for the jury to determine. Stenographer's Report, 92-98 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.
counsels to read. No objections were made to the language of the affidavit. Hardy added that he had had Pierce swear the affidavit before Nagle.86

In cross-examination, Hardy admitted that he had sent out hundreds of permits to do business in Texas and had hundreds of affidavits executed as a requirement of doing business in the state. Despite these numbers, he claimed to have a "positive recollection" of that particular affidavit. He did not remember Clark and Johnson expressly advising Pierce that it was alright to swear the affidavit, but their language implied that such a course of action was legally acceptable, whereupon Nagle had taken Pierce's oath and affixed her seal to the document. Hardy also did not remember if the notary had asked Pierce if he had read the document and understood it, but he "clearly recalled" that Pierce swore out the affidavit "as any man would swear to anything."

Upon redirect examination, Brady asked Hardy a few more questions, most notably whether Nagle had "used the ordinary form of oath," prompting another objection from Robertson that Hardy should testify to what Nagle actually said. Calhoun sustained the objection, whereupon Hardy added, "I just remember that Pierce swore to it."87

Brady excused Hardy and tried to offer the affidavit itself into evidence. Calhoun called a recess in order to allow the attorneys for both sides to argue about the affidavit. After the recess, Brady recalled Hardy, and pressed him to explain why he remembered that particular affidavit out of so many forms. Hardy distinctly remembered that Pierce had sworn an oath. Brady asked him why he had asked Pierce to make the affidavit. Hardy

86A ministerial function is one that does not involve the use of discretion by the officeholder, it is not a policy decision; it is an action performed routinely, and the officeholder cannot refuse to perform such a duty merely because he does not want to do it. By implication from Hardy's testimony, requiring corporate officers to swear out affidavits that the corporation is not involved in a trust seems to be a discretionary or judicial act, despite the language of the law which seems to require it in all cases. Stenographer's Report, 98-107 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.

87Hardy's testimony conflicted somewhat with that of Nagle, who did not mention the presence of Pierce's attorneys, and who had said that she had sworn Pierce in her office. If Pierce had in fact consulted with his attorneys prior to making the affidavit, this would lend credence to Pierce's contention that he did not knowingly make a false statement or commit perjury in swearing the affidavit. This argument, however, had been made before Judge Adams in the extradition hearings to no avail. Stenographer's Report, 107-13 Tarleton Special Collections.
would not grant Pierce the permit unless he made the statutory affidavit. Robertson again attacked his testimony, demanding to know why Hardy had not mentioned this material earlier. The witness replied that he had tried to say that Pierce had sworn as an ordinary man would, but that Robertson had objected. Robertson asked Hardy to repeat the words that Nagle had used to swear Pierce. Legal nit-picking resulted over whether or not Nagle had used the words "solemnly swear" in giving Pierce the oath, or if she had omitted "solemnly." Both sides accused the other of trying to lead Hardy's testimony. Brady again tried to enter the affidavit into evidence only to have Robertson raise another objection. Judge Calhoun closed the day's session.\(^8^8\)

The jury spent the next several days sequestered outside of the courtroom while legal arguments raged over whether or not the prosecution could enter the Pierce affidavit into evidence. The defense asserted multiple reasons why the affidavit should be barred. The strongest reason was that Pierce had been sworn by a female notary public. Robertson, Allen and Batts claimed that under the common law of Texas, women could not be notaries public. That position was quasi-judicial, and women could not hold offices. Robertson challenged the state to produce precedents showing that women could be notaries in a common law state like Texas. He concluded that women were not notaries de jure and could not count as notaries de facto for purposes of a criminal prosecution.\(^8^9\)

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\(^8^8\)Robertson was trying to argue that the oath that Nagle administered to Pierce was invalid because she had omitted the word "solemnly" in swearing him. If this were true, and his argument were correct then Pierce had not made a legally binding affidavit, and the case could be dismissed. The weakness of this argument was that there was not a statutory form that had to be used in administering affidavits generally. Some oaths, such as that of the Governor of Texas, had statutory specified forms that had to be followed exactly. In this situation only a generic oath was needed, with no specific language requirements. Only the omission of few critical words, such as "swear" could make the affidavit legally invalid. Stenographer's Report, 113-19 Tarleton Special Collections; Galveston Daily News, December 2, 1909; Houston Post, December 2, 1909.

\(^8^9\)Stenographer's Report, 119-85, 187-222, 546-608 Tarleton Special Collections; Galveston Daily News, December 3, 1909; Houston Post, December 3, 1909. Under the common law of England, and in American states, unless modified, women were legally excluded from holding a number of offices, principally those that involved non-ministerial functions. Exactly what offices were barred to women was not clear. The distinction between being a notary de jure and a notary de facto, is not of great import here. A person or company may not have power de jure, that is legally, to hold an office, position, or status, but can still act as if they had that power, and those actions will have legal consequences from the person acting de facto, in fact, as if they had the power. In the instant case, the defense was arguing that Nagle could not be a notary at law, hence here swearing of Pierce was not valid, and therefore he did not commit perjury/false swearing.
C.H. Jenkins, outside counsel hired by the state, was the first prosecutor to reply. He conceded that if a woman could not be a notary at law, that she could not be one in fact, but asserted that the defense was "setting up a straw man" in raising the question of de facto versus de jure women notaries. The only relevant issue was whether women could legally be notaries in a common law state. Jenkins pointed out that Robertson had misinterpreted the holding in Massachusetts precedents. Women were generally ineligible to be notaries in Massachusetts because of a statute authorizing women attorneys to be special commissioners to administer oaths and take depositions. The legislative intent in passing that statute was to limit women as notaries to those who were attorneys.

Jenkins argued that English legal history did not show that the Queen of England was the only woman who could hold a public office. Under the common law of England, women could not hold judicial offices, but they could hold offices which were ministerial in function. Women had been treated the same as minors at common law--the law considered them as being "of immature judgment." 90

Jenkins claimed broadly that "it had been uniformly held" that women could hold ministerial offices unless there were a constitutional provision to the contrary. He had not found any prohibitory provisions in the Texas constitution. Women had been notaries public in Texas for many years, and when Senator Charles A. Culberson had been Texas Attorney General in the early 1890s, he had concluded that women could be notaries public because nothing in the constitution or law forbade it. Building on his earlier point that women were treated like minors under the common law, Jenkins read from a case in which

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90 Stenographer's Report, 222-323 Tarleton Special Collections; Galveston Daily News, December 3, 1909; Houston Post, December 3, 1909. Jenkins also had noted that a provision in the Massachusetts Constitution contravened women as notaries, not the common law. The idea was that women, like minor children, lacked a man's "mature judgment," that is they were legally incompetent, and accordingly could not be allowed to hold positions that would require the making of policy, or exercising mature discretion. Positions that merely involved rubber-stamping, routine matters that merely required the filling out of forms in the proper manner with the proper paperwork, could be handled by women, as no judgment was involved. In other words, women could handle clerical and secretarial sorts of work, called here "ministerial."
a court held a minor eligible to hold the office of deputy county clerk. The issue had arisen in a perjury case in which the minor, acting as deputy county clerk, had administered an oath to the defendant. The defense in that case had raised the same point that attracted Robertson. According to Jenkins, this closed the issue. He concluded by stating that the defense had done nothing more than make "a serious bluff." Jenkins implied in his argument that the defense was trying to cloud the issue by raising meaningless distinctions, about a notary de jure or de facto; by selective reading of cases and relying on isolated precedents.61

County Attorney Brady produced an opinion from the Nebraska Supreme Court upholding the appointment of a woman as a notary public. He also reviewed a case cited by Jenkins the day before, noting that the deputy county clerk's powers to administer oaths and take depositions were the same as those of a notary, and that both offices were ministerial, not judicial. Brady called special attention to a recent Texas Supreme Court opinion in which the court had held that a man not qualified to vote in Liberty County was nonetheless eligible to hold the office of tax assessor there. Voters and appointing officers had absolute liberty to choose anyone not expressly forbidden by the Texas constitution. The Constitution of 1869 had restricted offices to qualified voters (which would have excluded all women), but the amended Texas Constitution of 1876 had eliminated those words of restriction. Brady asserted that by implication this removed any bar to women holding offices.62

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61Stenographer's Report, 222-323 Tarleton Special Collections; Galveston Daily News, December 3, 1909; Houston Post, December 3, 1909. While opinions of the Attorney General of Texas are not binding on the interpretation of law in Texas courts, they do carry some weight, particularly if the author of the opinion happened to be an active U.S. Senator influential in the politics of Texas, such as Culberson. Judging from Brady's statements of the following day, December 4, 1909, Jenkins appears to have been referring to a Texas case then commonly known as the Hart-Meeder case.

62Stenographer's Report, 336-89 Tarleton Special Collections; Galveston Daily News, December 4, 1909; Houston Post, December 4, 1909. Brady's argument is a persuasive one. The removal of express words of limitation in the Texas Constitution creates the presumption that the intent in removing those words was to remove the limitations that they imposed. An amended version of the Texas Constitution of 1876 was in effect in 1900.
W.P. McLean, another Texas special counsel expounded on women's rights and on the Texas constitution. The right of women to hold certain ministerial offices was conclusive evidence that they might be notaries, even if the concept of those rights had not existed or been addressed by the framers of the Texas constitution. 93

Batts tried to rebut. When the Constitution of 1876 was enacted, no one had thought about women holding offices because it was simply unthinkable. Accordingly there had been no need to include a constitutional ban against women becoming notaries public, a sort of "original intent" view. Because women had acted as notaries public for seventeen years in Texas did not make it right, adding the novel argument that to allow women to hold offices was discriminatory—against married women! Only single women could post bonds in their own names. Notaries were bonded. This confined the office of notary public to single women, "resulting in unfair discrimination and an unnatural division of women into two classes." 94

The defense raised several other objections to admitting the affidavit into evidence, some substantial, some technical. The most serious of these objections was that the affidavit contained only legal conclusions, not statements of fact. 95

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93 Stenographer's Report, 468-520 Tarleton Special Collections; Galveston Daily News, December 5, 1909; Houston Post, December 5, 1909. His argument is an interesting one, congruent with John Marshall's view of a U.S. Constitution that grows and evolves to fit the needs of a people, as opposed to a strict constructionist, original intent perspective. The full implications of McLean's arguments for the further extensions of women's rights, and by implication for those of minorities, does not seem to have been considered by their author, nor by his opponents or contemporary reporters.

94 Stenographer's Report, 546-608 Tarleton Special Collections; Galveston Daily News, December 5, 1909; Houston Post, December 5, 1909. One could also look at the fact the people and legislators of Texas had tolerated women notaries for seventeen years without undue protest, and come to the opposite conclusion. Likewise, instead of narrowing the rights of single women to prevent discrimination against married women, it would have been equally proper to argue that married women should have more rights, which would have the effect of removing the discrimination to which Batts alluded.

95 Each of attorneys for both sides made arguments on multiple points when they spoke. For the sake of clarity, I have presented the argument on whether women could be notaries as a single issue, rather than discuss all of the arguments in the order of attorneys. Hereafter, arguments are given in order of the attorneys who gave them. Adams had decided that the only question of law that he had to rule on in the extradition case was whether or not Pierce was accused of a crime by the State of Texas; the issue of whether the indictment was legally sufficient for Pierce to be convicted on it was a separate question for the courts of Texas to decide, not the federal courts, and was not relevant to the extradition. Stenographer's Report, 222 Tarleton Special Collections; Galveston Daily News, December 2, 3, 4, 5, 6, 1909; Houston Post, December 2, 3, 4, 5, 6, 1909.
Robertson had opened this issue for the defense. It would be wrong to hold any person legally responsible for an opinion on whether or not a contract violated the law—in this case, whether or not any agreements made by Pierce or his company violated the antitrust laws. Citing his own experience as a state judge, Robertson pointed out numerous instances in which lawyers and judges did not agree on the construction of contracts. It would be ridiculous to indict a man for giving his opinion on such a matter. He implicitly accused the prosecution of persecuting Pierce for publicity value, not for the merits of the case or for any gains to Texas by such prosecution. Thousands of affidavits similar to that made by Pierce had been filed with the Secretary of State, and many corporations had pled guilty to violations of the antitrust laws, but only Pierce had ever been indicted for perjury for these actions. Robertson read from the opinion in Schoenfeld v. State, decided by the Texas Court of Criminal Appeals in May 1909. The court had held that F.A. Schoenfeld, who had been indicted for perjury on the basis of sworn testimony in a civil suit regarding an alleged agreement, should not have been indicted, and that, "...perjury cannot be assigned upon the construction of a contract, oral or written; that a witness cannot be guilty of perjury for giving his opinion of a legal matter." Robertson declared that had Schoenfeld been decided even a month earlier the second indictment against Pierce would never have issued. Pierce had been dragged two thousand miles across the country for nothing. Exchanging a few angry words with Lightfoot over rulings in the 1896 Waters-Pierce case, Robertson concluded with a brief reading from the principal case cited by the court in Schoenfeld.96

96Stenographer's Report, 119-85 Tarleton Special Collections; Galveston Daily News, December 3, 1909; Houston Post, December 3, 1909. Schoenfeld v. State, 119 S.W. 101 (Tex. Crim. App. 1909). Schoenfeld had sued the Karnes City Independent School Corporation over work that he done in supplying and installing blinds in the school. The original contract called for "Victoria Venetian blinds." When they school board found out that these were not the type of blinds that they wanted, Schoenfeld agreed to modify the contract, and inserted "Venetian blinds" in place of "Victoria Venetian blinds" in the document. Schoenfeld installed the blinds, and demanded to be paid. The school board claimed that the blinds Schoenfeld had supplied, which were Venetian blinds, were not they had described to him that they wanted, and which he told them were Venetian blinds, and refused to pay. Schoenfeld sued, testified in court over the meaning of the contract, and the facts surrounding the amendment to the contract, and lost. He was then indicted and convicted of perjury for his testimony in the civil suit, and sentenced to two years in the State
George Allen elaborated on the themes in Robertson's argument. His rhetoric was anecdotal and effective, and he took a few good shots at the prosecution. He noted that if people were to be held liable for perjury due to mistaken interpretations of the law, lawyers would be in trouble. After all, his learned opponent, County Attorney Brady, had made affidavits claiming that he was owed certain monies for his services in the Waters-Pierce civil antitrust suit, a case in which he, Allen had an economic interest, having worked for Texas on that case as well. The Court had decided against Brady, and by the standards applied to Pierce, Brady could be indicted for perjury. Allen noted that in that same case the Court had not found the firm guilty of violating the antitrust laws prior to June 1, 1900. Under Texas case law the State had no right to force Pierce to make an affidavit. It was simple persecution to hound Pierce for not being able to figure out the law. When he was young he had thought that law was an exact science, but Allen confessed, more and more it seemed to him like pure guesswork.97

penitentiary, all for a dispute over a contract, and the subsequent civil lawsuit. The Texas Criminal Court of Appeals reversed the conviction, noting that the case involved a question of first impression on perjury in Texas. To conclude the quote started by Robertson, "Thus a misconception or mistake in swearing to the construction of a written instrument is not sufficient to warrant a conviction of perjury." The case made the district attorney look foolish, as well as the Assistant Attorney General who had to argue the case on appeal, Felix J. McCord. Lightfoot and Robertson disagreed over whether or not Judge Brooks had held that the Standard Oil trust agreement of 1870 did not violate the Texas antitrust law. Robertson argued that Brooks had so held, and that Pierce was being charged with perjury on the basis of that innocent agreement. Lightfoot said the agreement had been excluded from consideration by Brooks in 1897 because there had been no proof at that time that Waters-Pierce had been a part of that agreement. Robertson raised the delicate issue of Joseph Bailey, and his problems in 1907, in which this question had been extensively discussed.

97Stenographer's Report, 187-221 Tarleton Special Collections; Galveston Daily News, December 3, 4, 1909; Houston Post, December 3, 4, 1909. As the county attorney who had instituted the civil antitrust suit against Waters-Pierce in Texas in 1907, Brady was entitled to a percentage of the fines recovered from Waters-Pierce. Under the 1899 antitrust law, which had produced the bulk of the fine against Waters-Pierce, Brady was entitled to twenty-five percent of the nearly $1,800,000 in fines and interest, to be split with the outside counsel, which included Allen, and John Gruet, Sr. But under the 1903 antitrust law, the fees for the prosecuting attorney for prosecuting civil antitrust suits was to be over and above the fees allowed him under the general fee bill." This left the matter to the courts to determine what was fair compensation. Brady had sued to gain the twenty-five percent as per the 1899 law, and had sworn an affidavit to the effect that since the 1899 penalties still applied to Waters-Pierce, that legally the amount that the prosecuting attorney was to receive as a fee was that under the 1899 law. The Texas courts ruled against him. As a consequence, Brady could have been indicted for perjury or false swearing, though it would never have happened. At the same time, note that Allen, who was poking fun at his former colleague, had participated in the extradition of Pierce on behalf of Texas, and if he had thought Pierce was being persecuted, why had he assisted the persecutors?
Jenkins rebutted that Pierce's statements in the affidavit that Waters-Pierce was not a party to any combination or agreement in restraint of trade were statements of fact, not legal conclusions. He drew broad distinctions between the Pierce affidavit and the substance of the Schoenfeld case, downplaying the significance and applicability of that decision. For the sake of argument, he proposed that Pierce's statements in the affidavit were merely his opinions. Jenkins argued that a false statement about an opinion that a man holds constituted perjury, if the law called for the giving of an opinion.98

Next day, December 4th, Jenkins announced that he had examined the Schoenfeld case further, and that the state could rely on it to support its position in the Pierce case. Schoenfeld had no dispute over what the defendant had sworn to; what he had done, however, was to make a deduction of law from an agreed set of facts. In Pierce's case, the contents of the affidavit in question were not matters for construction; therefore there could be no misinterpretation. Surprised, Judge Calhoun asked Jenkins if he meant that only one construction was possible for the matters that Pierce swore to. Jenkins replied that there was one, and only one, construction possible.

In an argument reminiscent of Judge Adams's opinion in the extradition hearing, Assistant Attorney General McCord noted that Pierce was an intelligent, gifted businessman who had run a successful oil business in Texas for over thirty years. He detailed an imaginary conversation between Pierce and his lawyers, concerning what they should have told him. This prompted an angry outburst from Robertson that McCord should not be addressing the jury, to which McCord replied, "For God's sake, who were you addressing on yesterday?" McCord contended that Pierce should not try to claim ignorance.99

99Stenographer's Report, 222-336 Tarleton Special Collections; Galveston Daily News, December 4, 1909 Houston Post, December 4, 1909. The various accounts of the trial give the impression that the jury had been sequestered and excluded from most, if not all of the attorneys' arguments over legal issues, especially the admissibility of evidence. Yet the statements by McCord and Robertson seem to indicate that the jury was present for at least some portion of the arguments.
Brady spoke next at some length. He had been the target of Allen's sarcasm the day before for having sworn affidavits that had legally been determined to be incorrect, and now it was his turn for revenge. Innocently enough, he stated that the antitrust laws were so plain that Pierce simply had to understand that his company was violating them. In support of this argument he read a portion from the state's brief in the civil ouster suit. The relevant portion of the brief had been written by attorneys Allen and Batts, now defense counsels. When working for the State they had claimed "that the words were well established and of common meaning and sufficiently plain for the ordinary man to understand them, and that the law was not to be set aside because some one with a scheme was dissatisfied with it." He noted that Batts had observed then that Pierce's concealment of Standard Oil's effective ownership of over sixty percent of the stock of Waters-Pierce was the strongest proof that Pierce knew that he was violating the law. Brady quoted Adams' opinion from the extradition hearing that Pierce had to know what he had signed, given the language of the law and his many years as a successful businessman.¹⁰⁰

For the defense, Sam Canty discussed the Schoenfeld case at length, examining it in close detail to support the position that Pierce could not be prosecuted for his interpretation of Texas laws. Canty accused Brady of trying to imply that the state should be entitled to the benefit of the doubt, correctly pointing out that the benefit should be applied to the defendant, if anyone.¹⁰¹ E.B. Perkins summed up the day for the defense. Perjury was a serious charge, and the law knew no distinctions between people. When well-known people were charged with a crime, they faced the additional burden of notoriety. He implied that the press had tried the case and found Pierce guilty. To Perkins, the main issue was whether or not the affidavit stated facts or conclusions. Texas

¹⁰⁰Stenographer's Report, 336-389 Tarleton Special Collections: Galveston Daily News, December 4, 1909; Houston Post, December 4, 1909. Brady also pointed out that Judge Adams was a friend of Pierce, and was Priest's successor on the federal bench. Adams had no animus to either Pierce or Priest.
¹⁰¹The standard of proof for a criminal charge is that the accused be found "guilty beyond a reasonable doubt," which implies that in cases of doubt, the jury should decide in favor of the defendant. Stenographer's Report, 389-423 Tarleton Special Collections; Galveston Daily News, December 4, 1909; Houston Post, December 4, 1909.
precedents were that a conviction for perjury could not stand when a man replied to a general question about illegal activity. Pierce's affidavit addressed no specific acts or contracts. He could not be guilty of perjury, an assertion that ignored the impossibility of the State requesting detailed information in the affidavit in question. To Perkins, Pierce was a victim whose rights were being recklessly disregarded, who had been compelled to make the affidavit or to quit business. He compared the affidavit requirement to the hated loyalty oaths that lawyers in Texas had to make after the Civil War to practice law. Both were repugnant.\footnote{Stenographer's Report, 423-68 Tarleton Special Collections; \textit{Galveston Daily News}, December 4, 1909; \textit{Houston Post}, December 4, 1909. Appeals to the sanctity of property rights, and fears of an overreaching government still played well to audiences in Texas. Pierce was an easy target, a rich oil magnate, but the principle of governmental power could just as easily be applied to others. Texans were faced with dilemma of wanting the economic benefits of big business, yet being fearful of its power, of wanting to use state governmental power to curb big business, yet fearing the potential power of big government. The balance struck in the late nineteenth and early twentieth centuries tended to be precarious. See generally Harold M. Hyman, \textit{Era of the Oath: Northern Loyalty Tests During the Civil War and Reconstruction} (1954); Barr, \textit{Reconstruction to Reform}.}

Arguments on December 4, 1909, added little of substance. McLean acted out the role of a simplistic, naive Pierce in an imaginary conversation, innocently asking what a "pool" was. His imitation brought smiles even from the dour Pierce. Batts noted that the affidavit covered the activities of Waters-Pierce worldwide but should properly have been limited to actions in Texas. At that time (May 31, 1900) the Waters-Pierce Oil Company was brand new, and had not conducted any business in Texas. Consequently, Pierce had sworn to the truth. If Pierce were guilty, why had Texas failed to indict officers of several railroad companies which had been found to violate the laws?\footnote{Stenographer's Report, 468-520 Tarleton Special Collections; \textit{Galveston Daily News}, December 5, 1909; \textit{Houston Post}, December 5, 1909. Lightfoot and Hamilton made brief arguments that added nothing of consequence to the prosecution's position. Several railroads had been convicted of violating the laws of Texas, and several had effectively signed consent decrees, admitting guilt without a trial, and promising to obey the antitrust laws in the future. The state was not about to ostracize all of the railroads of Texas. It was better to reach an accommodation. And by 1909, Standard Oil and its affiliates provided a larger target for public wrath than the railroads did. Bringham, \textit{Antitrust and the Oil Monopoly}, 1-10; Piott, \textit{The Anti-Monopoly Persuasion}, 3-32, 105-31.}

Judge Calhoun's decision about admitting the affidavit was awaited eagerly. If he refused to allow it into evidence, the state's case fell apart. Allowed, it furnished automatic
grounds for appeal. It was a very close issue. Authorities conflicted and presented no helpful guides. Judge Calhoun had frequently interrupted arguments of both sides to ask for clarification on how they would rule on the issues. The wrangling over precedents was confusing to all who heard it. In particular the arguments over Schoenfeld were unenlightening. Both sides were using it. It was proving to be a true case for the lawyers, with both sides expecting victory on the issue.

To add fuel to the fire, oil men from around the country were arriving in Austin to bid for Waters-Pierce, Navarro Refining, Security Oil, and Union Tank Line properties. The U.S. Supreme Court had upheld the Waters-Pierce ouster, resulting in the need to auction in Texas assets. As the oil men met in secret conferences, Pierce awaited Judge Calhoun’s decision regarding his own fate. In the interim, his attorneys filed a request to stay the auction until the criminal trial was over, on the grounds that Pierce and his lawyers had been too busy to deal with the civil matter of late.  

V. Shall the Truth Set Him Free?

_It has been frequently asserted that the policy of the of the defense would be one of delay and that motions for change of venue and continuance would be interposed. This has always been farthest from our intention, as we have always believed that a vindication would follow a trial in this jurisdiction._

James H. Robertson, lead counsel for H.C. Pierce, December 7, 1909

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104 Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909. Speculation over who would buy the properties of Waters-Pierce, Security Oil, and Navarro Refining ran wild, and included plots by Standard Oil to take over the companies, an agreement by the Texas Company to take over the lot, to private business ventures with Pierce at the helm, aided by his millionaire friend John Gates, a stockholder in the Texas Company. Security Oil, Navarro Refining, and the Union Tank Line Company were Standard Oil companies that had been found guilty in a somewhat collusive antitrust trial in 1907 in Texas at the hands of Davidson, Lightfoot and Brady. Like Waters-Pierce, they were administered by receivers, and their assets to be sold to pay their collective fines of $154,000 to Texas. Any excess money went to the previous owners. Brinthurst, _Antitrust and the Oil Monopoly_, 63-68. Gray, _Rule of Reason_, 40-50. Among those present was Walter C. Teagle, a director of Standard Oil, who would become president of Jersey Standard in 1917. Teagle had ties to Texas, and good friends among independent oil men, including John Kirby, and the Bonner brothers, who had caused problems for Waters-Pierce. Other representatives of Standard Oil interests included Calvin N. Payne, a director and executive of multiple pipelines, and co-founder of the Corsicana Refining Company (which had become Navarro Refining); Courtney Marshall, secretary and treasurer of Security Oil, but also with close connections to Standard Oil of New York, and attorneys George C. Greer, Henry C. Coke, and William McKie, representing Security Oil, the Union Tank Line, and the Navarro Refining Company respectively. All of the above stayed cloistered together at the Driskill Hotel in Austin, along with Pierce, and several of his associates. See also Wall and Gibb, _Teagle of Jersey Standard_, 38-41, 71-72, 83-84 for Teagle’s early ties to Texas.
On Monday, December 6, 1909, one hurdle facing the prosecution fell, only to be replaced by another obstacle. Judge Calhoun decided to allow the affidavit to be entered into the record as evidence. He dealt first with the question of whether women could be notaries public. There were authorities on both sides of the issue. Calhoun afforded the greater weight to those allowing women to hold public offices, provided that neither a state law nor constitution of a state imposed any distinct qualifications upon the office, such as gender or the right to vote. Texan women had been notaries for seventeen years. To Calhoun this was a reasonable construction of the Texas constitution.

Calhoun ruled in favor of the state on other objections, but his awkward phrasing left his meaning unclear. For example, on the objection that the affidavit was invalid because Nagle had omitted several words in swearing Pierce, he ruled in favor of the State:

I understand it to be conceded in this case that there is no statutory prescription as to the manner of oaths that should be administered by the notary in these cases when there is no statutory oath prescribed. Therefore I consider the substantial compliance with the usual oath to be administered is sufficient. Consequently I am not in [a] position to say at this time the oath administered does not meet substantially the requirements of the law.

This ruling seemed to mean that no particular form of oath was required for notaries and that any form substantially similar to that used to swear in public officials was acceptable. Nagle apparently had met the requirements. At the same time, Calhoun seemed to reserve the right to change his mind. He also ruled in favor of the prosecution on the issue whether the statute of limitations had run or been tolled. His statement, while decisive, was confusing.105

105Calhoun's statement on the issue of the statute of limitations is as follows:
While there are decisions in this state construing the statute of limitations as to nonresidents in this state, there is in my opinion a difference between that statute and the statute prescribed in the penal code as to limitations. There has been no direct action of this state upon that subject, and certainly it can not mean in construing the statute that it meant after the indictment was found. It must mean--because when an indictment is found under our laws, the statute of limitations runs whether a man is present in the state or absent from the state. Therefore it must refer to the time in which the indictment is presented, and I am inclined to believe, and so hold, upon that objection, that under the allegations in the indictment here and the admission of the testimony, that limitation has not run in this case.

Stenographer's Report, 609-14 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909
Calhoun's longest ruling was on the question whether an affidavit could constitute perjury/false swearing. He made an analogy between the rule articulated in the Schoenfeld case and that of the "Rule in Shelley's Case" which dated back to 1324 A.D.. That is, he said, the principles in Schoenfeld were well-established, and the case provided only a concise summary of the rule, which is that interpretations or deductions of law cannot be the basis of perjury. Calhoun viewed the defense objection as a collateral attack on the indictment for perjury/false swearing. All he could do was determine whether a charge of perjury/false swearing could lie on the affidavit itself. Pierce could have had knowledge that would have led him to believe that he was making a false oath. The prosecution would have to prove this and should have allegedly such in the indictment. Accordingly, he overruled the objection. 106 Calhoun's final ruling was that the state did not have to choose between pursuing a charge of perjury or of false swearing. He was concerned that neither charge might hold, given that the antitrust law of 1899 requiring the affidavit, seemingly had been repealed. He decided not to decide. Calhoun would rule on that issue later if it became necessary. Robertson took an exception to the ruling and at last trial proceeded.

The procession, however, was not a long one. The affidavit was read into the record before the jury by District Attorney Hamilton in the morning of December 6, 1909. The state called its next witness, H.D. Muir, the veteran stenographer of the Missouri Thirtieth Judicial District. He had taken Pierce's testimony in the 1906 Hadley investigation of Waters-Pierce and Standard Oil and could verify the transcript of Pierce's testimony from the Missouri case so that it could be introduced into evidence in the perjury trial. The same testimony had been used in the Texas ouster suit by agreement of both parties; now the defense fought tooth and nail to keep the evidence out. In their first cross-
examination of Muir, the defense implied unsuccessfully that he was profiting from
testifying in the case. Failing on that front, the defense asked if it was true that there were
many errors in the transcript, implying that it was unreliable evidence, at least for a criminal
trial. Muir granted that there were many errors in the initial transcript, but not because he
made mistakes. Rather the demand was immediate and heavy for copies after Pierce
tested. Muir had dictated the transcript from his notes to a typist, who had made many
mistakes, obliging Muir to send out corrections. However, he noted that the transcript
presented to him to identify in this case was correct. Defense counsel asked Muir if there
was any charge pending before Missouri courts that his report of the testimony was not
correct. Muir replied that he had heard that this was a question before the courts. Again
the defense aspersed Muir’s reliability as a court stenographer.  

Brady neatly turned the
tables on the defense. He pointed out that the accuracy issue had not arisen until after Muir
was named as a witness in the perjury case, implying that Pierce’s lawyers had denied the
accuracy of Muir’s transcript in Missouri in order to assist Pierce in the present case. Few
of Brady’s other questions were so successful. At the conclusion of the redirect, Brady
attempted to introduce the transcript into evidence, but ran into a defense objection that
Muir did not have sufficient independent recall of the testimony, and had to depend upon
his notes to refresh his memory. Hence only the notes could be used as evidence. There
would not be sufficient proof that that was what Pierce had said.

107 Stenographer’s Report, 614-24 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909. Muir had no special fee arrangement with Texas. All that he received were his expenses for coming to Texas to testify. In the ouster suit, the defense had been willing to allow the transcript of Pierce’s testimony in the Missouri investigation for at least two reasons: it spared Pierce the inconvenience of undergoing another lengthy examination and cross-examination; it also meant that Pierce would not make any more damaging statements to Waters-Pierce or to Standard Oil if he did not undergo another examination. Whereas in the criminal trial, if Pierce’s testimony were admitted, it would not be his corporation which would lose money, it would be the man who would lose his freedom, as the information in the transcript would have proven Pierce to be guilty of willful ignorance, at the very least, if not outright conspiracy with Standard Oil.

108 Stenographer’s Report, 624-27 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909. This was not a particularly strong argument, for if it were upheld, then there would be no point in using court reporters. What it did was to create another hurdle for the prosecution to have to leap.
After a conference, both sides agreed to recall Muir to the stand. Through a long series of questions, Perkins elicited from Muir an admission that stenographers made mistakes, including himself. Muir admitted that when transcribing from his notes, the text was not always clear. But in those rare cases he could tell text from context. The questioning cast some slight doubt on the accuracy of the transcript of the testimony without taking the implausible stand that the transcript was worthless and highly inaccurate.

This was not such a great concession to the prosecution as it might have seemed. Once Muir was dismissed, the State again sought to introduce the transcript of Pierce's testimony into evidence, and again the defense objected, but now on different grounds. Robertson objected because the testimony had been obtained by coercion. Pierce had testified in Missouri under process of the court by a law that threatened him with imprisonment if he failed to testify. Accordingly, he should have immunity from any criminal prosecution relying on such testimony, potentially a potent argument given the history of the privilege against self-incrimination and coerced testimony. And Robertson added that the transcript still had not been proven to be correct.

Judge Calhoun overruled Robertson's objections "subject to further action on the hearing of additional evidence." This prompted a reply that the present was a good time to hear more evidence on the subject and to resolve it. In a heated exchange between Lightfoot and Robertson, Lightfoot insisted that Texas was not prosecuting Pierce because of statements in the transcript, but was only trying to determine the truthfulness of Pierce's testimony. The testimony in the transcript related to a statement of facts, not to the affidavit underlying Pierce's prosecution. Robertson retorted that Pierce had been forced to testify with the understanding that his testimony would not be used against him in any criminal proceeding. If he had failed to testify, he would have been subject to contempt of court,
imprisonment, and a default judgment in the Missouri antitrust suit against Waters-
Pierce. 109

The lawyers wrangled freely, once again without the jury. Spectators, mainly law
students from the University of Texas, were treated to the rare sight of an attorney on the
stand, when the defense called Priest as a witness. He stated that he had been Pierce’s
lawyer during the Missouri suit, and that the attorneys had agreed that Pierce had to appear
and testify in that case. But Pierce had not received a subpoena legally compelling him to
testify, though the process servers had been hot on his trail. His client had felt compelled.
Priest would never have advised him to testify if there had been any way to avoid it. He
thought that the Missouri antitrust statute had the force to coerce Pierce to testify and
pointed out the immunity clause that protected Pierce from prosecution. This immunity
clause gave Missouri the power to compel his client’s testimony against his will.

The cross-examination by Lightfoot, was much less friendly to Priest. Under
prodding, Priest admitted that Pierce had never been served process and that the Missouri
agents had stopped seeking his client once Pierce had agreed to testify. In other words, he
had appeared voluntarily. Lightfoot then fenced with Priest about whether Pierce had ever
been served process, even after his testimony. Priest eventually conceded that such might
be possible. But he then read a letter in which the Missouri court clerk stated that he had,
conveniently for Pierce, lost the records of several subpoenas in the Missouri ouster suit
and did not know if Pierce had ever been served. Priest added that the New York Supreme
Court (a trial court) had held that Pierce would have to appear to testify in the Missouri

109 Stenographer’s Report, 627-48 Tarleton Special Collections; Galveston Daily News, December 7, 1909;
Houston Post, December 7, 1909. The defense had raised several interesting legal issues: what constituted
coercion sufficient to raise the privilege against self-incrimination under the state constitutions and the U.S.
Constitution, and did immunity granted by one state bind another under the federal system. On the right
against self-incrimination, see generally, Leonard Levy, Origins of the 5th Amendment: The Right
Against Self-Incrimination (1968).
case. Lightfoot gently asked if Pierce's lawyers had appealed to the U.S. Supreme Court, which they had not.\textsuperscript{110}

Priest left the stand. Robertson read from the Missouri court record to show that Missouri had wanted Pierce to testify, as well as the defense. Pierce had been served and summoned to appear before Frederick Sanborn, special commissioner of the Texas courts in New York in the Texas ouster suit against Waters-Pierce. Pierce had appeared before Sanborn, identified himself as the same Pierce in the Missouri ouster suit, and signed a copy of the transcript of his Missouri testimony, verifying that it was his testimony. This was the copy of transcript used in the Texas ouster suit and the one presented to Muir earlier in the day. Robertson expounded at length on the Texas antitrust law. It had an immunity provision for witnesses who testified under service of process in an antitrust action, protecting them from subsequent criminal proceedings deriving from or relyng on such testimony.

Lightfoot interrupted to point out some "errors" in his argument. He produced the stipulation entered into between Texas and the Waters-Pierce lawyers regarding Pierce's Missouri testimony, signed before the testimony was entered into evidence. This stipulation was not signed by Pierce or by attorneys representing him in the ouster trial; they represented his company, not him. The stipulation stated that the transcript of the testimony was to be treated as if it had taken under Texas law for a Texas case.\textsuperscript{111}

Robertson was succeeded by Jenkins. The thrust of Jenkins's argument was that Pierce testified before Sanborn in New York only that he was in fact the same person that

\textsuperscript{110}Stenographer's Report, 651-74 Tarleton Special Collections; \textit{Galveston Daily News}, December 7, 1909; \textit{Houston Post}, December 7, 1909. Priest had to have been a good attorney to have remained as both Pierce's personal attorney and counsel for Waters-Pierce. No evidence of this skill comes through in this case, as Priest repeatedly made statements that were damaging to his client. Putting Priest on the witness stand was also a questionable proposition because of the potential that it had to waive the attorney-client privilege, which would have been damning to Pierce; a miscalculated question on direct examination could have opened doors for the prosecution on cross-examination that the defense would rather have kept shut. The question remained—did the threat of severe financial loss legally constitute coercion?

\textsuperscript{111}Stenographer's Report, 674-704 Tarleton Special Collections; \textit{Galveston Daily News}, December 7, 1909; \textit{Houston Post}, December 7, 1909. Lightfoot's "corrections" of Robertson point out yet again the distinction between civil antitrust suits, and criminal actions. The potential conflicts of interest were seldom so obvious as in this case, and even more seldom a concern for the corporate lawyer in that era.
had testified in the Missouri case. Building on Lightfoot's "correction" of Robertson, Jenkins argued that the transcript of Pierce's testimony used in the Texas ouster suit was no more than an agreed statement of facts made up by the lawyers, more in the nature of a document than testimony. In Jenkins's view the state could not have pursued perjury charges against Pierce if the contents of this "document" were false. If it was not testimony, then there could not be any immunity under the Texas antitrust law. The defense had cited many cases which, Jenkins pointed out, were federal cases interpreting federal law. These cases did not bind Texas any more than the immunity granted Pierce by Missouri law bound Texas.

Jenkins denied that Pierce had given testimony involuntarily in the Missouri case. True, process servers had hunted for Pierce. But they had not caught him when he testified in Missouri. He made a racist analogy:

Jenkins: If a man were charged with shooting a coon up a tree and he were to prove that he told the coon to come down and then he shot him you could not truthfully say he shot the coon in the tree.
Robertson: Well, would you say the coon voluntarily came down out of that tree?
Jenkins: I would not say anything about that. I would just hold that he did not shoot the coon in the tree.¹¹²

Perkins rose somewhat above the technicalities and "analogies" of the other attorneys. In scholarly fashion he reviewed the history of forced confessions from ancient time to the evolution in America of the privilege against self-incrimination. Perkins claimed, with some justice, that the immunity provision of Texas antitrust law came into being to obtain testimony and evidence for the Waters-Pierce ouster suit. The antitrust law was a promise by the people of Texas to Pierce not to prosecute him. The prosecution of Pierce by Texas destroyed its honor and that of its people. The stipulation in the Waters-Pierce case applied to Pierce and brought him within the protection of the immunity clause.

¹¹²Stenographer's Report, 704-29 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909. Jenkins's arguments logically built upon Lightfoot's, but Jenkins carried the argument to an almost untenable extreme when he stated that the transcript of Pierce's testimony was a mere statement of facts, not rating the status as testimony.
of the antitrust statute. Other attorneys for both sides argued on the question of immunity, adding little to their predecessors.

On December 7, 1909. Judge Calhoun decided the immunity question in favor of the defense motion to exclude the transcript of Pierce's Missouri testimony. His reasoning followed, as he put it, "the spirit of the law" if not its letter:

...But it seems that before he [Pierce] was asked any questions which would bring material testimony it was agreed by counsel that that his testimony before the Missouri commissioner should be his testimony in the Texas case. He swore that the transcript of his testimony then offered in court was a true and correct copy. The state does not deny that if he had given testimony in the Texas case he would be immune from criminal prosecution. Now, he facilitated the state in its civil case, and the transcript which he swore to was a true and correct copy of this testimony in the Missouri case was used against the Waters Pierce Oil Company to advantage in the suit in Texas. I think, and will so hold, that under the spirit of the law he is entitled to immunity.

Robertson asked Calhoun for an instructed verdict. McLean interrupted, declaring that the State might have other testimony to introduce. Robertson replied that the ruling did not merely exclude the transcript; it gave Pierce immunity. A quick conference among the prosecutors produced no answer. Calhoun called in the jury. It had been sequestered for most of the trial and excluded from the courtroom during the arguments over evidence. The jurors were amazed when Calhoun told them that he had sustained Pierce's claim of immunity and instructed them to return a verdict in his favor. Moments later the great trial was over.

\[113\] Stenographer's Report, 729-46 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 7, 1909. The Texas Legislature passed a number of laws in 1907, often emergency bills that went into effect immediately, that were a direct response to the investigations of Waters-Pierce and Joseph Bailey. See General Laws of the State of Texas, Regular Session (1907), Chapters 12, 97, 120, 173, and General Laws of the State of Texas, 1st Called Session (1907), Chapter 10. If Pierce had testified in person in the ouster suit, he clearly would have come under the protective umbrella of the immunity clause of the 1907 antitrust law amendments. Perkins's attempts to appeal to Texas honor were rather amusing in light of the scathing remarks about Texas that Priest had made publicly several times between 1907 and 1909.

\[114\] Stenographer's Report, 746-812 Tarleton Special Collections; Galveston Daily News, December 7, 1909; Houston Post, December 9, 1909. The court adjourned after 11:00 p.m. that night. Calhoun had decided early in the trial to hold evening sessions as well as day sessions in an effort to get the trial over within a relatively brief period of time. This was somewhat unusual for a trial in December.

\[115\] Stenographer's Report, 813-17 Tarleton Special Collections; Galveston Daily News, December 8, 1909; Houston Post, December 8, 1909. Conceivably the prosecution could have produced other witnesses that
The prosecution team sat stunned. Its members had expected victory, or at least a chance to take their case to the jury, and if necessary, to argue constitutional issues in higher courts. Pierce, who had sat stonily throughout the proceedings, showed little emotion now. He gravely shook hands with his lawyers and well-wishers, and thanked Judge Calhoun, who replied "I did what I thought was right under the law." Pierce, his attorneys and the prosecutors declined to make any immediate statements for publication, though McLean was overheard to say to other attorneys that the state should have been allowed to introduce other evidence even if the transcript was barred.

Robertson later spoke to the press. Calhoun's decision completely vindicated his client. The affidavit had never furnished a basis for a perjury charge; Pierce had never entered into or knew of any illegal agreements. Robertson claimed that his investigation of the matter in the Fall of 1906 had convinced him that the state could not win. For that reason only the defense had avoided delays and legal technicalities, like seeking a change in venue. He had faith in Texas and Texans and had not been concerned about the colossal 1907 judgment against Waters-Pierce or possible bias, concluding that:

...The result of the trials afford proof by demonstration that a stranger in Texas, although belonging to the class known as capitalists, can appeal to our courts for the protection guaranteed to all litigants by our constitution and laws.

He did not explain why it took over three years for his client to face trial in Austin if he had been so sure in 1906 that the state could not win, or how the extradition fight had not been a delaying tactic.116

Not everyone agreed with Robertson. The front page story for the Galveston Daily News noted that public sentiment which had been against Pierce initially had swung his way after the ouster verdict and collection of nearly two million dollars in fines. The

116 Galveston Daily News, December 8, 1909; Houston Post, December 8, 1909. It is hard to see how the result of the trial was a vindication of Pierce given that the case never reached the jury, nor had Judge Calhoun issued a directed verdict of acquittal.
editorial page was more acerbic. An editorial entitled "He Was Saved By His Immunity Bath," decried that Pierce had escaped on a "technicality" and that the trial did not go to the merits of the charges. Cynically, the editor noted that his high-powered legal team had three years that they had to prepare a defense. The result of the trial even could only "further destroy popular confidence in the courts and other of our institutions," which, in conjunction with thousands of similar miscarriages of justice, might stir up the people to change the legal system while increasing effective enforcement of laws.117

Over three years of time, effort, and expense by Texas had come to nothing. The only lesson that Pierce learned was to let other officers of his companies swear antitrust affidavits. Consumers, not Pierce, ultimately paid the huge fine against Waters-Pierce. The perjury trial fiasco did point out the need for well-written laws and coordination among the various departments and branches of Texas government. The Texas Legislature now had rules and procedures for investigative hearings, which would occur regularly over the succeeding years, and the Texas Attorney General's office had some new tools to assist it in antitrust investigations.

The failure to convict Pierce on an antitrust-related criminal charge in 1909 proved to be the last major attempt to use criminal prosecution actively to control oil companies and their officers in Texas. In part this cessation of criminal prosecutions was due less to the previous failures to convict, but more to a realization that corporate executives and their attorneys were seldom certain if particular actions and decisions violated the antitrust laws, particularly when the state and federal governments worked at cross-purposes. Only if business decisions were blatant and deliberate attempts to flout antitrust laws could the criminal intent requisite sustain a penal charge against an individual. Such blatant behavior was largely obsolete. Increased competition and the threat of civil antitrust actions

117 Galveston Daily News, December 8, 1909. The editor's views were much more realistic than that of Robertson. No ordinary defendant in a criminal case could muster the legal resources that Pierce was able to bear. If the case had gone to trial promptly in the Fall of 1906, or in early 1907, before the outcome of the civil ouster suit, things might not have gone so well for the oil magnate.
sufficiently deterred such behavior. The threat of criminal prosecution would remain, but
greater reliance would lie on civil antitrust actions. Penalties, injunctions, ouster suits, and
consent judgments would prove to be the wave of the future rather than criminal
prosecutions. Reality had also set in—large oil companies were in Texas to stay, and were
increasingly important to the economic well-being of Texans.\textsuperscript{118}

\textsuperscript{118}Consider the problem of an oil company and its executives that wished to do something that its lawyers
warned them might violate the Texas anti-trust laws. Autry stated to Cullinan in 1904 that

Our [Texas] anti-trust laws as a rule are changed at every session of the legislature and are
as complex and intricate as it is possible for such to be and it is wholly impossible to
determine in advance with absolute precision whether in the eyes of the State authorities a
particular transaction would be violative of this law or not.

Autry to Cullinan, May 12, 1904, Autry Papers, Box 27 "Business Correspondence, 1901-1912" WRC.

On more than one occasion in the 1920s and 1930s petroleum company executives and their attorneys went
to the Texas Attorney General’s Department to explain their business plans, and ask for the approval of the
Texas Attorney General, and an opinion letter. This was the sensible thing to do to avoid trouble. But the
Texas Attorney General’s Department had to inform them that while the present Texas Attorney General did
not think anything was illegal about their plans, he could not bind his successors to a similar tolerance.
Hence they proceeded at their own risk. In such situations, the Texas Attorney General was also reluctant
to issue an opinion letter that might come back to hurt him politically a few years later. As for the federal
and state governments working at cross-purposes, in 1931 Texas Attorney General James V. Allred began
an antitrust suit against nearly every major oil company operating in Texas, as well as the American
Petroleum Institute ("API"), over conduct approved by the API’s Code of Fair Practices. The API was the
leading trade association of the oil industry, sanctioned by the Federal Trade Commission, which had also
approved its Code of Fair Practices. The API and its members had done their best to avoid antitrust
litigation, and had even altered the language of the Code of Fair Practices specifically for companies
operating in Texas, to no avail. A contemporary observer noted,

It is the literal truth that Texas’s anti-trust laws are such that the directing heads of
corporations cannot always know when they are violating the law. That is a statement
which can be proved by official records. Some years ago an Attorney General of Texas
prosecuted one of the State’s oil companies for lending pumps to filling stations, his
contention being that that practice was a violation of the law. And now, in the suit to
come up in October, Texas is prosecuting eleven Texas companies for announcing...that
this practice is uneconomic and should be discontinued. Doesn’t a law leading to a
situation of that kind need clarifying?

