MINUTES

ASSEMBLY COMMERCE COMMITTEE

March 30, 1977

Members Present:

Vice Chairman Mello
Mr. Barengo
Mr. Demers
Mrs. Hayes
Mr. Moody
Mr. Price
Mr. Sena
Mr. Weise

Members Excused:

Chairman Harmon

Guests Present:

See Guest List Attached

Mr. Mello called the meeting to order at 3:15 p.m. and the secretary called the roll. Mr. Mello advised that Mr. Moody would be late since he was testifying in another committee and that Chairman Harmon was excused.

The Vice Chairman recognized Mr. Weise, who made the following statement:

Mr. Weise: Before we get going, after reviewing some of the minutes we have had, I would like if we could from now on to get a little more detail in here, particularly on the votes. I came to talk to you today (aside to secretary), but I think it probably should be a committee position. I think if you go through here we have no reflection of the questions that are asked on behalf of the committee, and I think that is an awfully important part of the testimony that we have, the responses.

Mr. Mello: Of course, I am just the Vice Chairman, but I am sure the secretary will do her best to see that your wishes are conformed to.

Mr. Mello stated that this meeting was for the purpose of hearing A.B. 291, A.B. 426, A.B. 427, A.B. 428, A.B. 429, A.B. 430 and A.B. 431, and asked for a show of hands as to the number of people who wished to speak. Mr. Mello further said it was his

understanding that the Chairman informed the service station group and the opponents to the bills that they would each have an hour and a half to present their testimony. After discussion, it was agreed that it would probably be timesaving to discuss these bills as a package, rather than each one individually with pros and cons on each bill.

Mr. Dan Usner, a Shell dealer from Louisiana, stated that he is president of the Service Station Association in Louisiana. He has also been assigned by the Federal Energy Administration to the Gasoline Advisory Committee and to the Consumer Affairs Special Impact Advisory Committee. Mr. Usner said he was appearing at the request of Mr. Roger Bedell, Executive Secretary of the Association for Nevada, who felt that Mr. Usner could assist the committee in understanding the problems of service station operators.

Mr. Usner showed the committee a documentary film designed to depict the problems of the small retailer when he has to do business with a gigantic corporation who controls the product all the way through the system. Mr. Usner called the committee's attention to certain facts in the film such as companies having an exchange program of profit. When the companies cooperate in the system in production and exploration, they are eliminating competition among themselves. In reducing competition, the consumer will pay higher prices because the dealer organization, local people running small businesses, is being replaced by salaried employees operating refinery owned and controlled stations. This takes money out of the local community. Nevada has a great deal to lose, both in jobs for people and also in moneys that could be generated by using local people to assist other local people in operating their businesses.

(The film was shown.)

Mr. Usner stated that one of the major problems was that the companies have responded to self-serve because the motoring public has responded to it. The pressure is on the retail margin, yet the companies will not reduce or compete on a wholesale level. It is Mr. Usner's opinion that the legislative package being introduced will help the dealers in Nevada compete on a more fair and equitable basis with their suppliers.

A.B. 428, according to Mr. Usner, is most important to the dealers. Mr. Usner submitted a suggested amendment (Exhibit 1) to the bill. This bill attempts to copy the method the major oil companies are using--secondary brands. If the dealers can get unbranded products at competitive prices, they can utilize the moneys spent for trademark and credit cards to buy gasoline on a more competitive basis.

Mr. Usner presented a report, "Problems of Small Retail Petroleum Marketers", which he requested be made a part of the record. (Exhibit 2)

Mr. Weise asked Mr. Usner if he was suggesting that the committee replace the entire bill with the language in the suggested amendment. The answer was "yes".

Mr. Weise: Now when you say, "have the option to transport and/or use the trade mark and credit cards", are those costs the dealers have to pay now, or is it just something that prevents them from possibly lowering their prices because they have to pay the premium on the credit cards, for example?

Mr. Pete Woolley answered from the audience that a number of companies that charge for the logo or trademark and there is a difference in price. There is a branded independent and unbranded.

Mr. Weise: I gather that what you're saying in this amendment is you would make a 90 day contract, an annual contract, to say whether you wanted to use a company credit card or you didn't. If you didn't you could probably sell gas for a little less money.

Mr. Woolley replied that companies back East were now experimenting with this concept.

Mr. Usner: In dollars and cents, what is could amount to, we feel like the tank wagon price is an inflated price and the dealer does not have any choice. He can't go anywhere else. He goes to his supplier. This would still lock him in his supplier, but it would give him the option of using that supplier's trademark or his credit card system because if this man gets surrounded by self-serve units and his wholesale price is so high that he can't compete, this gives him a way of competing and still selling that company's product and not violating that company's trademark laws. The Maryland bill that you saw on the film was ruled constitutional. The Maryland dealers have found a way of cancelling the fuel contract, keeping the lease on the property, then buying the gas on the open market. They find they are really able to compete, they are tripling their volume and building their business. It just shows it's generating more fair and equitable business and that's what we're trying to do.