Booth Mooney, "Facts About the Texas Oil Suit," \textit{The Texas Weekly} (April 30, 1938) 6, 10.
CHAPTER 6: THE PIRATES OF PETROLEUM DUEL

As a managing Director of the Standard Oil Company of New Jersey you undoubtedly were advised that the Waters-Pierce Company had sustained serious losses and had been subject to enormous fines in Texas, Arkansas, Missouri and Oklahoma, solely by reason of the officiousness of the Standard Oil Company of New Jersey in the affairs of the Waters-Pierce Company through the ownership of practically two-thirds of the stock, and that for this reason alone the Waters-Pierce Company has been unable to pay any dividends upon its stock, or to make any substantial progress in the extension of its business during the past three years.

You are aware, because of your intimate participation in the management of the Standard Oil Company of New Jersey, that it has bent every energy and resource to destroy the Waters-Pierce Oil Company, and the interest of H.C. Pierce in that company, solely because Mr. Pierce has always insisted upon a separate and independent maintenance and conduct of the affairs of that company, and that purpose and intent, as manifested by your demand, has not in the least abated since the pretended dissolution of the Standard Oil Company of New Jersey.

Henry Clay Pierce to Henry M. Tilford, April 1912 as quoted in The New York Times, April 30, 1912

I. Pierce Throws Down the Gauntlet

Following the conclusion of H.C. Pierce’s perjury trial and the sale of Waters-Pierce’s, Security Oil’s, Navarro Refining’s and Union Tank Line’s Texas assets in December 1909, all seemed quiet on the state antitrust front. New oil fields gushed in Texas and Oklahoma and the quiet protection of the state antitrust laws spurred competition. The Magnolia Petroleum Company and the Pierce-Fordyce Oil Association rose from Standard Oil’s and Waters-Pierce’s ashes. They joined Joseph S. Cullenan’s rapidly growing The Texas Company, the Mellon family’s Gulf Oil companies. The calm was illusory. On March 5, 1913, Texas Attorney General Benjamin F. Looney filed charges against Magnolia Petroleum, Corsicana Petroleum, Jersey Standard, Socony, plus numerous individuals for violations of the state’s antitrust laws.¹ Looney sought the

¹Although the Supreme Court dissolution order in 1911 had officially ordered the break-up of the Standard Oil combination, divesting the Standard Oil of New Jersey holding company of thirty-three firms, including sixteen of the twenty largest affiliates, the contemporary press, lawyers, and legislators continued to refer to “Standard Oil” and the “Standard interest” as if the dissolution had not happened. The initial effectiveness of the dissolution decree, which had ordered a pro rata distribution of the shares of all of the stocks of the divested affiliates, was questionable at best, and most of the companies continued to cooperate with each other out of necessity as well as common stock ownership. I have followed this nomenclature as well, and have used the names of individual companies only when referring to those specific firms. The most
ouster from Texas of the offending firms, and penalties against both companies and individuals that totaled over $115,000,000. But this time, Henry Clay Pierce and his companies were not the villains, but the victims.²

Looney’s ambitious litigation had roots in the events of the preceding fifteen months in Washington, St. Louis, New York, Chicago, and Dallas. The relationship between H.C. Pierce and Standard had never been close. Since the 1870s Pierce had shown himself to be a tough, independent, brilliant marketer, and most important, a profit-maker. Though controlling a majority of Waters-Pierce stock, Standard had been content to let Pierce manage his company as he saw fit.³

Despite Waters-Pierce's tremendous profits problems had existed. In addition to the Texas litigations previously discussed, several other states had won antitrust suits against Waters-Pierce, ousting it from Oklahoma, Missouri, and Arkansas, plus money

²This is not to say that there were no accusations of antitrust violations by oil companies, particularly Standard Oil of New Jersey and its affiliates. Accusations and investigations were commonplace. In 1911 and 1912, even as the U.S. Supreme Court issued its decree dissolving the Standard Oil holding company combination, the Interstate Commerce Commission investigated oil and gas pipelines with a view towards requiring all of them to be common carriers. At the Houston hearings, F.C. Proctor, general counsel for the Gulf Pipe Line Company, casually stated as common belief in the oil industry that the Magnolia Petroleum Company was controlled by Standard Oil. Proctor also stated that the State of Texas had investigated the Gulf companies several times, and they "had been given a clean bill of health." Most of the witnesses examined during the hearing confirmed the claims of Gulf and The Texas Company to independence from Standard, and from collusion with each other. "Interstate Commerce Commission's Probe of Pipe Lines," The Oil and Gas Journal, October 5, 1911, 6-22 (hereafter "OGJ"). There was a rumor going around in October 1911 that Texas Attorney General Jewel P. Lightfoot intended to investigate the Texas Company to get evidence of antitrust violations. From the available records of the Texas Attorney General and lack of comment in contemporary newspapers and trade journals, no such investigation seems to have taken place. The alleged incident that triggered this possible investigation was the claim that John D. Rockefeller, Jr., had his offices in the New York headquarters of The Texas Company, implying that Standard controlled it. OGJ, November 2, 1911, 1. At approximately the same time, Gulf Refining Company and Pierce-Fordyce announced their intents to build large refineries at Fort Worth, and Pierce-Fordyce was in the process of obtaining sources of crude oil from sources independent of Standard Oil and its affiliates, while The Texas Company and the Magnolia Petroleum Company continued to expand. Competition was alive and well in Texas. See OGJ, November 23, 1911 1; "Texas Oil War Dope," OGJ, November 23, 1911, 10-12.

³Williamson and Daum, Age of Illumination, 541-45, 677-701, 714-15; Hidy and Hidy, Pioneering in Big Business, 111-13, 447-77. The business conduct of Waters-Pierce and its relationship with Standard Oil is detailed in Transcript-1907, TSA RG 302 Box 1989/41-85. See also Chapters 2-4, with accompanying notes.
penalties. Now federal prosecutors won their antitrust suit against Standard and its subsidiaries culminating in the U.S. Supreme Court's dissolution decree in mid-May 1911. Waters-Pierce was nominally independent of Standard Oil, and H.C. Pierce was determined to make that independence real.4

Pierce blamed most of his company's public relations and fiscal problems on Standard Oil. Litigation had cost Waters-Pierce over $3,000,000 in penalties and attorneys' fees since 1906. The previously profitable Waters-Pierce had not declared a dividend since 1909, and Waters-Pierce had been ousted from four states, at least temporarily. Missouri, Oklahoma, and Arkansas had suspended the ouster decrees, pending the company's good behavior. Those ouster decrees could be enforced whenever the respective state supreme courts ordered.5

Much of the impetus for the state antitrust suits stemmed from Waters-Pierce's marketing behavior. H.C. Pierce and his directors, not Standard, had decided to crush competition and maintain high prices. Pierce, however, chose to blame Standard's executives, at least publicly. In the federal antitrust suit, Pierce was a most cooperative

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4United States v. Standard Oil Company of New Jersey, 173 Fed. 177 (1909) and Standard Oil Company of New Jersey v. United States, 221 U.S. 1 (1911). Pierce seems to have been an eager witness against Standard Oil in the federal antitrust suit, apparently hoping to bring down the wrath of the federal government upon his majority partner, and perhaps gain his independence in that fashion. The brief period in 1904-1905, when Standard actually exerted the voting power of its stock, and temporarily installed an executive of its own who ousted Pierce's brother-in-law, Andrew Finlay as de facto president, likely had a deep impact on Pierce and his attitude towards Standard Oil. Standard had always had agents in executive positions at Waters-Pierce, and on its board of directors since it first bought majority control of the company. See Transcript-1907, 408-51, TSA RG 302 Box 1989/41-85, and Bringhamurst, Antitrust and the Oil Monopoly. 40-68.

5In Texas, the Pierce-Fordyce Oil Association was legally a separate company from Waters-Pierce, and Standard Oil did not own any of it. Until July of 1912, it purchased nearly all of its crude oil and refined products from John Sealy & Company, and its successor, the Magnolia, though it had purchased a small refinery in Texas in 1911, and had plans to build a new one at Fort Worth, "Texas Oil War Dope," OGI, November 23, 1911, 10. A compromise was reached in Oklahoma after Waters-Pierce agreed to build a $150,000 refinery there, which was something that the company had wished to do anyway as part of its efforts to become an integrated oil company, and pay a fine of $75,000. See OGI, July 14, 1910, 14-15; OGI, July 21, 1910, 2; OGI, August 18, 1910, 20; OGI, September 15, 1910, 2.
government witness and shifted as much guilt as possible onto Standard Oil, which had not endeared him to its executives.⁶

Clear confrontation between them emerged shortly before the Waters-Pierce annual stockholders' meeting in St. Louis on February 15, 1912. Waters-Pierce had announced that it would make public its annual earnings and full financial data. Such candor sharply contrasted to the other Standard affiliates. All were vague about financial records. Further, Pierce had been soliciting shareholders' proxies, a sign either that the Pierce interests intended a drastic break from Standard, or that they feared a change in Waters-Pierce's management.⁷

Pierce and his relatives directly controlled only about one-third of Waters-Pierce's stock. Their cause seemed hopeless. The remaining two-thirds was scattered among a diverse shareholders of the former Jersey Standard holding company. The dissolution decree had ordered all of the stock of the divested Standard subsidiaries distributed proportionately among all shareholders of Jersey Standard. Each share of stock held in

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⁶See Bringham, Antitrust and the Oil Monopoly, 60-68, 90-95, 101-02; Gray, Rule of Reason, 13-16, 36-52; Williamson and Daum, Age of Illumination, 541-45, 688-90; Hidy and Hidy, Pioneering in Big Business, 448-51, 684-98.

⁷One of the reasons that the public viewed Standard Oil with distrust was the veil of secrecy that its executives had always maintained about all aspects of its business, particularly ownership of stock and companies, marketing, and financial matters. While this attitude was understandable by nineteenth century business standards, where firms routinely sought to obtain information about competitors to use to their own advantage, the extremes to which Standard had gone in this regard, and continued unabated until 1916 and the "open door" policy of Allen Cottin Bedford, who succeeded John D. Archbold in 1916. The door did not truly open until 1917, when Walter C. Teagle assumed the presidency. Teagle, unlike previous Standard executives, welcomed the press, and did much to establish positive public relations for his company. See Wall and Gibb, Teagle of Jersey Standard, 122-28; Williamson and Daum, Age of Illumination, 347-70, 412-30, 433-37, 466-75, 482-87, 703-24; Hidy and Hidy, Pioneering in Big Business, 38-39, 201-32, 639-718. Increasing profits for the Standard Oil companies after the dissolution, along with increasing petroleum prices, also caused suspicion. For example, see "Why Oil Advances," OGJ, February 1, 1912, 1. Regarding the friction between the Pierce interests and the Standard interests, both sides started soliciting proxies well before the shareholders' meeting of Waters-Pierce scheduled on February 15, 1912, though it is not clear who started the solicitations. The Pierce faction correctly interpreted the proxy solicitation by Standard interests as a sign that it intended to exert control, and oust the Pierce family from control of the company. The St. Louis Post-Dispatch noted, the feud between Pierce and Standard went back a number of years, as far back as 1904, and following the Missouri ouster suit, the Pierce interests had threatened to file injunction suits against Waters-Pierce and Standard executives to prevent dividend payments to Standard, and restrain it from voting its stock, if it did not yield effective control of the company to the Pierce group. See St. Louis Post-Dispatch, February 14, 1912; The New York Times, February 15, 1912. On the awareness of publicity and its effects, see "The Value of Public Opinion," OGJ, February 18, 1912, 1.
Jersey Standard, became a fractional share of each of the divested companies' stocks. When so divided, it took a large amount of Jersey Standard stock to make one share of Waters-Pierce stock. John D. Rockefeller, Sr. and other directors had held large amounts of Standard stock. Accordingly they now held a number of whole Waters-Pierce shares, but much of the Waters-Pierce stock formerly held by Jersey Standard was fractionated. The Pierce interests maintained that fractional shares could not vote in shareholders' meetings. A voting unit was a share, and fractionalization was Standard's problem. Even if Standard interests gathered enough whole shares, and accumulated sufficient fractional shares to form entire shares, there were problems. There was the legal question of whether they could even vote their own stock much less those of proxies. If Standard's agents tried to vote the stock and elect a compliant board for Waters-Pierce, that action might violate Missouri's ouster decree against Waters-Pierce, Indiana Standard, and Republic Oil. This occurring, Missouri might simply undo the election or even forfeit the Waters-Pierce charter and dissolve the company.8

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8 Both of these defenses of the Pierce interests raised perplexing legal points. It is unlikely that the charter of Waters-Pierce or its by-laws contained a provision that only whole shares could vote in shareholders' meetings, as the extreme fractionalization of shares could not have been planned for or foreseen. It is also unlikely that there was a charter provision against cumulating fractional shares in order to vote a share. Standard Oil of New Jersey, the holding company, had 983,383 outstanding shares divided among 6,078 shareholders. As of June 30, 1911, Standard held 2,744 shares of Waters-Pierce stock. This meant that at the time of dissolution, each share of Standard Oil of New Jersey stock entitled the holder to less than 28/10,000 of a share of Waters-Pierce stock. Pierce maintained that only whole shares had been issued, and therefore only whole shares could vote. The fractionalization was done by Standard Oil, and not authorized by Waters-Pierce. Fractional shareholders of the companies formerly of Standard Oil received did not receive actual shares of the individual companies, but scrip from Standard showing the fractional interests. As it turned out, 617 shares of Waters-Pierce stock were fractionals, and could not vote, which Standard conceded. The antitrust issue also presented problems. After the ouster decision in Missouri in December 1908, and conditional reprieve by the Missouri Supreme Court, the Waters-Pierce stock held by Standard was in a trust, which Standard could not vote. That trust terminated with the implementation of the Supreme Court's dissolution decree, as the stock was then held by individuals, but the same large shareholders that had controlled Standard Oil controlled the constituent companies, and could try to resurrect the Standard Oil Trust in a new form, controlled by concerted action by individuals, not through a trust or a holding company. Such action directed at Waters-Pierce could constitute a violation of the Missouri antitrust law, resulting in forfeiture of its corporate charter, and more fines. St. Louis Post-Dispatch, February 14, 15 1912; The New York Times, February 15, 1912; Hidy and Hidy, Pioneering in Big Business, 608-09; Gibb and Knowlton, The Resurgent Years, 6-38, deals with the complications arising from dissolution. See also Brinshurst, Antitrust and the Oil Monopoly, 89-107, 180-200 on the Missouri ouster suit, the 1911 dissolution, and its effectiveness, and Piott, The Anti-Monopoly Persuasion, 105-31, dealing with the battle against Standard and Waters-Pierce in Missouri, and the complications of ousting a major industrial firm. The United State Supreme Court on April 1, 1912 had unanimously upheld the ouster of
On February 15, 1912, Martin M. Van Buren and Walter F. Taylor, representing Standard Oil, showed up at the stockholders meeting of Waters-Pierce with briefcases full of proxies, and a list of whom they intended to vote for as directors. Van Buren had received a mysterious cable in late January while on vacation in Puerto Rico telling him to go to St. Louis to vote proxies for people unknown to him. On the train he had met Walter Taylor, a New York attorney, and also a Jersey Standard executive, formerly a Waters-Pierce. Taylor gave Van Buren a bundle of proxies made out in Van Buren's name and a slate of candidates for whom to vote. Taylor held the remaining proxies in his name. Together Van Buren and Taylor controlled 2,058 of the 4,000 shares outstanding, while Pierce's faction held only 1,325 shares. Van Buren and Taylor intended to install Robert Stewart, a senior legal counsel for Indiana Standard, as president, George Mayer, who had been manager of the Indiana Standard plant in Kansas City, Missouri as vice-president, and to leave Adams, a longtime Standard Oil "watchdog" on Waters-Pierce as treasurer/secretary.9

Standard Oil of Indiana from Missouri in a brief opinion, perhaps influenced by the well-publicized ongoing struggle between Standard interests and the Pierce interests. Standard Oil Company of Indiana v. Missouri, Republic Oil Company v. Missouri, 224 U.S. 270 (1912).

9In the 1907 Texas ouster suit, Van Buren had testified that he had no idea for whom he had held sixty-two percent of Waters-Pierce stock in trust for several years prior to transferring it to Charles M. Pratt, a director of Standard Oil of New Jersey in 1907. Taylor was an executive in Standard, and a lawyer in the New York firm of John G. Milburn, closely connected with Standard Oil. Regarding the stock totals, see St. Louis Post-Dispatch, February 15, 1912; The New York Times, February 16, 1912; Galveston Daily News, February 16, 1912. Regarding the actions of Van Buren and Taylor, see also The New York Times, May 26, 1912. Given the early dominance of Standard Oil in the industry, it is not surprising that many prominent oil men that founded or worked for other oil companies had worked for Standard Oil, Joseph Cullinan of The Texas Company being a prominent example. But this was not the case with Adams, who was a Standard Oil man until the Pierces ousted him. See Transcript-1907, 729-33, 761-74 TSA RG 302 Box 1989 41/85; St. Louis Post-Dispatch, February 15, 1912; The New York Times, February 16, 1912; Galveston Daily News, February 16, 1912. Robert Wright "Colonel Bob" Stewart rose from humble origins, the son of a blacksmith in Cedar Rapids, South Dakota that worked his way through Yale's law school. He built up a successful practice in corporate law in South Dakota, along with a minor career in politics, not quite the "country lawyer" as he liked to describe himself. He started his career with Standard Oil of Indiana in 1907 when Alfred D. Eddy, Indiana Standard's western counsel in Chicago, recruited him for his firm after he had successfully acted as a local counsel in South Dakota for Indiana Standard in what had been a losing case prior to his retention. Between 1907 and 1918, he participated in every significant lawsuit involving Indiana Standard, of which there were many, and became its general counsel in 1915, as well as a member of the Board of Directors. An aggressive, able, and imposing executive, Stewart became Chairman of the Board in 1918, elected at the suggestion of John D. Rockefeller, Jr. Stewart came by his military title honestly, having served as a Rough Rider in the Spanish-American War, and as an officer in the South Dakota National Guard. Stewart led the growth of Indiana Standard as a truly separate company,
Nonetheless, the Pierce faction won the election. It had appointed John D. Johnson and Robert Moloney as elections tellers, and they refused to accept Van Buren's and Taylor's proxies, citing the state and federal antitrust problems. The new board of directors included H.C. and C.A. Pierce, and brother-in-law, Andrew M. Finlay. They elected H.C. Pierce as chairman of the board, C.A. Pierce as president of the company, Finlay as vice-president, and replaced treasurer/secretary C.M. Adams, with a Pierce loyalist, Thomas F. Lyon.10

Even while the shareholders' meeting progressed, Standard's attorneys were rushing to the state courthouse to petition for an alternative writ of mandamus from Judge Kinsey to compel Pierce's tellers to record the votes of the Taylor's and Van Buren's stock proxies. The petition stated that at the regular stockholders' meeting for the election of directors, the tellers, John D. Johnson and Robert M. Moloney,

...[I]n utter disregard of the duties imposed upon them as such inspectors, have arbitrarily and unlawfully refused, and are now so refusing, to receive or accept the said ballots and votes cast by each and all of the said shareholders above mentioned.

The petition listed the shareholders for whom Van Buren and Taylor held proxies and asserted that the ballots were supposed to be cast for Stewart, Mayer, and Adams, and warned that Johnson and Moloney would commit further wrongs by certifying the Pierce votes. The result would be the election of a board which had received a minority of the votes. Judge Kinsey issued the alternative mandamus writ and ordered the Pierce tellers to

10This was the same John D. Johnson that served as general counsel for Waters-Pierce. Just as Standard Oil employed relatives in high places, so did Henry Clay Pierce. Another brother-in-law, Arthur M. Finlay, had managed affairs for Waters-Pierce in Texas, and thereafter for Pierce-Fordyce. St. Louis Post-Dispatch, February 15, 1912; The New York Times, February 16, 1912; Galveston Daily News, February 16, 1912.
appear in his court two days to show cause why they should not count the Standard stock proxies.\textsuperscript{11}

Although the writ was executed upon Johnson and Moloney, they ignored it, continuing the election and declaring the Pierce faction the winners. Johnson publicly accused Standard Oil of perpetrating "a feigned dissolution" that only superficially complied with the Supreme Court decree. Standard’s actions at the shareholders’ meeting and in seeking the writ of mandamus indicated its true intentions, which were to maintain its monopolistic control of the oil industry by systematically placing directors and other officers in charge of all of the former subsidiaries of Jersey Standard. Only Waters-Pierce had the independence and will to fight the Standard Oil Trust's new incarnation. Johnson called on U.S. Attorney General George W. Wickersham, who had presided over most of the federal antitrust suit against Standard Oil, to determine if Standard and its officers were acting in good faith, or whether "the defendants are not endeavoring to perpetuate in another form through individual pooling or otherwise, a combination of the same combination."\textsuperscript{12}

\textsuperscript{11}The suit was styled \textit{State of Missouri ex rel. Robert W. Stewart et al v. John D. Johnson et al}, No. 77348-A (hereafter, \textit{Missouri v. Johnson}), filed in the Circuit Court of Missouri, City of St. Louis. While the pleadings in this case were on file with the circuit clerk’s office, few of the depositions in the case were with the record, most notably the depositions from the hearings in New York, Chicago, and St. Louis. Gibbs and Knowlton seem to have had access to some of these depositions, possibly from Standard Oil’s archives. For the quotation, see "Alternative Writ of Mandamus," \textit{Missouri v. Johnson}. See \textit{St. Louis Post-Dispatch}, February 15, 1912; \textit{The New York Times}, February 16, 1912; \textit{Galveston Daily News}, February 16, 1912. The relations were Stewart, Mayer, and Adams, not Taylor and Van Buren, who held the proxies. Standard had been prepared for this conflict, and had already retained Daniel N. Kirby, a prominent regional attorney, and the firm of Schnurmacher and Rassieur to file suit. Kirby (1864-1945) had joined forces with Charles Nagel (later Secretary of Commerce and Labor) in 1894, and their firm became one of the leading firms in St. Louis, handling mainly corporate work. Kirby had ties to New York, and held a non-resident membership in the New York bar. A scholar as well as a practicing corporate lawyer, Kirby taught courses on agency law and constitutional law at Washington University in St. Louis. \textit{The National Cyclopedia of American Biography, Vol. XXXIV} (1948) s.v. "Kirby, Daniel N."

\textsuperscript{12}\textit{The New York Times}, February 16, 1912. George Woodward Wickersham (1858-1936) was born in Pittsburgh, and practiced law in Philadelphia from 1880-1882 before moving to New York City, joining a firm there in 1883, which he left only during his tenure as U.S. Attorney-General. In private practice, Wickersham specialized in business problems, and became a leading expert in corporation law in the New York bar, serving as a railroad and banking lawyer. Wickersham also had an active interest in Republican politics, and became prominent in the Republican party in New York, with close ties to Elihu Root. President Taft's brother happened to be a partner in Wickersham's firm by 1909. Taft selected Wickersham because of his connections, and his well-known expertise in corporate law and operations, with a charge to enforce the Sherman Anti-Trust Act vigorously. This Wickersham did, with such enthusiasm and persistence so as to cause many businessmen and attorneys in New York to demand his resignation. He
Wickersham "coincidentally" arrived in St. Louis on February 16, 1912, and was greeted at the train station by U.S. Solicitor General Frederick W. Lehmann, who was allegedly well briefed on the Pierce faction's allegations. Meanwhile, Pierce's busy process servers were serving subpoenas on Standard's personnel present for the shareholders' meeting: Van Buren, Taylor, Stewart, and Mayer. The subpoenas required them to make depositions on Standard's reorganization, which promised to delay or derail the mandamus proceedings. Wickersham stated to the press that "It looks as if the Waters-Pierce people had been able to take pretty good care of themselves so far."13

Judge Kinsey agreed to delay the mandamus action for six days in order to allow Johnson and Moloney time to develop a cogent answer to Stewart's petition. The attorneys

also drafted several pieces of legislation for Taft, and served as a close advisor. He remained active in public affairs after his return to private practice in 1913, following the defeat of Taft by Woodrow Wilson. Dictionary of American Biography Vol. XXII (1958), s.v. "Wickersham, George Woodward."


The department will investigate this matter and determine whether there has been any violation of the decree of the Supreme Court....We have been watching the matter, but I have not before me sufficient facts to justify me in discussing it. But such facts as I have seen are very interesting.

It made sense for Wickersham to be content to observe at this stage of the proceedings in order to see if the dissolution decree would work, and because Pierce and his lawyers were in a better position than the Department of Justice to know the secrets of Standard Oil, and to reveal them to the public, all at no expense to the federal government and the limited budget of Wickersham's office. Wickersham also took the opportunity that same evening to address the Commercial Club of St. Louis, and urge support for federal laws to regulate multistate and international corporations through "some adequate law of association." Wickersham was a champion of the Sherman Act, and though he disliked what became the Clayton Antitrust Act, he advocated the formation of a body similar to that of the Federal Trade Commission. Frederick William Lehmann (1853-1931), was a Prussian-born lawyer, whose family moved to the United States in 1855. He ran away from home at age ten, grew up as a homeless person, but hardworking, and through the generosity of Judge Epenetus Sears of Iowa, went to college, and studied law, and moved to Des Moines, where he became an attorney for the Wabash Railroad and politically active. The growth of his railroad practice resulted in his relocation to St. Louis in 1890, as it was a major hub for railroads. There he built a reputation as a skilled lawyer and a fair dealer, on many occasions handling matters on a pro bono basis. In 1895 he became a name partner of the firm of Boyle, Priest & Lehmann, the same firm that handled the represented H.C. Pierce and Waters-Pierce. He continued with the firm for a number of years, along the way becoming president of the American Bar Association in 1908. President Taft appointed Lehmann as U.S. Solicitor General in 1910, and he held the post for two years. At the same time, he did not hesitate to state when he thought that the federal government's position on legal matters was incorrect. In private practice, he handled a number of significant corporate cases, which included establishing news as a form of property for the Associated Press. He never held elected office, and switched parties from election to election, but was a man of the public, a generous philanthropist and civic activist. He was a popular public speaker, known as "the best educated man in St. Louis," and a number of his speeches and articles were collected and published. Dictionary of American Biography Vol. XI (1933), s.v. "Lehmann, Frederick William," and The National Cyclopedia of American Biography, Vol. XII (1904), s.v. "Lehmann, Frederick William." As for the effect of the Standard dissolution on John D. Rockefeller, Sr., the value of his oil stocks had increased $79,099,475 since the U.S. Supreme Court decree.
for both sides agreed on the appointment of former judge Jesse A. McDonald as special commissioner to preside over the hearings for the depositions of the Standard agents in St. Louis. Johnson again denounced Standard's attempts to evade the intent of the dissolution decree, citing the actions in St. Louis and creation of Magnolia Petroleum as successor to Security Oil and Navarro Refining, both condemned as former members of the Standard Oil combination by the U.S. Supreme Court. Johnson called for the federal government to institute contempt proceedings against Standard Oil's executives for defying the dissolution decree and even urged the seizure of Standard's properties in order to force a real dissolution, a surprising sentiment from a lawyer schooled in laissez-faire capitalism and the sanctity of property rights. A St. Louis Post-Dispatch editorial declared that the Pierce-Standard litigation would have been unnecessary had the federal government pursued criminal sanctions instead of equitable remedies. If

...half a dozen or more Standard Oil magnates were now undergoing prison sentences, their aim would not be to see how far they could come toward perpetuating the substance of a monopoly while avoiding the legal form They would be trying to get as far away as possible from either form or substance or anything that might create further punishment.

Then Commissioner McDonald ruled against the conspiracy contentions of H.C. Pierce and his attorneys (technically against Johnson and Moloney), terminating the depositions almost as soon as they began. This sent the increasingly complicated case to Judge Kinsey.14

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14 Even those attorneys and judges who favored corporate regulation, corporate taxes, and antitrust enforcement were concerned with the sanctity of property rights, just not to the extremes that some corporate counsel would argue prohibited any sort of governmental interference with the enjoyment of one's property, such as the Sherman Act. The surge of populism in the late nineteenth century, with its potential threat to the property rights of big business, and by extension, the middle-class, helped pave the way for Progressive Era reforms which regulated business, in good part to protect property rights from populist threats. See generally, Keller, Affairs of State, 343-71, 404-38; Keller, Regulating a New Economy: Hovenkamp, Enterprise and American Law, 241-364; Sklar, Corporate Reconstruction; and Paul, Conservative Crisis. See also St. Louis Post-Dispatch, February 17, 18 1912; The New York Times, February 20, 1912; "Ruled Against Waters-Pierce," QGL, February 22, 1912, 6. Also over the weekend, the treacherous Charles M. Adams found that his suite of offices in the National Bank of Commerce Building were guarded by two private detectives, who refused to let him pass to empty his office. Apparently he had been slow in turning over his books and records as secretary of Waters-Pierce after Clay Arthur Pierce had notified him that he had been ousted, and his desk had been forced open, and papers and records removed. Thus ended a thirty-four career with Waters-Pierce, all the while a tool of Standard Oil. See St. Louis Post-Dispatch, February 18, 1912.
Led by Frederick N. Judson, Waters-Pierce's attorneys argued in Judge Kinsey's court that in order to deal properly with the Standard agents' petition for a writ of mandamus, Waters-Pierce had to determine if Rockefeller and associates were attempting again to control it in order to continue the old trust in a new form. Commissioner McDonald's ruling against permitting Waters-Pierce to take depositions to that end was simply incorrect, in fact "unprecedented." Judson insisted:

The commissioner's ruling, if upheld by this court [Judge Kinsey], is in violation of interstate commerce laws, and the Sherman anti-trust act. The life of the Waters-Pierce Oil Company depends upon its ability to show it is not in any illegal combination in restraint of trade.

Judson was pointing out that the 1908 Missouri Supreme Court decree revoking Waters-Pierce's charter in Hadley's antitrust suit was suspended on condition that the company severed its ties with trusts and combinations in restraint of trade, and obeyed state law. If Standard was evading the 1911 dissolution decree and was still effectively a trust, and its agents controlled Waters-Pierce, then the Missouri Supreme Court would reimpose the revocation of Waters-Pierce's corporate charter. The results of Hadley's antitrust suit against Waters-Pierce were now protecting it from control by Standard Oil.15

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15*Galveston Daily News*, February 22, 1912. The Missouri suit had cost Waters-Pierce a $50,000 fine, a small sum compared to the amount collected by Texas, but its charter had also been revoked, with the revocation suspended upon condition of Waters-Pierce's good behavior. In the meantime, Indiana Standard was still under the Missouri Supreme Court's order of ouster, which it had appealed to the U.S. Supreme Court. The Supreme Court affirmed Missouri's actions on April 1, 1912, which encouraged the Pierce faction, as well as inhibited Indiana Standard's ability to compete in Missouri. Indiana Standard appealed for a modification of the ouster decree on May 1, 1912, which the Missouri Supreme Court eventually turned down on February 12, 1913. Missouri had stood down Standard Oil, in favor of its own. However, Indiana Standard did not quit. Instead it shut down its large refinery at Sugar Creek, Missouri, near Kansas City, which employed many people, and started shipping oil to its Wood River, Illinois refinery. Under economic pressure and at the urging of many Kansas City businessmen, the Missouri Legislature hastily passed a law, purportedly general in scope, but tailored to the situation, that would allow Indiana Standard to remain in Missouri, provided it pay a triple fee for business permits. Missouri Governor Elliot W. Major, who had argued the case before the U.S. Supreme Court as Missouri Attorney General, vetoed the law, proclaiming that the law had to be enforced without special exception, despite harsh repercussions (also noting another company could buy the refinery). Under pressure, the Missouri Supreme Court allowed a special commissioner to reopen the matter, in which Indiana Standard claimed to be independent because of the 1911 Supreme Court decree, which none believed. More significantly, it stressed the value of its investments in Missouri, and its contributions to the economy, as well as its intent to invest $1,000,000.00 in Missouri. On July 28, 1913, the Missouri Supreme Court, with one dissent, suspended the ouster for the good of the state, provided Indiana Standard would obey the laws in the future. Even Herbert Hadley, who had started the whole mess, conceded that it was better to have Standard Oil, despite the bad example, than to allow Missouri law to hurt Missouri's citizens. Bringhurst, *Antitrust and the Oil*
A battle of precedents ensued. Daniel Kirby, local counsel for the pro-Standard shareholders, noted a relevant Missouri Supreme Court ruling, implying that it would take more concrete action than had occurred on the part of Standard Oil's "agents," Stewart, Mayer, and Adams, to constitute a violation of the Supreme Court's and Missouri's antitrust decrees. Henry S. Priest cited another Missouri case that contradicted Kirby's citation. Then the Pierce faction filed an answer to the mandamus petition. It contained no surprises. The response accused Standard Oil and its agents of attempting to seize control of Waters-Pierce to continue the monopoly dissolved by the Supreme Court, pointed out that neither Stewart nor Mayer owned Waters-Pierce stock in their own right, as was required of directors. Instead, other stockholders associated with Standard Oil had transferred one share each to the pair so they could qualify as directors, much as they had done in pre-dissolution years when they wished to have a particular Standard director on the board. In their answer, attorneys Priest, Judson, and Col. Samuel W. Fordyce also reviewed the history of the Missouri ouster suits, and concluded that: if Standard Oil accomplished its nefarious scheme, Waters-Pierce would lose its charter, pursuant to the Missouri ouster decree, or be forced into a combination in violation of the Sherman Act and outlawed by the Supreme Court, whose decree Standard's executives had simply evaded.

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Monopoly, 96-102; Piott, The Anti-Monopoly Persuasion, 135-49. The respite for Waters-Pierce would be brief.

16Galveston Daily News, February 22, 1912. Frederick Newton Judson (1845-1919) was another prominent St. Louis-based attorney who had a general law practice, but achieved fortune and national recognition for his work in corporation law. Born in Georgia, he grew up in Connecticut, and graduated from Yale in 1866. He moved to St. Louis in 1870, and received his LL.B. from what became Washington University in 1871. Like several other prominent attorneys who had made their living and fame as corporate lawyers, Judson also served against their interest, winning a major victory defending strikers in an injunction case in federal court in St. Louis in 1903. He also acted as special counsel for the U.S. Department of Justice in a number of important railroad and rebate cases, and served on several state and national commissions. In addition to being an excellent attorney, he was also a teacher and scholar, serving as a lecturer at Washington University and at Yale, and authored multiple legal treatises. Dictionary of American Biography, Vol. X (1933), s.v. "Judson, Frederick Newton"; National Cyclopedia of American Biography, Vol. VII (1897), s.v. "Judson, Frederick Newton."

17"Respondents' Return to the Alternative Writ of Mandamus," Missouri v. Johnson; St. Louis Post-Dispatch, February 23, 1912; The New York Times, February 24, 1912. Local opinion seemed to be strongly in favor of the Pierce group, as reflected by the coverage given the situation by the press. After
As Judge Kinsey considered the arguments, Attorney General Wickersham and Solicitor General Lehmann hovered about like a pair of vultures. Some saw the struggle as a test case on President Taft's antitrust policy. Rumors circulated that Waters-Pierce had retained Frank B. Kellogg as counsel to assist the firm in its struggle. Kellogg had been the chief nemesis of Standard Oil in the federal antitrust suit. The oil industry generally watched the litigation with interest. Many operations threatened to run afoul of Texas antitrust law.18

In late February 1912 Judge Kinsey overruled Special Commissioner McDonald. The Pierce interests could inquire into the business methods and motives of Standard Oil, its directors, subsidiaries and agents. Standard's actions could violate the laws of the United States and Missouri and defy the decrees of their courts. While quite respectful of

the Pierce faction filed its answer, another editorial appeared condemning Standard Oil for conducting business as it had previously, reviving its pre-holding company methods of control of subsidiaries by individual stockholders. The solution to the problem, the editorial ran, was to add effective criminal sanctions to any equitable solution. St. Louis Post-Dispatch, February 23, 1912.

18St. Louis Post-Dispatch, February 24, 1912; St. Louis Post-Dispatch, February 25, 1912; Galveston Daily News, February 25, 1912. Frank Billings Kellogg (1856-1937) was a prominent lawyer and Republican politician. Kellogg was a country lawyer, who had grown up on poor farm in Minnesota, and had "read law" instead of going to law school, as he had very little formal education. A brilliant performance in some litigation got him the notice of Minnesota's leading lawyer, Cushman K. Davis, who made him an associate in 1887. Through the firm, Kellogg became a skilled corporation lawyer, working with railroads, and the iron and steel industry, building up a fortune. Like Wickersham and other business lawyers, he had no hesitation in turning his skills against corporations, on three occasions allying himself as a special counsel and prosecutor aiding Roosevelt's antitrust policies, the last and greatest being the suit against Standard Oil that culminated in the 1911 dissolution decree. These efforts stood him in good stead with Roosevelt and Taft, moving from law to politics. He was elected U.S. Senator (R) from Minnesota in 1916 for one term, but thereafter served as an United States representative to several conferences and treaty negotiations, and became Secretary of State under Coolidge in 1925, ultimately winning the Nobel Peace Prize in 1930. Kellogg's connection with the Department of Justice ceased after the Supreme Court decree in 1911, and he proved willing to consult with the Pierce interests, joining the horde of attorneys already behind that banner. The alleged hiring of Kellogg caused speculation that Waters-Pierce intended a nationwide war against Standard Oil. This is not far from the truth. While Kellogg may have consulted with the Pierce attorneys and their employer, in the end he chose not to become one of Pierce's legion of lawyers. See Dictionary of American Biography Vol. XXII, Supp. 2, (1958) s.v. "Kellogg, Frank Billings." Why Kellogg chose to avoid this litigation is unclear. In Texas, meanwhile, rumors, which later were proved true, abounded that The Texas Company intended to absorb the Producers' Oil Company. The same group of businessmen that had founded The Texas Company founded the Producers' Oil Company in 1903, and the principal stockholders of the latter were large stockholders and/or executives of the former. While seemingly not unlike the methods used by the Standard Oil concerns to control other companies, this was not done as a subterfuge to conceal control, but to satisfy Texas laws which had effectively prohibited the formation of fully integrated oil companies.
the property rights of the majority stockholders, Kinsey pointed out that no property right was unlimited.

There is attached to every right the enjoyment of which is guaranteed by the law of the land, a condition that it shall not be used for a criminal or otherwise illegal purpose. No court will lend its aid to the enforcement of a right claimed by an individual or by a combination of individuals, when the right so claimed, although fair on its face, is intended to be used as colorable authority for doing an illegal act, provided the court may lawfully inquire into the motives of those who ask its judgment in their favor.

The depositions of Standard personnel would continue. Priest and Fordyce intended to delve deeply into the true nature of the Standard Oil dissolution. Priest saw Judge Kinsey's opinion as a license to investigate Standard Oil thoroughly and publicly, and planned to follow the St. Louis depositions with investigations in Texas, New York, Louisiana, Illinois, and Tennessee. Fordyce claimed that they could prove that despite Texas's ouster of Standard subsidiaries and the sale of their assets, Standard continued to operate in Texas through Magnolia Petroleum. Priest pointed out that a number of former Standard Oil subsidiaries still operated out of 26 Broadway, home of Jersey Standard, and collectively controlled a considerable majority of the refining and transportation capacity in the United States.19

Mayer's deposition revealed that William P. Cowan, Indiana Standard's president since the 1911 dissolution, had offered to let him have a share of Waters-Pierce stock in order to qualify as a director. Stewart claimed that Waters-Pierce was fraught with

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19"Opinion of the Court," Missouri v. Johnson: As Priest put it, "This decision gives us the right to go into the history of the Standard Oil Company and all of its subsidiary companies in the proceedings now under way before Special Commissioner McDonald...." St. Louis Post-Dispatch, February 27, 28 1912; The New York Times, February 28, 1912; "Waters-Pierce Wins Point," OJ, February 29, 1912, 3; "Waters-Pierce Hearing Continued," OJ, March 7, 1912, 6,8; Gibb and Knowlton, The Resurgent Years, 1-42. In their investigations into the activities of Standard and its affiliates in Texas, Pierce's legal squad enjoyed the assistance of longtime Standard Oil nemesis, William H. Gray. Gray had long been an active, vocal opponent of Standard in Texas since 1904 as a counsel for the Oil Producers Association, which successfully lobbied to have pipelines declared common carriers. He testified in federal investigations of the oil industry in 1905-1906, and he testified in the Interstate Commerce Commission's investigation of pipelines in 1911-1912. Also in 1912 he published a critical account of the history of Standard Oil related companies in Texas, and the seeming face of the litigation efforts against Standard, See Gray, Rule of Reason. He sent a copy of this book, published privately as no newspaper in Texas would touch it due to its attacks on the Texas Attorney General's Office, to U.S. Attorney General Wickersham, and assisted in the federal efforts that resulted in the indictments in Dallas in August, 1912. Gray would remain active as a leader of independent oil men into the 1930s. See also The New York Times, October 20, 1912.
mismanagement, corruption, and illegality, noting that no dividends had been paid to the shareholders in three years. In his opinion this was due to suspiciously high legal fees, penalties for the illegal actions of Waters-Pierce, and large amounts of money paid to H.C. Pierce and his relatives from Waters-Pierce assets.20

Adams's lengthy deposition confirmed Stewart's accusations, based on his insider knowledge of Waters-Pierce, and added a few of his own. Adams discussed the connections between Standard Oil and Waters-Pierce. Adams did not acquire a share in Waters-Pierce until 1902, when Standard Oil sold him one so that he could qualify as a director. He talked of the subterfuge after Waters-Pierce's 1900 dissolution in which the majority of the "new" firm's stock was held by Van Buren to hide Standard's true ownership. Priest "refreshed" Adams's memory regarding how Taylor and Van Buren had obtained one each share of Waters-Pierce stock to qualify as directors.21

20Galveston Daily News, February 29, 1912; Galveston Daily News, March 1, 1912; St. Louis Post-Dispatch, February 29, 1912. It is worth noting that Waters-Pierce was involved in a great deal of litigation between 1905 and 1911, the most serious and expensive cases being a series of successful antitrust suits in four different states, as well as the federal case that had ended in the dissolution of the Jersey Standard holding company. Pierce used the best available attorneys that money could buy, with several of them at once in defending his company and himself. Whether the fees were excessive is a subjective issue. The directors and executives of Waters-Pierce did get amply compensated, even during this period of no dividends, but the compensation was not much greater than in the years of plenty when Waters-Pierce had routinely paid 600-700 percent dividends on its undervalued stock. Among those drawing a handsome salary from the oil firm was Charles Adams. Standard Oil's watchdog, who received $10,000 per year, up to the time of his firing. See St. Louis Post-Dispatch, February 18, 1912. Pierce was notoriously lax about keeping his personal debts and charges separate from those of Waters-Pierce, as his dealings with Senator Joseph W. Bailey had indicated, see Chapters 1 and 2, with accompanying notes. William P. Cowan (1846-1918), who was president of Indiana Standard from 1911 to 1918, had been in the Standard organization since 1875, starting with Ohio Standard as a paymaster. Cowan rose through the ranks, establishing a reputation for dependability, and making the right decision, though he was at the same time "slow, phlegmatic and dilatory,..." Cowan was responsible for the construction of Standard's giant refinery at Whiting, Indiana, and handled matters well enough to be made a founding director of Indiana Standard when it incorporated in 1889, as well as vice-president. He remained in these positions, but with increasing power, until the dissolution in 1911, when he formally resigned, only to be elected a director and president of the company. During his tenure as president, Indiana Standard developed and patented the Burton Process, the first cracking procedure which enabled Indiana Standard to double its output of gasoline between 1911 and 1918. Giddens, Oil Pioneer of the Midwest, 13-25, 32-34, 43, 60-68, 161, 208.

21St. Louis Post-Dispatch, February 29, 1912; St. Louis Post-Dispatch, March 1, 2 1912; Galveston Daily News, March 2, 1912. It was apparently common Standard Oil practice to transfer one share of a controlled company's stock to people that Standard Oil executives wanted on the board of directors. The most blatant examples of this took place shortly after the dissolution, when there could no longer officially be a central board or committee managing the affairs of the constituent companies, nor could there be interlocking directorates. This required the rapid creation of new boards of directors and new officers for some of the Standard affiliates, and the breakdown of the old committee system of management that had cut across company lines. See Gibb and Knowlton, The Resurgent Years, 1-43.
Cross-examining Adams, Kirby asserted that the Pierce faction did not come into court with "clean hands." It claimed Standard was trying to evade court orders by controlling Waters-Pierce through stockholders and through the operation of Magnolia Petroleum. Waters-Pierce did the same thing: it had operated in Texas, despite the ouster, through Pierce-Fordyce, a partnership controlled by H.C. Pierce, who commingled the financial affairs of the two companies. Waters-Pierce would pay cash for merchandise, then sell it to Pierce-Fordyce at cost, on credit. Waters-Pierce had not paid dividends since 1909, but Pierce-Fordyce paid handsome dividends. Many of the Pierce-Fordyce employees were formerly employed by Waters-Pierce in Texas. Some Pierce-Fordyce employees were paid by Waters-Pierce. Adams agreed that Fordyce was paid as a Pierce-Fordyce legal counsel, but did little or nothing. He had complained to the Pierces about legal fees and about the excessive salaries of executives, most of whom were Pierce's relatives, though he did not discuss his own $10,000 salary. Adams admitted that he had been Standard's man at Waters-Pierce for thirty-four years. Adams had not helped the Standard cause. The local press, which favored the Pierces, continued to raise the larger issue of the case—the effectiveness of the Supreme Court's dissolution decree and of the Sherman Act. Could the Standard combination continue to exist through the use of mechanisms that satisfied the technical language of the dissolution decree, but not the intent? With the conclusion of Adams's deposition, Special Commissioner McDonald indicated that the next round of depositions would begin with Van Buren on March 15, 1912.22

22St. Louis Post-Dispatch, February 29, 1912; St. Louis Post-Dispatch, March 1, 2 1912; Galveston Daily News, March 2, 1912; Houston Post, March 2, 1912; "Waters-Pierce Hearing Continued," OGI, March 7, 1912, 2. H.C. Pierce had always run Waters-Pierce as if it still was entirely his, save for the regular payment of dividends. Given this attitude, on a number of occasions Pierce treated his companies as personal banks, and generated some rather confusing financial records that indicated a commingling of funds and assets. For all practical purposes, Water-Pierce was in Texas, save that Pierce-Fordyce legally was a separate company, in which Standard Oil did not own any interest. But what also emerged from Adams's testimony was that he and Standard Oil did not like how money was being spent, as Waters-Pierce and Pierce-Fordyce were trying to expand into production and refining, which would have made both less dependent on Standard Oil companies. Adams also admitted to corresponding with Standard attorneys about Waters-Pierce business, and to destroying his correspondence, claiming that he feared Pierce's spies. While
On March 2, 1912, arguments in the mandamus action briefly resumed before Judge Kinsey. This time Standard Oil lawyers Kirby, Benjamin Schnurmacher, and Leo Rassieur argued a motion to strike out portions of Johnson's and Moloney's answer, particularly allegations of a Standard Oil conspiracy, as lacking proof. There was merely "a mass of suspicions, conjectures and conclusions." The only purpose of the allegations was to delay and obfuscate the real issue. Schnurmacher was correct. The hearings would take many months. To Schnurmacher, the real issue was the right of Johnson and Moloney to exclude the votes of the stock proxies held by Taylor and Van Buren. The stock held by the proxies was, on its face, good, and neither teller had any right to inquire into an unsubstantiated conspiracy theory.23

Arguing against the motion, Priest reiterated that there was a conspiracy: "In this affair you can see the hands of John D. Rockefeller and John Archbold moving as stealthily as a thief in the night." Rockefeller had ceased to be active in the management of Standard

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23Schnurmacher's arguments were similar to those failed arguments before Judge Kinsey regarding the depositions before Commissioner MacDonald. Little reason existed to think these would succeed. Schnurmacher also sought to force the defendants to clarify some of the general statements of their answer. Leo Rassieur (1844-1929), of Schnurmacher and Rassieur, was yet another Prussian-born, St. Louis based lawyer of considerable prominence. He first acquired public attention as an outspoken leader of the pro-Union members of St. Louis's sizable German population in 1861, joined the Union Army as a private that same year, ultimately rising to the rank of major, and held a number of posts within the army. He taught school for two years, before becoming an attorney in 1867, and proceeded to build up what was described as "one of the largest clienteles in the city." As was the case with most of the attorneys in this case, he also held the title of "judge," having served on the probate court from 1895-1899. He was a notable public speaker, and took an active interest in public education. The National Cyclopedia Of American Biography, Vol. IV. (1897), s.v. "Rassieur, Leo." The newspaper source refer to the attorney involved as Theodore Rassieur, but this appears to be a mistake. Leo's father was Theodore Rassieur, and even if he had been an attorney and still alive, it is unlikely that he would have actively practiced law at such an advanced age. Leo had several children, but none named Theodore. While it is possible that there was another Theodore Rassieur who was an attorney in St. Louis in 1912, all of the parties involved tended to hire only the best and most prominent attorneys that they could get, and Leo was the most prominent of the Rassieurs. Who Was Who in America, Vol. I 1897-1942 (1943), s.v. "Rassieur, Leo;" Who's Who in America, 1912-1913 (1912), s.v. "Rassieur, Leo."
Oil many years before, but it was good rhetoric. Priest concluded that for the defendants to have allowed the stock to be voted would have put Standard Oil in control of Waters-Pierce, in violation of federal and Missouri court decrees. The inquiry into the alleged conspiracy should continue.24

That same day, Texas Attorney General Jewel Lightfoot announced that he was making a trip East to investigate "four or five matters of general interest to this State." With the recent developments and accusations in St. Louis, he decided to add that city to his itinerary. John Brady, his ally in the 1907 Waters-Pierce ouster case, now an assistant state attorney general, would accompany him. If evidence turned up that either Standard interests or Waters-Pierce were operating in Texas, Lightfoot would bring civil antitrust suits against the firms and pursue criminal charges against the officers. "Official" sources supposedly had evidence that Standard was operating in Texas, with over a million dollars in property there, and acting through multiple puppets, pseudo-independent firms.

Meanwhile, C.A. Pierce denied that Waters-Pierce was operating in Texas through Pierce-Fordyce. Lightfoot and Brady observed the arguments before Kinsey in the mandamus action, and attended depositions. They were content to observe and quietly consult with attorneys for both sides. Perhaps inspired by Lightfoot and Brady, Wickersham announced a thorough-going investigation of the relations between Jersey Standard and its former subsidiaries, particularly the manipulation of dividends. Wickersham refused to commit himself to any other action, save to commend the Taft Administration's antitrust program and record.25

24_**St. Louis Post-Dispatch,** March 3, 1912; "Motion to Strike," _Missouri v. Johnson_, filed February 27, 1912; "Waters-Pierce Hearing Continued," _QGJ_, March 7, 1912. It seemed unlikely that Kinsey would completely sustain the motion to strike, as it would effectively reverse his previous decision that was less than two weeks old. But what Kinsey could do, and had to think about, was striking particular paragraphs of the defendants' response, and/or requiring them to file an amended answer making some of their allegations more definite and clear.

25_**St. Louis Post-Dispatch,** March 3, 7 1912; _Houston Post_, March 3, 1912; _Galveston Daily News_, March 3, 1912; _The New York Times_, March 4, 6, 7 1912. Missouri and Texas had a history of cooperating in antitrust investigations going back to Herbert Hadley's administration as Missouri Attorney General in 1905, when Lightfoot was investigating Waters-Pierce as a mere Texas Assistant Attorney General. In an era of extremely limited state budgets, before the era of cheap photocopiers and word processors, it made sense for the state attorneys general to share information and resources in any
The arguments on the motion to strike continued on March 9th, with Judson and Schnurmacher squaring off. The courtroom was again full of lawyers for both sides, the press, and spectators. The arguments held no surprises, save for the presence of Lightfoot and Brady. Their arrival fueled speculations, but Lightfoot offered little to the press.26

Despite Wickersham’s threats of renewed investigations and possible federal intervention in the Standard Oil-Waters Pierce litigation made on March 7, the share value of Jersey Standard and other Standard affiliates kept rising sharply. Jersey Standard raised prices of petroleum products, while speculators watched to see if Waters-Pierce would match the increases.27

II. Private Problems, Propaganda, and Public Prosecutors

So far as we have been able to learn no corporation subsidiary to either the Waters-Pierce or the Standard is operating in Texas. If we should find that this were not the case, within twenty-four hours we would have an injunction to stop the business of such a subsidiary company.

Understand the position I am in. Don’t understand that I am hunting trouble, for I am not. I am here as an onlooker. I am going to watch developments, and if anything turns up that I would be interested in, of course, I will act.

Texas Attorney General Jewel P. Lightfoot, March 7, 1912

investigations involving multi-state corporations. Printing costs for briefs, depositions, and transcripts were high, and it was not uncommon to attorneys general to “share” the same printed records, shipping them between several states. For numerous examples of this kind of cooperation, see the following files of the Texas State Archives: RG 302 Box 1984/67-65; RG 302 Box 4-8/386; RG 302 Box 4-8/334; RG 302 Box 4-8/396, which contain opinions and correspondence to and from the Texas Attorney General’s office.

26Galveston Daily News, March 8, 1912; St. Louis Post-Dispatch, March 9, 1912; Houston Post, March 10, 1912; Galveston Daily News, March 10, 1912. It is unclear as to how Lightfoot and Brady were conducting their investigation, as there appear to be no records on this investigation of the Texas Attorney General at the Texas State Archives, nor was the Texas legislative committee investigating the conduct of the Texas Attorney General’s office in 1913 able to find an original of Lightfoot’s report on his investigation. It seems likely that the two Texans were consulting with the Pierce faction and their attorneys to get information on Standard, and possibly with the Standard agents, particularly Adams, to get information on Waters-Pierce.

27"The New York Times, March 8, 1912; St. Louis Post-Dispatch, March 9, 1912. The Oil and Gas Journal regularly reported on the increasing stock values of Jersey Standard and its affiliates, as well as the imputed value of pre-dissolution Jersey Standard stock. For results of the dissolution on Standard, see Hidy and Hidy, Pioneering in Big Business, 708-18; Gibb and Knowlton, The Resurgent Years, 15-42, and Appendix 2; Bringham, Antitrust and the Oil Monopoly, 134-41, 158-94. It had been alleged that Rockefeller and Standard Oil exacerbated the Panic of 1907 in response to ongoing litigation, and federal investigation, as a means of discouraging the state and federal governments from pushing Standard too hard. See Piot, The Anti-Monopoly Persuasion, 132-56 on the pressures on governments not to push antitrust enforcement, but instead turn to regulation. One of the interesting results of break-up of Standard Oil in 1911 was that John D. Rockefeller, Sr. became worth much more as the value of his stocks in the various Standard Oil companies rose greatly in the years immediately following the dissolution.
The affairs of both the Rockefellers and the Pierces were fodder for the press. For example, a *St. Louis Post-Dispatch* article told of the stormy relations between John D. Rockefeller, Sr. and his brother, Frank, who had long been publicly critical of Standard's business methods, perhaps due to his envy of his brother's success and great wealth. As the *St. Louis Post-Dispatch* article noted, Frank Rockefeller had recently been a witness in a suit against John. He admitted bitterly that they had not spoken in a dozen years, and he had no desire to do so. Allegedly the bad blood between the brothers dated to the formation of Standard Oil, when John purportedly forced Frank to put his independent refinery into the Standard group. Frank went into a partnership with James Corrigan, another former independent oil man, in the Franklin Iron Mining Company. Both owed money to John D. Rockefeller, with their shares in Franklin Iron and Corrigan's 2,500 shares in Standard Oil as collateral. In the Panic of 1893, John refused to release the collateral or lend Corrigan more money and forced Corrigan to sell him his Standard Oil stock in February 1895, without knowing its true value.28

Henry Clay Pierce did not fare much better than John D. Rockefeller. Newspapers covered the marital sagas of his family in detail. Three of Pierce's children married against

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28 *St. Louis Post-Dispatch Sunday Magazine*, March 3, 1912; Chernow, *Titan*, 275-81, 393-96; Hidy and Hidy, *Pioneering in Big Business*, 59-61, 67 160-62, 193-95, 231, 583. Frank Rockefeller was a second vice-president of Ohio Standard, and also served as president of the Solar Refining Company for several years following 1886. Despite his claim not to be involved in the oil business since 1897, he remained on the payroll of Jersey Standard at a vice-president's salary, doing nothing, save complaining. Some of his complaining about management and interference was that the company was not as fierce or ruthless as it could have been. The contemporary accounts did not report that Frank Rockefeller was an alcoholic and had a severe gambling problem, nor did the public know of the hundreds of thousands of dollars that John and William Rockefeller had loaned to Frank over the years, seldom repaid, or how they had bailed him out of bankruptcy on several times. William, but principally John, continued to subsidize their brother despite his many public criticisms of Standard Oil and them personally, and his willing testimony before investigatory committees and to Ida Tarbell. As for John forcing Frank to sell his independent refinery to Standard Oil, according to John D. Rockefeller, Frank was one of the Cleveland refiners that he called "blackmailers" who had tried to extort large sums from Standard Oil to buy out their antiquated refineries. Standard Oil did not purchase Frank's company, the Pioneer Oil Works, but gave it a very favorable, one-sided deal. Pioneer Oil Works failed, and Frank was given the post at Ohio Standard, which had been specially created for him in 1886. Despite Frank's claims, John D. Rockefeller had treated Corrigan very well, and had carried his $400,000 loan for over a year after the latter had defaulted and refused to pay interest, before getting him to sell the 2,500 shares of Standard Oil stock at market value.
his wishes between 1908 and 1912, with Roy Pierce marrying his step-sister in the middle of his father's struggle with Standard. 29

While tales of the rich and famous were amusing sideshows, Judge Kinsey deliberated about the Standard motion to strike the portions of Johnson's and Moloney's answer which alleged a Standard Oil conspiracy. The litigation stalled. If Kinsey ruled strongly in favor of the Standard faction, the main defense of the Pierce forces would be seriously damaged if not made entirely untenable. If he simply dismissed the motion, weeks of hearings and investigations would follow throughout the country, though for once not at taxpayer expense.

On March 20, 1912, Kinsey decided: the case would go forward, and the Pierce faction could submit proof that Standard Oil was conspiring to continue the old combination through individual control of the affiliates. Kinsey did strike out several paragraphs of the answer as containing mere conclusions of law, and not alleging facts, but this ruling was small comfort to Standard Oil, as was true of the order requiring the Pierce lawyers to make a more definite statement on Standard's alleged attempts to control Waters-Pierce. 30

29 St. Louis Post-Dispatch, March 14, 1912; St. Louis Post-Dispatch Sunday Magazine, April 21, 1912. Violet Pierce eloped with New York lawyer James Deering in 1908, fleeing from her father's New York mansion on a dark and stormy night while he was away on business. In 1909 Theron Pierce married May Deering, sister of James. Roy Pierce married Betty Chapman, an older, divorced actress with a publicly checkered past in 1910. H.C. Pierce had Roy committed to a sanitarium and eventually got the marriage annulled, with much publicity. Having failed to learn his lesson, Roy eloped with his step-sister, Virginia Burrowes, in March 1912. Clay Arthur Pierce, the oil magnate's eldest son, seems to have avoided the marital problems that plagued his siblings.

30St. Louis Post-Dispatch, March 20, 1912; The New York Times, March 21, 1912; "Minutes of Proceedings," Missouri v. Johnson. It was unlikely that Kinsey could have ruled in favor of the Standard group, given the still strong antitrust sentiment prevalent in the United States, and in Missouri in particular. Local pressure on Judge Kinsey to let the inquiry proceed had to be immense. Standard representatives tried to put a positive spin on Kinsey's ruling, emphasizing that the Pierce faction had to be specific in the allegations in its answer, and not simply make the tired, old general denunciations of Standard Oil that had been made for the previous thirty years. "Standard Gained A Point," OGI, March 28, 1912, 1. To add to Standard's troubles, accusations abounded that it had contributed heavily to either Taft or Roosevelt's presidential campaigns, or possibly both, thereby undoing the efforts of both campaigns to take an antitrust stance. These rumors were denied vociferously by Charles T. White, secretary of Jersey Standard, but to no avail, given Standard's long history of secrecy. "Political Story Denied," OGI, March 28, 1912, 12. Other matters were unsettled in the oil industry, further complicating matters, from a political perspective. Mexican oil production was booming, and flowing into the United States in increasing amounts. Texans in particular complained loudly over this (and had a strong influence in the federal government), and demanded protection for their oil industry from Mexican crude. At the same time,
During the interval until the next round of hearings in St. Louis, Wickerson continued to observe the progress of the mandamus suit and to offer comments on the efficacy of the Sherman Act in both criminal and equitable actions. Hard pressed to cite a success in criminal actions, Wickerson turned to the Standard Oil dissolution and the Waters-Pierce mandamus litigation as proof that monopoly was difficult to maintain without the use of mergers and holding companies. He urged enactment of a federal incorporation statute, federal regulation, and a national law effectively prohibiting holding companies. Resistance to such expansion of federal power successfully exploited state-centered federalism.

On April 8th, lawyers for the Pierce faction complied with Kinsey's order for a more definite statement. Their amended return alleged that the proxies were invalid because they had not been obtained in the manner required by Missouri law and that some companies holding Waters-Pierce stock lacked the legal authority to hold or vote it. For these reasons the tellers refused to allow Van Buren and Taylor to vote proxies. Additionally, the return repeated in detail the familiar allegations: the Standard Oil conspiracy to take control of Waters-Pierce violated the decrees of the Missouri Supreme Court and U.S. Supreme Court, and the sole purpose for which Taylor and Van Buren had procured proxies and was to further Standard Oil combination in a new form.31 Pierce

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31St. Louis Post-Dispatch, April 8, 1912; The New York Times, April 9, 1912; Galveston Daily News, April 9, 1912; "Respondent's Amended Return," Missouri v. Johnson; "In the Courts," OGI, April 4, 1912, 10. Bringhamurt, with the advantage of historical hindsight, disagrees rather strongly with Wickerson's contemporary faith in the efficacy of antitrust enforcement. See Antitrust and the Oil Monopoly, 67-68, 86-88, 102-07, 136-41, 142-98. It is a mark of the strength of state-centered federalism that despite the failure of state corporation law to control large corporations that there was such resistance to a federal incorporation statute, which had been an idea put forth seriously in Theodore Roosevelt's administration. Possibly the successes, of sorts, achieved by Missouri and Texas, through state antitrust law, convinced people that further state law would suffice. The problem with the use of corporation law was the inevitable "race to the bottom" as states competed to become the situs of incorporation by major companies, following the lead of the "traitor state," New Jersey. Unless all states acted together to curb companies through corporate law, it would prove ineffective. Complicating attempts to solve the issue were the changing nature (actual, theoretical, and legal) of the corporation in the late nineteenth and early twentieth centuries, and the problems and opportunities presented by the rise of big business. While
faction's lawyers claimed that relators Mayer, Stewart, and Adams, lacked personal interest in Waters-Pierce or in the litigation: none owned any stock of their own. They were acting solely as agents of the "unlawful combination and conspiracy" composed of Jersey Standard executives, past and present, and "divers other persons whose names are to respondents unknown." They advanced their conspiracy by voting the stock of former subsidiaries, by proxy, electing boards of directors, and taking effective control. Johnson and Moloney had acted properly in refusing to count their votes, or so their attorneys claimed.

Construing Judge Kinsey's order for a more definite statement broadly, Pierce's legal team added allegations. George Mayer had been the manager of Indiana Standard's Kansas City refinery. He quit to become a Waters-Pierce director, allegedly at behest of Indiana Standard executives, as part of a "mere pretense" to let the latter control Waters-Pierce. Stewart was Indiana Standard's legal counsel and had ties to Jersey Standard and to "other interests affiliated and associated with" the two companies, their executives and stockholders. Mayer was a small fish, but Stewart was a whale. According to Judson, Priest, and Fordyce, Adams "is under the complete domination and control of the majority shareholders of the Standard Oil Company of Indiana and that [of] the officers, agents and attorneys of said Standard Oil Company of Indiana and of the Standard Oil Company of New Jersey." To have allowed the relators to be elected as directors would have placed Waters-Pierce under the complete domination of Indiana Standard.32

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32"Respondent's Amended Return," Missouri v. Johnson. Of the three, Stewart would prove to be the most independent of Jersey Standard. See note 10, infra. Prior to Hadley's antitrust suit, Indiana Standard and Waters-Pierce did not compete in Missouri. Instead they had divided the state into a northern half and a southern half, the north including Kansas City, the south St. Louis. Waters-Pierce had the south, Indiana Standard had the north, and Republic Oil, a "blind tiger" operated all over Missouri as pseudo-independent competition to both companies. With the revelation that Republic was a Standard shill, Indiana Standard simply bought nearly all of its property in 1906. Indiana Standard was not in a position to expand into Waters-Pierce territory immediately following the Missouri decision in 1908, because it had been ousted, and continued to operate only because the firm had appealed the case, granting a stay of ouster. Further, Waters-Pierce was still part of the combination, however reluctantly, until the dissolution decree of 1911. If Indiana Standard remained ousted, there would be no large scale competition for Waters-Pierce, in effect granting it a monopoly, as no one else was in a position to move into Pierce's territory and wage war.
The remainder of the return detailed the history of the state and federal antitrust suits in Missouri that had culminated in the ouster of Indiana Standard, and Waters-Pierce and the dissolution decree of the U.S. Supreme Court. The Pierce attorneys noted that Van Buren, Taylor, and Adams figured in those suits as Standard Oil lackeys. They had no real interest in Waters-Pierce save to control it. The Standard executives and companies had superficially complied with the Supreme Court’s dissolution order. What had changed was the means by which combination was achieved—from trust to holding company to individual stock ownership: "Wherefore, respondent says that the jurisdiction and process of this Court should not be given to aid the relators and their confederates in a disguised attempt to evade the laws of the United States and the decrees herein before referred to."33

Then, that same day, in Texas, Lightfoot announced that he would not seek reelection to his post but, with Brady and George Robertson, planned to open a new law firm in Austin. Lightfoot inevitably would then work for corporations he had opposed for so long. What effect it would have on antitrust enforcement in Texas would remain to be seen.34

33"Respondents' Amended Return," Missouri v. Johnson. Standard sought to evade the intent of the decree, but it kept to the letter of the law in doing so. Adding fuel to the fire was the seemingly steady increases in the petroleum market. At the time of the litigation, demand was up, as were prices, and seemingly overall profits for the Standard Oil group of companies. Bringhamurst, Antitrust and the Oil Monopoly, 190-203; Gibb and Knowlton, The Resurgent Years, 32, 38-42, which asserts an overall decline in the industry between 1911 and 1914; Williamson et al., The Age of Energy, 167-207, which shows increases in demand and price in some areas, notably gasoline, while prices for kerosene decreased; "General Advancing Markets," OGI, April 4, 1912, 1. At approximately the same time as this phase of the litigation, the ICC resumed hearings on the oil and natural gas pipelines, with an eye towards further regulation, possibly making all pipelines common carriers or perhaps public utilities. See "Resume Hearing at Washington," OGI, April 11, 1912, 1 and "In the Courts," OGI, April 18, 1912, 1.

34Galveston Daily News, April 9, 1912; Galveston Daily News, April 20, 1912. Brady and Robertson were state assistant attorneys general. Lightfoot explained that his primary reason for not seeking reelection was financial. The salary of the Texas Attorney General was too low. This was a familiar problem for Texas officials, and in the case of the attorney general’s office, many went into private practice assisting their old foes. Examples of this include James Hogg, who became an oil man, Jewel Lightfoot and John Brady, who became corporation lawyers, Clyde Sweeton, who became a partner in Vinson & Elkins, Dan Moody and Everett Looney, both of whom routinely defended the oil companies that they had prosecuted years earlier. See Chapter 5, note 26 and Keller, Affairs of State, 289-370; A "disagreeable cloud of suspicion" would cling to Jewel Lightfoot, who became the object of a legislative inquiry in 1913. See Chapter 7 and Senate Journal, Regular Session of the 33rd Legislature (1913) 107-09, 262-74. Lightfoot
In St. Louis, Van Buren's and Taylor's depositions shed some light on the events preceding the fateful stockholders' meeting and on Van Buren's previous connection with Waters-Pierce. In 1901, at the request of his father-in-law, John D. Archbold, Van Buren acquired a majority interest in Waters-Pierce, paying $4,100,000 for the stock. Van Burn obtained $4,000,000 of that sum by giving a note payable to Charles M. Pratt, a director of Jersey Standard. An unwritten understanding existed that the note would be paid out of Waters-Pierce dividends. The entire deal had been arranged at Standard Oil headquarters, and he knew he was acting for Standard Oil. Van Buren transferred the stock to Standard in blank in 1907 and got back his note to Pratt. In 1912, Van Buren held one share of Waters-Pierce stock that he had obtained in 1906 in order to be a director. He stated that he had paid virtually no attention to the company, only once or twice discussing it with Archbold.35

In January 1912, Van Buren was vacationing in Puerto Rico when he received a cable from the West India Oil Company, a concern with which he had no connection. It notified him to return to New York by early February in order to handle some "St. Louis business," and Van Buren understood that he would once more be enmeshed in Waters-Pierce's affairs. In New York, lawyer Walter Taylor, partner in a firm closely associated with Standard, informed Van Buren that Archbold, now president of Jersey Standard, had ordered the cable sent to Van Buren. Van Buren did not actively solicit proxies; instead Taylor gave him a stack of proxy forms made out to the former, and informed him how he should cast his votes. The sarcastic Priest noted that Van Buren had never shown any

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35St. Louis Post-Dispatch, April 18, 1912; The New York Times, May 26, 1912; "In the Courts," O&G, April 18, 1912, 10. Van Buren apparently transferred the stock in blank, and brought the certificates to Standard headquarters, where Pratt took custody of them. Van Buren's earlier role in the affairs of Waters-Pierce had been discussed in the 1907 Texas ouster suit, but neither he nor John Archbold had been witnesses in that case, and the details of the transactions made at that time were speculation, though not far off the mark. The whole Van Buren affair shows the absurd attempts at secrecy and misdirection that Standard Oil had engaged in the pre-dissolution days. In this case, it fooled no one who could do even the barest bit of investigation. Unlike the relatives of a number of other Standard executives, apparently Van Buren did not hold any significant office in Jersey Standard, or Socony.
interest in the management of Waters-Pierce, had never attended a board meeting in the years that he had been a director who, technically held a majority of the stock in his name, and had come to St. Louis at the behest of his father-in-law to vote proxies he had not solicited for people that he had not met. Van Buren could do little more than reply, "I should say that was the situation." 36

Taylor's deposition was equally illuminating. His law firm handled much of Standard Oil's legal affairs. He had helped to defend Standard Oil unsuccessfully in the federal antitrust suit that had ended in the dissolution of the holding company and had twice been a Waters-Pierce director. He admitted to having never attended a Waters-Pierce board meeting. He had obtained his share of Waters-Pierce stock from Wesley H. Tilford, Jersey Standard director and executive but gave an option on it to McNall of H.M. Tilford's office. He had given up the share after his term was over but got another share when he was reelected a few years later from Tinsley, assistant comptroller of Jersey Standard. Taylor surrendered it to Standard when his year was up. In 1912, Taylor stated, Charles T. White, secretary of Jersey Standard, had asked him to serve as a proxy-holder and to solicit other proxies from stockholders. At a meeting at White's New York office, he, Taylor, Stewart, and Daniel N. Kirby decided to elect Stewart, Mayer, and Adams as Waters-Pierce directors. Taylor had not needed to work hard at obtaining proxies; they had fallen into his lap. The St. Louis depositions terminated with Taylor. 37

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36 St. Louis Post-Dispatch, April 18, 1912; The New York Times, May 26, 1912. The public revelation of this kind of behavior merely confirmed the impression that Standard Oil had always been the controlling party in Waters-Pierce and other affiliates, despite its attempts at legal disguise and distinctions. These pieces of information also made it much more difficult for Jersey Standard, Socony and their allies to claim convincingly that Magnolia Petroleum was truly independent of the Standard combination, merely because individual directors of Standard held the controlling interest in Magnolia stock. Hidy and Hidy, Pioneering in Big Business, 607-18; Gibb and Knowlton, The Resurgent Years, 15-23; Wallace, Nine Lives, 12-42 (Wallace was an attorney for Magnolia and Socony, and his account of events is noticeably biased). Contrast Wallace to Bringhurst, Antitrust and the Oil Monopoly, 190-91.

37 St. Louis Post-Dispatch, April 19, 1912; The New York Times, May 26, 1912; "In the Courts," OGI, May 2, 1912, 4. Taylor, like Van Buren, had also managed to elude the process server in the 1907 Texas ouster suit. Though Stewart had been in St. Louis ready to testify, Priest claimed he could not depose him, due to Priest's appearance in Kinsey's court April 20th on the mandamus action, and more importantly, he had a golf date. It is surprising that the Pierce lawyers did not depose Stewart when they had the opportunity at this time. Given the high caliber of lawyers on both sides, any of those working for Pierce could have either deposed Stewart, or argued the mandamus action, assuming that Priest could not
The St. Louis hearings closed on April 19, 1912. Waters-Pierce officials announced that they were heading to New York to compel the deposition of every major Standard official, from John D. Rockefeller, Sr. to John D. Archbold, and every significant stockholder of Standard Oil securities at hearings in New York, Chicago, Philadelphia, and Pittsburgh to prove his contention that the Standard Oil dissolution was a sham. Priest asserted that the orders of the Supreme Court and of several states had been defied and that Jersey Standard still controlled all its former subsidiaries, save Waters-Pierce, through "dummy directors" and "dummy stockholders." 38

To head its New York investigation, Waters-Pierce retained one of the country's foremost corporate lawyers, Samuel Untermyer, who was familiar with Standard's operations. H.C. Pierce circularized his stockholders and the press, with correspondence between himself and H.M. Tilford, to show the severity of the rift between Waters-Pierce and Standard. Pierce also condemned C.M. Adams, the former secretary/treasurer as a traitorous spy who had regularly leaked secret reports to Standard, while professing loyalty to Pierce. He denounced Standard Oil's alleged attempts to undermine Waters-Pierce by using Louisiana Standard to duplicate Waters-Pierce facilities in its area and selling petroleum products to that affiliate more cheaply than it did to Waters-Pierce. The circular closed with a financial report, which showed the vast Waters-Pierce expenditures for antitrust litigation, which it blamed on Standard Oil. Standard Oil officials busily issued a denial that the increased costs of petroleum products were a response to antitrust suits and to the dissolution, claiming that the increases were the result of natural business conditions.

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have had that rescheduled. Possibly they did not want to depose Stewart any further this early in the proceedings, as he was a very capable attorney who was also quite knowledgeable about the oil business.

38 The New York Times, April 20, 1912. For once, Waters-Pierce was in a favorable position to use the press and public relations to its advantage. This struggle did not take place in isolation. The pipeline hearings in Washington, D.C. were continuing. Debates raged over to open the Indian lands in Oklahoma to increased oil exploration and production, an issue that had been ongoing for some time, and would continue for years even after Oklahoma became a state. The Secretary of the Interior at that time in April 1912, was against further drilling on Indian lands, citing already problems of overproduction of oil, increased supply, and the need to maintain the price of crude. OGI, April 25, 1912, 3.
Cynics noted that since the dissolution the wholesale price of gasoline had risen thirty percent, and the value of Standard stocks had increased greatly in value.39

Meanwhile, in St. Louis matters stalled until Judge Kinsey ruled on Judson's motion to strike certain portions of Waters-Pierce's amended answer, which they had filed on April 12, 1912. Unoriginal, this motion repeated that the allegations and conjectures of a Standard Oil conspiracy were merely that, and not relevant to the issues of the case, and certainly not a defense. Lightfoot delivered a mixed blessing to Waters-Pierce when, on May 11, 1912, he released the results of his investigation into the affairs of Waters-Pierce and Standard in Texas. Lightfoot gave both the Pierce-Fordyne Oil Association and the Magnolia Petroleum Company clean bills of legal health. Both had cooperated fully in his investigation, giving his office complete access to records and transactions. Even adding the testimony from the hearings in St. Louis, he could get no evidence of wrongdoing. Despite the fact that the owners of the two firms included individuals involved in trust activities in the past, he found nothing that would "justify or support the sensational reports sent out by newspaper correspondents in St. Louis." Texas was free and fair to all businessmen. As Lightfoot put it,

39The New York Times, April 28, 1912. Samuel Untermyer (1858-1940) was a prominent Jewish lawyer, born in Virginia, who practiced law in New York. Untermyer formed the firm of Guggenheim & Untermyer with his brother Isaac, and his half-brother Randolph Guggenheim in 1878, with his younger brother Maurice Untermyer joining later. He quickly built a solid reputation, and by age twenty-four he was representing a number of prominent business interests. His practice was wide ranging, and his legal activities "covered every phase of corporate, civil, criminal and international law." In all of these areas he excelled and handled headline creating cases. In his corporate practice he frequently represented the interests of minority shareholders, his involvement in the Waters-Pierce/Standard Oil case perhaps being his most prominent work in that area. Seemingly he disliked monopolies, and several times successfully sued the Associated Press, and in 1911 delivered a speech against what he called the Money Trust. Accordingly he served as counsel for the committee in the Pujo Money Trust Investigation. He was also active in Democratic politics and served the U.S. government in several international matters. For the full scope of his legal and political career, see The National Cyclopedia of American Biography, (1927) s.v. "Untermyer, Samuel, and Who Was Who, Vol. 1 (1942), s.v. "Untermyer, Samuel." Regarding other matters, see The New York Times, April 30, 1912; The New York Times, May 3, 1912; "Waters-Pierce Report for 1911," OGI, May 9, 1912 4. Bringhamurst, Antitrust and the Oil Monopoly, 180-92; Gibb and Knowlton, The Resurgent Years, 15-42. Previously Waters-Pierce had tried to retain Frank B. Kellogg, who had led the federal suit against Standard Oil only a few years earlier. Kellogg had declined the offer, purportedly on the advice of Attorney General Wickersham, whose agents were following the development of the Waters-Pierce investigation.
There is no law in this State which prohibits any individual or partnership from doing an oil business, notwithstanding the fact the individuals may have been former stockholders of an evicted corporation. Henry Clay Pierce, John D. Archbold, H.C. Folger or John D. Rockefeller, or each or all of them might move to Texas tomorrow and erect an oil station in every county if they chose to do so, and there is nothing in our laws to prohibit it.

Despite this certification of lawfulness, Lightfoot warned that the Texas Attorney General's Department would remain ready to act promptly if Magnolia or Pierce-Fordyce got out of line. Taking pride in the achievements of his office, Lightfoot pointed out the success of the Texas antitrust laws, noting that,

Instead of one company [Waters-Pierce] doing the marketing business in oil in this state, as was the case a few years ago, four large companies and a number of small ones are now engaged in that business. Doubtless others will spring up, and Texas now enjoys more competition in the sale of oil than any other state in the union.

Doubt would eventually be cast on Lightfoot's verdict, and he himself would be investigated by the Texas Legislature. Other developments that week were less positive for Standard Oil. C.A. Pierce released the Waters-Pierce fiscal report for 1911. It stressed Waters-Pierce's tremendous litigation costs in recent years and the consequent decreased profits, implicitly attributed to the firm's association with Standard Oil. Waters-Pierce was the first Standard affiliate ever to release its fiscal reports. The troublesome, frequently interrupted, Interstate Commerce Commission pipeline hearings had resumed on May 8, 1912, with briefs by Standard Oil's foes, generating more negative publicity for Standard Oil.40

40Galveston Daily News, May 12, 1912; The New York Times, May 12, 1912; "Are Not "Evil Concerns,"" QGI, May 16, 1912, 8; "Waters-Pierce Report for 1911," QGI, May 9, 1912, 4; "Adjourned Pipeline Hearing is On," QGI, May 9, 1912, 2-3. No official copy of this release, or of this investigation appears to be in the Texas Attorney General's records. Within one year of the press release, the Texas Legislature could not find the original in the Texas Attorney General's records, and had to rely on the newspaper account. See Senate Journal, Regular Session of the 33rd Legislature (1913) 107-09, 262-74. Whether or not Lightfoot had done a thorough investigation, or was deliberately failing to discharge the duties of his office are open to speculation. After he left office and opened a private practice in Austin with John Brady, his co-investigator, he promptly handled legal matters for a number of corporate clients, some of which had been involved in litigation or investigated by the Texas Attorney General's office during Lightfoot's work there. Lightfoot's contentions, at least in some respects, were not wrong. The discovery of major oil pools in Texas and the rapid growth of The Texas Company and Gulf, in addition to Pierce-Fordyce and Magnolia, resulted in a good deal of competition in the Lone Star State. This did not mean, however, that there were not antitrust violations occurring, or anti-competitive efforts were not made. Pratt, "The Petroleum Industry in Transition," 40 Journal of Economic History, (1970) 815-37, and Pratt
Kinsey handed down his ruling on the motion to strike on May 13, 1912. He sustained several of the relators assignments but again overruled the critical portion of the motion, holding in effect that it was a competent defense for the Pierce faction, technically defendants Johnson and Moloney, to show that the Standard executives were trying to perpetuate the combination in a new form. Thereafter, Kinsey issued dedimi (commissions from courts to take testimony) to the courts of New York to take depositions for the defendants.

Standard executives were not about to give up their effort to control Waters-Pierce. On May 21, 1912, H.M. Tilford filed suit in the federal district court in St. Louis naming H.C. Pierce, C.A. Pierce, Finlay, Ackert, George T. Priest, and the Waters-Pierce Oil Company as defendants. Tilford asked the court to oust all of the individual defendants from their positions in Waters-Pierce and to enjoin them from exercising any of the functions of officers and directors of the company, because the defendants had been acting unlawfully, without authority since February 15, 1912, and had mismanaged the company, wasted assets, and refused to give an accounting or financial statements to the stockholders. Judge Dyer granted a temporary injunction restraining Pierce, the other defendants, and Waters-Pierce executives from receiving any money from the firm, from transferring any property to members of the Pierce family or other defendants, and from making any new contracts for or with Waters-Pierce.41

and Steiner, "An Intent to Terrify," 29 Washburn Law Journal 270 (1990). Standard Oil companies had been doing their best to avoid the common carrier law by any legal means possible, and some of dubious legality. These actions stood in contrast to The Texas Company and Gulf, both of which held most of their pipelines out as common carriers.

41"Court Memo, May 13, 1912," Missouri v. Johnson; St. Louis Post-Dispatch, May 13, 22 1912; The New York Times, May 14, 22 1912; St. Louis Post-Dispatch, May 22, 1912; "In the Courts," OQI, May 23, 1912. 4. Kinsey ordered dedimi issued on May 14 and May 15, 1912 to the State of New York to allow defendants to take depositions, then vacated the order for the second set of dedimi on May 21, 1912, which was also the date that the plaintiffs filed their answer to the respondents' amended return to the alternative writ of mandamus. Again there were no major surprises in the answer. See "Minutes of Proceedings" and "Plaintiff's Answer to Amended Return," Missouri v. Johnson. Having failed to get what it wanted in state court, the Standard executives opted for a federal court suit on diversity grounds. There was, however, little reason to think that the federal district court, located in St. Louis, which was the same district court from which the Standard Oil dissolution had issued in 1909, would be favorably inclined towards Standard stockholders. As The New York Times article of May 22, 1912 put it, that suit was, "one of many recent efforts of the Standard Oil Company to wrest control of the St. Louis corporation from H.
Clay Pierce, who thus far has successfully checkmated every move of the Rockefeller interests." It was a strange world indeed in which a New York newspaper praised Henry Clay Pierce. In the meantime, Socony declared yet another dividend, keeping up with the previous rate of dividends for pre-dissolution Jersey Standard stock. "Trade News," OGI, May 23, 1912, 4. Oil men continued to fret over the ICC's impending decision regarding oil and natural gas pipelines, though more so over a Supreme Court decision that made much of the Indian lands in Oklahoma non-taxable, thereby forcing the State to seek other revenue, in particular pursuing what were known in the oil trade as the "tax ferret" cases, against which the Oil and Gas Journal expounded on a frequent basis. In the meantime, exports of crude and refined products for since April 1911 had increased noticeably over the previous year, as had profits. See "Pipeline Hearing has Concluded," OGI, May 16, 1912, 10; "Representing the Producers," "Oil Men are Fearful," and "More Money in Oil," OGI, May 23, 1912, 1. George T. Priest was Henry S. Priest's brother and law partner, who mainly handled criminal law matters. Regarding the Tilford suit, see St. Louis Post-Dispatch, June 3, 4 1912.
CHAPTER 7: THE LIBERATION OF WATERS-PIERCE

He could always read my mind and guess what the next six or seven questions were going to be,...I would start with questions intended to lay a foundation for questions far in the future. But I would always see a peculiar light in his eyes which showed that he divined my intention. I have never known a witness who equaled him in this clairvoyant power.

Samuel Untermyer, commenting on John D. Rockefeller as a witness

I. New York, New York, A Wonderful Town

Pierce’s attorneys struck back quickly at Standard Oil on multiple fronts. On May 24th and 25th, 1912, process servers delivered subpoenas to over twenty Standard executives, including a number who had a reputation for being difficult to find whenever litigation was involved. Even John D. Rockefeller, Sr., reclusive and publicity shy, was served.¹

¹The New York Times, May 25, 26 1912; St. Louis Post-Dispatch, May 25, 1912. Several of the targets of Pierce’s process servers also received subpoenas duces tecum, which required them to produce corporate documents, in particular the minutes of the last few meetings of several former Standard subsidiaries, along with the proxy records from the last elections. As The New York Times noted, the obvious purpose in these documentary requests was to show that the same people showed up at the annual meetings of several Standard Oil companies, bearing the proxies of the same stockholders who had controlled the old Standard Oil. Collectively those proxies would permit the bearers to elect a majority of the directors of each company, and effectively control the selection of all the corporate officers. The Standard Oil officials served were: John D. Rockefeller, who was retired; John D. Archbold, James A. Moffett, Walter C. Teagle, Charles T. White, respectively president, vice-president, vice-president, and secretary of Jersey Standard; Allen Cotton Bedford, vice-president and treasurer of Jersey Standard; Charles M. Pratt, still a director of Jersey Standard; Henry M. Tilford, who had been a director of Jersey Standard until the dissolution, and was still a director and officer in several former subsidiaries, and a stockholder of Waters-Pierce; Mortimer F. Elliott, general counsel for Jersey Standard; H.C. Folger, president of Socony, and closely involved with Magnolia; Richard P. Tinsley, treasurer of Socony; R.C. Veit, secretary of Socony; Charles M. Higgins and Herbert L. Pratt, both officers an directors of Socony; Robert W. Stewart, counsel for Indiana Standard; George Chesebrough, secretary of the Northern Pipe Line Company, the Buckeye Pipe Line Company, the Indiana Pipe Line Company, and the New York Transit Company; Edward T. Bedford, president of the Colonial Oil Company; F. E. Morrell, secretary and treasurer of the Colonial Oil Company; William M. Hutchinson, secretary and treasurer of the Union Tank Line Company; Samuel A. Drew, secretary and treasurer of the Chesebrough Manufacturing Company, Consolidated; John T. Lee, secretary and treasurer of Swan & Finch Company; Albert C. Weed, secretary and treasurer of Borne, Scrymser Company; Calvin N. Payne, who had been a director in multiple Standard pipe line companies, and actively involved with Magnolia and its predecessors; and W. J. Hillands, who formerly had been with Jersey Standard. See Hidy and Hidy, Pioneer in Big Business, tables at 51, 60, 224, 229, 314, which provides lists of officers and directors of a number of the officials connected with Standard Oil in the pre-dissolution era, and Gibb and Knowlton, The Resurgent Years, 687-89 for officers and directors of Jersey Standard, 1911-1927. Henry S. Priest, one of Pierce’s principal attorneys, was somewhat distracted at this time. On May 23, 1912 while vacationing in French Lick Springs, Indiana he formally announced that his engagement to Mabel Currie Hill, a divorcee thirty years his junior. Priest seems to have left most of the litigation efforts at this time to Pierce’s other capable counsel in New York. See St. Louis Post-
The New York hearings began on Monday morning, May 27, 1912 before Special Commissioner Abraham L. Jacobs. Extra space was needed to accommodate the three lawyers for Pierce interests, the dozen attorneys for the Standard faction, witnesses, and journalists.2

The first witness, Charles T. White, secretary of Jersey Standard, produced the minutes of the Standard directors meetings from 1882 until May 27, 1912. All fit in one slender book. Only four directors' meetings and one shareholders' meeting were held since the dissolution in December 1911. Little in the minutes appeared on that subject. At the latest meeting, the directors had ordered the pro rata distribution of shares of the subsidiaries of Jersey Standard to all who held shares in the holding company. Untermeyer asked for Executive Committee records. White responded that there had never been such a committee. Directors of the old Standard Oil had met nearly every day. They included John D. Archbold, James A Moffett, Sr., vice-president, Allen Cotton Bedford, Edward T. Bedford, Walter C. Teagle, and, sometimes, Charles M. Pratt. No minutes were kept of those meetings. Post-dissolution Jersey Standard had reduced the board from fifteen to nine. Of the six who resigned, three became directors of former Standard subsidiaries and still maintained offices at 26 Broadway. At Untermeyer's prodding, White stated that the same group of directors still met every day in Room 1500. Nothing in the corporate records of Jersey Standard reflected efforts to carry out the Supreme Court's dissolution decree.3

Dispatch, May 20, 23, 24, 26, 1912. The St. Louis newspapers seem to have been devoting more coverage to Priest's engagement and marriage than they were to the fight between Waters-Pierce and Standard Oil. 
2The New York Times, May 28, 1912. Judge Kinsey had appointed Jacobs as a Special, or Court, Commissioner to hear testimony in the case on May 14, 1912. As a Commissioner, Jacobs had limited judicial authority. To get his orders enforced he, or Pierce's attorneys, had to file contempt of court charges with the New York Supreme Court, which is New York's trial level court. The New York Supreme Court was supposed to enforce Jacobs' authority as a matter of comity with respect to the courts of Missouri and Judge Kinsey. Jacobs also happened to be a friend of Untermeyer, and held the hearings in the latter's spacious Wall Street office. See "Minutes of Proceedings," Missouri v. Johnson. Archbold himself did not appear before Jacobs on May 27th, but presumably he was well represented by counsel. See St. Louis Post-Dispatch, May 27, 1912.
Untermyer asked about the Waters-Pierce proxies. White had solicited them from large Standard shareholders and those who held shares of Waters-Pierce stock at Moffett's order. The first proxies were left blank as White did not then know the desired candidates. Later, Robert Stewart and Daniel N. Kirby, both Standard attorneys, told him whom to list as candidates on the proxy forms. No stockholder told him how to vote the proxies, and he not tell them for whom he intended to vote. White obtained Rockefeller's proxies for twenty-five percent of the Waters-Pierce stock by leaving the blank forms with the latter's secretary, who returned them the next day, signed. Rockefeller seemed to expect them to be blank. Feigning incredulity, Untermyer asked:

Untermyer: Didn't you think so large a stockholder would want to know in whose interest his holdings was to be voted?
White: I gave no thought to the matter. The proxy was signed and returned to me.

Asked about the request to solicit proxies, White cautiously admitted that Moffett "may have said John D. Rockefeller wanted them." Throughout the course of the interrogation, Austen Fox, a Standard attorney, futilely objected, and/or instructed White not to answer.4

That same day the Pierce attorneys in St. Louis delivered a separate blow to the Standard faction. Under Priest's and Johnson's leadership, they filed a motion to quash the temporary injunction that Tilford had obtained against H.C Pierce and the other directors and officers, asserting that the allegations in Tilford's petition could not be proved. Argument on the motion was to begin the next day, May 28, 1912. Meanwhile, editorialists argued against the use of equity decrees to deal with trusts, citing the apparent ineffectiveness of the Standard dissolution and the limited effectiveness of civil remedies,

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nine directors of Jersey Standard as of 1912 were either large stockholders or prominent Standard executives. Though a technical dissolution of Standard Oil had taken place by the order distributing shares in the Standard subsidiaries to the stockholders of the former holding company, the Standard Oil of New Jersey stock was still being traded in the stock market.

4 St. Louis Post-Dispatch, May 27, 1912; The New York Times, May 28, 1912. White persistently claimed that he knew nothing about the workings of Standard, or about the major executives despite his position and his many years with Jersey Standard. The first generation of leaders of Standard Oil had an obsession with secrecy that often proved counter-productive. Business actions taken by Standard Oil were automatically viewed with suspicion by government, the press, and the people, even if the action would have been ignored otherwise.
which could be circumvented. Their proposed solution was the criminal sanction against executives as "...the only sure way to reach the trust is to reach the men who operate it; that responsibility is individual and guilt is personal." 5

White testified briefly on the 28th and produced documents. His testimony reflected his willful ignorance about the purposes of the proxy solicitation and his voting instructions. If what he said was true, Standard executives exhibited an incredible sense of trust in filling out blank proxies. 6

John D. Rockefeller, Sr. was the star witness for May 28, 1912. Seventy-three years old, he had ceased actively to preside over Standard Oil more than a decade prior to stepping down in favor of Archbold in 1911. While appearing mild, and cooperative, he persistently evaded Untermeyer's questions. George W. Murray, Rockefeller's personal attorney, frequently objected, especially when Rockefeller hesitated to answer. Murray's behavior prompted Untermeyer to call him "pestiferous." Asked about the proxies that he had signed in blank, Rockefeller denied knowing of any controversy with Waters-Pierce, a statement conflicting somewhat with White's testimony. Rockefeller explained that he had signed the proxies because they came from those in charge of the reorganization. Whenever Untermeyer asked him to state the reorganizers' names, Rockefeller became maddeningly vague, as if he knew nothing about what went on at his old firm:

Untermeyer: From whom did the proxy come?
Rockefeller: From the reorganizers carrying out the mandate of the Supreme Court.
Untermeyer: Who were the reorganizers from who you supposed the proxy came?
Rockefeller: That I cannot tell you.

5The New York Times, May 28, 1912; St. Louis Post-Dispatch, Many 27, 1912. On a lighter note, Betty Chapman, whose marriage to Roy Pierce in 1910 had been dissolved after great effort and expense (she alleged received a $300,000.00 settlement) by H. Clay Pierce, announced her impending marriage to yet another oil man, Frank C. Henderson, who was active in Oklahoma and Texas, and was a rival of Waters-Pierce. St. Louis Post-Dispatch, May 28, 29, 1912.