Mr. Pete Woolley, President of the Northern Nevada Petroleum Retailers, spoke on A.B. 291. He said this bill covers the hours of operation. He cannot really support the bill other than it was something brought out to free the dealer to make his own decisions. Most dealers at this time do set their own hours. Mr. Woolley presumes that they want to do it because of some

experience in other states or in the southern group where they are being forced to hold hours that are longer than are profitable.

A.B. 426. Mr. Wes Bowlen, a Standard Oil Company Chevron dealer from Wells, Nevada, has been with this company for 25 years. Mr. Bowlan stated he was surprised when he saw A.B. 426 because this legislation has been a matter of policy with a large majority of oil companies for years. It simply gives the dealer the option of taking temperature corrected gasoline to 60 degrees at the rack or wherever its loaded. Gasoline expands when it gets hot, contracts with it gets cold. All this does is give the oil company a break on the gasoline to a set figure and give the dealer a break on the gas on the set figure, depending on the temperature where you are located.

Mr. Demers asked Mr. Bowlen if there was any oil company he knew of that wasn't doing this. Mr. Bowlen said he had heard today that Shell and Arco were not, and this surprised him since most oil companies do offer the option.

Mr. Barengo asked Mr. Bowlen if he would have any problem having this as a piece of law in the State of Nevada. Mr. Bowlen said he would not. Further answering a question by Mr. Barengo, Mr. Bowlen stated it would be a fair law for all concerned.

Mr. Weise: I gather from your examples that this would probably benefit the dealers from southern Nevada to an even greater extent. Would that be correct? The advantage to the dealers is during the hot season?

Mr. Bowlen answered that the dealers in southern Nevada would gain by it to a point, but the real concern is the temperature of the product in the tank it is being pumped out of.

Mr. Tim Rossiter spoke from the audience and stated that the oil companies' storage is above ground so this would affect someone who lives in a colder area. The gas comes from a warm area, and they fill the truck at a certain temperature. When it is delivered to a colder place, it contracts, so it would have more effect on northern Nevada.

Mr. Bowlen further stated there was not reason to have a law like A.B. 426 if all the oil companies would be fair about it. Mr. Mello asked if what Mr. Bowlen is saying is that there should not be a need for this law. Mr. Bowlen said there should not have to, but there appears to be a need.

Mr. Weise: By adopting the 60 degrees, is this a reasonable way to go about this? Or should we just pass a law saying that the gasoline should be temperature corrected?

Mr. Bowlen replied that 60 degrees is the industry standard.

Mr. Mello requested testimony on A.B. 427 and stated there had been an amendment requested. (Exhibit 3)

Mr. John Gledhill, a Mobile dealer in Las Vegas, stated that A.B. 427 is intended to amend the present franchise law and be more specific as to terms. He is one of the dealers whose lease has been cancelled, so he has a special interest. Mr. Gledhill feels that this legislation would give the dealers an opportunity to have injunctive relief so they could stay in business until the court could decide what is or is not good cause. The amendments presented (Exhibit 3) also clarify and further define the bill.

Mr. Weise: In looking through the amendments here, the only thing I see that's really different is that they added sub-paragraph 11. Is number 11 primarily the main change there?

Mr. Gledhill answered that it was. Mr. Tim Rossiter again spoke from the audience and stated that the main reason for the amendment was that the oil company can now cancel and you can go to court, but you are out of the service station in the mean-time. One particular dealer has won in court, but it took 8 years and the dealer lost income for that period of time. Mr. Rossiter said they were asking to be able to stay in business until any court action was settled.

Mr. Jim Pyatt, Union Dealer in Las Vegas, said that the primary purpose of A.B. 427 is to amend the existing "dealer day in court" bill and clarify some of the terminology and some of the things they originally wanted. A.B. 427 would allow the dealer to retain and operate his business until such time as a court would be able to determine whether he should be in that particular location.

Mr. Woolley said that under A.B. 428 they had not covered the benefits to the consumer. People should not have to pay extra for gasoline to get the standard services performed. Since full-service stations are not able to compete, they are not able to employ the people they should.

There was discussion between Mr. Barengo, Mr. Weise and witnesses on whether or not the amendment to A.B. 427 (Exhibit 3) contained any new language. It was agreed that it does contain different language.

On A.B. 429, Mr. Woolley stated that this would protect dealers who do not have a 3-year lease.

Mr. Woolley also stated that A.B. 430 could be referred to as a moratorium bill. This slows down inroads into the market that

is controlled by the element that is not controlled. It slows the distributor, unbranded independent jobber or broker from selling gas through a new operation unless he sells that much gasoline through his existing uncontrolled service stations or dealers.