6The New York Times, May 29, 1912. These assertions of ignorance and blind trust on the part of the executives who had built the leading corporation in the United States did not help their cause. It is much more likely that such suspect declarations made the rest of their testimony less credible rather than more credible. See Gibb and Knowlton, The Resurgent Years, 19-22, on the damage done to the public's perception and limited trust in Jersey Standard and its affiliates as a result of the struggle with Waters-Pierce.
Untermeyer: Why not?
Rockefeller: Because I do not know all the people concerned in that reorganization.
Untermeyer: But please tell us those whom you do know as having been concerned in that reorganization from who you assumed that proxy came.
Rockefeller: I assume that the people being most familiar with the business would be the natural ones to carry out the mandate of the court.
Untermeyer: Who have you in mind when you speak of these reorganizing people? I want you to designate them—have you designated them?
Rockefeller: I have in mind these leading people in the oil—former oil connections.
Untermeyer: Whom do you have in mind?
Rockefeller: I have not any man. I have not any one in mind particularly.\(^7\)

Discussing the Supreme Court decree and reorganization, Rockefeller recalled that the decree had stated that seven men, including himself, had controlled Jersey Standard and its subsidiaries. He freely admitted the obvious, that the seven largest stockholders would control the former subsidiaries after the dissolution, as they still controlled the same percentage of shares in the separate companies as they had in the pre-dissolution holding company. Untermeyer gave up in exasperation and dismissed Rockefeller, who patted him on the shoulder as if the attorney were a bewildered youth. The hearings adjourned shortly thereafter until June 17th.\(^8\)

Back in St. Louis, Priest observed about Rockefeller’s testimony that its numerous evasions and vagueness were "probably as effective in revealing to the general public the maintenance of the trust as any of the admissions which were so unwillingly dragged from him." Priest pointed out that the multiple lawsuits in St. Louis were by individuals tied to

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\(^7\) *St. Louis Post-Dispatch*, May 29, 1912; *The New York Times*, May 29, 1912. While Rockefeller had not actively managed Standard Oil for over a decade, he certainly was not ignorant of major business decisions made by executives that he had known for years. This exchange was typical of many between Untermeyer and Rockefeller. Gibb and Knowlton, *The Resurgent Years*, 36-38.

\(^8\) *St. Louis Post-Dispatch*, May 29, 1912; *The New York Times*, May 29, 1912. Again, Rockefeller was being uncooperative for the sake of being uncooperative. It was not a great secret that the reorganizers of the Standard Oil companies were the executives and directors who had been in charge of the holding company. Rockefeller’s memory loss did not go unnoticed. His actions on the stand were lampooned in editorial cartoons, and criticized in editorials. See "When Rockefeller Testified," editorial cartoon, and an editorial, *St. Louis Post-Dispatch*, May 29, 1912. The editorial was a strong denunciation of Rockefeller and his disdain for the law by examining his behavior on the witness stand. As the editorial noted, "The ordinary witness raises his hand of his own accord, or is shortly made to. The ordinary man stands in proper awe of justice and respects its forms as well as its meaning. But it is justice that seems to stand in awe of John D. Rockefeller." The editorial concluded with another call for criminal sanctions, making corporate guilt more personal.
Standard Oil which revealed Standard’s collusive efforts to evade state and federal court
decrees and drag Waters-Pierce back into the fold.

Priest also explained why Tilford had sought an injunction to restrain Waters-
Pierce’s directors and officers. The company was making itself truly independent of
Standard Oil. Waters-Pierce had been a marketing concern almost exclusively buying its
products from Standard companies. Then in 1912, Waters-Pierce faction started work on
building refineries and obtaining independent sources of crude oil. Like other successful
independent oil firms, Waters-Pierce was modeling itself on Standard Oil and becoming a
semi-integrated oil company, which helped to explain why there were no dividends. The
litigation that Standard had forced on Waters-Pierce would boomerang, he predicted, and
"result in a complete revelation of the existence of the old trust and an utter defiance of the
decree of dissolution." 9

External events also demanded the attention of the petroleum industry. The ICC
had recently concluded protracted hearings on interstate pipelines, and in mid-June 1912,
it held that pipelines built to transport oil, and which did an interstate business, were
common carriers subject to all pertinent rules and regulations governing common carriers.
This included pipeline companies that transported only their own oil and had not otherwise
acted as common carriers. The ICC also ordered that thirteen of the largest pipeline

executives on public relations and perceptions was not lost on the new leaders of Standard Oil. Allen
Cotton Bedford, who was president of Jersey Standard from December 22, 1916 until his death on
November 15, 1917, partially abandoned the old policy of secrecy in future dealings with the press and the
government. It would take Walter Teagle, who became president of Jersey Standard in 1917, and others of
the next generation of leaders, to adopt a true “open door” policy. Teagle’s ready accessibility to the press
and government investigators did much to improve the public relations and public perceptions of Jersey
Standard. The days of secret schemes and devious devices was largely dead by the 1920s. The Standard Oil
companies would not avoid antitrust litigation thereafter, but it would be for business decisions that were
openly made. See Wall and Gibb, Teagle of Jersey Standard, 124-32; Gibb and Knowlton, The Resurgent
Years, 249-59. On a positive note for Pierce, the Appellate Division of the Supreme Court of New York
more or less reversed its previous ruling in Alice Rycroft’s suit against H.C. Pierce for over $170,000 in
damages for his alleged conversion of the stocks, bonds, and proceeds from money that she had given Pierce
to invest for her years earlier. Rycroft had won a default judgment, as Pierce had not shown up for the trial,
claiming illness, which the trial court had disbelieved. The Appellate Division of the Supreme Court of
New York decided to permit Pierce to apply to reopen the default judgment, and provide better reasons for
his nonappearance at the trial. See St. Louis Post-Dispatch, May 31, 1912.
companies file rate schedules by September 1, and otherwise comply with the Interstate Commerce Act. Nearly all of the thirteen were Standard affiliates to a greater or lesser degree. The decision surprised even proponents of making pipelines common carriers. Pipeline companies against it were shocked as they had thought that they had a strong case for their position. Standard Oil companies now had a new, very important legal battle to wage. Control over pipelines had been an important part of Standard’s dominance of the oil industry. To add insult to injury, the Missouri Supreme Court decided to hear arguments on a Waters-Pierce motion opposing any modification of the 1908 ouster decree against Indiana Standard.10

10 In The Matter of Pipe Lines, 24 ICC 1 (1912); St. Louis Post-Dispatch, June 13, 1912; "Pipe Lines Common Carriers," O&G, June 13, 1912, 12; "Common Carrier Pipe Lines," O&G, June 20, 1912, 1; Charles E. Kern, "Decision in the Pipe Line Case," O&G, June 20, 1912, 2-4. The pipelines ordered to file rate schedules with the ICC as opposed being treated as common carriers as they transported only their own products, or that of one company, or claimed not to be interstate in nature. They did not want to be forced to transport the oil of rivals. Standard Oil had avoided previous ICC orders to act as a common carrier under the amendments to the Hepburn Act by several expedients, such as having their rates match the rail rates, requiring large minimum tenders of crude oil before piping it, and reorganizing their pipeline holdings and companies, so that the pipelines were all separated from one another by state borders, and therefore not "interstate" companies. Some actions, such as requiring large minimum tenders, did make sound business sense. Johnson, Petroleum Pipelines, 47-53, 72-81; George Ward Stocking, The Oil Industry and the Competitive System: A Study in Waste (1925), 24-27, 96-100; U.S. Bureau of Corporations, Report on the Petroleum Industry, Vol. I, 26-36. The 1912 ICC order was carefully drafted so not to leave any loopholes. It did not matter if the pipeline company transported only its own oil, or if the right-of-way of the pipeline had been privately acquired, nor if the subterfuge of separate corporations in each state owned the segments of the pipeline within their respective states, or if title to the petroleum products were transferred as they entered each state. The thirteen companies ordered to file rates with the ICC were: the Oklahoma Pipe Line Company, Prairie Oil and Gas Company, Standard of Louisiana, Ohio Oil Company, Jersey Standard, Producers and Refiners Oil Company, Ltd. (all Standard affiliates, though Jersey Standard had held only twelve percent of the stock of Producers and Refiners Oil Company), United States Pipe Line Company (Standard held 3.4 percent of their stock), Tidewater Pipe Line Company (Jersey Standard had held less than one percent of its stock), Pure Oil Company, Pure Oil Pipe Line Company, National Pipe Line Company, the Uncle Sam Oil Company, and the Uncle Sam Oil Company of Kansas. Making pipelines common carriers also gave producers more freedom of choice, in theory, in selling their product, whereas before they would have to take whatever price the pipelines offered, unless they had storage capacity. Several of the emerging competitors of Standard in the Southwest already operated at least some of their pipelines as common carriers, including The Texas Company and Gulf Pipeline Company, which The Oil and Gas Journal had noted with approval. Those opposing the status of interstate pipelines as common carriers saw the order, and the Interstate Commerce Act, as grossly unconstitutional, a violation of the sacred property rights of the stockholders of the pipeline companies. This was an argument that would carry some weight with federal judges schooled in nineteenth century economics and culture. See Johnson, Petroleum Pipelines, 47-53, 72-81. Waters-Pierce could not have cared less about the decision, as it had no pipelines at that time, and could take comfort in a decision that caused the Standard forces trouble. The ICC would shortly thereafter extend the rate schedule filing deadline until November 1, 1912. "Trade Notes," O&G, August, 1, 1912, 4. All was not lost for the pipelines, as they or their parent company, could appeal the decision of the ICC to the federal courts, and they did so. In this case, they had to appeal to the U.S. Commerce Court, a special federal court created by Congress in the Mann-Elkins Act amending the
In Tilford's equity suit, attorneys for the Pierce faction filed a motion challenging the jurisdiction of the federal court on June 3, 1912. Tilford's attorneys, Matt G. Reynolds, Daniel Kirby, and Benjamin Schnurmacher argued that the court should ignore the motion, as the date for responding to the application for injunction had passed with no apparent reply. Pierce's attorneys, Priest, Johnson, and Frederick Judson heatedly pointed out that Judge Dyer had been out of St. Louis; therefore no answer or motion had been filed until he returned, when Pierce responded in a timely fashion. Arguing for removal of the temporary restraining order, Judson asserted that Tilford's vague petition failed directly to allege wrongdoing and was technically deficient because it did not state that the Waters-Pierce shareholders would suffer "irreparable injury" unless the temporary restraining order issued without notice. He argued boldly that the court had issued the temporary restraining order too hastily. Judson's arguments were unnecessary. Judge Dyer had already decided to revoke the temporary restraining order. He gave Pierce twenty days to respond to the petition, now supplemented by affidavits filed by Tilford's attorney, Reynolds. It was another minor victory for the Pierce faction.\(^\text{11}\)

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The Hepburn Act regulating pipelines. The Commerce Court did not long survive the loss of the Republicans in the 1912 elections, as President Wilson abolished the Commerce Courts in 1913. In the Pipeline Cases, the United States Supreme Court reversed the holding of the Commerce Court, and said that the ICC could impose reasonable rates on pipelines. Texas had its own regulatory agency that dealt with pipelines, the multi-functional Texas Railroad Commission, and under the stringent Texas antitrust laws regarding oil companies, several firms maintained their pipelines as separate companies. Johnson, Petroleum Pipelines, 37-40, 72-81, 113-15; Prairie Oil & Gas Co v. United States, 204 Fed. 789 (Com. Ct. 1913); The Pipe Line Cases, 234 U.S. 548 (1914). Indiana Standard had previously requested a modification of the Missouri ouster decree to permit it to operate in the state, which would bring it into competition with Waters-Pierce. Indiana Standard had remained in Missouri following the ouster order in 1908, pending appeals, which dragged on into 1913. Ultimately it succeeded in modifying the ouster order, after having applied economic pressure in the form of increased prices, and threats to close down its large refinery at Sugar Creek, near Kansas City, Missouri. See "In the Courts," OGI, June 20, 1912, 4; Piott, The Anti-Monopoly Persuasion, 131-51; Bringham, Antitrust and the Oil Monopoly, 89-101; Giddens, Oil Pioneer of the Midwest, 89-97. "Independent Marketers Meet," OGI, June 27, 1912, 2.

\(^{11}\)St. Louis Post-Dispatch, June 3, 4, 1912. The difference between a temporary, or preliminary injunction, and a temporary restraining order is significant. Both are interlocutory injunctions, that is injunctions issued at any point during the litigation for the short-term purpose of preventing irreparable injury to the petitioner until the time that the court can grant or deny permanent relief on the merits of the case. A preliminary injunction is granted at the beginning of a suit, after the respondent to the petition for the injunction has had notice and the opportunity to contest the petition in a hearing. A temporary restraining order is granted \textit{ex parte}, with no notice or chance for the respondent to argue the issue. Temporary restraining orders are supposed to be of very short duration, until a hearing can be held for a temporary injunction, and are only supposed to issue when there is a danger that the petitioners would suffer
The New York hearings reopened in mid-June 1912. The first witness, Robert Stewart, would-be president of Waters-Pierce, candidly admitted that he had no particular qualifications to head an oil company but had represented Standard Oil subsidiaries in numerous legal matters. The cross-examination by Kirby, representing the stockholders' committee, got Stewart to safer ground. Stewart testified that Moffett had told him that Waters-Pierce was "lawyer-ridden and had been in [legal] trouble in every State...and we want a lawyer to run it and observe the Federal and State laws." In short, Stewart was to make the company law-abiding and profitable for all stockholders, including Pierce, who had caused the firm so much trouble by his persistent, blatant "unfair trade practices." He claimed that he was to have had a completely free hand and that he was to represent the shareholders, not Standard Oil. Stewart claimed that the mandamus suit in St. Louis was his idea, and that he had sunk $2,000 of his own funds so far in the litigation, though Tilford had sent him $1,200 to assist in the legal efforts.12

Vice-president and director of Jersey Standard, and one of its more aggressive and progressive leaders, James A. Moffett, Sr. followed Stewart. Moffett denied that the largest shareholders in the old Jersey Standard holding company had agreed to direct the affairs of the divested subsidiaries, in which they now owned equally large interests. He voted personally at the meetings of former subsidiaries and was therefore a controlling

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irreparable harm unless the order issued immediately, and there is no time for delivering notice or holding a hearing. On an unrelated, but ominous note for the Standard interests, the Department of Justice and U.S. Attorney General Wickersham indicated a continuing commitment to antitrust enforcement by pursuing several major antitrust litigations and investigations involving the so-called "Money Trust", the "Aluminum Trust," a "Ship Trust," and the St. Louis based Terminal Railway Association. Regarding the federal antitrust efforts, see St. Louis Post-Dispatch, June 5, 7, 8, 1912. On a lighter note, John D. Rockefeller and John D. Archbold filed requests to reassess their property taxes in Tarrytown, New York, claiming that their taxes were too high. Rockefeller in particular wanted his assessment lowered from $125,000 down to $100,000, even though he had added ten new bedrooms only a few months earlier at an estimated cost of $1,000,000. St. Louis Post-Dispatch, June 5, 1912.

12 The New York Times, June 18, 1912. While not a veteran of the oil business as many Standard Oil were at that time, Stewart's highly successful management of Indiana Standard in the 1920s proved that he was highly capable, and would have been a strong president for Waters-Pierce. Stewart's observation that the main cause of Waters-Pierce's legal problems had been the management by Pierce and his various relatives was correct. On Stewart and his tenure at Indiana Standard, see The New York Times, April 12, 1925; The New York Times, February 19, 1928, and Giddens, Oil Pioneer of the Midwest, 210-436.
force. Untermeyer relentlessly tried to force Moffett to admit that no real change had
occurred in control of the former Jersey Standard subsidiaries after the dissolution:

Untermeyer: Now I want to ask you whether you and your associates had
the right to substitute proxy control of the Waters-Pierce company for
holding company control as forbidden under the Supreme Court decree?
Moffett: It was stockholders' control.
Untermeyer: The Standard Oil Company of New Jersey was also
stockholding control?
Moffett: That was controlled by a company, not by individuals....
Untermeyer: Do not you and your associates who controlled the New Jersey
company hold, as a matter of fact, the same proportionate position in the
control of the subsidiaries?
Moffett: Not necessarily. Some of them may have sold their stocks.

Moffett continued to suffer memory lapses when Untermeyer queried him about the Waters-
Pierce proxies, claiming that he could not remember having instructed Taylor or Van Buren
for whom they should vote. He had met stockholders and discussed matters when they
bumped into each other. There were no meetings of officials to discuss the business of the
now "independent" subsidiaries, including Waters-Pierce.14

Untermeyer carefully laid the groundwork for his next point. Was Waters-Pierce
capable of expanding beyond its traditional marketing territory into areas Indiana Standard
and other former Standard subsidiaries dominated? Moffett confessed that it was possible
but claimed that he lacked adequate knowledge of such matters. This was surprising, as he
was Indiana Standard's president until the dissolution and sold Waters-Pierce most of its
petroleum products. Was the real purpose of the lawsuits against Waters-Pierce to prevent

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13 The New York Times, June 18, 1912. Moffett had risen through the ranks of Standard Oil through
ability and drive. He had served as president of Indiana Standard in 1890-1892 and 1904-1911, as well as
being a director thereof. In these capacities he got to know Robert Stewart well. Moffett also served Jersey
Standard as a director from 1901-1913, and as a vice-president from 1909-1913. In keeping the nepotism at
Standard Oil, James A. Moffett, Jr. succeeded to his father's positions in the late 1920s. Giddens, Oil
Pioneer of the Midwest, 22-26; Hidy and Hidy, Pioneering in Big Business, 164-65, 314, 317; Gibb and
Knowlton, The Resurgent Years, 687-89. Standard Oil executives had a chance to laugh at Pierce, albeit
briefly, as Pierce's yacht, the Yacona, was seized by the sheriff in the Erie Basin, and attached to satisfy
Alice Rycroft's default judgment against Pierce. St. Louis Post-Dispatch, June 14, 1912.

14 The New York Times, June 19, 1912. As with previous Standard Oil witnesses, Moffett's testimony
stretched the credulity of his audience. Moffett was noted for having a sharp memory for detail, and did not
handle matters in a haphazard, random fashion. Nor could he draw a substantive distinction between
stockholder control by a company and by individuals that would make it less monopolistic. On the rather
limited success of the dissolution of Standard Oil, see Bringhamurst, Antitrust and the Oil Monopoly 188-203.
it from building refineries, gaining greater independence, and competing with Standard Oil? Moffett denied such purposes and stated he did not believe that it was "directly stated" in Tilford's petition.15

Kirby cross-examined Moffett. Trying for damage control, he focused on why stockholders were dissatisfied with Waters-Pierce management and wanted to replace it for legitimate business reasons. Moffett detailed what he considered to be the spendthrift, inefficient management of the company and its penchant for getting into legal trouble: 
"...I have always believed that Pierce always hid behind his lawyers, in fact, the company has always been lawyer-ridden." An official of Jersey Standard calling another oil company lawyer-ridden was ironic, given Standard Oil's penchant for legal trouble and its stable of attorneys. With Moffett's statement, the hearings concluded, to be resumed in the fall of 1912.16

II. Summering in St. Louis

After a Government trust victory in a civil case, the magnates try to see how near they can come to the trust idea in organization without actually attaining it. After a victory in a criminal proceeding, and a few jail sentences, their chief concern would be to get just as far as they could from the trust idea, and still maintain an effective business organization.

Editorial, St. Louis Post-Dispatch, August 30, 1912

In the spring and summer of 1912 Waters-Pierce expanded in Mexico and the Southwest, obtaining an exclusive contract with the Topila Petroleum Company for its entire output, to be shipped by boat to its refinery at Tampico until a pipeline was

15The New York Times, June 19, 1912. The various Standard Oil affiliates were in odd positions upon the dissolution, as many of them were not independently integrated oil companies. Jersey Standard, for example, had a large refinery capacity, but no oil production of its own, and the pipeline and transportation companies did not stray outside of the field of petroleum transportation. Nearly all of the companies that existed after the dissolution had to reorganize their administration and operations. Giddens, Oil Pioneer of the Midwest, 130-39; Gibb and Knowlton, The Resurgent Years, 1-42; Gerald T. White, Formative Years in the Far West: A History of Standard Oil Company of California and Predecessors Through 1919, (1962), 384-96. California Standard, or Socal, was the exception in that it was and remained an integrated oil company, needing little reorganization. This was in large part due to the isolation of the West Coast oil industry from the remainder of the United States petroleum industry, a fortuitous by-product of the Rocky Mountains and the California oil fields. Moffett had been the president of Socal until the dissolution in December 1911.

16The New York Times, June 19, 1912. Placing an attorney such as Stewart at the helm of Waters-Pierce might seem to make it more lawyer-ridden, not less, but at least Stewart could have followed his own legal advice to ensure compliance with the laws, more or less.
finished. In Texas, First Assistant Attorney General James D. Walthall and State Senator Benjamin F. Looney announced that they would seek the Democratic nomination for state attorney general. Rumors in July were that Lightfoot had made deals with Standard Oil and, in return for silence, had agreed not to seek reelection. He responded:

Please denounce this as a fabrication out of the whole cloth and say for me that it is on a par with many other malicious misrepresentations made of me during this campaign in an attempt to bolster the fallen fortunes of an administration which has been an utter failure, made so by the utter incapacity of Governor Colquitt to administer the great affairs of our government. He has practically destroyed the usefulness of this department [the Attorney General], and it is now confronted with the situation of probably having to close on the 1st of September unless I can make some provision to keep it open, inasmuch as he has vetoed the appropriation for the second year. I am not retiring from politics, but only from public office.

Again Standard Oil was involved in an attempt to blemish a politician's record. Lightfoot condemned Governor Oscar Branch Colquitt for his veto of appropriations for the Texas Attorney General's Department. Budget limits made it difficult for the Texas Attorney General to conduct serious investigations, particularly those involving interstate corporations and to retain qualified personnel.

Congressional committees and the Justice Department gathered headlines investigating corporations, as did proposals for legislation to supplement the Sherman

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17 "Trade Notes," OGL, June 27, 1912, 2; "In the Courts," OGL, July 18, 1912, 4; "In the Courts," OGL, August 1, 1912, 4. Pierce also had personal troubles. Alice Rycroft had won a default judgment against Pierce, who had been her friend, for misappropriation of funds that she had given to him to invest. After the default judgment, Pierce and his attorneys made efforts to set it aside, and obtain a trial on the merits, while Mrs. Rycroft and her attorney, Robert Stewart, sought to enforce the judgment by having Pierce's $500,000.00 yacht attached. At this point in time, Pierce was losing the legal struggle, as Judge Brady of the New York Supreme Court had denied his motion to set aside the default judgment and his motion to stay the seizure of his yacht.

18 Galveston Daily News, April 9, 20, 1912; Galveston Daily News, July 19, 1912. Lightfoot's concerns about money were not new to the Texas Attorney General's Office, nor were they unique to Texas. See Chapter 5, note 26. It is not clear whether Colquitt vetoed appropriations for the Texas Attorney General's Department as an austerity measure, or as an attempt to frustrate Lightfoot's administration of the office, and thereby forestall any ambitions that Lightfoot might have for higher office. Governor Colquitt had been at odds with the legislature in his first term, and fought many political fights. He faced tough opposition in the Democratic gubernatorial primary in 1912, mainly from prohibitionists, breaking the tradition that an incumbent governor was "allowed" his second term without any real opposition within the Democratic Party. Possibly Lightfoot was a political opponent of Colquitt and his faction. See Gould, Progressives and Prohibitionists, 86-88. Colquitt did not veto appropriations when Looney became Texas Attorney General, and he did not interfere with Looney's major investigations. The validity of Colquitt's veto was litigated all the way through the Texas Supreme Court, which upheld his actions.
Antitrust Act. U.S. Attorney General Wickersham confidently predicted the demise of trusts and asserted that vigorous enforcement of the Sherman Act worked, pointing to the slow but noticeable progress of the Standard Oil dissolution. Less confident of the efficacy of both the Sherman Act and the dissolution of Standard Oil, Theodore Roosevelt, saw the Sherman Act as enforced civilly as an aid to trusts. He pointed to the rapid increase in value of shares of Standard Oil affiliates after the dissolution without any apparent diminution in effective control. Meanwhile, both the crude and refined oil markets were unsteady. Crude oil prices had advanced nine times in the Mid-Continent region since the start of the year, rising from fifty cents per barrel to seventy cents by July 16th. Refined prices suddenly dropped, spurring speculation that crude prices would also decline, adding to the uncertainty produced by litigation and legislation. On August 12 and 13, 1912, Ohio Senator Pomerene called on Wickersham to indict the individual defendants of the Standard Oil dissolution case on criminal charges for violations of the Sherman Act. The resolution went nowhere. But Standard officials were nervous. Archbold had to go to Washington in late August to testify before a Senate committee investigating campaign contributions to Roosevelt's 1904 presidential campaign. Congress investigated the matter for months, keeping Standard in the news. No politician was willing to be seen as pro-Standard Oil, or soft on the "trusts."\(^{20}\)

\(^{19}\)St. Louis Post-Dispatch, July 20, 1912 (meat packing plants were being distributed to the owners in the "trust" according to a plan submitted to the federal district attorney for approval); The New York Times, July 23, 1912; Galveston Daily News, August 1, 12, 21, 24, 1912; The New York Times, August 7, 1912; ; A.V. Bourque, "What of the Crude Oil Market," OIL, July 18, 1912, 6, 8; "The Refined Oil Market," OIL, August 1, 1912, 1.

\(^{20}\)St. Louis Post-Dispatch, August 20, 22, 23, 1912; Galveston Daily News, August 23, 24, 1912. According to the testimony of Senator Penrose and Archbold, the Roosevelt campaign had accepted $100,000 and spent it, and Bliss had asked for $150,000 more. Roosevelt had asked his campaign managers to return the $100,000, but his detractors asserted that he had not done so until after the money had been spent, and that he had requested the return of money only to get on the public record as having done so. According to Archbold and Penrose, Treasurer Bliss had made "a practical pledge" that if the additional money were "donated" that the Roosevelt administration would leave big business, particularly Standard Oil, alone. The investigation continued until the election in November, with many figures testifying before Congress, including Archbold and eventually Roosevelt. The excerpts of letters allegedly from Archbold's correspondence printed by Hearst were shown to be forgeries in some cases, and were transcripts of letters allegedly copied from the originals in Archbold's desk. While Standard officials cooperated somewhat in the investigation, the continuing publicity for the next several months was not beneficial for
In Tilford's suit against the Pierce faction, his attorneys filed sixteen affidavits with the court on July 22, 1912, from Waters-Pierce stockholders, including Rockefeller. The affidavits stated that the stockholders had owned the Waters-Pierce stock, had a legal right to vote it by proxies, and had been prevented from doing so by agents of H.C. Pierce. Rockefeller's affidavit in particular stressed that he had had no intent to place Waters-Pierce under the domination of Jersey Standard, Indiana Standard, or any Standard affiliate, or to violate the antitrust and corporate laws of Missouri and the United States, as Pierce's answer in the suit had alleged. It was a stalemate of oaths and allegations. 21

Arguments and motions continued endlessly. "Reliable rumor" had it that Pierce attorneys had obtained evidence that Wickersham had sanctioned Standard's alleged takeover of Waters-Pierce. Purportedly a Standard agent had met with Wickersham and showed him a plan to oust "certain directors" of several former subsidiaries at the corporate shareholders' meetings and replace them, and Wickersham had acquiesced. But no evidence was introduced when Waters-Pierce attorneys argued in federal court against the injunction to restrain the Pierce faction sought by Tilford. Judson, Priest, and Johnson appeared before federal district Judge Smith McPherson to argue that the Standard interests, not H.C. Pierce, dominated Waters-Pierce to its detriment. Pierce's attorneys claimed that Standard Oil had not permitted Waters-Pierce to own and operate refineries in

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the public relations image of Standard. On these donations, and other political activity by Standard officials in the late nineteenth and early twentieth centuries, see Moore, John D. Archbold, 235-65. The apparent exception to politicians being tough on trusts was U.S. Attorney General Wickersham, who compromised several suits against trusts that year, including one with the "Telephone Trust" on August 24, 1912, right as the controversy over Roosevelt and Standard Oil was breaking open. See St. Louis Post-Dispatch, August 24, 1912.

21 St. Louis Post-Dispatch, July 22, 1912; The New York Times, July 23, 1912; "In the Courts," OGL, August 1, 1912, 4. Given that Rockefeller had not actively managed Standard Oil for over a decade, what he might or might not have intended was of limited relevance. Certainly neither Rockefeller or any other official of Standard Oil wanted to have Waters-Pierce lose its corporate charter, which would have ultimately cost them a valuable asset. This was particularly true after the U.S. Supreme Court had upheld the ouster of Republic Oil and Indiana Standard from Missouri. It was still uncertain at that time whether the ouster order would be modified, and Indiana Standard allowed to remain in Missouri, and if not, there would be no Standard affiliate in Missouri save Waters-Pierce. Giddens, Oil Pioneer of the Midwest, 138-39; Piott, The Anti-Monopoly Persuasion, 144-49; Brinthurst, Antitrust and the Oil Monopoly, 95-101. The traitorous former secretary of Waters-Pierce, Charles M. Adams stated in his affidavit that after Waters-Pierce took out a loan for $1,500,000 at eight percent interest, it held out $600,000 "for some hidden purpose," which he believed to be the purchase of an oil refinery, which he characterized as a waste of money.
the United States, only in Mexico. They satisfied Mexico's needs, but could not export to
the United States. In this manner Standard had kept Waters-Pierce dependent upon it for
petroleum products, which enabled Standard to dictate Waters-Pierce's retail prices, at
times forcing it to reduce prices. This hurt Waters-Pierce profits, but left Standard's
wholesale profit margin alone. When Waters-Pierce built a refinery in Oklahoma, Tilford's
petition cited the decision as an example of mismanagement and waste of resources.
According to Priest, the Oklahoma refinery was necessary in order for Waters-Pierce "to
get out of the clutches" of Standard Oil, from whom it was still compelled to buy oil under
pre-dissolution contracts. Waters-Pierce also claimed that Standard agents waged a
publicity campaign to injure its business, telling Waters-Pierce customers that because
Waters-Pierce bought all of its products from Standard Oil, Standard could undersell them
everywhere.22

Tilford's attorneys Reynolds, Kirby, and Schnurmacher, pointed out that he was a
legitimate stockholder who had acquired his interest in Waters-Pierce—seventeen shares—as
a result of the 1911 dissolution of the Jersey Standard holding company. He had a right to
protect his interests and those of other stockholders from the Pierce clan until the
mandamus suit was settled. Pierce's actions at the annual meeting and while running the
company had deprived shareholders of their rights and property. He had denied Tilford the
right to examine its books. Pierce had perpetrated financial irregularities following the
ouster of the company from Texas. He allegedly compelled Waters-Pierce to buy the
Muskogee Refining Company's marketing and distribution system, which duplicated
Waters-Pierce's assets in the region. It benefited only Pierce. Pierce had personally
enriched himself and his relatives, at the expense of the oil company. Reynolds asserted

22St. Louis Post-Dispatch, July 29, 1912; Galveston Daily News, July 30, 1912; "Trade News," OGI,
August 1, 1912; "In the Courts," OGI, August 8, 1912, 6-7. Of course, it was still quite beneficial for
Waters-Pierce to continue to buy from Standard Oil companies, as they provided good products which were
well-recognized by the public, and only the Standard Oil affiliates could supply all of the needs of Waters-
Pierce easily. The New York Times, July 31, 1912. Waters-Pierce was not the only former subsidiary of
Standard Oil that suddenly found that it was not part of a fully integrated oil company. Jersey Standard, for
example had a large refining capacity, but little oil production of its own, and was heavily dependent upon
that Pierce's only defense was that Standard Oil sought to perpetuate the old trust in a new form. This was no defense for mismanagement or for the denial of shareholders' rights.  

Priest's version of Waters-Pierce's history accentuated the hard work of H.C. Pierce and the severe penalties that the company had incurred by its association, both secret and open, with Standard Oil. He told of the 1900 reorganization of the firm after its ouster in Texas, how all of the stock, save one share, had been in Pierce's name on the books, and how Pierce had run the company with a free hand. All of this was a falsehood concocted at the behest of Standard Oil, which had disclaimed ownership of the 2,750 shares held in Van Buren's name at first but eventually admitted its true role in the ownership. Thereafter Waters-Pierce suffered attack in state after state and was assessed penalties totaling over $2,000,000, all because of Standard Oil's domination. Priest declared that Waters-Pierce's lack of profits for the past several years was due to Standard Oil, not Pierce. True in part, Priest's monologue ignored the ill-will generated by Waters-Pierce's plundering policies. Waters-Pierce had gouged dealers and consumers more than the Standard Oil norm, to the point that Standard had sent Tinsley to St. Louis to manage matters.  

Tilford's attorneys replied that H. Clay Pierce and family were intriguing to keep control of the oil company in defiance of the majority shareholders' property rights. No conspiracy by Standard interests existed. Only fools would have conspired to violate the

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23 *St. Louis Post-Dispatch*, July 29, 1912; *Galveston Daily News*, July 30, 1912; "Trade News," *OGL*, August 1, 1912, 4; "In the Courts," *OGL*, August 8, 1912, 6-7; *The New York Times*, July 31, 1912. Pierce was known for being a sharp, hard business man, and does not appear to have been above using Waters-Pierce, of which he was still only a minority shareholder, for personal gain. Pierce-Fordyce in Texas had entered into a contract with Muskegee Refining to purchase all of the latter's output, which made Muskegee Refining's distribution system purchased by Waters-Pierce unnecessary. On his business practices, see Williamson and Daum, *Age of Illumination*, 544-45; Chernow, *Titan*, 255-56; Brinhurst, *Antitrust and the Oil Monopoly*, 40-43; Hidy and Hidy, *Pioneering in Big Business*, 448-51.

24 *St. Louis Post-Dispatch*, July 29, 1912; *Galveston Daily News*, July 30, 1912; "Trade News," *OGL*, August 1, 1912, 4, 6; "In the Courts," *OGL*, August 8, 1912, 6-7; *The New York Times*, July 31, 1912. This version of events conveniently glosses over the fact that Pierce was a willing participant in the fraud perpetrated on Texas after the 1900 ouster, and that it was the numerous complaints against the prices and anti-competitive conduct of Waters-Pierce in its territory that provoked the investigations and litigations that cost the oil firm so much money. Tinsley had been sent to St. Louis by Standard Oil to try to rein in some of the excesses of the Pierce management, and to bring it more into conformity with Standard Oil's practices. See Hidy and Hidy, *Pioneering in Big Business*, 448-51.
federal and Missouri court decrees, and so cause the destruction of the company. He conceded that the individual shareholders, who held a majority of the stock, had conferred as individuals dissatisfied with Pierce's domination of Waters-Pierce because he used its assets to enrich himself. They did not object to Pierce on the board of directors, but they wanted to elect a majority of non-Pierce directors and executives to protect their interests. As Schnurmacher observed, "In view of the action of Pierce and his associates, it is just as fair to say that they conspired to retain control of the company as to say that Tilford and others conspired to take it away from them." Tilford had demanded to have an accounting and to see the company books regarding over $60,000 transferred to Pierce personally. The Pierce faction had refused to comply with this demand. When Kirby took over from Schnurmacher, Judson interrupted, noting that an injunction was supposed to issue only if irreparable injury would occur without it. To Judson no irreparable wrong impended. The injury had already occurred to Tilford through Pierce's financial manipulations and commingling of Waters-Pierce's assets and obligations, Kirby retorted. But, Judson riposted, Tilford's application for an injunction contained no independent evidence, only limited information and hearsay. The lack of "definiteness" in the petition stemmed from Pierce's failure to disclose corporate records to Tilford upon his request, Kirby insisted. Despite Kirby's attacks, the injunction restraining Pierce and his executives did not issue.25

25Galveston Daily News, July 30, 1912; St. Louis Post-Dispatch, July 31, 1912; "Trade News," OIL, August 1, 1912, 4; "In the Courts," OIL, August 8, 1912, 6-7. Of course, it was still quite beneficial for Waters-Pierce to continue to buy from Standard Oil companies, as it gave the firm good products which were well-recognized by the public, and only the Standard Oil affiliates could supply all of the needs of Waters-Pierce easily. The New York Times, July 31, 1912. Note that despite the passage of time since the dissolution decree in 1911, there were still some shares of the pre-dissolution holding company stock being traded, and presumably these would at some point be converted to shares in the constituent companies. At the same time, Standard Oil of California doubled its capital stock from $25,000,000 to $50,000,000 in part to pay off $12,000,000 in debt to Jersey Standard. See White, Formative Years, 391-95 for SoCal's financial reorganization. At the national level, antitrust suits were in progress against several other "trusts" ranging from the Associated Bill Posters to the Associated Press and a "News Trust." In this election year, all of the presidential candidates and their parties took stands on the "trust problem" and how to enforce/utilize the antitrust laws and regulation. Roosevelt, who had built a reputation as a trust-buster, spoke out against the use of litigation in favor of federal government regulation and oversight. Wilson, for the Democratic Party, spoke out strongly against the growth of monopoly and its inevitability, and looked
Meanwhile the Texas the situation altered. In the attorney general's race, Walthall had enjoyed an early lead and Lightfoot's endorsement. But by August 1st Looney had a stable plurality of votes, though significant vote totals had not been turned in from most counties. Lightfoot announced his resignation that same day, but not effective until September 1, 1912. Governor Colquitt, with whom Lightfoot was at loggerheads, promptly Walthall to succeed Lightfoot, complicating matters when it was not clear who the nominee would be.²⁶

Pierce received aid from Texas. Judge Thomas S. Maxey of the Federal District in Dallas convened a special grand jury in late August 1912. Guided by U.S. Attorney William E. Atwell, Lightfoot's friend, the grand jury was rumored to be investigating "certain alleged violations of the Sherman Act. Though its proceedings were closed, the list of witnesses suggested that the Texas oil industry was under investigation. Witnesses included current and former public officials, oil men, prominent businessmen, and attorneys including George Calhoun, who had presided over Pierce's perjury trial, and Guy Collett, the receiver who had auctioned off the Standard's Texas properties in December 1909. Their testimony was sealed. But it became known that among the records shown to the grand jury were the November and December 1909 registers for the Driskill Hotel in Austin. Many oil men and their attorneys had stayed at this hotel during the Pierce perjury trial and the auction of Standard's Texas properties.²⁷

²⁶Galveston Daily News, August 2, 3, 1912. Walthall, thirty-five years old, was at that time the youngest Texas Attorney General ever. The accusations against Lightfoot, and Walthall's close association with him were detrimental to Walthall's race. Looney, by contrast, had created a favorable picture of himself in the press, aided by his actions in the Texas Legislature against the trusts.
²⁷Galveston Daily News, August 28, 29 1912; See Commerce Clearing House, The Federal Antitrust Laws, With Summary of Cases Instituted by the United States, 1890-1951 (1952) 98. Grand jury proceedings are almost invariable, and could and cannot be easily be made available, but it did not take a great deal of detective work to discover who was called to testify before the grand jury, or what records were demanded. On the questionable nature of the infamous December 9, 1909 auction, see Gray, Rule of Reason, 46-51 and Chapter 4, infra. During this relative period of calm during the mandamus hearings, Priest took the opportunity to get married to his young fiancée on August 19, 1912, some two months after the original June target date owing to Priest's rather full litigation schedule. The couple then set sail for a honeymoon in France on August 22, 1912, a sign that Priest did not expect much to happen for
On August 29th, secrecy ended. The federal grand jury returned indictments against Socony, Jersey Standard, Magnolia Petroleum, and individuals connected with the above companies, a group including Archbold, H.C. Folger, C.N. Payne, and W.C. Teagle, all non-residents of Texas; and John Sealy, A.C. Ebie, and E.R. Brown of Texas. The grand jury charged them with violating the Sherman Act, conspiring in restraint of trade, and attempting to create an interstate monopoly in petroleum and its products. Released information revealed that the federal government, evidently with some outside aid, had investigated the oil industry in Texas for three months before summoning the grand jury. Noteworthily, these were not charges that the defendants had violated the dissolution decree of the Supreme Court; that would have been contempt of court and not required a grand jury. Instead the grand jury accused the defendants of trying to destroy the Pierce-Fordyce Oil Association and monopolize the petroleum business in several Southwestern states. The true bill stated that Pierce-Fordyce was a marketer of oil products, not a producer or refiner, and bought from Jersey Standard, Socony, and Magnolia. Those companies and the individual defendants had conspired to destroy Pierce-Fordyce by establishing rival marketing outlets wherever it sold by trying to ruin its reputation through a whispering campaign, by selling at costs lower than they sold to Pierce-Fordyce, by refusing to sell to Pierce-Fordyce, and by co-opting employees of their rival. Effectively the conspirators had cut Pierce-Fordyce from its major suppliers.  

several weeks. *St. Louis Post-Dispatch*, August 19, 22, 1912. On Atwell's friendship with Lightfoot, see Atwell to Lightfoot, June 22, 1912, TSA RG 302 Box 4-8/354.  
28*St. Louis Post-Dispatch*, August 30, 1912; *The New York Times*, August 30, 1912; *Galveston Daily News*, August 30, 1912. Note that Standard Oil was not charged with contempt of court, which would not require a grand jury, but could be done by a federal court directly. It would require the efforts of the Justice Department to do this, as it would be necessary to provide convincing evidence that the dissolution decree was in fact actually, as opposed to arguably, violated. Regarding the Magnolia Petroleum Company, despite the origins of the company, it was not the creation of that firm that was the initial issue, but its alleged actions in trying to drive Pierce-Fordyce out of business. Magnolia had hired away seventy of their nearly five hundred employees (as of March 1, 1913) from Pierce-Fordyce, including "at least a dozen employees of the marketing department of Pierce or Fordyce..." Wallace, *Nine Lives*, 35-37; "Transcript of Testimony," *State of Texas vs. Magnolia Petroleum Company* No. 10,232 in the District Court of Hunt County Texas, 1844-53, 1862-77 TSA RG 302 Box 1989/41-46. The question was whether Magnolia had "pirated" these employees, or if these employees had independently solicited Magnolia for employment. On June 29, 1912 Andrew C. Ebie, the general manager of Magnolia, had sent a letter to Pierce-Fordyce
John Sealy, president of Magnolia and prominent Galveston banker and businessman, publicly denied the allegations and denounced the procedure. Many of the witnesses were or had been employees or otherwise associated with Pierce-Fordyce or Waters-Pierce, and had vested interests in the litigation. The grand jury had not called any of the defendants or their employees as witnesses. Perhaps Pierce or his lawyers had tried to induce these indictments to cause trouble for Magnolia and Standard Oil. Sealy's careful denial and allegations were filled with phrases like "so far as my knowledge goes,..." "[c]ertainly I have never entertained,..." and "[n]ever in any way has there been disclosed to me..." and had the sound of "implausible deniability." Sealy's statement that no oil company, not even Standard Oil, owned Magnolia, that it was a partnership of individuals, was true enough. All of the Magnolia trustees save one were Texans. But Sealy carefully did not mention who the largest stockholders were.29

George Greer, Magnolia's capable general counsel, reacted publicly to the allegations in the indictments. He repeated Sealy's observations that the defendants had no refusing to renew their contracts with the oil firm for petroleum products, effective as of July 1, 1912. Ebie also withdrew all price quotations for any future purchases, and declared that Magnolia would not sell any gasoline, naphtha, or engine naphtha to Pierce-Fordyce for the foreseeable future. Magnolia also stated that it would not sell to any independent jobbers in Texas at that time, but Pierce-Fordyce was their major client in Texas. The St. Louis Post-Dispatch commented on the indictments in an approving tone, seeing criminal convictions and jail time as more likely to produce real change in the behavior of big businessmen than civil antitrust suits, which it claimed had repeatedly failed in their alleged objectives. The odds of conviction in Texas also seemed better. See St. Louis Post-Dispatch, August 30, 1912.

29 Galveston Daily News, August 30, 31, 1912; Wallace, Nine Lives, 34-37. Oliver C. Edwards, who had been a vice-president and general manager of Magnolia and its predecessor, as well as a trustee, had resigned his managerial positions and moved to New York. The two largest stockholders in Magnolia were Calvin N. Payne and Henry Clay Folger, Jr. Payne had long been in charge of a number of Standard affiliate pipelines, and Folger had been a director of Jersey Standard from 1908 until the dissolution, thereafter becoming president of Socony. Both Payne and Folger had long been involved in the oil industry in Texas. Payne, who knew Joseph S. Cullinan from the latter's years with Standard Oil, together with Folger arranged the financing for Cullinan's first oil company in Texas, the Corsicana Refining Company (a predecessor of Magnolia) in 1898. This financing was done through the "books" of the National Transit Company, a subsidiary of Standard Oil, which belied claims that Payne and Folger had acted as individuals. King, Joseph Stephen Cullinan, 31-40, Wallace, Nine Lives, 10-14; Mobil, "History of the Refining Division," 5-15. Oliver C. Edwards (1852-1928), had been an oil man for many years prior to his stint at the Security Oil Company and Magnolia. He had worked at refineries in New York, South America, Ohio (for Standard Oil of Ohio), and Mexico (working for Waters-Pierce) before moving back to New York, and then to Texas in 1904. He quit Magnolia in 1913, moved back to Connecticut, Brooklyn, and ultimately California, where he organized the Security Oil Company in 1913. He remained its president until he died in 1928. He was regarded as a stern man, and a careful, effective, and efficient manager. Mobil, "History of the Refining Division," 32-33.
notice of the grand jury and no opportunity to reply. Many of the witnesses had vested interests in the indictments as "employees or officers of an unfriendly competitor." He cautioned people not to let the case be tried in the media based on speculation and rumor, but to try it in court on the basis of fact. Ever the legalist, he denied that Standard owned or controlled Magnolia, and as general counsel and a trustee of Magnolia he was "unquestionably in a position to know the facts." He pointed to an irony in the Pierce-Fordyce complaints.

It is true, as shown by the attorney general's [Lightfoot's] published report, made some months ago, that Mr. Archbold and Mr. Folger, as individuals, just as Henry Clay Pierce owns, as shown by the same report, a majority of the Pierce-Fordyce stock. However, a respectable minority of the Magnolia stock is owned by some thirty or forty substantial citizens of Texas. No Standard Oil corporation has ever, I feel absolutely sure, owned one dollar of the stock of the Magnolia company or exercised the least control of it.... Honorable citizens of the state have been indicted; they can see nothing in their conduct and management of the Magnolia Petroleum Company but an honest effort to build up a great business in fair and open competition with the whole world, a business in which we think the citizens of Texas should take pride. We are entitled to a suspense of public judgment until all the facts are known, particularly since the indictment found was based to a large extent on the hostile employees of an unfriendly and active competitor.

The problem for Magnolia was similar to that facing Standard Oil in its relations with its other subsidiaries. As Untermeyer had pointed out in his deposition of Moffett in New York in June 1912, no great distinction existed between stockholder control by a company or by individuals. Such a fine point would not convince many Texans. The Oil and Gas Journal observed, "To say the least, the developments that will result in the coming days will be observed attentively and discussed generally." Beyond discussion, little could happen in the Texas case until January 1913 when the case was set for trial.30

To make matters worse for Standard Oil, incoming Texas Attorney General Walthall announced on August 31st that he intended to ask Atwell to turn over his evidence to him for a state antitrust investigation. Meanwhile federal marshal George Green in

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Dallas busily prepared capias warrants for the defendants. Walthall was sworn in that next day. Lightfoot's farewell speech recounted his years in the Attorney General's office:

The eight years of service in the attorney general's department have been marked as the stormiest period in the history of the state. The battle between the masses and corporate greed was inaugurated during this time and has swept from state to state, revolutionizing public thought and has culminated in making the democratic party the leader of progressive thought throughout the nation. If the struggles of the people for industrial and political freedom bring to posterity a larger degree of independence and happiness, I will feel fully repaid for the very humble part which I may have filled in the initial struggles resulting in such reforms.

Six months later, Lightfoot would be the object of a Texas legislative investigation for corruption and mismanagement during his "eight years of service."§31

III. A Broadway Premiere

The demand of the times is for competition. By the first of the new year or next spring at most, we should not be surprised to see competition of the old cut-throat order rampant in the oil market of the world.

Oil and Gas Journal, October 3, 1912

The resumption of hearings in New York in late 1912 in the Waters-Pierce mandamus case increased the publicized skirmishing between oil firms and the pressure on Standard Oil. On September 14th, Johnson and Moloney, the election tellers at the Waters-Pierce stockholders' meeting the preceding February, applied to the Supreme Court of New York to reappoint Allen Jacobs as a special commissioner for taking testimony. Pierce's attorneys also filed a petition with Justice Newberger of the New York Supreme Court to issue twenty subpoenas for executives and employees of Jersey Standard and Standard affiliates. Untermyer, assisted by Fordyce, Pierce's partner in Texas and general counsel

§31Galveston Daily News, August 31, 1912; Galveston Daily News, September 1, 1912. There were several means by which the targets of those "warrants" could prevent their trial service and execution. One of the targets of the federal indictments, Archbold, took the matter lightly when he heard of the matter while aboard a steamship near England. He laughed to the reporter, and stated that he was becoming "case-hardened" to indictments. He deprecated Pierce-Fordyce as "a small Texas concern" and added that there was no basis for the indictment. He also reaffirmed that he had given a large sum of money to Roosevelt's campaign, which had never been repaid. The New York Times, September 1, 1912. On the investigation into the Texas Attorney General's Office, see Chapter 8.
of Pierce-Fordyce, would conduct most of the examinations before Commissioner Jacobs.32

To the press Fordyce claimed to know nothing about Department of Justice plans. He expressed confidence that Wickersham, whom he planned to see in Washington, would pursue all Standard malefactors and repeated Waters-Pierce's countercharges that the dissolution was a joke and that Jersey Standard had not lessened Standard Oil's control over its subsidiaries: "They are doing indirectly precisely what the Supreme Court enjoined them from doing directly." On the Texas litigation, he observed that the new Standard Oil conducted its affairs as had the old. The alleged campaign to destroy Pierce-Fordyce had started after Standard Oil tried to buy the oil firm and had been firmly rejected. Fordyce claimed that after this failure, the other familiar trust techniques appeared: hiring away the best employees, reducing prices to merchants and consumers, and cutting off the supply of goods to Pierce-Fordyce. But everywhere else where Standard had an effective monopoly, prices on petroleum products increased.33

Hearings resumed on September 16, 1912. D. S. Bushnell, formerly general manager of four Standard pipeline companies, told of his experience after the dissolution. All four of these newly independent pipeline companies held meetings the same day at 26

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32 Between the end of August and September 15, 1912, capias warrants had been served on several of the Texas defendants, including John Sealy of Galveston, and the Circuit Court in Missouri had issued deoimi to take depositions in Louisiana (August 26, 27, 29, 1912), Kentucky and Ohio (August 27, 1912), Connecticut (September 7, 1912), Pennsylvania, New York, Kansas, Oklahoma, Nebraska, Illinois, Colorado, and Connecticut (September 9, 1912). Galveston Daily News, September 9, 1912; "Minutes of Proceedings," Missouri v. Johnson. Pierce spared no expense in pursuing this litigation. The Supreme Court of New York is actually the trial court in New York. The New York Times, September 15, 1912; St. Louis Post-Dispatch, September 15, 1912. Jacobs was a favored choice by the Pierce faction, as he was familiar with the case, and had shown himself to be favorably inclined towards Untermeyer.

33 The New York Times, September 16, 1912; "Dissolution Not on the Square," OGJ, September 19, 1912, 4. Fordyce's observations, while colored by his position in the litigation were essentially correct. Magnolia stopped selling to Pierce-Fordyce as soon as it could do so without breaching a contract. Prices for petroleum products had generally risen since the dissolution, and some of it could easily have been a conscious reaction to the dissolution. There were, however, increased costs for all of the former Standard affiates and Jersey Standard, as they had to reorganize managements and reproduce corporate bureaucracies with the official demise of the more centralized management of the holding company. The companies also had to expand their physical facilities and holdings to compensate for the breakup, as most of the constituent companies were specialized in different areas of the petroleum industry to various degrees. See Gibb and Knowlton, The Resurgent Years, 15-25; Giddens, Oil Pioneer of the Midwest, 126-39; Williamson, et al., The Age of Energy, 231-34.
Broadway in New York. Moffett had told Bushnell to show up and attend the meetings without explaining why. At each meeting, the companies' directors, Archbold, Moffett, Teagle, A.C. Bedford, and Lauren J. Drake resigned, and as stockholders and/or proxy holders elected a new board and managers. Bushnell was elected as a director of the four concerns and also as president. The four pipeline companies effectively formed one continuous line, but Bushnell denied that this was the reason why he was elected a director and president of the four companies. Each of the companies had paid sizable dividends since the dissolution, all declared by the five new directors, each of whom held only one share. Buckeye Pipe Line had 200,000 shares outstanding. It had never crossed Bushnell's mind to consult the stockholders who held the remaining 199,995 shares before declaring the large dividends.

In fact Bushnell got paid by all four companies but received one check, issued by the secretary for all four. Bushnell stated that he had consulted with Moffett of Jersey Standard about a pay increase before he took the positions, with their increased salary, yet denied that Moffett had any control over the finances of the four pipelines. Yet he had not consulted anyone else.34

B.A. Towle, formerly real estate and tax agent for the four pipeline companies, found himself on the board of each company. He first learned about the elections when Bushnell told him to come to the stockholders' meetings. This raised questions about what

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The New York Times, September 17, 19, 1912; St. Louis Post-Dispatch, September 17, 1912. Bushnell was president and a director of the Buckeye, Northern, and Indiana Pipe Line companies, and of the New York Transit company. The actions of Standard executives, as shown here, seem to have been typical of their approach to implementing the dissolution decree by following the strict letter of the decree. Some changes of significance had occurred, however. Efforts made at cooperating with the decree were largely obscured by the shroud of secrecy that continued to surround the actions of Standard Oil firms. It also simply took time for there to be significant interpenetration of the former marketing subsidiaries of Standard Oil, and for the separate concerns to become fully integrated, and thus less dependent upon other former Standard subsidiaries. Gibb and Knowlton, The Resurgent Years, 18-25; Stocking, The Oil Industry, 54-82. Lauren J. Drake had labored for Standard Oil for over thirty years before being made a director of Standard Oil of New Jersey in 1911 (and only until December 1911). He was an expert in domestic marketing, taking over from Wesley H. Tilford after the latter died, and worked for Kentucky Standard, and in 1896 was placed in charge of all of Indiana Standard's marketing of refined petroleum products. Hidy and Hidy, Pioneering in Big Business, 321-22.
he did as a director and who actually ran the companies, which Untermeyer's examination pointed out:

Untermeyer: How have your responsibilities been increased by your election as a Director?
Towle: I have been consulted by the officers concerning matters that would not have come to my attention before.
Untermeyer: Can you name one such matter?
Towle: Offhand, I cannot.35

Other witnesses implied that the dissolution had not greatly affected routine business. Howard R. Payne, vice-president of the Union Tank Line, one of the transportation companies, still worked at 26 Broadway; Union Tank Line had contracts only with Jersey Standard and its former subsidiaries to transport petroleum products. Yet, Payne claimed that Union Tank Line was an independent concern, managed by its own directors and not by the directors and officers of Jersey Standard or any of the former subsidiaries.36

Untermeyer intended to use Magnolia Petroleum and Security Oil as flagrant examples to prove the 1911 dissolution was "a farce." Samuel Gamble Bayne, president of the Seaboard National Bank in New York, was a hostile star witness.37 Untermeyer first

35 The New York Times, September 17, 1912.
36 The New York Times, September 17, 1912. Consider also the origin of Standard Oil of Louisiana, which was not created until well after the federal government had instituted the suit which culminated in the dissolution decree of 1911. Assets and portions of the territories of Kentucky Standard were transferred to it during the litigation, and after the dissolution the stock of Kentucky Standard was distributed, but that of Louisiana Standard remained held by Jersey Standard. The president of Louisiana Standard was Colonel Frederick Weller. Weller was a longtime Standard man, starting with Ohio Standard. In 1890 he went to Whiting, Indiana to assist in the construction of Indiana Standard's giant refinery there. He went to Rouen, France in 1892 to supervise the building of a refinery there for a Standard subsidiary, returning to Camden, New Jersey two years later to become general superintendent of Jersey Standard's refinery there. He was sent to Beaumont in 1892 to become the vice-president and general manager of Security Oil. He returned to New York in 1906 to build and manage petrochemical works for Standard. Weller became president of Louisiana Standard on April 13, 1909, upon its creation, and in 1913, a director of Jersey Standard, largely representing the interests of Louisiana Standard. The president of Security Oil had been Samuel G. Bayne, president of Seaboard National Bank, which was heavily involved in oil affairs in Texas, and elsewhere. Bayne organized Seaboard National in 1883, and located in at 18 Broadway, conveniently close to 26 Broadway. Seaboard eventually merged with Mercantile Trust Company. Mobil, "History of the Refining Division," 21-33; Wallace, Nine Lives, 15-18, 22-30; Hidy and Hidy, Pioneering in Big Business, 401-03.
37 The Seaboard National Bank was known as a Standard Oil Bank. The New York Times, September 18, 1912; St. Louis Post-Dispatch, September 18, 1912. Numerous financial transactions, stock and bond transfers, payments of coupons, etc. were filtered through the silent, secure coffers of Seaboard, and several large stockholders and executives had large accounts at Seaboard, directly or indirectly. Bayne had longstanding ties to the oil industry, and to Standard Oil, having worked with John D. Archbold in the oil fields
tried to establish the close connections between Seaboard and Standard Oil. Bayne claimed that he could not remember how long he had been president of Seaboard, answered all questions literally and as narrowly as possible, and denied that Seaboard had close relations with any Standard company though he conceded that some of Standard's purchasing agents had accounts at his bank and that they shared some large shareholders. He denied that Henry H. Rogers had any bank accounts at Seaboard but admitted that Rogers's secretary had an amazingly large account. He minimized his dealings with Standard officials, including Archbold, who had been his close friend for nearly thirty years. And questions about Senator Joseph Bailey produced the following exchange,

Untermeyer: Wasn't he [Bailey] employed by you?
Bayne: I decline to answer--and I decline to give my grounds.
Untermeyer: Didn't you pay Senator Bailey $5,000?
Bayne: I don't recollect.
Untermeyer: How did he come to you, with a letter, or was he introduced by someone? Did he come from next door [Standard Oil] to the Seaboard National Bank?
Bayne: That's been washed clean out of my mind.
Untermeyer: As a matter of fact, didn't you send for Bailey yourself, make the bargain with him and pay him the money?
Bayne: I don't recollect.

"That's been washed clean out of my mind" and "I don't recollect" were Bayne's favorite and frequent phrases. After a time, he simply refused to answer any further questions on accounts, stating, when asked, "It's none of your business."

of Pennsylvania. His testimony, as did that of many of the witnesses, rang false. If they were to be believed, the greatest businessmen in the United States, who had built giant corporations, were incredibly naive, trusting, ill-informed, and with no long-term memory. For his early connection to Archbold, see Moore, John D. Archbold, 30-31, 37-38, 48-51.

38The New York Times, September 18, 1912; St. Louis Post-Dispatch, September 18, 1912. See also Moore, John D. Archbold, 30-31, 37-38, 48-51. On the employment of Bailey by Bayne and Standard Oil, see Holcomb, "Senator Joe Bailey," 382-83, 423-424, and Texas Legislature, Bailey Investigation Committee, 537-38, 894-99, 944, 1066. In 1903 Bayne had paid Bailey $5,000 for drawing up a charter and a mortgage of $2,500,000 for Security Oil. In 1901 Standard Oil had paid Bailey $2,500 for his opinion on whether or not the firm could do business in Texas. Bailey gave a written opinion, then paid a visit to 26 Broadway to explain it. Bailey was not a prominent lawyer, and not well-known for his legal expertise, but a powerful politician and his legal work for the companies did not truly merit the exorbitant fees he was paid. His employment by Standard Oil, and by Security Oil, was correctly perceived as an attempt to acquire influence with Bailey. At least as regarded Bailey, the matter was of public record, and there was no point to denying that Bayne had hired Bailey, save to be obstinate.
Untermyer asked Bayne about the Security Oil Company. Bayne had been a founder of the company and its president from 1903 until Sealy purchased it in 1909. However, he claimed that he knew almost nothing about the company. When asked about its finances, he consulted a memorandum that he had obtained during a court recess from Frederick W. Weller, former vice-president of Security. When asked to read the memorandum, he refused, despite Commissioner Jacobs's order to read it, and he refused to give it to Untermyer to be marked as an exhibit. He claimed ignorance of the property transfers that had led to the organization of Security Oil and said that he had signed papers without knowledge of their contents. He admitted that he did nothing as president of the firm except draw a salary, a fact which embarrassed him but which made him only more contrary:

Untermyer: You were merely a figurehead, were you?  
Bayne: No, I was not. You are trying to belittle me, and it is not gentlemanly.  
Untermyer: You say you didn't do anything as President. If that isn't a figurehead, what is one?  
Bayne: I am not obliged to tell you my definition of a figurehead, nor shall I do it.  
Untermyer: Did you ever attend a Director's meeting?  
Bayne: I was never within a thousand miles of one....I think you're as much of a figurehead here as I am.

Despite threats of being cited for contempt of court, Bayne continued to ignore Jacobs's instructions. Although Bayne's answers showed how little he knew about Security's affairs, he had, however, handled a $2,500,000 Security Oil bond issue. Bayne took the bonds to London and sold them to a Mr. Jecks, a solicitor for the London Commercial Investment and Trading Company, which then transferred them to the Anglo-American Oil Company, both of which were then Jersey Standard subsidiaries. Again Bayne claimed ignorance of matters he should have known as president of Security Oil and president of a bank.39

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39 The $2,500,000 Security Oil bond issue formed a very large portion of its debt. Howard Bayne, the son of Samuel Bayne, got paid more as an assistant secretary of Security Oil than his father did as president of the company, indicative of the work that the elder Bayne did. Security Oil's assets had been sold at the infamous December 1909 auction. The firm had been convicted of violating the Texas antitrust laws as a secret subsidiary of Standard Oil of New Jersey in 1907, its charter forfeited, and its assets auctioned off.
Defiant on the first day, Bayne grew more so on the next. Untermyer quizzed him about the $2,500,000 in Security Oil bonds discussed the previous day to find out if payment for them had filtered through Seaboard. Bayne again claimed ignorance. Perhaps the bank’s books held the information. Untermyer demanded that he produce the appropriate bank records. Bayne refused and asserted that he would ignore any order to produce them from Commissioner Jacobs. He admitted owning some Standard stocks but claimed not to know that his son, Howard, was a director of Magnolia Petroleum. Shifting tacks, Untermyer inquired about reports that S.G. Bayne owned half of the Gulf National Bank, which he had purportedly organized for the purpose of financing Security Oil. When asked about who owned the other half of the bank, he replied, “I’ll not answer.” Jacobs told Bayne that it was not the witness’s choice about which questions to answer and which to refuse, whereupon Bayne’s attorney, Herman Aaron, belittled Jacobs’s authority and threats to certify Bayne’s actions to the New York Supreme Court for contempt. Leaving, Bayne said defiantly, “You won’t get the books and papers.”

To show that the 1911 dissolution of Standard Oil had little effect on its methods of conducting business, Untermyer and Judson examined Richard C. Veit, formerly manager of shipping for both Jersey Standard and Socony; post-dissolution he was still Socony’s shipping manager and secretary as well. He claimed that Socony was independent and that things were very different, yet he could think of no substantial changes. Veit denied that

Most of the funding for the purchase of Security Oil and Navarro Refining was provided via the Gulf National Bank, largely owned by Samuel Bayne. This further illustrates the strong ties between Bayne and Standard. The New York Times, September 18, 1912; Gray, Rule of Reason, 40-50; Mobil, “History of the Refining Division,” 30, 35-40; Wallace, Nine Lives, 22-30. Howard Bayne left Security Oil in 1905 to become treasurer of the newly created Columbia Trust Company. See also Chapter 4 on Security Oil.

40St. Louis Post-Dispatch, September 18, 19, 1912; The New York Times, September 18, 19, 1912. It is difficult to imagine that kind of courtroom behavior in a leading banker, but most of those associated with the early years of Standard Oil of New Jersey were a rough, poorly educated lot. Aaron’s lack of courtroom civility also stands out, though not atypical in this particular lawsuit. Herman Aaron (1862-1939) was a prominent New York corporate attorney, who, like several other attorneys in the case, had been born in Germany. He served as counsel for several engineering and technical societies and firms, but was most noted for his long service with Seaboard National Bank, which the firm of Parker & Aaron served as counsel until 1929, when Seaboard consolidated with the Equitable Trust Company in 1929. Aaron also had a good knowledge of business, serving as the director and trustee of several corporations Dictionary of American Biography Vol. XXX (1943), s.v. Aaron, Herman. S.G. Bayne’s son, Howard, and his nephew, Courtney Marshall, were both shareholders and officers of Security Oil and Magnolia Petroleum.
Socony and Jersey Standard stockholders were the same: he had sold his Jersey Standard shares but kept those of Socony. Socony had nine new directors since the dissolution, but close questioning revealed that these directors did exactly the same work that they had done prior to becoming directors. Asked about territorial divisions, Veit insisted that Socony was expanding. This meant trying to market cheap oil in Bulgaria, not expanding its domestic market in the United States. Untermeyer noted that Socony shipped petroleum products for Magnolia, suspected of being a Standard Oil affiliate, but not for other independents. Veit said that Magnolia paid more than Standard companies and that shipping shortages made Socony routinely refuse orders. Other witnesses, all secretaries of their respective companies, told similar stories of recently promoted directors who did their pre-dissolution job despite the new title, and each held one share of stock to qualify as a director.41

Returning to the stand the next day, Veit, though a Socony director, claimed a total lack of knowledge about its finances, about financial statements he had signed, and about a $20,000,000 stock transfer of Socony shares earlier in the year. He could not explain why Socony sold petroleum products throughout Asia, but not in Hawaii, while California Standard (Socal) sold in Hawaii, but not in Asia, or how directors were selected. Virtually all the voting was by proxy, and neither he nor his fellow directors had known for whom to vote until the day of the meeting. He had no idea of the salary of the president of Socony, Henry C. Folger, Jr., whom he helped to select, and he did not consider it any of his business to know. Admitting that Socony shipped oil on the Great Lakes for other

41 The New York Times, September 19, 1912; St. Louis Post-Dispatch, September 19, 1912. Veit had worked for Standard Oil for roughly thirty years by the time of his testimony in a variety of positions of increasing importance. He knew Jersey Standard and Socony very well at the middle levels of management. The other witnesses of the day were: Samuel P. Drew, secretary and treasurer of the Chesebrough Manufacturing Company; F.E. Morrell, secretary and treasurer of the Colonial Oil Company, who had been a clerk for Standard Oil of New Jersey and whose new duties were still clerical; W.J. Fisher, vice-president of Colonial Oil, and still assistant to Edward Thomas Bedford (1849–1931) in his role as president of the Corn Products Company. E.T. Bedford was also president of Colonial Oil, and had been a director of Standard Oil of New Jersey from 1903 until the dissolution. He was a cousin of Alfred Cotton Bedford, who later became president of Jersey Standard, and chairman of the board. In keeping with the traditions of nepotism, E.T. Bedford's brother and son were also executives at Standard Oil. Hidy and Hidy. Pioneering in Big Business. 101, 141, 314, 317-19, 620.
Standard Oil affiliates, like Indiana Standard, and asked why Socony did not ship its own products for sale, Veit said it did not have a refinery on the Great Lakes. But, Untermyer noted, Socony had a refinery at Buffalo. Lamely, Veit explained that the Buffalo refinery was not on the Great Lakes. The refinery was three miles from the Lakes. Socony had a pipeline one hundred miles long in southern New York, yet ostensibly because of the $50,000 cost, it could not build one three miles to Lake Erie. Untermyer forced an admission that Socony had a $45,000,000 surplus.42

Veit noted that the Standard's pre-dissolution directors and executives still met daily before lunch and sat at the same four "officers tables," from which Veit and all new officers and directors were excluded. Therefore Veit claimed ignorance about what the old leaders of Standard Oil discussed at lunch; he could see them, hear them talk and laugh, but not hear details. He was on the outside, looking in.43

Socony vice-president Herbert L. Pratt was more talkative that Bayne about the $2,500,000 in Security Oil bonds now owned by Socony. An English firm, American Petroleum Company, owed Socony a large sum of money. It transferred the Security bonds to Socony in liquidation of the debt, which just happened to match the value of the bonds. Pratt did not know the origin of that convenient debt. The Security bonds converted to Magnolia bonds after that latter company organized in 1911, and Socony

42The New York Times, September 20, 1912. Other directors of Socony testified that day, and appeared to know even less that Veit, and did no more than their old jobs, with better pay. William M. Hutchinson, secretary of the Union Tank Line Company, noted great changes since the dissolution, chiefly that the company now generated profits. In the fifteen years prior to the dissolution, Union Tank Line had not made a profit as it was operated as a convenience to the other components of the Standard Oil holding company. The large stockholders, however, remained the same, and had not sold appreciable numbers of shares Henry A. McGee, another new Socony director, knew nothing about his firm's refineries or pipelines, or how he had been elected a director. He remembered a clerk told him about the election, after the fact. As a director his duties were to "look after the manufacture of cans and cases." The other witness of the day was Albert C. Weed, secretary and treasurer of Borne-Scrymser Company, which sold lubricants. Weed told a similar story of the election of new directors, three of the four held only one share to qualify for the position. Hidy and Hidy, Pioneering in Big Business, 480-85.

43St. Louis Post-Dispatch, September 20, 1912; The New York Times, September 21, 1912. While there was nothing particularly sinister about businessmen who had known and worked with each other for many years continuing to have lunch together, the image that it presented to the public was that of "business as usual," despite the dissolution and reorganizations of management among the affiliates. Gibb and Knowlton, The Resurgent Years, 18.
eventually sold to the Blair banking firm. Even the dissolution litigation had not been able to probe the details of these trades.44

Fordyce tried to show how Standard had previously interfered with Pierce-Fordyce. Early in 1912 Pierce-Fordyce had agreed with L.A. Kelsey and J.H. Phillips to purchase their Illinois oil refinery. According to Kelsey's and Phillips's affidavits, William J. Hillands of Standard, acting on Moffett's orders, had tried to break up the agreement, and offered to buy the plant. Fordyce tried to ask Hillands about these events, whereupon two Standard lawyers, Daniel Kirby and Frederick Geller objected strongly, claiming that Fordyce's line of inquiry was irrelevant and that he was eliciting the information for other litigations, thereby abusing the process of New York courts. Fordyce countered. Any evidence showing conspiracies to monopolize the petroleum trade was relevant. Jacobs backed Fordyce, as usual. Hillands denied the story, insisting that it had been the refinery owners who had approached him, in an effort to induce a bidding war. On that note, he was dismissed.45

44The New York Times, September 21, 1912. Jersey Standard had held a majority interest in the stock of American Petroleum, with the remaining shares held by another Standard subsidiary, the Anglo-American Oil Company. On direct examination, Richard P. Tinsley, Socony's treasurer (and former Waters-Pierce vice-president and director), shed little light on the Magnolia Petroleum bonds in Socony's possession. Pierce's lawyers had asked him to explain the American Petroleum Company's debt to Socony. All that Tinsley could recall, after brief research, was that on December 6 or 7, 1909, a charge of $3,250,000 to the credit of the American Petroleum Company appeared on the books, offsetting a credit to the Deutsche-Amerikanische Petroleum Desellschaft. Why this had happened, Tinsley did not know. The New York Times noted that this debt arose at the same time as the sale of the assets of the Security Oil Company, a strange coincidence. See The New York Times, September 25, 1912; "Standard Oil Counsel Ousted," OGL, October 3, 1912, 2. The bonds ultimately ended up in the hands of John D. Rockefeller, Sr., Charles M. Pratt and Charles W. Harkness, both directors of pre- and post-dissolution Jersey Standard, and attorney Lewis Cass Ledyard. C.M. Pratt took over from his father, Charles Pratt who had been one of the original trustees. C.M. Pratt, and others of his relatives, remained active in the management of various Standard companies, whereas Harkness was on the board of directors principally because of his family's large stock interests. Harkness was not an active manager. The New York Times, October 4, 1912; Hidy and Hidy, Pioneering in Big Business, 313-16.

45The New York Times, September 21, 1912; St. Louis Post-Dispatch, September 20, 1912. Kelsey's and Phillips's affidavits were not entered into evidence in the case, and it is surprising that Fordyce was allowed to refer to them in this fashion. It seems likely that the two independent refinery owners had tried to play one oil company off against the other, and then accused Jersey Standard of foul play. Meanwhile, the Justice Department followed the proceedings "with interest" and continued their own investigations, particularly the Dallas grand jury indictments, as Congress investigated Standard Oil's "donations" to Roosevelt's 1904 election campaign and to other government officials. Wickersham had reason to watch the Waters-Pierce case, as he had placed a great deal of faith, and his own credibility, in the efficacy of the dissolution decree. He had resisted many calls for criminal prosecutions against Standard executives, and had not pushed for a stronger order from the Supreme Court. The actions in this case, and in the saga
Inquiries continued into the business relationships between the refineries and storage stations of different Standard affiliates, particularly the practice of "assigning." It involved the sale of products from a refinery near the border of one state to stations of a different affiliate in another state. This made economic sense. It was often cheaper than shipping oil from the affiliate's refineries within the state many miles away. Fordyce was trying to prove that Atlantic Refining sold to stations of Jersey Standard at cost, with all profit going to Jersey Standard. Unconvinced by Standard witnesses' economic claims, Fordyce elicited from a clerk and a domestic sales agent for Jersey Standard that assignments of sales stations to various Standard affiliates' refineries continued as it had prior to the dissolution. A Socony city sales manager testified that its refineries did not sell in New Jersey, part of Jersey Standard's territory, although it could do profitably. Socony "did not deem it expedient to invade New Jersey." Fordyce also showed that Jersey Standard and Socony collected transportation, sales, and pricing statistics from all Standard affiliates in order to apportion market areas. Yet, Socony's statistician, Christian Dredger, denied collusion. All of his information came from sources of information available to the public. He claimed that if information on other Standard Oil affiliates crossed his desk, he never noticed it.46

46St. Louis Post-Dispatch, September 23, 1912; The New York Times, September 24, 25, 1912; "Standard Oil Counsel Ousted," Q7, October 3, 1912, 2. For example, the retail price of naphtha in New York was sixteen cents per gallon, and in New Jersey it was eighteen and a half cents, yet Socony made no effort to sell its cheaper products across the state line. In like fashion, Jersey Standard did not try to sell in New York. Prior to the dissolution Dredger had been responsible for the collection of data for all of the Standard companies. In 1912, he was officially responsible only for Socony. Testimony from George Chesebrough, secretary for several linked pipelines, indicated that James A. Moffett, Sr., had given them a list of favored candidates to vote who would make good directors and officers, and at the very least implied that the choices ought to come off of that list. Other witnesses who testified on September 23rd and 24th included Frederick D. Asche, of the foreign sales department of Jersey Standard (shortly thereafter he became a director); George Chesebrough; J. M. O'Conor, statistician of Jersey Standard, Dredger's counterpart; and Alfred J. Platz, of the sales department of the Vacuum Oil Company (which merged with Socony in 1931).
S.A. Megeath, president of the Galena-Signal Oil Company, described how officers and directors for that newly independent oil company were selected. He had failed to get some of the leading Standard Oil executives to join his company. Instead he settled for their recommendations, one of whom, Walter Jennings, a Standard employee, never attended a meeting of Galena-Signal.

Meanwhile in Washington, Wickersham, citing monetary concerns, announced his intention of leaving the Cabinet as of the presidential inaugural, March 4, 1913, regardless of the election results.47

Untermyer and Fordyce petitioned the New York Supreme Court to compel Bayne to produce the Seaboard National Bank's records that Pierce's attorneys and Commissioner Jacobs had requested, so that they could comprehend the maze of transactions surrounding the stocks and bonds of the various companies that eventually became Magnolia Petroleum. Untermyer and Fordyce asserted that these records, plus the testimony from the Standard Oil dissolution suit, and evidence from the current hearings, could prove that the "trust" had always controlled those firms and striven to avoid more antitrust suits in Texas.

Meanwhile, Bayne and Folger continued to dodge process servers.48

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47 The New York Times, September 25, 1912; "Standard Oil Counsel Ousted," 00, October 3, 1912, 2. Wickersham's announcement was not a surprise, given the low level of pay for many governmental officials, state or federal, coupled with the cost of maintaining a residence in the capitol. The announcement effectively turned Wickersham into a lame duck Attorney General, and he left the job of dealing with the problems of Standard Oil to his successor, James McReynolds. Pierce attorney Henry Priest continued his leisurely European honeymoon, apparently unconcerned about the hearings in New York. See St. Louis Post-Dispatch, September 24, 1912; Brinthurst, Antitrust and the Oil Monopoly 193-203.

48 The New York Times, September 26, 1912. Though Magnolia became a wholly owned subsidiary of Socony, and eventually merged with it, it claimed never to have circumvented, or tried to circumvent, the federal and state antitrust laws, and that the individuals who held the stocks of Magnolia and its predecessor had made the investments individually, and not as part of Standard Oil of New Jersey, or Socony. See generally Wallace, Nine Lives and Mobil, "History of the Refining Division," 1-57. Oliver C. Edwards had been deposed a few days earlier, on September 22, 1912 while on vacation in Connecticut, and his testimony provided some of the basis for the questions regarding the Magnolia bonds. He claimed to know little about the financial dealings of Magnolia and its predecessors, despite being one of the trustees, and a major executive in the various firms. He had no good reason for reorganizing John Sealy & Company in 1911 to form Magnolia. All of this seemed odd, given that he had provided fully half of the money for Sealy's successful bid at the infamous 1909 auction of oil properties. Edwards's contribution was conveniently provided for by financing from his bank, Gulf National, and Seaboard National Bank of New York, both banks of S.G. Bayne. "Oliver C. Edwards Deposition," Missouri v. Johnson. Testimony in the hearings on September 25th was brief. Agents of Standard Oil continued to obfuscate. Abner Coriell, of Socal stated that its New York offices were at 26 Broadway, home of the old Jersey Standard holding
Veit testifying again, triggered another squabble. Untermyer asked Veit repeatedly about pre-dissolution sales from Security Oil to Socony. A heated exchange followed among Untermyer, Robert Stewart, and Commissioner Jacobs. It was a peculiar situation. Stewart, a party to the suit and a witness, had been acting actively as a counsel, though he was not so listed. Untermyer now demanded that Stewart be ordered not to act as counsel. Untermyer continued to press Veit, which prompted loud objections from Stewart, and objections from Untermyer about interruptions by Stewart. Normal courtroom decorum and professional civility completely broke down:

Untermyer: ...If Col. Stewart continues to interrupt, I shall demand that he let counsel in this suit act for him.
Stewart: I shall not hesitate to continue objecting when witnesses are not properly treated. I think you ought to get counsel to act for Mr. Untermyer.
Jacobs: That is not a proper remark for you to make.
Stewart: I understand that you don’t think anything is proper that is against Mr. Untermyer.
Jacobs: In view of that remark, I shall rule that you can no longer act as counsel in this case.
Stewart: I shall act as counsel and I shall object to improper methods of examining witnesses.
Untermyer: In view of that statement, I shall ask the Commissioner to stipulate that at the first interruption by Col. Stewart, he be excluded from the room. He has been most insulting to the dignity of the court, and it is not his first offense....
Jacobs: Your manner to the court has been so offensive that I cannot consent to your appearing as counsel before it. I have no objection to your remaining in the room, but if you attempt to take part in these proceedings in any way I shall have to ask you to leave the room.
Stewart: I would have to be forcibly ejected.

Frederick Geller, counsel for Standard interests and Stewart, won adjournment to defuse the tense atmosphere.49

49The New York Times, September 27, 1912; "Standard Oil Counsel Ousted," OGJ October 3, 1912, 2. Daniel Kirby was Standard’s lead counsel for the case, and Geller was present only as a consultant on New
During this brief respite, Fordyce sent an open letter to Attorney General Wickersham, charging that the evidence produced in the Waters-Pierce hearings proved that Standard had violated, and was continuing to violate, the Supreme Court's dissolution decree. "[C]ertain actions" taken before the decree had lessened and circumvented the effect of the decree. The large Standard stockholders dominated and controlled every former subsidiary (save for Waters-Pierce), and Jersey Standard still effectively operated as a holding company. Attending particularly to Texas affairs which affected his firm, he reviewed the consolidation of the Beaumont and Corsicana refineries under John Sealy & Company and the creation of Magnolia Petroleum, including the odd transfers of bonds, credits, and debts. His purpose to stir the federal government into reopening the Standard Oil dissolution is reflected in his statement:

It is significant that the New York company [Socony] continued to hold the bonds of the Magnolia Company until April, 1912, when the investigation of the Department of Justice had already commenced....

The action of the New York company in lending money to Mr. Archbold, president of the New Jersey company, and the fact that Messers. Archbold and Folger, the presidents of the two most potentially competitive companies, are borrowing money from the New York company on joint account, indicates a decided degree of harmony in the management of these companies.  

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York law. He did not know anything of the petroleum industry, and used that deficiency as a basis for requesting the adjournment. The break also enable Fordyce and Kirby to attend related hearings in Chicago. While Robert Stewart was an excellent attorney of proven worth to the Standard Oil companies, he was not the attorney of record for any of the parties to the litigation, or to the witnesses. He was a party to the suit. While he could always have represented himself as a party, it was not a secret that his role as a party in the litigation was on behalf of Indiana Standard. Commissioner Jacobs and the attorneys for the Pierce interests had allowed Stewart to act as if he were an attorney of record both as a matter of professional courtesy and because it was known where his real interests lay, but as the circumstances of that day showed, the courtesy could be easily revoked. This litigation seemed to erode the normal level of professional decorum and courtesy between lawyers on both sides. Regarding the Chicago hearings, see St. Louis Post-Dispatch, September 27, 1912.

50 The New York Times, September 29, 1912; St. Louis Post-Dispatch, September 29, 1912. Fordyce cited a number of examples of corporate behavior that seemed to indicate that Jersey Standard and the Standard affiliates were operating and cooperating much as they had prior to the dissolution. In particular he drew attention to the fact that the marketing companies were not penetrating each others old territories. Several of the firms went to great lengths to avoid trespassing on other affiliates' territories, obtaining supplies from sources farther away, and not marketing in areas that were closer to their refineries or pipelines than to those of the Standard affiliate in which the market area lay. A number of authors seem sympathetic to the efforts of Standard executives to comply with the dissolution decree, and cite legitimate reasons for the slow interpenetration of the marketing divisions of the Standard affiliates. See Gibb and Knowlton, The Resurgent Years, especially 15-55; Giddens, Oil Pioneer of the Midwest, 122-92; White, Formative Years, 362-520; Wall and Gibb, Teagle of Jersey Standard, 78-91. Others view the dissolution
IV. From the Windy City to the Big Apple

Now that the operators have returned from their vacations and are into harness again they are expressing some concern at the non-arrival of another price advance. There are impertinent ones who do not hesitate to ask the cause of the delay. Frankness and some affection for the truth impels The Journal to state that it knows no reason for the delay. Certain it is that the field report for September affords the "bears: precious little comfort. Its advice to the producer is to cheer up and hope for the best--a hope that will not, we opine, be much longer deferred.

Oil and Gas Journal, October 3, 1912, on crude oil prices

On September 30, 1912, in Chicago, Fordyce closely questioned George W. Stahl, secretary/treasurer of Indiana Standard in an attempt to prove that Jersey Standard still controlled Indiana Standard despite the dissolution decree and formal separation. The five new Indiana Standard directors owned a total of 17 shares in the company, but voted 8,008 proxy shares after the dissolution. He gave no particularly sound business reason for the sudden, large increase in capital stock (from $1,000,000 to $30,000,000), which increased the number of shares held by the old shareholders by a factor of thirty. If Stahl were to be believed, this increase in capitalization was entirely the idea of the new board of directors with their seventeen shares of stock.51

decree as an utter failure, that the "Standard group" to a large extent retained its unity, and operated together for many years. The collective market dominance continued to decline, but observers attributed this more to forces external to the dissolution decree, such as the discovery of new oil fields, and the rise of competing integrated oil firms. For a particularly strong condemnation of the efficacy of the dissolution decree, see Bringham, Antitrust and the Oil Monopoly, 180-210; see also John Ise, United States Oil Policy (1926) 290-91. Government reports for the next thirty years would routinely point out the failures of the dissolution decree, particularly with regards to pipelines and their use (or abuse) to restrict independents, though by 1941 the condemnation extended to the "majors" (large integrated oil companies), not just Standard firms. See U.S., Federal Trade Commission, Report on the Pipe Line Transportation of Petroleum (1916); U.S., Federal Trade Commission, Report on the Price of Gasoline in 1915 (1917); U.S., Fuel Administration, Prices and Marketing Practices Covering the Distribution of Gasoline and Kerosene Throughout the United States (1919); U.S. Federal Trade Commission, The Advance in the Price of Petroleum Products (1920); U.S. Federal Trade Commission, Report on the Pacific Coast Petroleum Industry (1921); U.S. Federal Trade Commission, Petroleum Industry: Prices, Profits and Competition, (1928), Senate Doc. 61, 70th Cong., 1st sess.; TNEC, Monograph No. 39: Control of the Petroleum Industry by Major Oil Companies (1941). There were also innumerable sets of federal government hearings and investigations relating to the petroleum industry. For a view that competition did develop, and that the dissolution of Standard Oil was not an utter waste of effort, see Stocking, The Oil Industry, 49-114; Williamson, et al., Age of Energy, 3-298, esp. 3-30; Johnson, Petroleum Pipelines, 69-208.

51The New York Times, October 1, 1912. Most of the former Standard subsidiaries, save Waters-Pierce, greatly increased the number of shares of their respective companies. This had the effect of making it much more difficult for "outsiders" to gain any measure of control or influence in the companies, while not truly
Fordyce next examined William P. "Uncle Billy" Cowan, president of the oil firm. Cowan testified that his company purchased all its crude from two sources: the Ohio Oil Company and the Prairie Oil and Gas Company. Both had been Standard subsidiaries. Cowan claimed to have no idea how crude prices were "fixed," an odd ignorance, for Indiana Standard was the largest purchaser of crude from the two companies. Fordyce noted that Indiana Standard's new plants and stations were all located in the company's pre-dissolution territory. Cowan replied that Indiana Standard operated nationwide. Indiana Standard's vice-president/manager of marketing and a director and chief of manufacturing denied any connections between Indiana Standard and Jersey Standard, or

diluting the interests of the major stockholders, who continued to hold the same relative interest in the companies. For example, prior to the expansion in the stock, John D. Rockefeller held 2482 shares of Indiana Standard. After the stock was recapitalized from $1,000,000 to $30,000,000, Rockefeller held over 74,000 shares of Indiana Standard stock. The board of directors voted that the stock increase be distributed pro rata among the shareholders. The value of the shares of the Standard Oil companies also increased greatly in value in the period following the dissolution in addition to increasing the number of shares, with Indiana Standard perhaps the most dramatic example. Overall, the value of Standard stocks increased from $663,000,000 at the time of the dissolution decree in May, 1911 to approximately $ 885,000,000 in March, 1912. Indiana Standard stock went from a value of $2,521 per share on December 31, 1911 to approximately $ 4,000 by the end of January, 1912, and after the announcement of the stock increase on February 13, 1912, the per share price shot to approximately $ 7,000. The increases in value and the expansion of stock, in addition to helping the original large shareholders in control, also reflected the fact that the assets of the Standard companies had been grossly undervalued and undercapitalized for a long time. It also reflected confidence in both the petroleum market and the Standard companies, if not a lack of confidence in the dissolution decree. Dividends the first year after the dissolution were also a record high level. These benefits did not accrue to all shareholders, as many people who had held small amount of Jersey Standard stock received only fractional shares in the constituent companies, which had no voting power, and had sold their fractional shares before the vast increase in shares and value. Giddens, Oil Pioneer of the Midwest, 131-38; Brinthurst, Antitrust and the Oil Monopoly, 188-90; Gibb and Knowlton, The Resurgent Years, 18-19; White, Formative Years, 391-96. Stahl was Archbold's brother-in-law, but also related to Fordyce by marriage.

The New York Times, October 2, 1912. The largest purchasers of crude oil, and largest marketers of petroleum products generally are the price leaders, and as such have more than a little control over prices and price movements. The Standard companies effectively set the price in their purchasing and marketing areas for a number of years following the dissolution. Simon Whitney, Antitrust Policies (1958), 163-65; Brinthurst, Antitrust and the Oil Monopoly, 190; Gibb and Knowlton, The Resurgent Years, 44-55 on crude oil purchasing; "Price leadership" refers to the phenomenon that occurs in oligopolistic markets in which increases or decreases in price by one dominant firm, known as the price leader, are matched by all or most other firms in the market. Price leadership was not well understood by many non-economists in 1912, and not even by all economists at that time. To many the concept of "price leadership" seems to be a mere mask for collusive behavior. A good essay on price leadership and the factors affecting prices in the petroleum industry is Edmund P. Learned, "A Case Study of Pricing Patterns," in Oil's First Century, ed. The Business History Review (1960). Cowan knew that Indiana Standard did not operate nationwide. On Cowan and his experience, see Giddens, Oil Pioneer of the Midwest, 13-25, 32-34, 43, 60-68, 161, 172-73, 208.
any other Standard Oil firm, echoing Cowan’s testimony, but had little else to add. The
hearings in Chicago ended, to be resumed in New York later in the week.53

There more testimony emerged about the odyssey of the Magnolia bonds. Broker
Edgar L. Marston stated that he had bought the bonds on the “intimation” of a man he
deprecated to identify, that they would be taken off his hands rapidly. Marston followed
none of the standard purchasing procedures, made no investigation of the bonds, did not
try to determine if the bonds constituted a first mortgage on the Texas property, or were
second to other claims, and obtained no guarantees about security for the bonds. Instead
he visited Standard Oil’s New York headquarters in early April, 1912, where he met his
informant and Folger of Jersey Standard and arranged the deal. Untermyer asked Marston
why he did not follow normal procedures. Marston replied, “I thought we knew where we
could find a market. The purchase was made from Mr. Folger, and I had a very good
thought that they would be sold to people who knew about the property.”54

On the same day that Marston purchased the bonds, the brokerage firm of Jessup &
Lamont, conveniently located at 26 Broadway, told him that it would take $2,400,000 of
the bonds, and during the next few days, Standard attorney L.C. Ledyard, and directors
Harkness and Pratt purchased the remainder. Nothing had been said about Marston’s

53 The New York Times, October 2, 1912. Indiana Standard’s vice-president was Lauren J. Drake, a long-
time, hard-working Standard employee, and expert on domestic marketing. Drake had started off by
establishing a bulk station in Iowa which was taken over by a Standard affiliate by 1882. By 1896 he had
risen to the rank of manager of all of Indiana Standard’s domestic marketing of refined products. By 1900 he
was in New York representing Indiana Standard, and active on Standard’s Domestic Trade Committee as a
coordinator before becoming a director of Jersey Standard for a time in 1911. He was reassigned to Indiana
Standard in the dissolution. Hidy and Hidy, Pioneering in Big Business, 314, 320-21, 440; Giddens, Oil
Pioneer of the Midwest, 40-42, 59-61, 130-36. Indiana Standard’s chief of manufacturing was Dr. William
M. Burton, a research chemist with Indiana Standard that had been in charge of manufacturing there for
many years, eventually becoming a director and eventually president of the company. It was under his
general direction that Indiana Standard produced and patented the first cracking process for oil refining, the
Humphreys-Burton process, in 1913 which greatly increased the yield of gasoline per barrel of crude oil.
Hidy and Hidy, Pioneering in Big Business, 253-54, 438-42; Giddens, Oil Pioneer of the Midwest, 6-7, 22-
54 The New York Times, October 4, 1912. Marston repeatedly refused to identify his informant that gave
him the “intimation” and helped to arrange the deal with Folger. As is the case with many of the witnesses
for Standard interests, if Marston is to be believed there were a large number of incredibly trusting people
running the major corporations of the United States, as well as running the stock market. For a somewhat
blase (and sparse) account of the various bond transactions of Security Oil and Magnolia, see Wallace, Nine
Lives, 16-18, 31-33.
commission for brokering the deal. He had bought the bonds at 98, and sold them at 98.5, much below the normal amount of profit for such a bond sale.55

Concerning the Magnolia bonds, Edwy R. Brown, its president, had told Marston that $2,8112,000 in bonds were already outstanding as security for a loan of $2,250,000 from Howard Bayne's bank, the Columbia-Knickerbocker Trust Company. This loan increased Marston's confidence in the salability of the new bonds. Marston retired from the witness stand.56

Untermyer pursued this line of questioning with R.C. Veit. In the belief that the Columbia-Knickerbocker loan was tied into the transfers of the properties in Texas, he asked about loans made jointly to Archbold and Folger. Veit claimed that he could not find any $2,250,000 loan in the corporate books and denied any relevant knowledge, despite being a director of Socony at that time. Untermyer also had Veit detail the changes in stock ownership, particularly among large shareholders and Standard Oil executives.57

Pierce's counsel solved part of the mystery of the Magnolia bonds. John A. Hance, an employee of the brokerage house of Jessup & Lamont, disagreed with Marston on critical points. Marston had called Jessup & Lamont to offer the bonds for sale, not the other way around, the call occurring two to three weeks before Marston obtained the bonds from Folger and Socony. Hance knew virtually nothing about Magnolia, save that it was

56The New York Times, October 4, 1912. Howard Bayne was vice-president of the bank, which had formerly been the Columbia Trust Company, which had made the loan to Magnolia. He was also involved in the oil business, having served as assistant secretary of Security Oil working with his father, Samuel G. Bayne, also a banker. Howard Bayne's salary was larger than that of his father, perhaps indicating that he actually did work. In addition, S.G. Bayne's nephew, Courtney Marshall, was also an executive of Security Oil, and later Magnolia. Mobil, "History of the Refining Division," 21-22, 25-26, 30; Wallace, Nine Lives, 15-16.
57The New York Times, October 4, 1912. Dissolution, as noted, did not spread the wealth, nor did issuing more stock, as the largest shareholders still received proportional shares of the new issues. The number of shareholders actually decreased significantly in several major Standard companies in the year after dissolution. Some questions arose from Pratt's sale of all of his Socony stock. Giddens, Oil Pioneer of the Midwest 131-38; Bringhamurth, Antitrust and the Oil Monopoly, 188-90; Gibb and Knowlton, The Resurgent Years, 18-19; White, Formative Years, 391-96. It would take a number of years and many transactions for the increased amount of stock to dilute the concentrated power of the large stockholders.
"somewhere down South," and claimed no one had solicited the bond purchase from him, but that he found a purchaser, Rockefeller, after Marston had contacted him.58

Hance dealt with Rockefeller's secretary, not directly with the oil magnate. Concerning his commission, he charged Rockefeller the rate between brokers. No cash or check changed hands, however, as Rockefeller maintained a sizable account at Jessup & Lamont. Hance was familiar with Standard, having been a director of a subsidiary for many years, and still holding stock in Standard companies including Waters-Pierce. He and his firm had done considerable business with Standard Oil, its affiliates, and its executives for many years.59

After the close of testimony for the day, another Pierce attorney, William H. Gray, who was also an independent oil man, spoke to the press. He summarized, in a slanted manner, the Magnolia bond transactions. He concluded that Standard was still exerting monopolistic influence in Texas in contravention of the state's laws and the Supreme Court's decree. Journalists speculated about Archbold's failure to attend the hearings. He had been subpoenaed. Would he be cited for contempt of court? It was "understood" that Archbold would be given a chance to explain his absence before contempt proceedings began. Archbold's failure to appear presented a problem. The trial on the mandamus suit was scheduled for October 8, 1912, in St. Louis. This meant that the Pierce interests needed a continuance there. If that happened, Judge Kinsey would have to issue new commissions to take testimony in New York, potentially invalidating the subpoenas for

58The New York Times, October 5, 1912; St. Louis Post-Dispatch, October 4, 1912. If their testimony is to be believed, it is peculiar that neither Marston nor Hance made any efforts to investigate the Magnolia bonds. Undermyer expressed a similar incredulity at such business practices:
  Undermyer: Did you know anything about the bonds when you bought them?
  Hance: I knew nothing except that they were bonds....If the word "petroleum" appears on a bond, it has very great weight with me as to who I call as a possible customer.
  Undermyer: How could you offer the bonds to anybody without knowing anything about the property or the amount of the issue?
  Hance: I knew the name of the company contained the word "petroleum" and that they were 6 per cent bonds. That impressed me with their value.

59The New York Times, October 5, 1912; St. Louis Post-Dispatch, October 4, 1912. Hance was not a director at Jersey Standard, but evidently at one or more of the former subsidiaries, not including Indiana Standard and Socal.
S.G. Bayne and Archbold. To worsen matters for Standard Oil, Walthall, the new Texas Attorney General, announced that he intended to obtain transcripts of the testimony in the mandamus suit to use in a state action against Magnolia to oust it and collect large fines.\(^6^0\)

Bayne and his attorney Herman Aaron went on the offensive. Aaron had filed a petition in the New York Supreme Court for an order to the Pierce attorneys to show cause why the subpoena requiring Bayne to produce the Seaboard National Bank's corporate books, and to testify regarding transactions, should not be set aside.\(^6^1\) Bayne's and Aaron's affidavits filed with the application for the order, accused Commissioner Jacobs and Untermoyer of improprieties and acting in bad faith. Bayne claimed that Commissioner Jacobs,

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[W]as wholly subservient to the petitioners' counsel [Untermoyer], and on all matters that arose acted in conformity with his wishes. If the bank of which I am President had any books I would not deem it proper to turn them over to the Commissioner in this case, as I am satisfied they might just as well be turned over to the litigants in whose behalf the petitioners' counsel is acting....
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Bayne asserted that Untermoyer's petition had failed to state that Jacobs was a duly appointed Commissioner, that the records sought were irrelevant to the litigation, and that the subpoena's purpose was to enable Pierce to obtain records which were not specified with particularity and to spirit them to Missouri, beyond the reach and protection of New York laws and courts. Further, Untermoyer's subpoena application misstated and

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\(^{60}\) *The New York Times*, October 5, 6, 20 1912; *St. Louis Post-Dispatch*, October 4, 1912; "Archbold Must Explain," *OJ*, October 17, 1912, 1. Continuance of the mandamus suit in St. Louis was a minor problem, as Pierce's attorneys could easily get new commissions to take testimony, and to subpoena Bayne. It would merely have taken more time and some little effort. Circuit Judge Taylor continued the case until December 9 despite the objections of Daniel Kirby and Benjamin Schnurmancher for their Standard clients that delay denied their clients their rights that much longer. Henry Priest, acting for the Pierce faction, had argued that his clients needed more time to finish the depositions, which was true and very obvious given the publicity surrounding the case. In the end, Judge Taylor cited the failure of Archbold to appear before Commissioner Jacobs to testify as the main reason for granting the continuance. "Waters-Pierce Suit Continued," *OJ*, October 17, 1912, 3. Regarding Archbold's failure to appear for the hearings, he had just returned to New York from Europe on October 3, 1912, and allegedly needed time to recuperate from his vacation. Kirby, effectively the head counsel for the Standard interests, proclaimed that it was up to the Pierce faction to find out why Archbold had not appeared, not the Standard group.

\(^{61}\) *The New York Times*, October 8, 1912. The New York Supreme Court is actually the trial court of New York, not the highest state court. This seems to have been a delaying tactic on the part of Bayne and Aaron, as the request for documentary discovery was not unreasonable, and could have been conducted in such a fashion as to preserve any banking confidentiality concerns.
misinterpreted Bayne's testimony regarding Waters-Pierce, crediting him with knowledge that he lacked. Aaron added an additional indictment of Jacobs—his relationship with Untermyer:

Abraham L. Jacobs, the Commissioner herein, is and for many years has been, to my personal knowledge, an intimate friend of Samuel Untermyer. I concur in Mr. Bayne's statement as to the attitude of said Commissioner upon said examination.

Bayne and Aaron accused Jacobs of being Untermyer's appointee and of rigging the hearing in favor of Pierce. When interviewed by the press, Untermyer appeared unconcerned about the order. Bayne's application was obviously an attempt at delay, and the New York courts would soon dispose of it.62

The opposing sides also dueled in St. Louis before Judge Taylor in October 1912, in the trial of the mandamus suit. Attorneys for the Pierce faction outnumbered those representing the Standard Oil interests, five to two. Priest opened the battle by requesting a continuance, an action promptly objected to by Kirby. A continuance would erode his clients' legal rights. Priest retorted that the trial could go on immediately if Kirby would bring into court “the real parties in interest in this case, John D. Archbold and John D. Rockefeller.” Priest knew that was an impossible request. Neither Archbold nor Rockefeller would testify voluntarily in court in St. Louis. Priest continued his plea for a continuance, citing difficulties he and his colleagues faced in serving subpoenas and getting witnesses to testify or provide documentary evidence they alone possessed.

Priest stressed Archbold's failure to appear before Commissioner Jacobs in New York despite receiving a subpoena. Trying to shift the blame onto Pierce's attorneys, Kirby stated that Archbold had not appeared because Standard's lawyers had thought that there was an agreement between opposing counsels that he could testify “at his

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62 *The New York Times*, October 8, 1912. While it is not unlikely that Untermyer and Pierce pushed to obtain Jacobs as the Commissioner, it was not as sinister as Aaron would have liked to have made it sound. Untermyer was an extremely prominent attorney, and Jacobs also well-known in the legal community of New York. It is likely that any appointee as Commissioner would have been known to Untermyer, though perhaps not so well. The legal profession tended to encourage isolation from non-lawyers, and civility between attorneys.
convenience" and ignore the subpoena. So Archbold had gone to Europe, a common ploy when Standard executives did not want to appear in court at certain times. Kirby ignored the illogic in his opposition to the continuance; if important evidence was not available until Archbold testified, then it was reasonable to continue the trial until he deigned to appear. Previously in New York, Kirby had denied that he was Archbold's attorney, and asserted that Archbold was Untermeyer's witness. Further complicating matters, Judson, for the Pierce group, filed a second amended return to the mandamus petition. It charged that Standard Oil had not dissolved, but continued its old operations through stockholder control of former subsidiary companies like Waters-Pierce. As usual in this case, there objections sounded. Schnurmacher complained that the amended return was unacceptable as it raised new legal issues not mentioned in the original response. Judge Taylor wisely allowed the filing of the amended return and permitted Kirby and associates to file motions to strike any objectionable portions of the response. Taylor ignored all arguments on the continuance issue and continued the case on his own initiative due to his crowded court docket. One troublesome issue had been temporarily by-passed.63

Meanwhile the New York Supreme Court ordered Bayne and Aaron to appear and show cause why they should not be held guilty of criminal contempt for their conduct at the hearings, particularly his insults to the court, and Archbold was ordered to appear and explain why he had ignored a properly served subpoena to testify before Commissioner Jacobs.64 Howard Bayne, son of S.G. Bayne, was vice-president of the Columbia-Knickerbocker Trust Company and had been assistant secretary of Security Oil Company, of which his father had been president. Unlike the father, Howard was initially a cooperative witness. He testified freely about the auction of oil company properties in December 1909, in Austin, about John Sealy & Company, and about Magnolia. The

63St. Louis Post-Dispatch, October 8, 1912; The New York Times, October 8, 15, 1912; "Second Amended Return," Missouri v. Johnson.
64The New York Times, October 8, 15, 1912. The actions of Bayne and Archbold, who at least had the excuse of traveling abroad, did not help improve Standard's image to the public, which was only to ready to accept the worst about Standard Oil.
younger Bayne, Sealy, Edwy R. Brown, Oliver C. Edwards, Calvin N. Payne, and George C. Greer had agreed to purchase the properties of Security Oil, Navarro Refining, and Union Tank Line, acting through Sealy. Several others, including Archbold and Folger, were associated with the nominal purchasers. Bayne had cleared the deal with Socony's legal counsel, Martin Carey. Bayne had borrowed the money from his father's bank, Seaboard National, and later had arranged for a loan from Seaboard to O.C. Edwards so that Edwards could repay a loan from Gulf National Bank funds advanced to Sealy to purchase Security Oil. To obtain the loan, Howard Bayne had agreed to provide "such securities as might come to him as a result of the transaction" as collateral to Seaboard. Bayne also provided Seaboard with a copy of Archbold's and Folger's agreement to purchase the securities from him, which they did in 1911. Bayne also sold them Edwards's interest in the company. He testified that several New York banks, including his and Seaboard National, held $8,750,000 in Magnolia bonds as security for a loan given to the oil company. His testimony contradicted Edwards's testimony in his September 12, 1912, deposition in which he had denied the existence of any special contracts or agreements. The younger Bayne agreed to provide a copy of the contracts in question on the following day.65

On October 16th, however, Bayne refused to provide the promised copies or to answer any more questions. He had changed his mind after his father's attorney, Herman Aaron, convinced him that he did not have to cooperate because Commissioner Jacobs's authority to take testimony had lapsed.66

65 *The New York Times*, October 16, 1912; Wallace, *Nine Lives*, 25-34; "Deposition of Oliver C. Edwards," *Missouri v. Johnson*, 14-21. Howard Bayne and O.C. Edwards provided most of the funding for the purchase of Security Oil at the 1909 auction. In his deposition Edwards also claimed a lack of knowledge on many of the financial transactions for the companies of which he was a partner, stock holder, and trustee, and stated that he did not have copies of any of the contracts or agreements that he had made for the organization of the two companies. The Gulf National Bank was at that time largely owned by Samuel G. Bayne. The money flow in this case seems to be somewhat circular. Archbold received the order of the New York Supreme Court on Monday, October 14, and he or his attorney had to appear before the court on October 17 to show why he should not be charged with contempt of court for ignoring the subpoena. "Archbold Must Explain," *OJI*, October 17, 1912, 1.
66 *The New York Times*, October 15. This was a by-product of the continuance of the mandamus suit in St. Louis. While obtaining the continuance was not difficult, nor would it have been difficult to have the
The following day S.G. Bayne appeared in court on motions by Untermoyer to compel his testimony and production Seaboard National Bank's books. Judge Greenbaum had before him motions to punish S.G. Bayne and Aaron for contempt of court and one from Aaron to set aside the subpoena to compel Bayne's testimony. Surprisingly reluctant to pursue the contempt charges, Untermoyer ultimately withdrew the contempt motion. In support of his own motion, Aaron argued that Judge Kinsey of Missouri had been wrong in holding that the conspiracy allegations of the Pierce group were relevant to the Missouri mandamus suit. Accordingly Kinsey's decision did not bind the New York courts. This was a weak argument. The proper place to challenge Kinsey's decision was in the Missouri courts. Under the principle of comity New York courts would be reluctant to question the interpretation of Missouri's laws by a Missouri court. Judge Greenbaum ruled against Aaron's motion to set aside the subpoena, and in favor of Untermoyer's motion.67

On the positive side for Standard Oil, trade journals reported throughout the year that genuine competition existed in all segments of the petroleum industry. Wildcatters had discovered new oil fields, and new refineries and pipelines were being built. On the negative side, by late October several Standard Oil companies were in multiple courts. Frank Hagerman, a Kansas City, Missouri attorney who often represented Indiana Standard, argued before the Missouri Supreme Court on his motion to modify the decree which had ousted Indiana Standard and Republic Oil from Missouri. Arguments also began before the Commerce Court on behalf of the thirteen pipeline companies that the ICC had ordered to file rate schedules for shipments and to act as common carriers. Federal

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67The New York Times, October 18, 1912. Possibly Untermoyer chose not to pursue the contempt charge against Bayne, because he had doubts about the validity of Jacobs' authority following the continuance in the St. Louis court. In that case, Untermoyer could have gone after Bayne after Judge Kinsey issued a new commission to Jacobs, and new subpoenas. More likely Untermoyer did not pursue the matter because negotiations between the parties were well under way, and he did not wish to disrupt the settlement effort by putting S.G. Bayne in jail.
indictments in Dallas were still pending. The Standard lawyers, executives, and shareholders had their hands full.68

Bayne did not get the opportunity to refuse to testify again. Negotiations between Standard interests and Pierce's faction to resolve matters became public in the last week of October 1912. The negotiations had gone so well that Archbold, scheduled to testify on October 28th, received a further reprieve. It appeared that the largest Waters-Pierce shareholders who were affiliated with Standard Oil had agreed to sell their interests to Pierce at market value. It was rumored that Pierce was demanding that all shareholders, not only the largest, sell out. This requirement would delay any actual settlement, for it would require the concurrence of a large number of minor and fractional shareholders. But as noted by journalists, a result of compromise would be the dismissal of all pending litigation between the factions, and no other Standard Oil employees and executives, including Archbold, would have to testify.69

68 The Oil and Gas Journal regularly mentioned signs of expansion in the petroleum industry, and of the continuing prosperity of independent (non-Standard related) oil firms, ranging from future giants like The Texas Company and the Gulf companies to comparatively small and new firms. For examples see generally the "Trade Notes" section and the following articles or comments in the O&G: "Vast Expansion Coming," March 21, 1912, 1; "Increase in American Exports" and "Sugar Makers Adopt Fuel Oil," March 28, 1912, 1; "General Advancing Markets," April 11, 1912, 1; "The Awakening of the Oil Fields," May 9, 1912, 1; "More Money in Oil," May 23, 1912, 1; "Cushing and Ponca" and "Oppose American Marketers," June 27, 1912, 1-2; A.V. Bourque, "What of the Crude Oil Market?" July 18, 1912, 6;8; "Petroleum Production in 1911," August 1, 1912, 1; "Problem of Gasoline Supply," August 29, 1912, 1-2; "Marketing Strategy," October 3, 1912, 1; "The Growing Fields for Fuel Oil," October 10, 1912, 1; "The Oil Market and Small Refiners," October 17, 1912, 1; "Formed New Oil Company," October 24, 1912, 4; "Barnsdall's Big Deal" and "Independents to Build Line?" October 31, 1912, 4. Of course while the Standard forces could point to this increased growth and competition in the oil industry as proof that they no longer monopolized the industry, the growth of competition did not mean that the Standard interests were not acting in a collusive fashion that violated the state and federal antitrust laws. Regarding the Missouri ouster see, "To Argue Standard Ouster," O&G, October 10, 1912, 3 and Piott, The Antimonopoly Persuasion, 144-48; Giddens, Oil Pioneer of the Midwest, 136-38; Brinkhurst, Antitrust and the Oil Monopoly, 95-107. On the ongoing saga of the pipelines, see "Pipe Line Arguments Next Week," O&G, October 17, 1912, 1; Charles E. Kern, "Arguments in Pipe Line Cases Are In," O&G, November 7, 1912, 2-4; "Milburn's Supplementary Brief," O&G, November 14, 1912, 10 (John G. Milburn was counsel for several of the Standard companies in the case).

69 "Archbold Failed to Show Up," O&G, October 24, 1912, 4; "May Sell Waters-Pierce Company," O&G, October 31, 1912, 4; The New York Times, October 27, 1912. If all of the larger interests sold out to Pierce, it would have been foolish for any smaller shareholders to retain their interests, as Pierce would have control of the company, and could control dividends and salaries, and ensure that the small shareholders got nothing, while his family still got paid good salaries. Archbold's evidence, if he had to testify, could have proved extremely damaging to the Standard interests both in court and for public relations as he knew too much. He would either have had to disgorge secrets, and his generation of Standard executives valued secrecy in all corporate matters extremely highly, commit perjury, and/or appear to be an ignorant fool,
Although the tedious process of locating shareholders proved to be more time-consuming than estimated, on November 2, 1912, a satisfactory settlement was reached. Pierce purchased the stock of all large shareholders connected with Standard Oil, or their estates, and of many minor shareholders, totaling 1,270 shares. This gave him 2,520 out of 4,000 Waters-Pierce shares, more than enough for control. This red-letter day marked the first time when any individuals connected with Standard Oil had to give up control of a former subsidiary and, it was also reported, the first time John D. Rockefeller, Sr. sold an oil stock. To some the settlement was proof that the Supreme Court's dissolution decree and injunctive relief worked. To others, it was proof that it was a failure.

By agreement of all parties on November 4th, the hearings were postponed indefinitely to allow the small and fractional Waters-Pierce shareholders to exercise an option to sell to Pierce. It would take several more months for the smaller and fractional shareholders to decide to opt in or out on the deal, and for Pierce to gain the funding for the approximately $3,000,000-plus he needed to buy back control of his company. But by February 1, 1912, he was again in charge.70

The struggle for Waters-Pierce's liberation was over. Pierce's David had defeated Standard Oil's Goliath. Indeed, Standard Oil's legal problems worsened, in part because

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70 The architect of the deal was Moritz Rosenthal, of the international banking firm of Ladenburg, Thalmann & Company. Rosenthal had acted as counsel for Standard Oil in the past, and his banking firm was reputed to be financing Pierce's purchase of the stock. See The New York Times, October 31, 1912; The New York Times, November 3, 5, 1912. The deal was officially closed on February 1, 1913, when the Pierce group paid $3,121,000 for 2,076 shares of Waters-Pierce stock held in escrow by the Chase National Bank on behalf of the larger stockholders of Standard Oil. Pierce, through the Chase National Bank, extended an offer to the remaining shareholders, accounting for approximately 400 shares, mostly in fractional form, to purchase their interests at $1,500 per share. See The New York Times, February 2, 4, 1913. Untermeyer, meanwhile, was gathering headlines as counsel for the Pujo Committee which was investigating the alleged Money Trust. See The New York Times, October 31, 1912. Pierce's string of victories continued into November, as John P. Gruet, Sr., the former secretary of Waters-Pierce that had proved so helpful to state and federal attorneys pursuing the oil company, lost his suit against Pierce for $10,000 for money that Pierce had allegedly promised to pay him to supplement his salary. Not only did Gruet lose, the jury awarded Pierce $27,657.50 on his counterclaim against Gruet for an unpaid loan, plus interest. "Pierce's Secretary Loses Suit," OGI, November 21, 1912, 4.
the hornet's nest that the struggle in St. Louis had stirred up would not settle down quickly or easily. Department of Justice officials told the press that the end of litigation between Standard and Pierce would not end continuing federal investigations. Federal indictments in Dallas against Standard executives and former executives were still outstanding. Attorney General Wickersham, who had been content to let private counsel and litigation do most of his investigation for him, continued investigating complaints in Texas, and elsewhere that Standard Oil executives were in violation of the dissolution decree. And Texas retained its interest in the activities of Standard Oil.71

71The New York Times, November 4, 1912. Although Wickersham had not terminated the federal inquiry, he himself did not actively pursue it; Troubled by increased prices for petroleum products and negative publicity, he had appointed Charles B. Morrison as special assistant in charge of investigating the allegations that Standard had and was continuing to violate the dissolution decree, with an additional assistant Oliver B. Pagan. Morrison had been the federal district attorney for Northern Illinois, and had done much of the investigation that led to the federal antitrust suit that had led to the dissolution. Morrison had also been the architect of the dissolution decree. In Brinthurst's cynical words,

The attorney general [Wickersham] had refused to investigate the allegations against Standard Oil for a year and a half. When he finally decided to look into the charges, he appointed the aging jurist who had helped design the decree to head the investigation. Wickersham had no particular desire to uncover the inadequacies in an antitrust suit that the Taft administration valued as one of its major achievements.

Brinthurst, Antitrust and the Oil Monopoly, 193. Morrison was actually a decent investigator and produced multiple reports over the next five years, but none of the U.S. Attorneys General seemed particularly interested in actively pursuing the matter.
CHAPTER 8: TRUST-BUSTING: THE NEXT GENERATION

We renounced the authority of King George over a hundred years ago but today we have King Monopoly and King Trust in almost every phase of American industry. In the new feudalism the control of a commodity is the mark of power. The slavery of the black man was abolished by the force of arms but today for the white man of average means an economic bondage as merciless as any slavery of the past is threatened....

U.S. Senator Morris Sheppard to the Texas Legislature, January 28, 1913

Instead of a silver spoon, we were born with an antitrust citation in our mouth. We sired, after a fashion, by Sherman out of Hogg. The layette, the cradle and the attending physicians were of this stock. If ever we are accused of having antitrust phobias, it can be said with only a little crudeness that during pregnancy our mother was frightened by at least two antitrust laws.


I. The Astounding Actions of Attorneys General

We believe that it is fundamentally and inherently wrong for any person who has been Attorney General of Texas, after his retirement from that high office, to accept employment from any source and appear against the State in any matter, suit, or action wherein he has theretofore been of counsel for the State. And we recommend the passage of a law prohibiting any person from so doing.

State Senators Tom H. McGregor and C.M. Hudspeth, Minority Report to the Texas Legislature, February 3, 1913

1912 was an election year. Nationally, Woodrow Wilson defeated the incumbent Taft and Theodore Roosevelt for the presidency of the country. In Texas, State Senator Benjamin F. Looney was elected Texas Attorney General. By November 8th U.S. Attorney General Wickersham was a lame duck, soon to leave public office and return to a private law practice. Wickersham had previously shown considerable interest in antitrust investigations and litigation in several industries. Following the victory of Wilson, Wickersham showed a noticeable change in his attitude on antitrust. On the evening of November 19, 1912, William H. Gray, steadfast nemesis of Standard Oil, issued a statement to the press corps of Washington, D.C. Earlier that day Gray and Congressman Burgess of Texas had paid a visit to Attorney General Wickersham to inquire into the status "of certain indictments," referring to the indictments returned by the federal grand jury in
Dallas in August 1912 against officials of Magnolia Petroleum, Jersey Standard, and Socony. Almost everyone indicted had been arrested, including Calvin N. Payne except for three denizens of 26 Broadway: John D. Rockefeller, St., John D. Archbold, and Walter C. Teagle. Gray stated that Wickersham had declared that he had ordered the federal marshal in New York not to arrest the three Standard executives pending further investigation by the Department of Justice into the validity of the indictments. Wickersham did not think that there was enough evidence to force the oilmen to go to Texas. Gray, an attorney and oilman, had disagreed with the Attorney General on this point, arguing that the sufficiency of the evidence was not a matter for Wickersham to determine, but for a federal court in Texas. Gray angrily declared that Wickersham had anticipated that the Jersey Standard executives would fight the matter, much as Pierce had fought extradition to Texas only a few years earlier, rather than seek vindication by trial in open court. He added that,

Fortunate, indeed, is one who can have his case, after indictment and before arrest, tried in the Department of Justice and every detail of it examined with a view to determining the extent of guilt before the trial. This is a privilege not extended to ordinary men, and not involved in ordinary cases, and I say this dispassionately and with all respect to Mr. Wickersham and the high office which he holds.

Gray's sarcastic statement and implied denunciation of Wickersham as a tool of the trusts prompted a press release by the Attorney General later that same evening. In this statement, Wickersham accused Gray of distorting their discussion about the evidence and reneging on his promise to assist the Department of Justice investigation, which had not ceased. Upon hearing of these events, Archbold indicated his satisfaction with the Attorney General's action in quashing the charges. "As for Mr. Gray__, " Archbold chuckled once again and stated that he had said enough.1

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1 The New York Times. November 20, 1912; "Ordered Not to Serve Warrants," OGI, November 28, 1912, 4. While Wickersham seems to have been concerned about the real state of affairs following the 1911 dissolution decree, he seems to have been more concerned about preserving the public record of this "great achievement" of the Taft administration. See Bringhamur, Antitrust and the Oil Monopoly, 190-94. Concerns had already been expressed about the high price of crude oil and refined petroleum products, which had increased steadily throughout 1912, with very few periods of decline. See "Why a High Oil Market?" OGI, November 28, 1912, 1, which noted that demand had increased greatly, while production declined, or was cut back in a number of oil fields.
An anonymous source high in the Justice Department stated a few days later that all stories of investigations and intentions of filing suits against Standard Oil and its affiliates were untrue. The one suit "has accomplished what it was intended to accomplish..." In speeches and press releases in November and December of 1912, the lame duck Attorney General praised the Sherman Antitrust Act and the effectiveness of the past civil litigation against the trusts. Continued supervision of large companies by the Justice Department was the solution. Wickersham also decided not to pursue indictments against the sugar industry and had his underlings discuss the handling of the Texas indictments. It appeared that he intended to go out quietly, rather than with a fanfare. 2

The coming of the new year brought several surprises in Texas. Dire warnings appeared in trade publications regarding the ultimate fate of the small oil refiner, whose numbers had grown in recent years. On the legal front, former Texas trust-buster Robert L. Batts announced on January 13, 1913, that his investigations of the Texas antitrust laws revealed an unpleasant problem. As its predecessors had routinely done, the Thirty-Second Legislature of Texas had amended the civil and criminal codes, including the antitrust laws. Through careless drafting the Legislature had duplicated some, but not all of the provisions of previous civil and criminal antitrust laws. Batts asserted that the Legislature had reenacted a criminal provision granting an exemption to agriculturists and

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2 *The New York Times*, November 24, 1912; *The New York Times*, December 6, 1912; "Ordered Not to Serve Warrants," *OGJ*, November 28, 1912, 4; "Government Must See More Evidence," *OGJ*, December 12, 1912, 8; Brinthurst, *Antitrust and the Oil Monopoly*, 194-95. District Attorney Atwell met with Morrison and Assistant Attorney General James A. Fowler in Washington D.C. in early December to discuss the evidence, or lack thereof from Wickersham's view. Atwell's efforts went unheeded, despite the conclusions reached by Morrison in his report of March, 1913. Wickersham's praise for antitrust litigation as a big stick and his call for federal government supervision sounded much like Theodore Roosevelt's antitrust policy, and that of the incoming U.S. President, Woodrow Wilson. There was not a great deal of distinction between the three political parties stance on antitrust in 1912. Another event of some significance was the death of Walter Bedford Sharp, one of the founders of The Texas Company with Joseph S. Cullinan, on Thanksgiving morning, November 28, 1912. Sharp had been president of The Producers Oil Company, the production branch of The Texas Company, at that time legally separate in order to comply with Texas corporate law. Sharp's death at the age of forty-two caused some unsettling of the industry in Texas. See "Walter Bedford Sharp, Deceased," *OGJ*, December 12, 1912, 8. The relationship between The Producers Oil Company and The Texas Company formally changed in 1913, when The Texas Company acquired nearly all of the stock of the former in its own right, and had Producers Oil reorganized. "Texas Company Will Control," and "Producers Company Reorganizes," *OGJ*, January 16, 1913, 4.
labor unions, which had previously been held unconstitutional by the U.S. Supreme Court. He claimed that this meant that the penal provisions of the state antitrust laws were invalid, and possibly portions of the civil remedies as well. While this announcement was important, people were more interested in the accusations made by State Senator Thomas H. McGregor against the last three attorneys general of Texas, Robert V. Davidson, Jewel P. Lightfoot, and James D. Walthall. McGregor, who had previously attacked Lightfoot in the press, introduced a resolution into the State Senate on January 20, 1913, calling for an investigation of the Texas Attorney General's Department.

3A. V. Bourque, "The Small Refiner in the Southwest," OGI, January 2, 1913, 2-4. Bourque's cogent article noted that the booming demand for oil had served the small refiners well, but that the increasing prices would be death of them. In order to compete with larger refiners and the pipe line companies, the small independent refiners had to pay premiums for crude oil, that is, a bonus amount in excess of the market price of crude. In addition the small refiner also suffered several other competitive disadvantages owing to size, such as credit, storage capacity, and transportation difficulties. Producers wanted cash from the small refiners, and would not make long term contracts, preferring the consistency of the majors. It was a precarious existence, with excess refining capacity, and dependent upon increasing demand and the export market. Meanwhile, rumors abounded that the Rothschilds were involved with Waters-Pierce, possibly in financing Pierce's stock buy-back, a rumor that the Pierce management encouraged. The rumors were unfounded, but persisted for several years, as the Rothschilds had been in fierce competition with Standard for many years outside of the United States, merging their interests with what had become Royal Dutch Shell. See "Rothchild Affiliation Taken Lightly," OGI, January 9, 1913, 1; Daniel Yergin, The Prize: The Epic Quest for Oil, Money, and Power (1991), 60-77, 125-40. Waters-Pierce was having problems with a regular crude oil supply as a result of their differences with Jersey Standard and the affiliates, with the result that it was in the same situation as the small refiners, despite its size, for it had predominantly been a marketing firm. Waters-Pierce even indicated a willingness to pay a ten cent premium for a ten year contract with producers. None accepted. "Waters-Pierce Seeks Oil," OGI, January 9, 1913, 3-4. On Batts's announcement, see Galveston Daily News, January 14, 1913. The Texas Legislature had made several revisions to portions of the antitrust laws in 1911. The first, Title 130, Articles 7796 to 7818 of the Revised Civil Statutes of 1911, included the revised antitrust laws from the Acts of 1903, 1907 and 1909, but did not include exemptions to farmers, stock raisers or laborers. The second legislative revision, Title 77, Chap. 2, Articles 5244 to 5246 of the Revised Civil Statutes of 1911 copied the same portions of the antitrust act of 1899 regarding the right of workers to organize, but included that portion of the 1899 act that expressly stated that the act did not affect the antitrust laws of Texas. This, of course, only served to confuse matters as it had in 1899. The problem was the revision of the Penal Code. Title 18, Chap. 6 Articles 1454-1479 of the Revised Penal Code of 1911 contained a hodge-podge of sections cribbed from provisions of the Civil Code, which relied on material from 1903, 1907 and 1909, provisions lifted from the Penal Code of 1895, and the labor act of 1899 (already copied in the Revised Civil Statutes of 1911, as noted above). The material from the 1895 Penal Code had been repealed in 1903, but the legislature in 1911 reenacted it, and added the labor provisions in the criminal code. The result was that it seemed to grant an exemption from the penal provisions of the antitrust laws to union activity, except that the language provided that it would not affect the validity of the antitrust laws. It was not clear what the intent of the legislature really was. The U.S. Supreme Court in Connolly v. Union Sewer Pipe Co, 184 U.S. 540 (1902) had held that the agricultural exemption of the Illinois antitrust statute was unconstitutional under the 14th Amendment as a denial of equal protection by creating a separate, exempt class. The Illinois statute in Connolly was copied directly from the 1895 Texas antitrust statute. This was why the Texas legislature had done a wholesale revision of the antitrust laws in 1903. Legal arguments on the validity of such exemptions for farmers and unions would continue for some time, with differing, somewhat conflicting opinions from the U.S. Supreme Court.
for the period between 1908 and 1913. This resolution did not contain any specific charges of wrongdoing. It stressed the need for vigilance on the part of the people regarding the "purity and stability of the government which they compose...." and that regular investigations by those with "proper authority" were necessary to that end. The office of the Texas Attorney General was powerful, subject to abuse. No independent investigation of that department had ever been made. The people of Texas had had to rely on "the ex parte and interested reports of those selected to fill this important position and for information of its accomplishments and omissions...." The resolution called for a Senate committee to investigate the affairs of that office for the five years preceding January 1, 1913, when Benjamin F. Looney took over as Texas Attorney General. Facing some opposition, McGregor flew into a passionate speech, declaiming that he had facts that compelled such an investigation, though they could not properly be made public, and that the investigation needed to be done in an open, public, and legal manner. If all was proper, then the Attorney General's Department ought to welcome "the glad light of publicity to clear up the darkness for those who are not afraid of it." His opponents insisted that an investigation required charges. While the politicians argued, the price of petroleum products continued to rise, prompting the search for alternative fuel sources.4

4Galveston Daily News, January 21, 1913. Davidson was a favorite son of Galveston, and generally received favorable publicity in the Galveston Daily News, which was still a major Texas newspaper, part of the chain owned by A.H. Belo & Co., which also included at that time the Dallas Morning News. Benjamin F. Looney, a native of Greenville, received more severe criticism from the presses of A.H. Belo & Company. There were always concerns that the petroleum supply was going to run out in the near future if there were not major new fields discovered. Such discoveries always seemed to turn up. The principal increase in demand was for gasoline and fuel oil, as the rise of the automobile making its presence felt in the marketplace. At this time, the amount of gasoline produced from a barrel of crude was generally low, as efficient cracking and distillation processes had not been developed to yield more gasoline from crude. There was serious talk of refining kerosene carburetors for cars, and using benzol (from coal) and alcohol as fuel. "Gasoline and Autos," OGJ, January 16, 1913, 4. Annual production of motor vehicles in the United States had grown from 3,723 in 1899 to 569,054 in 1914, with consequent effects upon American life, the economy, and the petroleum industry. In 1899 approximately 6.2 million barrels of gasoline had been produced, and used mainly as a cleaning solution, and as stove fuel, and by 1914, forty percent of the approximately 31 million barrels produced was used in automobiles. The cost of gasoline had also risen, from 12.3 cents per gallon in 1911 to 21.3 cents per gallon in 1913. See Williamson, et al., The Age of Energy, 172, 184-96. Much of the research for alternative fuel sources was done by the major oil companies, particularly the Standard Oil firms, which would have done little to free the consumer from the clutches of the "oil trust." On the concern for prices of oil and petroleum products see the following: "All Year Demand," OGJ, January 9, 1913, 1; "Gasoline and Autos," OGJ, January 16, 1913,
Taking advantage of this challenge, McGregor dramatically denounced several specific instances of malfeasance on the part of the Texas Attorney General's office. He alleged that Lightfoot, when he was Texas Attorney General, had dismissed lawsuits ready for trial initiated by his predecessor to recover $400,000 worth of property in Harris County for the school fund, despite the assurance of Assistant Texas Attorney General John L. Terrell that the cases were eminently winnable. McGregor also told the story of the resignation of C.A. Leddy from the Attorney General's Department. Leddy had prosecuted cases closing down a number of "members only" clubs, that were places of drinking and gambling. When he had prepared to start suits against the large number of German social clubs, he was ordered to desist, because such litigation would hurt the Attorney General's Department politically with the large number of German voters. Disgusted by such actions, Leddy had quit, telling Lightfoot that he "could go to the devil with your office." As McGregor waxed eloquent, he focused the handling of antitrust matters, noting the failure of Davidson and Lightfoot to file suit against several prominent trusts operating in Texas. He also charged that Lightfoot and Davidson had acted improperly in the suits against Security Oil and Navarro Refining in order to increase the compensation that the attorneys acting for Texas received. The resolution passed two days later, with only two votes against it.\footnote{Charles Nordhaus, Jr., "Refined Market Review for 1912," \textit{OJI}, January 30, 1913, 6, 8; "On the High Price for Oil," \textit{OJI}, January 30, 1913, 10; "Gasoline and its Price," \textit{OJI}, February 6, 1913, 2-3; "Couldn't Fill the Bill," and "Investigating the High Price of Oil," \textit{OJI}, February 13, 1913, 1, 4; A.J. Hazlett "Gasoline Prices Reduced," \textit{OJI}, July 10, 1913, 14; "Texas Oil Market is Advanced," \textit{OJI}, July 24, 1913, 1; A.F. Robertson, "Commission to Investigate Prices," \textit{OJI}, August 21, 1913, 4; A.F. Robertson, "Hearing of Corporation Commission," September 4, 1913, 2-4; A.F. Robertson, "How the Oil Investigation Started," \textit{OJI}, September 11, 1913, 2; "Decline in Price of Gasoline," "Comparisons of Cost of Fuel," and "Progress of an Investigation," \textit{OJI}, October 2, 1913, 1; "No Fear of a Gasoline Famine," \textit{OJI}, October 16, 1913, 1; \textit{The New York Times}, January 13, 21, 1913; \textit{Galveston Daily News}, February 7, 8 1913; \textit{The New York Times}, March 27, 1913; \textit{The New York Times}, June 1, 1913; \textit{Houston Post}, June 19, 20, 25, 1913; \textit{Houston Post}, July 6, 8, 1913. \footnote{\textit{Galveston Daily News}, January 21, 1913; Texas Legislature, \textit{Senate Journal}, (1913), 107-09. On the handling of the Security Oil case, see Chapter 4; Bringham, \textit{Antitrust and the Oil Monopoly}, 63-67; Gray, \textit{Rule of Reason}, 40-46. Gray, who was not an unbiased author, offered multiple reasons why the Security Oil cases were tried as they had been, none of which reflected well on Davidson or Lightfoot. Bringham's view is less condemnatory of the pair, and emphasizes politics as the major motivating force in Davidson's efforts against Standard Oil, not any real concern with the outcome or actual effects after the publicity was}
Davidson, who had resigned from the office of Texas Attorney General in his failed quest to become governor in 1910, claimed to welcome the investigation. He had little to fear from it, as only one of the allegations made by McGregor dealt with his administration, the litigation against Security Oil and Navarro Refining. On that subject he said,

The Security Oil Company case was filed, prosecuted and disposed of in an open way and in open court, and in my judgment for the best interest of Texas. If there is any evidence showing that I failed to discharge my duty as attorney general, the public is entitled to it.6

Davidson had little to fear from an investigation as he was not McGregor’s real target. Jewel P. Lightfoot was the object of the State Senator’s denunciations, and it was Lightfoot who had handled and supervised the antitrust litigations under Davidson. Lightfoot refused to comment on the resolution at that time, other than to say he was ready for an investigation. The resolution also raised other questions about Lightfoot’s tenure, particularly the clean bill of health that he gave to the oil industry in Texas in May of 1912. The highly publicized hearings in the Waters-Pierce mandamus suit and the federal indictment in Dallas issued in August of that same year raised doubts about Lightfoot’s findings.7

over. Joseph A. Pratt notes that despite the strict antitrust laws, “[a]ctual enforcement was not systematic,...” owing in part the limitations of the Texas Attorney General’s Office. It was difficult for the Texas Attorney General to obtain reliable information about alleged violations of the oil companies, other than consumer complaints, which almost invariably were based on price and disgruntled former employees. Consider how Davidson and Lightfoot had relied on John P. Gruet, Sr. in their actions against Waters-Pierce. See Chapters 2-6. Also, the Texas Attorney General’s Office had extremely limited budgets and support staff for prolonged antitrust investigation, in contrast to the fiscal resources of the large oil companies. At the same time, politicians who formulated antitrust policy were torn between the populist sentiment that feared big business and the “trusts,” and the realization that big business also brought in capital investment and could greatly accelerate the economic growth of Texas. Attorneys General in several states who had built careers on antitrust enforcement found that their perspective on big business changed when they became governors responsible for the economic well-being of the state rather than enforcement of the antitrust laws. See Pratt, The Growth of a Refining Region, 197-206, and Flott, The Anti-Monopoly Persuasion, 131-50.

6Galveston Daily News, January 21, 1913
7Galveston Daily News, January 21, 23, 1913; Texas Legislature, Senate Journal, (1913), 107-09. Davidson had, in fact, apparently pursued the cases against the other Standard Oil affiliates only after Senator Joe Bailey had made his failure to hound Standard thoroughly an issue in September and October 1907. The delay between the filing of the petition and the actual “trial” of two years also seemed odd, as did the trial itself. See Gray, Rule of Reason, 40-46; Bringhamurst, Antitrust and the Oil Monopoly, 65.
The Senate committee investigating the Attorney General's Department proceeded in desultory fashion, as two members seemed to show little enthusiasm for the project. On January 28, 1913, McGregor formally submitted a set of nine specifications of matters that the committee was investigating to the Texas Senate. The brunt of the charges fell upon Lightfoot. According to the specifications, Lightfoot had padded expense accounts on several investigations when he had been Texas Attorney General, had failed to prosecute several companies and trusts despite evidence of illegality and violations of the antitrust law, and thereafter had represented those same companies as counsel. Last of all, it was charged that the lawsuits against Security Oil, Navarro Refining, and the Union Tank Line were rushed to trial at the last moment instead of being compromised and settled in order that some of the attorneys for the State could collect a higher percentage of the penalties as fees. 8

Some members of the investigating committee were hostile to the investigation, particularly Senator Lattimore, who ensured that it did not proceed "regularly nor with enthusiasm." Lattimore insisted that the investigating committee not waste the Texas Senate's time during the regular session hours; if it had to meet, it could do so in the evening. Upon examination of the specifications, W.F. Ramsey, counsel for the three former Texas Attorneys General in question, offered the opinion that most of the material in the specifications dealt with actions that occurred outside of the Attorney General's Department, which were private and personal matters, and therefore irrelevant to the investigation and beyond its scope. He stated, "You might as well investigate me in my private affairs." While Ramsey was merely representing his clients, he was technically

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8Texas Legislature, Senate Journal (1913), 64-72; Galveston Daily News, January 30, 1913. By current legal ethics standards, Lightfoot's behavior after he left office was improper or unwise at best, and would constitute grounds for harsh disciplinary action. By the standards of the Texas Bar in the early 1900s, what Lightfoot did looked bad, but there was no codified legal ethics in Texas that he had to obey other than his own conscience. It would be many years before all of the Texas bar would be professionally bound by a code of ethics. Note that the Texas Attorney General's Department did not share in penalties collected, but that county and district attorneys received a percentage of the fines, which they shared with outside private counsels that assisted the State.
correct. The most significant allegations against Lightfoot would constitute violations of legal ethics today, but at that time the issue was not a clear one. 9

Lightfoot, not content with Ramsey's representation, demanded that the Senate subpoena a number of people and documents. All were men involved in oil, law, politics, or some combination of the three. He demanded a subpoena duces tecum for Joseph S. Cullinan, president of The Texas Company to produce all telegrams and letters exchanged between Cullinan and the following: William H. Gray, Jacob F. Wolters, prominent Texas politician, lawyer and oilman, C.W. Cahoon, longtime employee of Waters-Pierce and the Pierce-Fordyce Oil Association, H.C. Pierce, C.A. Pierce, John D. Johnson, Henry S. Priest and Samuel W. Fordyce, Jr., which related to the current Texas Senate investigation, or any such proposed investigation, or proposed investigations of the Magnolia Company or Pierce-Fordyce. He demanded a similar subpoena duces tecum be issued to James L. Autry, the general counsel for The Texas Company, which also specifically ought to include any communication from Gray since the Texas Legislature began its current session, and any letters from Wolters since January 22, 1913, when the investigation began. Lightfoot also wanted to request all telegrams sent out by Gray and Wolters to any of the above-mentioned individuals since the beginning of 1913. 10

It was an obvious attempt to shift the focus of public attention away from Lightfoot and the original purpose of the investigation and represented as much an intrusion into the private affairs of the targets of the subpoenas duces tecum as Ramsey alleged the

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9 *Galveston Daily News*, January 30, 1913. Given that most states, apparently including Texas, allowed their Attorneys General and assistants to engage in private practice to supplement the meager income of the office had to create real conflicts between their public and private work as lawyers, despite the best efforts of the attorneys in question to avoid such cases. The states were generally sluggish about modernizing their state bureaucracy and offices. See Keller, *Affairs of State*, 319-42, and Chapter 5, note 26. It is not clear if the attorney representing the former Texas Attorneys General was in fact William F. Ramsey, former Justice of the Texas Supreme Court and former judge of the Texas Court of Civil Appeals who had left the Texas Supreme Court in 1911 in an unsuccessful gubernatorial bid against Oscar B. Colquitt in 1912. See Gould, *Progressives and Prohibitionists*, 65, 86, 89-91.

10 *Galveston Daily News*, January 30, 1913. For an innocent man, Lightfoot protested greatly. Presumably both Gray and Wolters were part of different factions of the Democratic Party in Texas from Lightfoot, though neither could have been pleased with Lightfoot's handling of the various investigations and prosecutions of Standard Oil and its affiliates, Wolters having ties to The Texas Company.
investigation was of Davidson, Lightfoot and Walthall. Wolters denied sending any pertinent letters or telegrams to any of the people mentioned by Lightfoot, or for that matter "any other man, woman or child connected with any oil business with reference to the pending investigation." He pointed out that he did not know most of the people at all, had only met Cahoon once several years earlier, and had not seen or communicated with Johnson in four years. He had no particular interest in the matter.\footnote{Galveston Daily News, January 30, 1913. The investigation of the Texas Attorney General's Department was a political maneuver, and Wolters a politician, but it seems to have been the brainchild of McGregor. Wolters had proven before that he was concerned with the major hot political issue in Texas, Prohibition, having briefly been incarcerated for contempt of the Texas Senate before over that issue, and vindicated in \textit{Ex Parte Wolters}, 144 S.W. 531 (Tex. Crim. App., 1912). He had also run for the U.S. Senate in 1912 as the candidate of the anti-prohibition forces, or "wets," against Morris Sheppard, the "dry" congressman from Texarkana in the Democratic primary, and lost. See Gould, \textit{Progressives and Prohibitionists}, 65-66. On the relationship between the Texas Prohibition campaign and the presidential campaign of Woodrow Wilson in 1912, see Gould at 59-88. Texas Democrats occupied a number of prominent positions in Wilson's administrations.}

Gray, no stranger to the oil industry, law, or political infighting in Texas, bluntly stated that Lightfoot "would like to shift the burden of the investigation from his own official acts to my private affairs,..." and would prove "both humorous and ridiculous for his [Lightfoot's] subpoenas... will prove barren indeed." He pointed out that he had been through this before along with Jake Wolters in 1911, in another State Senate committee investigation regarding prohibition in Texas, and had refused then to allow the Senate to investigate his private matters, and had been vindicated by the Texas Court of Criminal Appeals. He thought it would be wise for the present committee to read the judge's opinion in that case before subpoenaing the various telegraph companies for his telegrams. He claimed to have sent or received no relevant telegrams. He denied being legal counsel for any oil company in Texas, technically correct, as he had represented Waters-Pierce in the recent hearings throughout the country, not Pierce-Fordyce, and had not discussed the investigation with any oil companies or their agents.\footnote{Galveston Daily News, February 2, 1913; Galveston Daily News, January 30, 1913; Houston Post, January 31, 1913. Gray did not approve of the conduct of the Texas Attorney General's Office in its prosecutions of Standard Oil affiliates in Texas, nor of the Waters-Pierce receivership, wherein many had complained that business was being handled no differently, and finally the "sale" of the assets of the Standard affiliates in December 1909. From Gray's perspective, neither the lawsuits nor the sale had done anything to change the situation for independent oil men or consumers in Texas, and seemed political in}
Gray was not behind the investigation. He had published a pamphlet in 1912 called *The Rule of Reason in Texas*. In it he had commented on the antitrust suits against Waters-Pierce and other Standard Oil affiliates in 1907 and made the observation that the trial against Security Oil, Navarro Refining, and the Union Tank Line was a trial of a moot case. That trial had benefited certain individuals and Standard Oil more than it did the State of Texas. Gray suggested that the judge in that case, George Calhoun, be subpoenaed. He conceded that he had talked with the U.S. Attorney General Wickersham about the federal indictments from Dallas to discuss why Wickersham had held up the warrants for Teagle, Archbold, and Folger. And on January 27, 1913, the federal district court judge had ordered new warrants issued, vindicating Gray's actions.\(^{13}\)

Having read in the newspapers that the senate intended to subpoena his letters and telegrams, Autry had F. C. Pannill, his secretary, search his personal records and those of The Texas Company for the letters and telegrams that the Legislature presumably would request. He also consulted another lawyer and friend regarding the validity of such a legislative subpoena, Robert A. John of Houston. Pannill found only three letters exchanged between Autry and Gray and three letters and telegrams exchanged between Autry and Wolters between 1909 and 1913. None were of real relevance to the information demanded by Lightfoot. Robert A. John, meanwhile, sent a short memo to Autry on February 2, 1913 on the law in Texas on subpoenas. The most recent case on it was *Ex Parte Wolters*, in which the Texas Court of Criminal Appeals had overturned contempt convictions against Wolters and Gray for failure to produce records demanded by a State Senate committee.\(^{14}\) Under that opinion, John reasoned that the Texas Senate could

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\(^{14}\) Autry may well have known from other sources that the Texas legislature intended to subpoena his correspondence, as he had good political connections, but his personal papers include several newspaper clippings relating to the beginning of this investigation. See Autry Papers, Box 13, File 571-A, WRC; Autry to F.C. Pannill, January 30, 1913 and Pannill to Autry, February 1, 1913, Autry Papers, Box 13,
subpoena material for legitimate investigations within its jurisdictions provided that such material was pertinent for the purposes of the investigation. The purpose of this investigation seemed to be to determine whether or not there had been official misconduct by former Texas Attorneys General, or their assistants. Given that Davidson, Lightfoot, and Walthall were no longer in office, the theoretical purpose of the investigation could not be for impeachment, but only to serve as an aid to future legislation. Otherwise the Senate lacked jurisdiction to conduct the investigation. John doubted that the theoretical scope of such an investigation would extend to the alleged "questionable conduct" of the former Texas Attorneys General, and certainly not to any act of a private citizen dealing with third parties, such as Gray. A sheriff could not serve such a dubious subpoena from the Legislature; that would require the Sergeant at Arms.15

Despite John's advice, Cullinan and Autry traveled to Austin and appeared before the committee on February 3, 1913, for which they were compensated in the sum of 1.50

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File 571-A, WRC. According to John, the rule stated in that case was that witnesses had to produce information in investigations where the tribunal had power and authority to make the investigation, and the "questions are pertinent and material,..." with reservations for self-incrimination and privileged communications. Robert A. John to Autry, February 2, 1913, Autry Papers, Box 13, File 571-A, WRC. John was also closely tied to The Texas Company. See also Chudleigh, "James L. Autry," 262-66 for a further description of these events from the view of The Texas Company and Autry.

15John to Autry, February 2, 1913, Autry Papers, Box 13, File 571-A, WRC. While antitrust policy and enforcement was a major issue in Texas politics, few would openly admit to being opposed to antitrust enforcement. The most severe criticism usually heard was that a vigorously enforced, strong antitrust policies kept investors and business from Texas. This was true, which was a main reason why antitrust policy and enforcement tended to be ambivalent. Texas governors wanted to attract business and capital, even if the general populace was leery of big business (and big government). The most divisive issue in Texas politics in the early twentieth century was prohibition. Wolters and Gray had run afoul of the Texas Legislature in 1912 over the issue of prohibition by refusing to testify and produce evidence for before an investigating committee of the Texas Legislature, and been held in contempt of the Texas Senate. The pair of oilmen/lawyers/politicians had then filed petitions for habeas corpus to get released. This resulted in Ex Parte Wolters, 144 S.W. 531 (1912) which was a vindication of their defiance of the Texas Senate. The case involving Gray was decided by the Texas Court of Criminal Appeals at the same time and included as part of Wolters. The court's opinions in Wolters were lengthy, with strong dissents from Judge Prendergast. For prohibition as a political issue, see generally Barr, Reconstruction to Reform; Gould, Progressives and Prohibitionists; Sean C. Murray, "Texas Prohibition Politics," (M.A. thesis, University of Houston, 1968). See also Martin, The People's Party, 54-57, 74-82, 107-08, 132; Anders, Boss Rule in South Texas, 66-69, 82, 86-90, 97-104, 193-202, 240-50, 273-80; Jack L. Calbert, "James Edward and Miriam Amanda Ferguson: The Ma and Pa of Texas Politics," (Ph.D. dissertation, Indiana University, 1968); Brown, Hood, Bonnet and Little Brown Jug, 3-11, 107-14, 126, 184-85, 229-34, 417-19, 435-36. The issue of prohibition is still not completely dead in areas of Texas.
per day, and five cents per mile travel. On the other hand, Gray was incensed that the Texas Senate had caved in to Lightfoot's demands and had issued subpoenas for his personal communications. He sent a letter to the investigating committee, which he also released to the press. In it, he declared that the subpoena to O.D. Parker, manager of the Western Union Telegraph Company "shows a startling disregard of a man's personal rights as guaranteed by the Constitution and Bill of Rights." He pointed out that the Senate investigation was of the Attorney General's Department, with which he had never had a connection. He demanded that the Senate show the relevance of his communications to any of the people listed in the subpoena to the investigation. He had no telegrams sent by Western Union during the relevant period to the named individuals, but Gray still demanded that the Senate state what relevance his personal telegrams could have on an investigation of the Texas Attorney General's Department for the previous five years. He declared that the actions of the investigating committee were a flagrant violation of his constitutional rights and an unreasonable seizure of his property, without probable cause, based solely on the demand of Lightfoot. Who benefited from a publication of Gray's communications, particularly that of Fordyce?

It is well known throughout the world that I, together with others, have been and are now engaged in a desperate fight with the heads of the Standard Oil Company.

The ruthless and indiscriminate publication of my private correspondence could serve but one purpose; that would be to advise them and their representatives of what my future plan of action is to be. This I feel sure is not the purpose of the committee in calling for these telegrams, and

16Subpoena for James L. Autry, January 29, 1913; Cullinan to Autry, telegram February 4, 1913; T.H. McGregor to Autry, February 4, 1913; Blank Affidavit of Expenses, February 1913; Autry to McGregor, February 13, 1913; all in Autry Papers, Box 13, File 571-A, WRC. Autry had few papers or telegrams for the committee, and most of those were obviously irrelevant to the investigation, and the remainder were inquiries or replies on matters that were not obvious, which could have related to the investigation, or could easily have dealt with any other matter or dealing in which Autry was involved. Of related interest was that Gray had sent a copy of his The Rule of Reason In Texas to Autry in 1912 for his perusal, which Gray described as "a history of the Standard Oil Company in Texas, its 'life, death and resurrection' together with the part played therein by the law enforcement officers." Autry thanked Gray, and noted that the work "cannot be otherwise than very entertaining." Gray had also written Autry in 1909 commenting on the investigation and prosecution of Security Oil and Navarro Refining, with implied criticism of the Texas Attorney General's Office. See Gray to Autry, February 15, 1912; Autry to Gray, February 19, 1912; Gray to Autry, October 28, 1909; all in Autry Papers, Box 13, File 571-A, WRC.
therefore I call the committee's attention to its reckless disregard for my constitutional rights.

He asked that he be allowed time to make a challenge in court on the issue to obtain an injunction if the Senate committee continued to insist upon production of his correspondence.\textsuperscript{17}

The issue quickly became moot, as the sharply divided committee issued its reports on February 4, 1913.\textsuperscript{18} All agreed that James D. Walthall had done no wrong in his brief stint as Texas Attorney General when he had dismissed four land suits. The majority report agreed with Robert John, that the only possible grounds of jurisdiction for the investigation under the resolution was to develop facts for future legislation, and that the Senate and its committee were without jurisdiction over the people or the subject matter to investigate the charges contained in the specifications. Further investigation would be a waste, implying that McGregor had gone way beyond the permissible scope of the resolution in framing his specific allegations. On the other hand, the entire committee agreed that the Texas Senate should recommend to Attorney General Looney that he

\textsuperscript{17} Houston Post, January 31, 1913; Galveston Daily News, February 3, 1913; Houston Post, February 3, 1913. Autry was as incensed as Gray, but saved his anger for private correspondence. In a letter to Texas Attorney General Benjamin F. Looney whom Autry confessed might not be "a proper repository of complaint," he expressed extreme outrage at Lightfoot's public demand for his correspondence, which assumed "the fact and existence of such communications" (emphasis in original), which indirectly accused Autry of wrongdoing, and lacking any external confirmation of its existence, however unreliable. To make matters worse from Autry's perspective, after he had gotten the few remotely related items together, and gone to Austin ready to testify, the investigation "fell down, and Mr. Lightfoot's press statements, etc, stand unrefuted." (emphasis in original). This was the core of the matter—that he had indirectly The Texas Company had once again been maligned, and no correction made for the public. As Autry put it, During all the miserable period of evasion and duplicity and law-defying by people in the oil business, The Texas Company has been free from all such and from all just suspicion of having improper relations with any of the people responsible for such; and if the miserable period referred to has not yet ended, this is still my Company's position. Autry concluded by offering Looney the same deal that he had to previous administrations that were suspicious of The Texas Company, to come and investigate the company himself anytime. Autry to Looney, February 11, 1913, Autry Papers, Box 13, File 571-A, WRC. The Texas Company was the target of much suspicion in its early years in Texas that it was a shill for Standard Oil, owing it part to Cullinan's early history with Standard, and the origins of the Corsicana Refining Company. Despite this, there was no basis to these allegations. The Texas Company was a home-grown independent integrated oil company.

\textsuperscript{18} Evidently the five man committee became a six member committee somewhere along the way. Senator Lattimore was not on the original appointment list for the special committee. See Texas Legislature, Senate Journal, (1913), 107-08, 262-74; "Galveston Daily News, February 5, 1913.
investigate the specifications of wrongdoing, particularly those dealing with antitrust matters. 19

The minority report of Hudspeth and McGregor demanded that there be further investigation, particularly of a suspected cotton seed and cotton ginning trust, if not by the Senate, then by Looney. Though speaking in general terms, McGregor and Hudspeth condemned the actions of Lightfoot for representing companies that the Attorney General’s Department had investigated and prosecuted under his tenure, as well his handling of the bond issue, purchased by his future client. They also indicated that at the very least the Attorney General’s Department had been extravagant in its investigation expenses, if not actually engaged in improper spending and account padding. The pair urged the enactment of laws to deal with these issues. 20

The reports were not a vindication of Jewel Lightfoot. But in conjunction with other contemporaneous events, they served to focus the attention of the public, and Attorney General Looney, on antitrust enforcement and the potential for corporations to exert influence at high levels of government. Among these events were the election of the new United States Senator from Texas, Morris Sheppard, and the disposal of the federal indictments at Dallas. Sheppard, unanimously elected by the Texas Legislature on January 28, 1913, devoted his acceptance speech to the evils of monopoly, "the satraps and the janizaries of economic despotism...," particularly when supported by government action.

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19 Texas Legislature, Senate Journal, (1913), 262-73; Galveston Daily News, February 5, 1913. With a little creativity, the Texas Legislature could have come up with justification for further investigation into the behavior of the Texas Attorney General’s Office, at least under the guise of the need for investigation to draft future legislation in order to prevent the Texas Attorney General’s Office from acting improperly in the future. As was often the case with highly publicized issues, such as prohibition in Texas, factional struggles seem to have demarcated the sides in the investigation.

20 Texas Legislature, Senate Journal, (1913), 273-74; Galveston Daily News, February 5, 1913. Lightfoot’s actions largely did take place after he had left office, save for the issue of padded expenses reports, but it smacked of impropriety for him to be representing corporate clients that his office had investigated or sued not long before. McGregor attempted one more time to revive the issues of the Attorney General Investigation on March 20, 1913 when he pushed for formal adoption of the minority report as the official report of the Texas Senate on the issue. He faced strong opposition on from his opponents on the investigating committee, chiefly Senator Nugent, and lost this final round of the battle. See Galveston Daily News, March 21, 1913.
Others, such as Robert L. Batts stressed the need to overhaul the state antitrust laws yet again.\footnote{Texas Legislature, \textit{Senate Journal}, (1913), 174-86; \textit{Galveston Daily News}, February 4, 1913. Representative Walker introduced two bills into the legislature to rectify the problems with the 1911 legislative revision that Batts had pointed out publicly nearly three weeks earlier. Waters-Pierce also became officially independent of Standard on February 1, 1913 with Pierce's purchase and transfer of the Waters-Pierce stock held by John D. Rockefeller and the "Standard interests." The value of a share of Waters-Pierce stock proved to be approximately $1,500. \textit{The New York Times}, February 2, 4, 1913.}

II. Federal Farragoes

\textit{The only person who believed there was ground for the indictments was the government prosecutor in that district, and he probably was influenced by local coloring. If it had been anyone except Standard Oil officials no indictments ever would have been returned. I did not propose that citizens of the State of New York should be dragged to the State of Texas to stand trial when there was absolutely no reason for such action being taken against them.}

Attorney General Wickersham to Associated Press, February 25, 1913

The issue of the federal indictments against the Standard Oil executives had not gone away. On January 27, 1913 Judge Edward Meek of the federal district court in Dallas issued new warrants against Teagle, Archbold, and Folger. While Meek expressed his confidence in the integrity of Wickersham as U.S. Attorney General, he observed that it was a strange new thing for an executive department of the federal government to interpose itself between a federal court and those indicted by it. That same evening, Wickersham issued an explanation for his actions, repeating that there was insufficient evidence for an indictment, but stating that he had relied upon the opinion of two assistants, C.B. Morrison and Oliver E. Pagan, who had studied the evidence carefully. U.S. Attorney Atwell of Dallas, who had examined the same material with Pagan and Morrison, had reached a different conclusion and continued his investigation, albeit with Wickersham's permission. Atwell's statement to the press the next day, after the warrants had been sent to the federal marshal in New York, indicated the depth of his disagreement with Wickersham's policies.

Unless the Attorney General interferes again, service will be had or attempted upon John D. Archbold and Henry C. Folger, Jr., of New York, and W.C. Teagle of Plainfield, N.J.... It would seem proper that the guilt
or innocence of men ought to be submitted to twelve men, good and true, their peers. I have no doubt of the sufficiency of the evidence, save in possible [sic] one man's case, and that man's attorney has been informed of the conditions so as to make it unnecessary for his client to go to any inconvenience.

The actions of Congressman John Nance Garner of Texas reinforced Atwell's statement. Garner warned that he would press for a Congressional investigation into the Department of Justice if the Dallas grand jury adjourned without further action against Standard Oil. He stated that he did not think it proper to interfere with Department of Justice investigations, unlike Wickerson interfering with the federal district court, but if Atwell dropped the case, he intended "to find out why they were dropped and what influence the Attorney General may have had in the case."22

Perhaps Wickerson did not much worry about Garner's threats, as he was going to be out of office within five weeks with the inauguration of Woodrow Wilson. On February 1, 1913, he telegraphed Atwell, and demanded a full report on Meek's actions in issuing new warrants on Teagle, Archbold, and Folger, along with any new evidence collected by Atwell or by the Court. The New York Times speculated that Wickerson would likely hold up the new warrants. The subject of trusts and antitrust law was a common topic in the nation's newspapers at this time, with a Supreme Court decision in favor of one major monopoly, and multiple states enacting new laws, including Texas and New Jersey, home of the trusts, where the "Seven Sisters" bills were under consideration

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22 The New York Times, January 28, 29, 1913; Galveston Daily News, January 29, 1913; "Again After Magnolia Officials," and "Watching the Standard," OBI, February 6, 1913, 4. It is questionable whether Morrison and Pagan really agreed with Wickerson, given Morrison's ninety-seven page report to Wickerson on February 28, 1913 after the preliminary investigation into post-dissolution Standard Oil, his conclusion being that "The defendants have not kept faith with the court and have not abandoned the combination, but, on the contrary, have gone forward with it in full force on slightly different terms. Though it is the same in substance as it was before the decree." Bringham, Antitrust and the Oil Monopoly, 193, quoting C.B. Morrison in "Report of C.B. Morrison, Special Assistant to the Attorney General, upon the Oil Investigation," February 28, 1913, Justice Department File 60-57-0, sec. 7. By 1913 John Nance Garner (1868-1967) was a six-term Congressman and a new member of the House Ways and Means Committee, and an increasingly strong power in Washington, D.C. Garner, who had served in the Texas Legislature from 1898 to 1902, would continue to serve in Congress until 1932, becoming Speaker in 1931. In 1932 he was a Democratic candidate for president, but settled for the vice-presidency, serving under Franklin Delano Roosevelt for two terms. For some details of his Congressional career, see Gould, Progressives and Prohibitionists, 108-11, and Anders, Boss Rule in South Texas, 106-23, 280-81.
by the legislature. Wickersham's actions and the events in Texas drew considerable attention.23

The new warrants issued by Judge Meek on January 28th, had reached New York by February 3rd, and speculation ran that nothing would happen. Neither U.S. District Attorney Wise nor U.S. Marshal Henkel in New York would talk to the press. Garner's reaction was swift and sure; he introduced a resolution in the House of Representatives to require Wickersham to make a report on the case and to state if he intended to interfere yet again. By Thursday, February 6th, the House Judiciary Committee unanimously reported favorably on Garner's resolution and declared themselves surprised at Wickersham's actions. The House Judiciary Committee thought the Attorney General should have waited until after the warrants had been served, and the defendants released on bond, to express a view on the case. The resolution required Wickersham to turn over all correspondence on the cases and indicate his intent regarding the warrants. It stopped short of launching an investigation of Wickersham's action, but Garner indicated that if the Attorney General's

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23The New York Times, February 2, 1913; Galveston Daily News, February 4, 1913. In United States v. Sidney W. Winslow, 227 U.S. 202 (1913) the U.S. Supreme Court affirmed the decision of the district court sustaining a demurrer to one indictment, and one count of a second indictment against Mr. Winslow et al., for allegedly trying to restrain and monopolize the shoe machinery industry. Winslow and others had consolidated several independent manufacturers of shoe machinery into the United Shoe Machinery Company, and put together a set of machinery leases on the equipment with tying clauses to other equipment. The various constituent companies had not been competitors per se, but rather had made different types and parts of equipment used in the manufacture of shoes and boots. The Supreme Court held in effect that that kind of consolidation, a sort of partial vertical integration was acceptable. It did not rule on the tying clause issue, as it was not technically before it. The "Seven Sisters" bills were the product of Woodrow Wilson when he had been governor of New Jersey. They were seven antitrust bills which aimed at curbing corporate excess. The New Jersey Senate Committee on Judiciary began hearings on the bills, introduced by State Senator Davis, on February 3, 1913. None initially spoke on behalf of the bills, while many opponents (mainly corporation attorneys) suggested "changes." In the end the bills did get enacted in various forms, and most were later repealed or amended out of effective existence. At that same time, Texas was also considering new antitrust legislation to rectify the mistakes produced in the antitrust laws by the wholesale revision of civil and criminal codes in 1911. The result was intense public scrutiny over antitrust actions, or inactions, and suspicion of price changes in the petroleum industry, whether market-driven or not. On a related note, the Interstate Commerce Commission repeated its 1912 declaration a number of pipe line companies to be common carriers, despite petitions to the contrary submitted by most of the companies previously involved in the litigation. "Pipe Lines Still Common Carriers," OGL, February 6, 1913, 4.
report raised any questions of impropriety, he would press for a full Congressional inquiry.24

While this was going on in the Congress, Wickersham conferred with C.B. Morrison and examined the new evidence sent to him by Atwell. Wickersham issued no statement to the press but indicated that he still felt that the evidence was insufficient to sustain indictments. Rumor had it that the U.S. Attorney General had already ordered the U.S. Marshal not to serve the warrants. At the same time, the Department of Justice announced that it was investigating the soaring price of crude oil, and correspondingly, of gasoline throughout the country in recent weeks. The investigation was to determine if Jersey Standard or its former subsidiaries were artificially creating the conditions which had resulted in the price increases and if they were acting in concert and/or with other firms. Evidence allegedly in possession of the Justice Department claimed that the Standard Oil companies had a full year's worth of crude oil in storage. If true, this meant the those companies were relatively unaffected by price increases, unlike small refiners, and stood to reap considerable profit. The explanations by various officials of Standard Oil companies that the increases in the price of crude and refined petroleum products were the results of several market factors, such as increased consumption and decreased production, fell on deaf ears.25

25Galveston Daily News, February 7, 1913; Houston Post, February 7, 1913; Congressional Record, 62d Cong., 3d sess., 1913, pt. 3: 2524-25, 2676, 2705. The Standard Oil companies were price leaders in their respective marketing areas, despite the increase in competition produced by the expansion of the petroleum industry and new companies, and contemporary investigations revealed this dominance and price manipulations. The New York Times, January 4, 21, 1913 (the Mayor of Boston complained about price increases in gasoline since the dissolution, and proposed a city-run gasoline distributorship to sell at low costs to motorists). According to William H. Libby, a long-time Standard Oil executive in charge of foreign matters, the rise was due to a variety of factors, such as increases in the cost of living, economic and public unrest, but chiefly due to the great increase in the worldwide demand for petroleum products and "diminishing production of higher qualities of crude oil." Libby's statement held elements of truth, particularly regarding the increase in demand, but few gave it credence. After all, it was released as his personal statement, even though it was given to the press by the regular press representative of 26 Broadway, not an official response by Jersey Standard. Others noted that a number of independent producers were selling crude for well below the "market cost" as they lacked the transportation, refining, and marketing facilities that the Standard companies and affiliates controlled. J.C. McKinney, a director of the South Penn Oil Company, formerly a wholly owned production subsidiary of Standard Oil, agreed with
The House of Representatives speedily approved the Garner resolution and sent it on to Wickersham, who declined to issue an immediate statement, preferring to stand behind his original opinion that there was insufficient evidence to sustain the warrants. His actions up to that point did raise questions in the public mind. According to the *Galveston Daily News*, Wickersham had either abused his power, or the U.S. Attorney General had more power than previously thought to be able to set aside the findings and opinion of federal grand juries and federal judges seemingly at will.26

Wickersham did not let the matter lie until he was no longer in office. On February 11, he made a brief statement to the House of Representatives in response to the resolution, though on orders from President Taft he did not present any correspondence or evidence. He pointed out that warrants executed in one judicial district were not self-executing in another; an application had to be made to a judge or special commissioner to commit the defendant, based upon some proof that the defendant had committed the crime charged in an indictment. Accordingly, it was proper for him to examine the sufficiency of the evidence and decide that there was not enough to make a case, and so to hold up the warrants. What was interesting in his statement was that he had acted on the warrants after attorneys for Archbold, Teagle, and Folger had asked him to examine the evidence that had led to the indictments to avoid removal proceedings before a commissioner. These

Libby, adding that crude oil prices had been too low for years, and were only beginning to reach a profitable level, which would be good for industry growth, See *Galveston Daily News*, February 7, 8, 1913. See also "What's the Explanation," *Everybody's Magazine* Vol. 26, 817-18 (June 1912) on price investigation in New England region. The Department of Justice also acknowledged that it was investigating prices as part of Morrison's investigation into the dissolution of Standard Oil. On production and prices, see Charles Nordhaus, Jr. "Refined Market Review for 1912," *OIL*, January 30, 1913, 6-8 and "Oil Production for 1912," *OIL*, February 6, 1913, 6, which showed that crude production in 1912 decreased by 219,318 barrels below that of 1911.

26*Galveston Daily News*, February 7, 8, 1913; *Congressional Record*, 62d Cong., 3d. sess., 1913, pt. 3: 2524-25, 2676, 2705. While Wickersham was nominally Atwell's boss, federal district attorneys had enjoyed a fair amount of independence in conducting investigations and filing suits. It was within Wickersham's purview to order Atwell to stop investigating, and even to dismiss the suits, but his actions in handling the warrants in question did seem to overstep his bounds. Once the grand jury had indicted, and the federal judge issued warrants, actions by the U.S. Attorney General to prevent their service and execution were unwarranted. On an unrelated note, William Rockefeller, John D.'s brother, fell seriously ill under the questioning of Samuel Untermyer before the Pujo Committee investigating the so-called "Money Trust" on February 7, 1913.
attorneys had indicated that they would fight removal with all of their ability and effort, which could be extremely time and effort-consuming, as the attempt of Texas to extradite H.C. Pierce for perjury/false swearing in 1906-1909 had proved. Wickersham stated that he had had a report made on the evidence and consulted with several attorneys in the Justice Department, including Atwell. He had decided that there was not sufficient evidence and sent Atwell back to Texas to "secure certain additional evidence which it was thought would strengthen the case against the defendants." Judge Meek acted without any further proceedings, despite a motion for a continuance by Atwell until the May term of court, so accordingly Wickersham held up the new warrants as insufficient. Atwell was continuing the investigation and sending in reports.27

Possibly Wickersham was acting to avoid needlessly prolonged litigation. His second refusal to have federal marshals serve the warrants was consistent with his first one in September, 1912. But as Garner pointed out that same day, while a commissioner or judge had the authority and duty to examine the sufficiency of evidence for indictments from other jurisdictions, nowhere did Wickersham state that the U.S. Attorney General had similar authority, nor had he pointed out any appropriate statute or precedent giving him such an examination power or showing that it was transferable to anyone in the Department of Justice. If there were such a statute or precedent, then Congress needed to enact legislation to remove such power from the Attorney General. However, Garner indicated that there would be no further Congressional investigation, much as he might have wanted one, given that Wickersham had not provided the evidence on Magnolia Petroleum on orders from President Taft on grounds of the public interest. It would wait until a better time, and Garner left the matter in the hands of the House Judiciary Committee.

27Galveston Daily News, February 12, 1913; "The Wickersham Warrant Muddle," OGI, February 20, 1913, 2. Wickersham's actions simply looked suspect. Given that he was soon to be back in the private sector practicing corporate law for the likes of Jersey Standard and other large companies, and would need to curry favor, his behavior looked all the more suspicious. As Bringham notes, Wickersham seemed reluctant to question the efficacy of what had been one of the Taft Administration's (and his) purportedly chief accomplishments, Antitrust and the Oil Monopoly, 190-93. If he had simply let matters proceed, nothing much could have happened by the time that he had left office.
Wickersham’s action, or inaction, was good news to Standard Oil and its affiliates, in light of the refusal of the Missouri Supreme Court on February 12, 1913, to alter the decree ousting Indiana Standard from that state. 28 Meanwhile Waters-Pierce, now an independent competitor of the Standard Oil companies, purchased land in Oklahoma near the Cushing and Cleveland oil fields for the purpose of building an oil refinery. Rumor claimed that Waters-Pierce was actually acting as a cover for the Roxana Petroleum Company of Oklahoma, a subsidiary of Royal-Dutch Shell. Though this proved not to be the case, trade journals abounded with stories of secret ties between Waters-Pierce and Shell. 29

Attorney General Wickersham pondered the matter for two more weeks, as his term of office drew to a close, before taking definite action. On February 25th, perhaps looking to his future career as an attorney in private practice, he had Acting Attorney General Fowler send a telegram to U.S. Attorney Atwell in Dallas, in which he ordered him to

28 Galveston Daily News, February 12, 1913; “The Wickersham Warrant Muddle,” OGI, February 20, 1913, 2; “Oil Ouster Upheld,” The New York Times, February 13, 1913; “Ouster Made Permanent,” OGI, February 13, 1913, 2; “The Standard Ouster,” OGI, February 20, 1913, 2. Taft, while an extremely lame duck, also did not want to see any further tarnish on his career as a trust-busting president. While the Missouri courts stood firm, Indiana Standard made intense lobbying efforts, directly and indirectly to the Missouri Legislature throughout 1913. Indiana Standard was aided by the business community of the Kansas City region, which stood to lose much if the large refinery at Sugar Creek were to shut down, which Indiana Standard threatened to do. In the end, the ouster decree was suspended indefinitely, thus staying the ouster, but also leaving the courts with something to threaten the oil company in the future to keep it in line. See Piot, The Anti-Monopoly Persuasion, 142-49; Giddens, Oil Pioneer of the Midwest, 137-39.

29 “The Roxana-Waters-Pierce Refinery,” OGI, February 13, 1913, 2. It is uncertain how Pierce obtained the financing to purchase back the stock in his oil company from the Standard Oil stockholders. Possibly he did get money from the Rothschilds as the rumors claimed. Kendall Beaton argues that the claim that Shell had secretly purchased Waters-Pierce, or was otherwise partnered with it arose from the selection of Clinton D. Martin as president of the Roxana Petroleum Company of Oklahoma in late 1912. Martin had been a leading executive of Waters-Pierce in its Mexican operations and had become well-acquainted with Shell oil men there. The choice of Martin as head of Shell’s first subsidiary in the United States, and the secrecy surrounding many of Waters-Pierce’s transactions made the inference that Shell and Waters-Pierce were affiliated seem natural. There is no further evidence of any connection, and when Waters-Pierce finally came under the control of another major oil company in 19127, it was Sinclair, not Shell. See Kendall Beaton, Enterprise in Oil: A History of Shell in the United States (1957) 122 and Charles B. Wallace, “Waters-Pierce Oil Company Case Revisited,” Texas Bar Journal Vol. 24, No. 3 (March 1961) 221. On the history of the Roxana Petroleum Company of Oklahoma and Shell’s early forays into the United States, see Beaton, Enterprise in Oil, 115-66. H.M. Tilford’s suit against H.C. Pierce and other Waters-Pierce executives that had begun in the 1912 struggle between Pierce and Standard Oil was finally dropped in mid-February, following the formal purchase of the outstanding Waters-Pierce stock by Pierce. “Suit Against Pierce Dismissed,” OGI, February 20, 1913, 2.
dismiss the charges against all of the defendants, corporate as well as individual. The
district attorney complied with the orders of his superior and dropped the indictments, but
was displeased. He tersely refused to offer any explanation for his orders or make any
comment on them. Judge Meek also was displeased at this further interference by the
Attorney General, more so by efforts that had apparently been made by the Department of
Justice to interrogate the grand jurors who had returned the original indictments. That same
day as Atwell complied with the orders, Meek, who did not live up to his name, had
Special Examiner McCanna brought to his court room. The judge accused him of having
sought to get a grand juror to violate his oath, and claimed to have evidence of such
actions. McCanna refused to admit or deny the accusation, nor would he state whether he
had authorization to commit the act, which was illegal. Meek told him that he was in
contempt of court, and if he continued his investigation, he would end up in jail.30

Wickersham, who was in Indianapolis, traveling to Washington, D.C. from St.
Louis, released a statement that evening to the press, in which he averred that no one in his
office believed that there was sufficient evidence to support the Texas indictments. Only
the local U.S. Attorney, Atwell, thought there was enough, doubtless influenced by the
strong antitrust, anti-Standard Oil feelings in Texas. The dismissal did not mean that the
Department of Justice thought Standard Oil had not violated the Supreme Court dissolution
decree. The Department of Justice continued its larger investigation of the oil industry,
which had begun as a result of the Waters-Pierce litigation with Standard Oil over a year
earlier, and Texas was a part of that inquiry.31

30 Houston Post, February 26, 1913; Galveston Daily News, February 26, 1913; "No Ground For
Indictments," OGJ, March 6, 1913, 2. If McCanna had tried to get grand jurors to violate the sanctity of
the grand jury proceedings, with or without authority to do so from Wickersham, and this action could be
proven, then McCanna would have been in serious trouble, and likely have found himself the object of a
criminal indictment. If Wickersham had authorized such an action, he had no power to do so as it was
illegal to tamper with a grand jury. and he also would have been enuring trouble. McCanna's behavior in
refusing to admit or deny the accusations seemed suspicious in itself.

31 Houston Post, February 26, 1913; Galveston Daily News, February 26, 1913; "No Ground For
Indictments," and "Lack of Necessary Evidence," OGJ, March 6, 1913, 2, 4. The investigation continued
under Morrison's direction for several more years without any real encouragement from the various U.S.
Attorneys General or the President, all of whom seemed to prefer a perpetual on-going investigation that
could be referred to, but without forcing the administration to do something concrete. The Standard
Public opinion in Texas did not favor Wickersham's actions or his statements about Atwell and Texas, whose star was rising with the advent of Woodrow Wilson to the White House. Newspapers expressed the belief that if any legal actions were questionable in the matter, it would be those of Wickersham and the Department of Justice, who had strained the power of his office, if not abused it. His comment about local influence "coloring" Atwell's perceptions prompted the following rejoinder:

His [Wickersham's] suggestion...is suggestive of the further thought that the attorney general himself and his associates may have been unconsciously influenced by "local coloring" in the making of which the concerns indicted are generally considered to be quite proficient.

The editorial concluded that if Atwell and the grand jury had erred in seeking and returning the indictments, bringing the defendants into court in Texas, that far from being an inconvenience, it would have given them and Standard Oil an opportunity to vindicate themselves publicly. Any inconvenience would have been more than offset by "the wholesome effect that would result from the enforcement of orderly procedure in all cases of which judicial cognizance should be taken."32

Wickersham's own investigators believed that Standard was violating the dissolution decree and the antitrust laws, and stated so in a preliminary report to him, bits of which were made public, which made the Attorney General's actions even more questionable. Numerous complaints had been lodged against Standard Oil and its affiliates, and the public and politicians still perceived 26 Broadway and its denizens as controlling the petroleum industry and prices at will. If Wickersham had merely thought that Atwell

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32Galveston Daily News, February 27, 1913. The next day Magnolia announced that it was building a new pipeline from the Oklahoma oil fields to its refineries in the Gulf Coast region. See Houston Post, February 28, 1913. Standard Oil executives of the various companies and affiliates would not have welcomed the chance to vindicate themselves publicly, as the aura of secrecy that had surrounded Standard Oil since its creation had yet to dissipate, and would not do so until the next generation of leaders took power.
had a poor case to try, he should have said so even more explicitly, and stated that the Justice Department would act, but only after its investigation.33

Any celebration that might have been held at 26 Broadway, or in Beaumont, was premature. Attorney General Wickersham turned over Morrison and Pagan's report on the oil industry, along with his office to his successor, James C. McReynolds, on March 4, 1913. The next day, Texas Attorney General Benjamin F. Looney filed an antitrust suit in his hometown of Greenville, Texas, against Jersey Standard, Socony, Magnolia Petroleum, several other companies, and a number of individual defendants, including John D. Archbold, Walter C. Teagle, and Henry C. Folger. The next round of the antitrust fight between the Texas Attorney General's Office and the petroleum industry had begun, the cycle had started again.34

III. Epilogue: Broken Trusts

They can and they can’t;
They will and they won’t;
They’ll be damned if they do,
They’ll be damned if they don’t.

Charles L. Francis, on the dilemma facing oil companies trying to operate under the Texas antitrust laws, as enforced, 1933

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33 The New York Times, March 2, 1913; "No Ground For Indictments," and "Lack of Necessary Evidence," OGI, March 6, 1913, 2, 4; see also "Report of C. B. Morrison, Special Assistant to the Attorney General, upon the Oil Investigation," February 28, 1913, Justice Department File 60-57-0; Brinthurst, Antitrust and the Oil Monopoly, 190-198. The question for Morrison and Pagan was whether there was enough solid evidence of violation of the decree and the Sherman Act. Violation of the intent of the dissolution decree and the Sherman Act was not the same thing as the violation of the literal language of the dissolution order. This left a great many loopholes, some of them rather large, such as permitting individuals to do what the old Standard Oil of New Jersey holding company could not do.

34 Galveston Daily News, March 6, 1913; The New York Times, March 6, 1913; "Ouster Suit Against Magnolia," OGI, March 13, 1913, 2; “Plaintiff's Original Petition,” State of Texas v. Magnolia Petroleum Company, No. 10,232 (District Court of Hunt County, Eighth Judicial District of Texas, 1913), T-3S, RG 302 Box 2-23/848F. Attorney General Looney had been quite busy preparing a barrage of antitrust-type actions. On March 4, Looney had filed for a temporary restraining order to prevent the Missouri, Kansas & Texas Railway Company of Texas, better known as the Katy of Texas, from effectively merging with the Katy of Kansas and several other rail lines. A consolidation bill passed in the Texas Legislature on March 3, 1913 over Governor Colquitt's veto apparently gave the Katy of Texas that right to merge. Looney had earlier written an opinion opposing this consolidation bill, and with the support of Colquitt, sought to handle the issue in the courts. Looney also issued an opinion at the request of a state senator opposing the buyout by one telephone company in several Texas towns of its competitor in those towns, reducing the number of telephone companies in the towns to one, a monopoly situation. Galveston Daily News, March 5, 6, 1913.
Before the rise of the great trusts and the passage of the antitrust law, the Texas tradition of antimonopoly oratory flourished untested. The Standard Oil cases offered Texas politicians a concrete opportunity to drive the oil trust from the state, but their words proved hollow. Texas politicians obscured the essential facts of this litigation. The leading figures on both sides of these controversies were all ostensibly devoted to the Texas antitrust tradition, and they all labored mightily to get their message out to the voters. Collectively, they succeeded to a remarkable extent in disguising the ineffectuality of their antimonopoly activities. Texas acquired a reputation as a foe of Standard Oil that persists to this day.

Bruce Brinthurst, Antitrust and the Oil Monopoly (1979)

Brinthurst concludes that Texas antitrust enforcement against the oil industry between 1889 and 1909 was motivated primarily by politics and was largely ineffectual. To a certain degree he is correct. Henry, Thomas, Crane, Davidson, and Gregory all tried to use their reputations as trust-busters fighting against Waters-Pierce and Standard Oil to achieve political advancement, with varying degrees of success. Subsequent Texas Attorney Generals would likewise try to elevate themselves on the basis of successful antitrust litigations against large oil companies in Texas. Texas politicians used the issues raised by the readmission of Waters-Pierce after its ouster in 1900 to attack each other. Bailey and Davidson engaged in a bitter political struggle in 1906 and 1907 overtly over antitrust issues and the oil industry. Greed also emerged as a factor in the antitrust litigations, as county attorneys, district attorneys, and special counsels all stood to collect large sums of money from attacking oil companies under the guise of antitrust zeal. While Texas made some money out of Davidson's antitrust suits, it was arguably at the expense of Texas's consumers that paid higher prices. In the end, the assets of Waters-Pierce remained operational in Texas, albeit as the Pierce-Fordyce partnership, as did the assets of Security Oil, Navarro Refining, and Union Tank Line, first as John Sealy & Company, then as the Magnolia Petroleum Company.

A close examination of available material suggests that while politics, ambition, and greed had a role to play in Texas antitrust enforcement against the oil industry, many of the

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35 Brinthurst, Antitrust and the Oil Monopoly, 58-68. Antitrust was not a political issue in the same manner as the prohibition of alcohol, as very few if any, Texas politicians were publicly opposed to tough antitrust laws and their enforcement. The political question seemed to be how tough an antitrust stance to take balanced against the desire to attract capital investment in Texas.
state trust-busters had a sincere commitment to antitrust enforcement and its goals, but as the events of December 1909 showed, tempered by reality. Were the antitrust efforts of the Texas Attorney General ineffectual? If the criteria are driving the corporate defendants from the state and sending the individual defendants to jail, then the answer is yes. But if one looks at other, less direct results of the vigorous antitrust enforcement policies of Texas a different conclusion is reached.

The antitrust suits against Waters-Pierce pointed out problems with the state's statutes on antitrust and corporations, prompting needed legislative changes in 1895, 1899, 1903, and 1907. Discovery problems that Davidson and Lightfoot faced in the early stages of their litigation against Waters-Pierce resulted in prompt action to give the Texas Attorney General broader powers to investigate in Texas and beyond its borders. This reflected a commitment on the part of Texas legislators to controlling big business, a commitment that continues to the present. It also reflected a realization that Texas was part of a national economy; that corporations, individuals, and actions beyond Texas's border could have a serious impact on Texans.36

The joint antitrust efforts of the attorneys general of Texas, Missouri, and several other states showed a commitment to state antitrust enforcement that complemented the intent of the Sherman Act and suggests that more than mere politics prompted the efforts against Waters-Pierce and Standard Oil in Texas. Some states, at least, were willing to act when the federal Department of Justice and the U.S. Attorney General were not, and the publicity created by their efforts in turn put pressure on the federal government. In the 1912 presidential campaign, Wilson, Taft, and Roosevelt all ran on platforms with antitrust

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planks. Though Waters-Pierce and Standard companies effectively remained in both Texas and Missouri, by 1913 they were true competitors.37

The need for joint efforts by state attorneys general, along with the reliance on special counsels and county and district attorneys, made it plain that the size of the attorney general’s office had to increase, as did its budget. For most of the nineteenth century the position of state attorney general throughout the country had been effectively a part-time one, with low pay that the officeholder was expected to supplement through private practice. The outcry in the press over the windfall that Travis County Attorney Brady stood to receive from the Waters-Pierce litigation for doing his statutorily mandated duty made it clear to the Texas Legislature that the increasing responsibilities of the attorney general, particularly antitrust enforcement, required increased staffing and funding. Attorneys general needed resources to match corporations capable of hiring the nation’s best lawyers and enduring long, costly investigations. The provision allowing county and district attorneys to initiate antitrust suits and share in the penalties collected provided an undersized attorney general’s department with investigators at no cost to the budget, but it also encouraged frivolous suits to extort money from corporations and cast doubts on the motivations for serious litigation. Following World War I, the Texas Attorney General’s Department increased steadily in size, funding, responsibilities, and investigatory power, making it more of a match for even the largest law firms.38

Most significantly, the persistent state antitrust enforcement in Texas against oil companies from the 1890s onward compelled the executives and attorneys of such firms to

37 In addition to the antitrust suits against Waters-Pierce and Standard Oil, Texas cooperated with Missouri and several other states in investigations and litigations against International Harvester, and alleged trusts in the lumber, book publishing, and plumbing industries, to name a few. For the differing perspective of Roosevelt, Taft, and Wilson on federal antitrust policy, see Keller, *Regulating A New Economy*, 23-29; 38 On the problems of staffing and funding facing state attorneys general in the late nineteenth and early twentieth century, see Chapter 5, note 26. Since that period the offices of all states attorneys general have grown to the size of large law firms for their respective states. In 1949 the Texas Attorney General’s Department employed 40 lawyers, and by 1970 that number had increased to 125 lawyers. Recruiting and retention continue to be problems, in large part due to the salary discrepancy between the public and private practice of law, though it is doubtful than a Texas Attorney General today would resign as Lightfoot did in 1912 on the basis of inadequate income. See Dickson, "Law and Politics," 77-79.
take notice of the antitrust laws, and shape business decisions accordingly. Bringhurst states that the litigation against Waters-Pierce, Security Oil et al., merely forced the companies to reorganize without driving them from Texas. This is true, but it ignores the fact John Sealy & Company and Magnolia were organized as partnerships to try to avoid the Texas antitrust and corporation laws, and reflected a continuing wariness by Standard Oil of such laws and their enforcement. As Joseph Pratt points out, although Standard was determined to have as strong as possible an interest in the Texas oil industry, the antitrust laws and their enforcement limited its ability to act openly and boldly. When the Mellons met with Archbold and H.H. Rogers to offer Standard the opportunity to buy out the large Gulf holdings in Texas, Rogers declined, stating "We're out. After the way Mr. Rockefeller has been treated by the state of Texas, he'll never put another dime in Texas." While not absolutely true, Gulf remained independent. Standard was content to foster competing firms and to try to play them off against each other.39

Gulf and The Texas Company benefited from the constraints on Standard Oil's presence in Texas, and the focus on antitrust enforcement directed against Standard affiliates partially protected them from over-vigorous scrutiny by the Texas Attorney General, which gave both companies the time and opportunity to emulate Standard and integrate vertically and become strong, viable competitors in the oil industry. The antitrust laws also shaped the form of the vertical integrations, requiring separate companies with common stockholders to perform different activities. While these firms received benefits from the antitrust laws and enforcement, they were not immune to them and their executives and attorneys were well aware of it. In addition to blocking the Mellon's efforts to sell Gulf's assets to Standard in 1902, antitrust concerns also helped to prevent the merger of Gulf and The Texas Company in 1905, despite extensive negotiations between the companies and strenuous efforts to lobby the Texas legislature to enact a law permitting

the merger. And while The Texas Company and Gulf were effectively fully vertically integrated, it was not until 1917 that they were permitted to run their integrated operations through one company each. Both Gulf and The Texas Company also generally ran their intra- and interstate pipelines as common carriers, in marked contrast to Standard-affiliated pipelines. By acting in this fashion the two companies escaped much of the criticism that Standard pipeline companies faced.40

Gulf and The Texas Company saw the benefits of operating without the secrecy that habitually surrounded Standard Oil, readily cooperating with the attorney general. Gulf's general counsel went so far as to enlist the aid of Davidson and Lightfoot to prove to the Mississippi Attorney General that the Gulf companies were not part of Standard Oil. The Texas Company was suspected by many of being a secret subsidiary of Standard from its creation onwards for many years, in part due to Cullinan's history with Standard and the actual cooperation that existed between Standard and The Texas Company. As a suspected Standard shill, The Texas Company came under heightened scrutiny, and the company, led by Cullinan and Autry behaved accordingly.41

Autry was particularly concerned about the threat of antitrust litigation by Texas. In 1904 he warned Cullinan that the rapidly growing and aggressive "native Texan" oil companies that flourished in the wake of Spindletop "would have to use extreme care to avoid antitrust censure." Autry also warned Cullinan of the pitfalls of vertical integrations through common stock ownership and offered alternative approaches if Texas chose to challenge this practice of doubtful legality with an antitrust suit. Autry and Cullinan were always conscious of state antitrust concerns when making business decisions, whether it was contemplating a major merger, executing a contract, or operating pipelines. The Texas Company executives followed Davidson's and Lightfoot's litigation against Waters-Pierce

41On Gulf's solicitation for the aid of Davidson and Lightfoot, see A.H. Whitfield, Jr. to Lightfoot, July 10, 1909, TSA RG 302 Box 4-8/334; Lightfoot to Flowers, Fletcher & Whitfield, July 14, 1909, TSA RG 302 Box 1984/67-65; F.C. Proctor to Davidson, July 20, 1909, TSA Box 4-8/396.
and Security Oil et al. very closely, and considered carefully how their company should proceed given the atmosphere favoring antitrust enforcement. Autry cautioned Cullinan in 1907 that:

[T]here is some margin of probability in incurring the disapproval of the Texas State Authorities, and in as much as the parties with whom we are dealing are already slated for trouble of this kind, here again I feel that it is worth while for us to be extra careful....I had felt that all of these matters as to policy and as to proper practice would become imminent with us and perhaps require some solution...[T]hese are my views as far as I have formulated them and I am submitting them promptly because I feel that I cannot delay, and that all of the points mentioned above are worthy of your consideration antecedent to any absolute commitment.

The public accusations by Bailey later that year that The Texas Company was part of Standard Oil only confirmed the decision to consider the threat of antitrust enforcement in making business decisions, and to consult and cooperate with the Texas Attorney General to avoid conflict and suspicion.42

The Texas Attorney General’s Department would continue to investigate and initiate antitrust proceedings with regularity against oil companies in Texas until well after World War II. Piott observed that in Missouri and nationally, trust-busting litigation gave way to regulation. Texas does not fit Piott’s model; there regulation and antitrust litigation co-existed after the anti-monopoly movement faded elsewhere, and the oil industry remained a favored target. Though the Texas Attorney General would file suits seeking monetary penalties and requesting that corporate defendants be ousted, losing their charters or permits, the true goal was not to drive major oil companies from Texas, which would have been disastrous to the industry and to the state’s increasingly petroleum-driven economy, but general compliance with the antitrust laws, and consideration of those laws in making business decisions. To a large extent it worked. But often it was not clear whether a

42Cullinan to J.W. Gates, February 25, 1907; Cullinan to George M. Craid, April 23, 1907; Autry to Cullinan, April 23, 1907; Autry to Cullinan April 25, 1907; Cullinan to Autry, June 4, 1907; Autry to Cullinan, June 10, 1907; Cullinan to Arnold Schlaet, June 19, 1907; Cullinan to Schlaet, August 9, 1907; Autry to Cullinan August 10, 1907; Cullinan to M. Moran, August 12, 1907, all in Autry Papers, Box 27, "The Texas Company Legal Correspondence--1907," WRC. On the Bailey accusations, see Chapter 4, note 137 with accompanying text. Autry repeated his offer to the Texas Attorney General to examine the records of The Texas Company in 1913 shortly before Attorney General Looney filed suit against Magnolia. Autry to Looney, February 11, 1913, Autry Papers, Box 13, File 571-A, WRC.
business decision would violate the state antitrust laws, and while the attorney general could give his opinion on the legality of corporate behavior (and oil companies did seek such opinions), such opinion was not binding on his successors. While this indeterminacy largely relegated criminal antitrust prosecutions to the statute books, it also made future antitrust litigation against the oil industry by the Texas Attorney General a certainty.43

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43 Between 1913 and 1951 the Texas Attorney General's Department filed antitrust suit against one or more oil companies in at least seven different cases. James V. Allred's antitrust suit lasted from 1931 to 1938, into the administration of William McCraw, and involved nearly every major oil company in Texas, and several that operated in the state through subsidiaries. Price Daniel began an antitrust suit similar in scope that lasted from 1949 to 1955, carrying over into John Ben Sheppard's tenure as attorney general. Concerning the antitrust laws, Texas lawyers were frequently uncertain if a client's proposed business action was legal or illegal. Oil companies were careful and cautious in Texas, particularly after antitrust suits against Jersey Standard over its acquisition of Humble Oil & Refining, and against Gulf, Producers & Refiners Oil Company, and Texaco in the first half of the 1920s. See Autry to Cullinan, May 12, 1904, Autry Papers, Box 27, "Business Correspondence--1904," WRC; Autry to Cullinan, January 31, 1905, Autry Papers, Box 27, "The Texas Company Legal Correspondence--1905," WRC; Thompson, Knight & (?) to Continental Oil Company, January 6, 1926, Graham B. Smedley Collection, Box 114, Folder 7, Tarlton Special Collections. Conoco was interested in acquiring a Texas oil company, Texhoma, but was concerned if there was any way to do so without running afoul of the Texas antitrust laws. Their Texas legal experts spent fifteen pages outlining the antitrust issues, and methods of acting within the law. The lawyers summarized the problem as follows:

While competition in the sale of crude petroleum is hypothetically possible, the only inquiry here is whether the operations of the two companies [Conoco and Texhoma] are, in fact, competitive, and whether the proposed purchase is intended to limit competition, if any, or will have the effect of limiting same.

The lawyers thought that Conoco could legally acquire Texhoma, and would win an antitrust suit, if one were filed. However, they closed the letter to Conoco by stating:

You are quite aware, however, that a lawyer cannot advise confidently as to the outcome of litigation, especially where the question is one of fact which may have to be determined by a jury. The law's uncertainties -- which are proverbial -- grow largely out of the uncertainties involved in determining questions of fact.

In 1929, the API adopted a "National Code of Practices for Marketing Refined Petroleum Products," approved by the Federal Trade Commission. Cognizant of the Texas antitrust laws and enforcement policies, the API produced a special form for companies operating in Texas to sign. Neither FTC approval nor the special signatory card helped, as Allred filed suit nearly all of the major oil companies in 1931.
GLOSSARY


**ACTUAL AUTHORITY**—the authority that a principal intentionally gives to an agent, or which the principal permits the agent to believe that he has, either intentionally or through lack of ordinary care.

**AGENCY**—relation in which one person represents or acts for another by the latter's authority, such as the relationship between principal and agent, or master and servant.

**AGENT**—a person who, by mutual consent, acts for the benefit of another, with the latter's authority, who, unlike a servant, deals not only with things but also with people, having some discretion as to means. Agents frequently establish contractual relations between third parties and the principal. See also "actual authority" and "apparent authority."

**APPARENT AUTHORITY**—the authority of an agent to enter into legal relations with third parties who reasonably that the agent has the power to enter into legal relationships for his principal. Lack of actual authority, express or implied, is no defense.

**APPEAL BOND**—bond given when a party takes an appeal, which binds the appellant and his sureties to pay the costs if the appeal fails.

**ARREST OF JUDGMENT**—staying or withholding a judgment after the verdict because of some error apparent on the record that would make the judgment reversible or erroneous.

**BEST EVIDENCE RULE**—evidentiary rule which requires that to prove the contents of a document (or recording, photograph, or similar item), that the original document be produced in court, prohibiting secondary evidence of the contents unless the original is destroyed or beyond the court's jurisdiction without serious fault on the part of the party seeking to use it.

**BILL OF EXCEPTIONS**—a formal written statement of the exceptions or objections taken by a party during a trial. It states the exceptions/objections and the facts and circumstances underlying them, and is signed by the judge to ensure accuracy. Its purpose is to put the matters in controversy on the record of information for the appellate courts. It is obsolete in most states.

**BULK PLANT/STATION**—a distribution point for petroleum products, typically having tank car unloading facilities and warehouse space for goods sold in packages or barrels.

**CAPIAS**—several types of writs which require that an officer, such as a sheriff or federal marshal, seize the property or body of a person in order to require the person to answer a charge in court.

**COMITY**—the principle by which court of one state or jurisdiction recognize and give effect to the laws and judicial decisions of another state or jurisdiction as a matter of courtesy, deference, and respect, not as a matter of obligation. This is separate and distinct from the constitutional doctrine of Full Faith and Credit (U.S. Constitution, Art. IV, sec. 1).
COMMON CARRIER--any carrier required by law to transport freight or passengers without refusal if the charge or fare is paid, as a public utility. A common carrier holds itself out as being in the business of transportation for money, offering its services to the public generally. Examples include railroads and commercial airlines.

COURT COMMISSIONER--a person appointed by a judge to take testimony and find facts, or to carry out some specific task associated with a case.

DEDIMUS--more properly it is "dedimus potestatum" and is a commission issued by a court to take testimony. See "court commissioner."

DE FACTO--a term used to characterize an officer, past action, or state of affairs that has to be accepted for all practical purposes, but which is illegal or illegitimate.

DE JURE--a term which describes total compliance with all requirements of law, in contrast to "de facto."

DEMURRER--A legal objection that a complaint fails to state a cause of action for which legal or equitable relief can be granted and therefore should be dismissed, which admits the properly pleaded facts in the complaint for purposes of testing its sufficiency, but it does not admit the complaint's conclusions of law.

EXCEPTION--a formal objection to a court's action in overruling an objection or otherwise refusing an attorney's request. "Making an exception" indicates that the lawyer intends to preserve the objection or request for appeals or other court proceedings. Federal courts and most state courts have eliminated the requirement of claiming an exception to preserve rights for an appeal. Texas still retains the use of exceptions.

FALSE SWEARING--under Texas law this was a felony in which a person under oath or affirmation intentionally makes a false statement by a voluntary declaration or affidavit which is not required by law, or made in the course of a judicial proceeding. See "perjury."

HABEAS CORPUS--actually refers to a variety of writs, but is commonly used to refer to the writ of habeas corpus ad subjiciendum, a writ directing a person detaining another to produce the person detained in court. The purpose of this writ is to obtain a judicial determination of the legality of the detention/imprisonment, not guilt or innocence.

INJUNCTION--an equitable decree granted which orders a party to refrain from doing something, or to cease doing a particular act, or to perform a particular act. It is preventative in nature, rather than remedial. A temporary, or interlocutory, injunction is usually used to retain the status quo during a judicial proceeding to preserve the subject matter of the dispute. See "temporary restraining order."

INTEGRATED OIL COMPANY--an oil company that is engaged in all four aspects of the petroleum industry: production, transportation, refining, and marketing. Such a firm is often referred to as "fully integrated." A company which engages in two or three aspects of the petroleum industry is commonly referred to as "semi-integrated."

JUDICIAL ACT--an act which involves the exercise of discretion or judgment. See "ministerial act."
MINISTERIAL ACT—an act that an official performs according to explicit directions, usually embodied in a statute, without the exercise of the official's own judgment as to the propriety of the act. A ministerial act can be purely ministerial, with absolutely no discretion or judgment, or quasi-judicial.

MUTUALITY OF OBLIGATION—the requirement that both parties to a contract be bound to perform in some way, or neither is bound, and the contract fails for lack of consideration, and is invalid.

NOTARY PUBLIC—a public officer under civil and commercial law, authorized by the federal or state government to administer oaths and to attest to and certify signatures and certain types of documents. The seal of a notary public authenticates a document.

ORIGINAL PACKAGE DOCTRINE—In Brown v. Maryland 12 Wheat. 219 (1827), the U.S. Supreme Court struck down a Maryland tax on importers of out-of-state goods. As long as the goods remained in their "original package" they were considered to be part of the stream of interstate commerce, even if they resided indefinitely in a warehouse, and therefore not subject to state taxes or regulation. Once goods were removed from their "original package" and, for example, sold in smaller lots, the packages were "broken" and could be taxed and otherwise regulated as part of intrastate commerce.

PAROL EVIDENCE—oral rather than written evidence.

PERJURY—in Texas, this is a felony for intentionally making a false statement, whether written or verbal, under oath or an affirmation that is legally equivalent to an oath, where such oath or affirmation is legally administered and required by law, or as part of a judicial proceeding. See "false swearing."

PLEA IN ABATEMENT—a plea which objects to the time, mode, or place of a plaintiff's case, without addressing the merits of the complaint. The errors asserted in the plea can be corrected by the plaintiff. Largely, if not completely abolished by rules of civil procedure.

PRICE LEADERSHIP—refers to a phenomenon in oligopolistic markets, such as sectors of the oil industry, in which increases or decreases in price by one dominant firm, the price leader, are matched by all or most of the other firms in the market.

QUO WARRANTO PROCEEDINGS—a statutory action which can only be brought by the state against a corporation, typically for abusing its powers under charter or permit, or for failing to exercise its franchise for a great length of time.

REBATE—a marketing technique to induce someone to purchase goods or services, such as railroad or pipeline transportation of oil. The manufacturer or dealer gives a drawback from the stipulated payment back to the purchaser after the latter has paid the stipulated payment in full. Rebates are illegal under the Interstate Commerce Act, and in several industries, such as insurance.

SEMI-INTEGRATED OIL COMPANY—see "integrated oil company."

SUBPOENA DUCES TECUM—a subpoena issued by a court at the request of a party directing a witness or party to produce certain documents in court or at a deposition.

TALES—a number of jurors added to a deficient jury panel to cure the deficiency.
TALESMEN—a person summoned to act as a juror from the courtroom by-standers, or as one of the tales.

TRUE BILL—endorsement made by a grand jury when it finds that there is sufficient evidence to warrant an indictment.

ULTRA VIRES—typically refers to actions by a corporation beyond the powers granted to it in its charter or by statute. Such actions can give rise to stockholder suits against corporate officials, and/or to litigation by the state attorney general to revoke the corporation's charter.

VENIRE—the list of jurors summoned to serve as jurors for a particular term. Courts will sometimes call a special venire when it appears that a case will be prolonged, or that there will be difficulty in finding qualified jurors.
APPENDIX: TEXAS ANTITRUST LAWS, 1889-1909

I. Texas Trust Act of 1889

SEC. 1. Be it enacted by the Legislature of the State of Texas, That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them for either, any or all of the following purposes: First—To create or carry out restrictions in trade. Second—To limit or reduce the production, or increase or reduce the price of merchandise or commodities. Third—To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth—To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth—To make or enter into, or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves or others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

SEC. 2. That any corporation holding a charter under the laws of the State of Texas which shall violate any of the provision of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis County, at Austin, or at the county seat of any county in the State, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

SEC. 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the attorney general to enforce this provision by injunction or other proper proceedings in the district court of Travis County, in the name of the State of Texas.

SEC. 5. That the provisions of chapter 48, General Laws of this State approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 6. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy, or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders thereunder, or in pursuance thereof, shall be punished by fine not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than then years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

SEC. 7. In any indictment for an offense named in this act, it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a member of,
acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

SEC. 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SEC. 9. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions whether within or without the State.

SEC. 10. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act, shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis County, and it shall be the duty of the attorney general or the district or the county attorney to prosecute for and recover the same.

SEC. 11. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

SEC. 13. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

Approved March 30, 1889
II. Texas Trust Act of 1895

TRUSTS.

CHAPTER 83

An act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act.

SECTION 1. Be it enacted by the Legislature of the State of Texas: That an act entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30, 1889, be so amended as to hereafter read as follows:

Section 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:
1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.
2. To increase or reduce the price of merchandise, produce or commodities.
3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.
4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.
5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

SEC. 2. That any corporation holding a charter under the laws of the State of Texas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney general or district or county attorney, or either of them, upon his own motion and without leave of any court or judge, to institute suit or quo warranto proceedings in Travis County, at Austin, or at the county seat of any county in the State where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence.

SEC. 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it
shall be the duty of the attorney general to enforce this provision by injunction or other proper proceedings in the district court of Travis County, in the name of the State of Texas.

SEC. 5. That the provisions of chapter 48, General Laws of this State approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 6. If any person shall be or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected, or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, directions, condition or orders of such combinations, shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

SEC. 7. In any indictment for an offense named in this act, it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

SEC. 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SEC. 9. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions whether within or without the State.

SEC. 10. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act, shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense
is committed, or where either of the offenders reside, or in Travis County, and it shall be
the duty of the attorney general or the district or the county attorney to prosecute for and
recover the same.

SEC. 11. That any contract or agreement in violation of the provisions of this act
shall be absolutely void and not enforceable either in law or equity.

SEC. 12. That the provisions hereof shall be held cumulative of each other and of
all other laws in any way affecting them now in force in this State; provided, this act shall
not be held to apply to live stock and agricultural products in the hands of the producer or
raiser, nor shall it be understood or construed to prevent the organization of laborers for
the purpose of maintaining any standard of wages.

SEC. 13. That nothing in this act shall be held or construed to affect or destroy any
rights which may have accrued, or to affect the right of the State to recover penalties, or to
affect the right of the State to forfeit charters of domestic corporations and prohibit foreign
corporations from doing business in this State, or affect the right of the State to maintain
prosecutions for violations thereof, under any law of this State relating to trusts, for acts
heretofore done.

SEC. 14. Any court, officer or tribunal having jurisdiction of the offense defined
in this act, or any district or county attorney or grand jury, may subpoena persons and
compel their attendance as witnesses to testify as to the violation of any of the provisions of
the foregoing sections. Any persons so summoned and examined shall not be liable to
prosecution for any violation of said sections about which he may testify fully and without
reservation.

SEC. 15. All laws or parts of laws in conflict with this act are hereby repealed.

SEC. 16. Whereas, the people of this State are without an adequate remedy against
trusts, therefore an emergency and imperative public necessity exists requiring that the
constitutional rule which requires that all bills shall be read on three several days, be
suspended, and it is so enacted.

Approved, April 30, 1895.
III. Antitrust Laws of 1899

ANTI-TRUST LAW

CHAPTER CXLVI

An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suites therefor.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of a or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

SEC. 2. A "monopoly" is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms, or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms, or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct forms or corporations or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporation or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly," as defined in this section is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be subject to the penalties prescribed in this Act.
SEC. 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

SEC. 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this state in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

SEC. 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative of agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

SEC. 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation fro buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, its shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and
privileges to do business in this State shall be declared forfeited; and in all proceedings to
have such forfeiture declared, proof that any person who has been acting as agent of such
foreign corporation in transacting its business in this State, has been, while acting as such
agent, and in the name, behalf, or interest of such foreign corporation, violating any
provisions of the preceding sections of this act, shall be received as prima facie proof of the
act of the corporation itself; and its shall be the duty of the clerk of said court to certify the
decree thereof to the Secretary of State, and if it be an insurance company, to the
Commissioner of Insurance, Statistics and History of the State, who shall take notice and
be governed thereby as to the corporate powers and rights of said corporation.

SEC. 8. It shall be the duty of the Secretary of State, on or about the first day of
July of each year, and at such other times as he shall deem necessary, to address to the
president, secretary or treasurer of each incorporated company doing business in this State
a letter of inquiry as to whether the said corporation has all or any part of its business or
interest in or with any trust, combination or association of persons or stockholders, as
named in the preceding provisions of this act, and to require an answer under oath of the
president, secretary or treasurer, or any director of said company. A form of affidavit shall
be enclosed in said letter of inquiry, as follows:

Affidavit.

STATE OF TEXAS,
County of .......

I, ............, do solemnly swear that I am the ........ (president, secretary, treasurer or
director) of the corporation known and styled ........, duly incorporated under the laws of
........, on the ..... day of .... 19...., and now transacting or conducting business in the
State of Texas, and that I am duly authorized to represent said corporation in making
this affidavit, and I do further solemnly swear that the said ........, known and styled as
aforesaid, has not since the ......day of .......... (naming the day upon which this act takes
effect), created, entered into or become a member of or a party to any pool, trust,
agreement, combination, confederation or understanding, with any other corporation,
partnership, individual, or any other person, or association of persons, to regulate or fix the
price of any article of manufacture, mechanism, merchandise, commodity, convenience,
repair, any product of mining, or any article or thing whatsoever, or the price or premium
to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone,
tornado, or any other kind of policy issued by the parties aforesaid; and that it has not
entered into or become a member of, or a party to, any pool, trust, agreement, contract,
combination or confederation, to fix or limit the amount of supply or quantity of any article
of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product
of mining, or any article or thing whatsoever, or the price or premium to be paid for
insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any
other kind of policy issued by the parties aforesaid; and that it has not issued, and does not
own any trust certificates of any corporation, agent, officer or employee, or for the
directors or stockholders of any corporation, has not entered into, and is not now in any
combination, contract or agreement with any person or persons, corporation or
.corporations, or with any stockholders, or directors thereof, the purpose and effect of
which said combination, contract or agreement would be to place the management or
control of such combination or combinations, or the manufactured product thereof, in the
hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the
production and sale of any article of commerce, use or consumption, or to prevent, restrict,
or diminish the manufacture or output of any such article; that it has not entered into any
conspiracy, defined in the preceding sections of this act, to form or secure a trust or
monopoly in restraint of trade; that it has not been since January 31, A.D. 1900, and is not
now a monopoly by reason of any conduct on its part which would constitute a monopoly
under the provisions of Sections 2., 3, 4, 5, 6, 10 and 11, of this act, and is not the owner
or lessee of a patent to any machinery intended, used or assigned for manufacturing any 
raw material or preparing the same for market by any wrapping, baling or other process, 
and while leasing, renting or operating the same refuses or fails to put the same on the 
market for sale; that it has not issued, and does not own any trust certificates, and has no, 
for any corporation or any agent, officer or employee thereof, or for the directors or 
stockholders thereof, entered into, and is not now in any combination, contract or 
agreement with any person or persons, corporation or corporations, or with the 
stockholders, directors or any officer, agent or employee of any corporation or 
corporations, the purpose and effect of which combination, contract or agreement would be 
a conspiracy to defraud, as defined in Section 1 of this act, or to create a monopoly, as 
declared in Sections 2, 3, 4, 5, 6, 10 and 11 of this act.

.................................................
(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a ............ within and of the county of 
............., this .... day of ..........., 19...
.................................................
(Seal.)

And on refusal to make oath, in answer to said inquiry, or on failure to do so within 
three days from the mailing thereof, such failure shall be prima facie proof that such 
incorporated company is transacting business in the State of Texas, and has violated the 
provisions of this act, every day after the expiration of thirty days from the mailing of said 
letter of inquiry, the Secretary of State shall certify to the prosecuting attorney of the district 
or county wherein said corporation is located, and it shall be the duty of such prosecuting 
attorney, to proceed against such corporation, if a domestic corporation, for the recovery of 
the money forfeited provided for in this act, and also for the forfeiture of its charter or 
certificate of incorporation. If a foreign corporation, to proceed against such corporation 
for the recovery of the money forfeited provided for in this act, and to forfeit its right to do 
business in this State; and provided, that whatever money, bonds or other securities may 
be on deposit in this State shall remain subject to the decision of said court to secure 
whatever penalties or costs may be adjudged against said corporation or individual. It is 
provided, however, that all parties making the affidavit provided for in this section shall be 
exempt from criminal prosecution for any violation of law that may be disclosed by such 
affidavit. It is further provided, that the Secretary of State shall, form time to time, when 
he may have reason to believe that individuals or partnership are doing business in this 
State in violation of this act, address the letter of inquiry herein provided for to such 
individuals or partnerships are doing business in this State in violation of this act, address 
the letter of inquiry herein provided for to such individuals or partnership and require of 
them the same answers under oath prescribed in this section for officers of corporations, 
the affidavit to which must be made by the individual addressed, or some member of the 
partnership address; the form of affidavit herein prescribed, with such changes as may be 
necessary to make it applicable to individuals and partnerships shall be inclosed in said 
letter of inquiry.

SEC. 9. It shall be the duty of the Attorney-General and the prosecuting attorney of 
each district or county, respectively, to enforce the provisions of this act. The Attorney-
General and the prosecuting attorney shall institute and conduct all suits begun in the 
district courts, and upon appeal the Attorney-General shall prosecute said suits in the courts 
of Civil Appeals and Supreme Court. The prosecuting attorney shall receive for his 
compensation one-fourth of the penalty collected; provided, the fees allowed for 
prosecuting attorney representing the State, provided for in this section, shall be over an 
above the fees allowed him by the general fee bill now in force.

SEC. 10. All actions authorized and brought under this act shall have precedence 
on motion of the prosecuting attorney or Attorney-General of all other business, civil or 
criminal, except criminal cases where the defendants are in jail.
SEC. 11. Each corporation, co-partnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by any wrapping, baling or other process, who shall lease, rent or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

SEC. 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business contrary to the provisions to this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company, or corporation shall not be liable for the price or payment thereof, and may plead this act as a defense to any suit for the price or payment, whether the purchase was made directly from the individual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation as agent, representative, solicitor or canvasser; and provided further, that where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing paid.

SEC. 13. The following corporations, co-partnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act:

Every corporation, co-partnership, firm or individual which may gather items of news or press dispatches for sale to newspapers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

SEC. 14. The provisions of the foregoing sections, and the pains and penalties provided for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. And provided, that the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. And provided further, that nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed; provided further, that this act shall take effect from and after January 31, A.D. 1900.

SEC. 15. The near approach of the end of the session, and the fact that we now have no adequate anti-trust law upon the statutes, and the importance of such legislation, create an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and its is so enacted.

Approved May 25, 1899.
Takes effect January 31, 1900.
TRUSTS AND CONSPIRACIES–PENALTY–AMENDMENT

CHAPTER CLXXII

An act to amend Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade.

SECTION 1. Be it enacted by the Legislature of the State of Texas: That Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas so amended as to hereafter read as follows:

Article 5318. Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day each firm, person, corporation or association of persons shall continue to do so shall be a separate offense; the penalty in such case may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney-General or the district or county attorney to prosecute for and recover the same.

SEC. 2. This act shall take effect and be in force from and after January 31, 1900, and the same shall not be so construed as to affect any suits pending at the time it takes effect.

SEC. 3. The near approach of the close of the Legislature, and the crowded condition of the calendar, and the importance of making the penalties of existing trust laws correspond, create an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days, and it is so suspended.

Approved June 5, 1899.
Takes effect January 31, 1900.
IV. Antitrust Laws of 1903

ANTI-TRUST LAW—DEFINING AND PROHIBITING TRUSTS, MONOPOLIES AND CONSPIRACIES

CHAPTER XCIV

An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith.

SECTION 1. Be it enacted by the Legislature of the State of Texas: That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes:

1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or in the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.
7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

SEC. 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this Act.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

SEC. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations, or association of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or associations of persons for buying from or selling to any other person, firm, corporation or association of persons.

SEC. 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

SEC. 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this Act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 6. For a violation of any of the provisions of this Act by any corporation mentioned herein, it shall be the duty of the Attorney-General, upon his own motion, and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis County, at Austin, or at the county seat of any county in the State, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter and franchise, and the dissolution of its corporate existence.

SEC. 7. When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions of this Act, and its charter and franchise has been forfeited, as provided in section 5, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 8. Every foreign corporation violating any of the provisions of this Act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney-General to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the State of Texas.

SEC. 9. The provisions of chapter 92 of the Revised Statutes of this State of 1895, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this Act.

SEC. 10. When any foreign corporation has been convicted of a violation of any of the provisions of this Act, and its right to do business in this State has been forfeited, as provided in Section 8 of this Act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.
SEC. 11. Each and every firm, person, or corporation or association of persons who shall in any manner violate any of the provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney-General, or the district or county attorney under the direction of the Attorney-General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this Act shall be over and above the fees allowed him under the general fee bill.

SEC. 12. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforçable either in law or equity.

SEC. 13. And in addition to the penalties and forfeitures herein provided for, every person violating this Act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years.

SEC. 14. In prosecutions for the violation of any of the provisions of this Act, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was to acting as the agent, was the act of the corporation.

SEC. 15. Upon the application of the Attorney-General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this Act, it shall be the duty of the justice of the peace to whom such application is made, to have summoned and to have examined, such witness in relation to violations of any of the provisions of this Act, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the Attorney-General, district or county attorney upon whose application the witness was summoned. Should the witness summoned, as aforesaid, fail to appear, or to make statement of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with referenced to the matter inquired about. Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this Act about which he may testify fully and without reserve.

SEC. 16. All actions authorized and brought under this Act shall have precedence, on motion of the prosecuting attorney or the Attorney-General, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

SEC. 17. That all laws and parts of laws in conflict with this Act be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and articles 5313, 5314, 5315, 5216, 5317, 5318, 5319, 5329, 5321, and 5321a, thereof, be and the same are hereby expressly repealed; and that articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d, of chapter 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and that an Act entitled "An Act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this Act," approved April 30, 1895, and known and published as Chapter 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that an Act entitled "An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of
corporations that violate the terms of this Act, and to authorize the institution and prosecution of suits therefor," approved May the 25th, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that an Act entitled "An Act to amend Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade," approved June 5th, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided, nothing in this Act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this Act takes effect.

SEC. 18. The fact that the anti-trust laws enacted by the Legislature of the State of Texas in 1895 have been held to be unconstitutional, creates an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved March 31, 1903.
Became a law March 31, 1903.
V. Antitrust Statutes of 1907

I. Laws passed at the Regular Session of the Thirtieth Legislature:

TRUSTS—PROCEDURE BY WHICH EVIDENCE MAY BE TAKEN AGAINST.

Chapter XII

An act providing procedure by which evidence may be taken in suits brought by the Attorney General or by the district or county attorney acting under his direction, to enforce the laws of this State against trusts, monopolies and conspiracies in restraint of trade, or suits to enforce laws regulating and controlling corporations; providing for taking evidence within or without the State and for the appointment of special commissioner and prescribing his powers and duties; providing for the attendance of witnesses and the production of books, papers and documents of corporations, joint stock associations, co-partnerships or individuals in such cases; providing for issuance of notices of time and place of taking evidence and manner of service; providing that judgment by default shall be rendered against any defendant in such action who fails to comply with the provisions of this act; providing that this act shall be cumulative of other laws of this State; providing immunity, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Whenever any suit shall be instituted or is pending in any court of competent jurisdiction in this State, by the Attorney General or by any district or county attorney, acting under his direction against any corporation, or corporations, individual or individuals, or association of individuals, or joint stock associations, or co-partnerships under any law of this State, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this State regulating or controlling corporations, domestic or foreign, the Attorney General, district or county attorney, as the case may be, may in addition to the means now provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence, in the manner herein provided.

SEC. 2. Whenever any action is commenced or is pending, as contemplated in section 1, of this Act, by the Attorney General, or by any district or county attorney, acting under his direction, and said officer representing the State, either upon the trial of the case, or in preparation thereof, desires to take the testimony of any officer, director, agent or employee of any foreign or domestic corporation, or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either or them, and the person or persons whose testimony is desired, resides either within or without the State of Texas, the said officer shall file in said court where the action is brought, either in term time, or in vacation, or with any special commissioner, who may be appointed by the court to take testimony, as provided for in this Act, a statement in writing setting forth the name or names and residence of the person or persons whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and place where, either within or without this State, he desires such person to appear and testify, or to produce books, papers and documents, if any are desired; and thereupon the judge of said court, or the commissioner as the case may be, before whom said testimony is being or shall be taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record, in said cause or the agent, officer, or employee of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, or to any individual or individuals, who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employee,
aforesaid, or member or members of any co-partnership, or individual as herein provided, that the testimony of the person or persons, named in said notice, is desired, and requiring said attorney or attorneys of record, or such officer, agent or employe[e] aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses whose testimony or evidence it is desired to take, at the place named in said notice, at the time fixed therein, before the court of special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided; provided, that if the taking of such evidence be not concluded on the day and date specified in said notice, the court or the commissioner, as the case may be, may continue the taking of same from day to day, or adjourn from day to day, at the same place, until the taking of such evidence has been concluded.

SEC. 3. Whenever any officer, director, agent or employe[e] of any foreign or domestic corporation or joint stock association, authorized to do business in this State, or any member of any co-partnership or any individual, against whom suit has been filed, or is pending, as provided for in this Act, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership or individual, shall be notified in accordance with the provisions of this Act, that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership or individual, are wanted before the court, or special commissioner, as provided in this Act, it shall be the duty of such defendant corporation, joint stock association, co-partnership or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents, belonging to any such defendant in court or before said special commissioner, at the time and place so specified, and in the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this section, it shall be the duty of the court, upon the motion of the officer representing the State, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant, corporation, joint stock association, coo-partnership or individual, as the case my be, and render judgment by default against any such defendant.

SEC. 4. Whenever any attorney or attorneys of record, or any agent, officer, employe[e] of any corporation, or joint stock association proceeded against as herein provided, shall be notified that any officer, director, agent or employe[e] of any such corporation or joint stock association, is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents, of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership, or any individual, who are defendants in any such action, are desired as witnesses, or to produce books, papers or documents, before any court or before any special commissioner appointed to take testimony in said proceeding, as herein provided; it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employe[e] to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired; and if the person or persons whose testimony is desired as herein provided, shall fail to appear, or appearing shall refuse to testify or shall fail to produce whatever, books, papers or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the Attorney General, district or county attorney as the case may be, on proof of such refusal, failure or dereliction to strike out the answer, motion, reply, demurrer, or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director or employe[e], as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the
control of such witness or witnesses, or corporation or joint stock association; and said
Court shall in the event of any such refusal or failure, proceed to render judgment by default
against any such defendant; provided, however, that if any such defendant shall file a
sworn denial in writing, in said Court, setting forth that such failure or refusal did not arise
by reason of any fault or procurement of defendant, the Court shall hear evidence upon that
issue, and if the defendant shows to the satisfaction of the Court that any witness who failed
to attend did not do so at the instance or procurement of said defendant, or that the books,
papers or documents demanded were not in its possession or control and could not be
produced, and that such defendant had complied with all the provisions of this Act, within
such defendant's power to perform, then in that event, the answer, motion, reply, demurrer
or other pleadings shall not be stricken out or judgment by default taken because of the
failure of the witness to attend, who could not be so procured, or because of the failure to
produce the books, papers or documents not in the possession or under the control of such
defendant; but the Court shall have the power to enter such further orders in respect to the
matter in controversy as it may deem necessary for the proper administration of justice,
provided, further, that in any proceeding had before a special commissioner as herein
provided, the certificate of the special commissioner showing the failure or refusal of any
such witness or witnesses to appear and testify, or to produce any books, papers or
documents desired, shall be sufficient prima facie evidence of such failure, refusal or
dereliction on the part of any such defendant, when same is filed in Court. Any witness
attending any proceeding herein provided for in compliance with any notice or subpoena
issued by authority of this act, shall receive as compensation one dollar per day for each
day of his attendance, and four cents per mile traveled computed upon the shortest possible
route; and claim for fees and mileage shall be filed with the Court, or special commissioner,
and sworn to by said witness, and shall be taxed up as costs and collected as other costs in
civil cases.

SEC. 5. The Court or presiding judge, thereof, in which any proceeding as herein
provided is pending, in term time or in vacation, upon application therefor, made by the
attorney general, or district or county attorney, acting under his direction, shall appoint
some well qualified, disinterested person as special commissioner, to take testimony, in
any such case, at any point either within or without the State, as designated in such
application, or where requested by either party to said cause of action, upon the issues
joined in said cause, such special commissioner shall have full power and authority to issue
notices provided for in section 2, of this Act, and to issue subpoenas for witnesses, compelling
the attendance of such witnesses, the production of books, papers or
documents, to issue attachments, to punish for contempt to the same extent as provided by
law for said Court; to administer oaths to witnesses; to have all witnesses examined orally,
which testimony shall be reduced to writing and may be taken own by a competent
stenographer and transcribed, and shall be signed and sworn to by said witness. The
person appointed as special commissioner in any case, shall qualify by taking oath
prescribed by the constitution of this State, for officer, and shall, with all convenient speed,
certify and return the testimony taken by him to the Court appointing him; and said
commissioner, shall note all objections to testimony, and shall not exclude any testimony,
and all questions as to the materiality or admissibility of same, shall be reserved for the
court trying the case, and such testimony so taken, may be read in evidence upon the trial
of the suit in which same was taken, subject to any legal objections, which might be made
to same. The compensation of such commissioner shall be his actual expenses in traveling
and such fees as are allowed a notary public in taking depositions, to be taxed up as costs
and collected in the same manner as now provided by law for district clerks in civil cases.

SEC. 6. When any notice is issued and served, as provided for in this Act, ten full
days exclusive of the day of service, shall elapse before any witness so requested shall be
compelled to appear and testify, or produce any books, papers or documents, called for,
and if the taking of testimony shall not be concluded on the date named in said notice, the
witness or witnesses shall remain in attendance from day to day until same is completed or
said witness is finally discharged by the court, or commissioner, as the case may be; service of said notice and the return thereon may be made by any sheriff, or constable of this State, or by an disinterested person competent to make oath of the fact, and shall be made by said person executing the same, by delivering to the person or persons, attorney or attorneys to be served a true copy of such notice, and return of such service shall be endorsed on or attached to the original notice; it shall state when the same was served and the manner of service, and upon whom served, and shall be signed, and if served by any person other than an officer, shall be sworn to by the party making the service before some officer authorized by law to take affidavits, and such affidavit shall be certified under the hand and official seal of such officer.

SEC. 7. Any witness for the State who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this Act, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise.

SEC. 8. The provisions of this Act shall be cumulative of all laws of this State, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided.

SEC. 9. The inadequacy of the laws of this State, to enable the Attorney General or the district or county attorney, acting under his direction, to procure testimony in support of, and prosecutions of suits brought by the State, to enforce the law against trusts, monopolies and conspiracies in restraint of trade, and the corporation laws, creates an emergency and imperative public necessity, demanding the suspension of the constitutional rule, requiring bills to be read on three several days, and same is hereby suspended and this Act shall take effect and be in force from and after its passages, and it so enacted.

Approved March 4, 1907.
Became a law March 4, 1907.

ANTI-TRUST LAW—PROVIDING PUNISHMENT FOR VIOLATIONS

Chapter XCVII.

An Act to amend Section 13, Chapter 94, of the Acts of the Twenty-eighth Legislature, defining and prohibiting trusts, monopolies and conspiracies, providing that any person violating the provisions of this Act shall be punished by imprisonment.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Section 13, Chapter 94 of the Acts of the Twenty-eighth Legislature be amended so as to hereafter read as follows:

Sec. 13. And in addition to all other penalties and forfeitures herein provided for, every person violating the provisions of this act shall be further punished by imprisonment in the penitentiary not less than two years nor more than ten years.

SEC. 2. The large number of bills now pending before the Legislature creates an imperative public necessity and an emergency that the constitutional rule requiring bills to be read on three several days by suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

Approved April 15, 1907.
Takes effect ninety days after adjournment.

TRUSTS—DEFINING AND DECLARING ILLEGAL TRUSTS, ETC.

Chapter CXX
An Act to amend Section 15 of Chapter 94, Acts of the Twenty-eighth Legislature of Texas, entitled "An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of same, and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith," and declaring an emergency.

SECTION 1. Be it enacted by the Legislature of Texas: That Section 15 of Chapter 94, Acts of the Twenty-eighth Legislature, entitled "An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of same, and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith," be so amended as follows:

Section 15. Upon the application of the Attorney General or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General, made to any county judge, or any justice of the peace, in this State, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of this act, it shall be the duty of the county judge, or the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this act, said witness shall be duly sworn, and the county judge, or justice of the peace, as the case may be, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, such sworn statement shall be delivered to the Attorney General, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this act, or who shall testify as a witness for the State in the course of any statutory proceeding to secure testimony for the enforcement of this act, or in the course of any judicial proceeding to enforce the provisions of this act, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise.

SEC. 2. The fact that there is no statute in force in this State authorizing county judges to inquire into violations of the law against trusts, monopolies and conspiracies in restraint of trade, and the fact that the immunity clause of the statute prohibiting trusts, monopolies and conspiracies in restraint of trade should be broadened, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each House be suspended, and said rule is suspended, and this bill shall take effect from and after its passage, and it is so enacted.

Approved April 16, 1907.
Takes effect ninety days after adjournment.

TRUSTS—PROVIDING PENALTIES AND FIXING VENUE OF SUITS.

Chapter CLXXIII

An Act to amend Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature entitled "An Act to define, prohibit and declare illegal, trusts, monopolies and
conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same, and to promote free competition in the State of Texas, and to repeal all laws in conflict herewith," by adding to said law Section 18, concerning punishment for violation thereof, Section 19, with reference to venue, Section 20, with reference to the duties of district and county attorneys and the Attorney General, and Section 21, concerning fees, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That the Act mentioned in the Caption hereof shall be amended by adding thereto Section 18 to read as follows:

Section 18. If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade, (as these offenses are defined by Chapter XCIV of the Acts of the Twenty-eighth Legislature, which Chapter this Acts amends), or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust, or monopoly, or conspiracy in restraint of trade, or shall become a party to a trust, or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of, or aid t such trust or monopoly or conspiracy, in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years, nor more than ten years. If any person shall, as a member, agent, employee, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of Chapter XCIV of the acts of the Twenty-eighth Legislature, which Chapter this Act amends, or shall operate in violation of the provisions of this Act any such business, firm, corporation, or association formed in violation of Chapter XCIV, of the Acts of the Twenty-eighth Legislature, which Chapter this Act amends, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of the provisions of Chapter XCIV, of the Acts of the Twenty-eighth Legislature, which Chapter this Act amends, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. If any person shall outside of this State do anything which if done within this State would constitute the formation of a trust, or monopoly, or conspiracy in restraint of trade, and shall cause or permit the trust or monopoly so formed by him to do business within this State, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation of effect within this State, or if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of this State, any person shall give effect to such trust, monopoly, or conspiracy in this State or shall do anything to help or aid it in doing business in this State, or otherwise violate the anti-trust laws of this State, or if any person shall buy or sell, or otherwise make contracts for or aid any other business for any business firm, corporation or association of persons, formed or operated in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, which Chapter this Act amends, or so formed or operated as would be in violation of the laws of this State, if it had been formed within this State, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. If any person or employee or employees, or agent or agents, stockholder or stockholders, officer or officers, of any person, firm, association of persons, or corporations now doing business in this State, who has formed a trust as defined in Chapter XCIV of the Acts of the Twenty-eighth Legislature, which Chapter this Act amends, or has formed a conspiracy in restraint of trade as defined in Chapter XCIV of the Acts of the Twenty-eighth Legislature, which Chapter this Act amends, shall do or perform any act of any character to carry out such trust, monopoly, or conspiracy in restraint of trade, such person, employee, or employees, agent or agents, stockholder or stockholders, officer or officers shall be punished by confinement in the penitentiary for not less than two years nor more than ten years.
Sec. 18. Criminal prosecutions under this Act may be conducted in Travis County, Texas, or in any County in this State wherein a trust or conspiracy in restraint of trade is being carried on, a recovery or prosecution against any person for violation of this Act, or shall, with the intent or purpose or shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid shall not bar a prosecution of or recovery against any other person or persons for the same offense.

Sec. 19. Prosecutions under this Act may be instigated by any County or District Attorney of this State, and when any such prosecutions have been instigated by any County or District Attorney such officer shall forthwith notify the Attorney General of such fact and it is hereby made the duty of the Attorney General, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this Act.

Sec. 20. For every conviction obtained under the provisions of this Act the State shall pay to the County or District Attorney in such prosecution the sum of $250.00, and if both the County and District Attorney shall serve together in such prosecution, such fee shall be divided between them as follows: $100.00 to the County Attorney, and $150.00 to the District Attorney.

Sec. 21. The fact that many trusts, monopolies, and conspiracies in restraint of trade are now in operation in this State, creates an emergency and an imperative public necessity which requires that the Constitutional rule which requires that bills be read on three several days should be suspended, and said rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved April 25, 1907.
Takes effect ninety days after adjournment.

II. Laws passed at the First Called Session of the Thirtieth Legislature:

TRUSTS—DEFINING AND DECLARING SAME ILLEGAL

Chapter X

An Act to amend an act of the Thirtieth Legislature of Texas, Regular Session, approved April 25, 1907, entitled "An Act to amend Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature entitled 'An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same, and to promote free competition in the State of Texas, and to repeal all laws in conflict herewith,' by adding to said law Section 18, concerning punishment for violation thereof, Section 19, with reference to venue, Section 20, with reference to the duties of district and county attorneys and the Attorney General, and Section 21, concerning fees," and declaring an emergency.

By adding to said Chapter 94, page 119, of the Acts of the Twenty-eighth Legislature, Sections 19, 20, 21 and 22, said Section 19 defining, prohibiting and declaring illegal trusts, monopolies and conspiracies in restraint of trade, providing criminal prosecution therefor, and fixing the punishment and penalties for violations of said chapter and of this act; Section 20, fixing venue for criminal prosecutions and providing that such prosecution shall not bar a prosecution of or recovery against any other person or persons for the same offense; Section 21, defining the powers and prescribing the duties of county and district attorneys of this State and of the Attorney General under this act; and Section
22, fixing the fees of the county and district attorneys for prosecutions under this act, and apportioning such fees between such county and district attorneys, and providing that this act shall not repeal said Chapter 94 Acts of the Twenty-eighth Legislature of Texas, and that this act shall be cumulative thereof, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That an act of the Thirtieth Legislature of the State of Texas, Regular Session, approved April 25, 1907, entitled "An Act to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same, and to promote free competition in the State of Texas, and to repeal all laws in conflict herewith," by adding to said law Section 18, concerning punishment for violation thereof, Section 19, with reference to venue, Section 20, with reference to the duties of district and county attorneys and the Attorney General, and Section 21, concerning fees, and declaring an emergency," be amended by adding to Said Chapter XCIV, page 119, Acts of the Twenty-eighth Legislature, Sections 19, 20, 21 and 22,

Said Section 19, defining and prohibiting and declaring illegal trusts, monopolies and conspiracies in restraint of trade, providing criminal prosecutions therefor and fixing the punishment and penalties for violations of said chapter and of this act; Section 20 fixing venue for criminal prosecutions, and providing that such prosecutions shall not bar a prosecution of or recovery against any other person or persons for the same offense; Section 21 defining the powers and prescribing the duties of county and district attorneys of this State and of the Attorney General under this act; and Section 22, fixing the fees of the county and district attorneys for prosecutions under this act, and apportioning such fees between such county and district attorneys, and providing that this act shall not repeal said Chapter XCIV, Acts of the Twenty-eighth Legislature of Texas, and that this act shall be cumulative thereof, and declaring an emergency.

Sec. 19. If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restrain[t] of trade as these offenses are defined by Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to such trust or monopoly or conspiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years nor more than ten years.

If any person shall, as a member, agent, employee, officer or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall operate in violation of the provisions of this act any such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of the provisions Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall with the intent or purpose of driving out competition or for the purpose of financially injuring competitors sell within this State at less than cost of manufacture or production or sell in such a way or give away within this State products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person shall outside of this State do anything which, if done within this State, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade as defined by Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature, and shall cause or permit the trust or monopoly so formed by him to do business within this State, or shall cause or permit such trust, monopoly, or conspiracy in
restraint of trade to have any operation or effect within this State, or if such trust, monopoly or conspiracy in restraint of trade having been formed outside of said State, any person shall give effect to such trust, monopoly or conspiracy in this State, or he shall do anything to help or aid it doing business in this State, or otherwise violate the anti-trust laws of this State, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of the provisions of Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature, or so formed or operated as would be in violation of the laws of this State, if it had been formed within this State, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person or employe[e] or employe[e]s, or agent or agents, stockholder or stockholders, officer or officers of any person, firm, association of persons, or corporation now doing business in this State, who have formed a trust as defined in Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature, or formed an monopoly as defined in Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature, or has formed a conspiracy in restraint of trade, as defined in Chapter XCIV, page 119, of the Acts of the Twenty-eighth Legislature, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employe[e] or employe[e]s, agent or agents, stockholder or stockholders, officer or officers shall be punished by confinement in the penitentiary for not less than two years nor more than ten years.

Sec. 20. Criminal prosecutions under this act may be conducted in Travis county, Texas, or in any county in this State wherein a trust, monopoly, or conspiracy in restraint of trade is being carried on, a recovery or prosecution against any person for any violation of this act, shall not bar a prosecution of or recovery against any other person or persons for the same offense.

Sec. 21. Prosecutions under this act may be instituted and prosecuted by any county or district attorney of this State, and when any such prosecutions have been instituted by any county or district attorney, such officer shall forthwith notify the Attorney General of such fact, and it is hereby made the duty of the Attorney General, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this act.

Sec. 22. For every conviction obtained under the provisions of this act, the State shall pay to the county or district attorney in such prosecution the sum of $250, and if both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: $100 to the county attorney and $150 to the district attorney.

SEC. 2. That this act shall not repeal, modify or in any manner affect said Chapter XCIV, page 199, of the Acts of the Twenty-eighth Legislature, or any section or provisions thereof, and this act is and is intended to be cumulative of said Chapter XCIV of the Acts of the Twenty-eighth Legislature of Texas.

SEC. 3. The fact that many trusts, monopolies and conspiracies in restraint of trade are now in operation in this State, creates an emergency and an imperative public necessity which requires that the constitutional rule which requires that bills be read on three several days should be suspended, and said rule is hereby suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

Approved May 16, 1907.
Takes effect ninety days after adjournment.
VI. Antitrust Statutes of 1909

ANTI-TRUST LAW—AMENDMENT FIXING VENUE OF SUITS AND PRESCRIBING PENALTIES AND FEES.

CHAPTER 11.

An Act to amend Sections 6 and 11 of Chapter XCIV of the Acts of the Twenty-eighth Legislature, page 119, entitled "An Act to define, prohibit, an declare illegal, trusts, monopolies, an conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies, and conspiracies, and to provide for the suppression of the same and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith"; providing venue; providing punishment for violations thereof, fixing compensation; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Sections 6 and 11 of Chapter XCIV of the Acts of the Twenty-eighth Legislature, page 119, entitled "An Act to define, prohibit, an declare illegal, trusts, monopolies, an conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies, and conspiracies, and to provide for the suppression of the same and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith," be and the same are hereby amended so as to hereafter read as follows:

Section 6. For a violation of any of the provisions of this Act, or any anti-trust laws of this State, by any corporation, it shall be the duty of the Attorney General, upon his motion and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence; and for such purposes, venue is hereby given to each district court in the State of Texas.

Section 11. Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas in the district court of any county in the State of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall no be transferred to any other county except upon change of venue allowed by the court, and it shall be the duty of the Attorney General, or the district or county attorney, under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars and five per cent on all sums in excess of the first fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over an above the fees allowed under the general fee bill; provided, that the provisions of this Act as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause, and in case of the
employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; providing further, that in case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided shall be reduced one-half.

SEC. 2. The fact that there is no law giving venue to each district court to try cases arising under the anti-trust laws throughout the State, and the further fact that the penalties provided under the Act of 1903 are inadequate to suppress violations of the law, create an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved April 18, 1909.

Takes effect ninety days after judgment.
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