Mr. Mello asked if this package of bills belonged to Mr. Woolley's association. Mr. Woolley replied that is was from the two associations and apologized for the trouble caused since it was not consolidated into one bill. Mr. Woolley said the strength of the major oil companies has been, in part, in the fact that the dealers are disorganized and do not communicate with one another. Mr. Mello stated that this was apparent from today's presentation and thought they should have been better prepared. Mr. Woolley agreed with Mr. Mello's statement.

On A.B. 431, Mr. Woolley stated that this bill would not be necessary if A.B. 428 is passed.

Mr. Mello called for speakers in opposition to the bills.

Mr. Ernest Newton, Executive Vice President of Nevada Taxpayers' Association, emphasized that members of his association are retail dealers, distributors, manufacturers, finders and are part of the whole gamut of the petroleum industry from production to ultimate distribution. Therefore, Mr. Newton said he could not speak with any authority for or against any one of the particular bills. However, he does speak with the blessing of his board of directors against any of these bills which attempt to rewrite the contracts that grown people, in full command of their facilities, have entered into on an arm's length basis. Mr. Newton thinks it is inappropriate for the legislature, in any industry, to attempt to write the contracts for suppliers and dealers any more than it is appropriate for the legislature to attempt to fix prices of anything. Mr. Newton's plea is that the legislature get out of the business of writing contracts for the State of Nevada.

Mr. Price: So your position would more or less be that, all things being equal, a dealer who has an investment and a contract renewal coming up, or a person going into business would in fact be on an equal basis with Standard Oil for example?

Mr. Newton: Yes. My position is that before the contract is entered into, both parties know what all the terms are and what all the pressures are, or can be.

Mr. Price: Would you have any objection to the legislature, not writing agreements so much, but setting forth certain guidelines for agreements?

Mr. Newton: I don't think they'd need to set more than one guideline, and that is that no person has the right to defraud his fellow citizen.

Mr. Weise: Ernie, one of the problems alluded to in the film, I gather is that there is a discrimination in the bulk sales of gas, and price discrimination at that point. Setting contracts aside and everything else, it seems there are a lot of wholesale suppliers, at least in the businesses I am familiar with, who have to give the same quotes to anybody who comes in to buy from them. Would there be--would you have objections to a law that would prohibit price discrimination on a wholesale basis, for example, company stations as opposed to the independent stations?

Mr. Newton: No, and I think that law is presently in existence.

Mr. Weise: Is it? Where?

Mr. Newton: Just the general fraud statute, monopoly statutes. I can't cite you the section.

Mr. Barengo: Ernie, you said you didn't feel the legislature should come back in and rewrite a contract that two persons negotiated at arm's length. What about the situation that arises when one of the parties then, through their collateral actions, vary the conditions that were existing at the time the contract was written?

Mr. Newton: I don't think that is right and I think the injured party has a cause of action.

Mr. Barengo: Isn't that what your oil dealers are doing when they negotiate with a person to open up a station here, and they say you open it up here, as the film alluded to, and this will be the territory you'll have, and this will be the area you're drawing from, and then a few years later they come back in somebody else to compete with them, one of their own businessess?

Mr. Newton: Yes, I think that would be a basis for a very real cause of action.

Mr. Barengo: Then all you're saying is that you don't feel we should be adding more laws to the books that may already be covered by other things.

Mr. Newton: That's right.

Mr. George Vargas stated that he was a lobbyist for the major oil companies and represents 8 of them. Mr. Vargas said he proposes to address himself to each of these bills as they were written. The movie was on an entirely different subject than these bills,

according to Mr. Vargas. The amendment to one bill is also on an entirely different subject than the bill, the rack pricing subject, and Mr. Vargas has someone else to speak on that.

Mr. Vargas' presentation on each of the bills is attached as Exhibit 4.

The following questions were posed after the presentation on A.B. 291:

Mr. Price: You mentioned the normal competitive market in the area which tended to indicate that the hours which would be required by the major dealer would be only competitive to the surrounding stations, and then in the next sentence you talked about a 24-hour operation. Now what are the normal requirements?

Mr. Vargas: That would vary as to the marketing conditions. You take for instance certain areas in Las Vegas, and certain companies have different provisions. The one I read, that provision with reference to reasonably meeting the needs and meeting competition, comes out of the Chevron USA lease. These companies have different provisions. In Las Vegas a major station, the company who has built that station, who has studied the marketing, selected that site, who has paid for it, who wishes its product dispensed there, may feel that that marketing situation calls for a 24-hour operation in view of our moving shifts of people and our tourist industry.

Mr. Price: How do they reevaluate the hours? If a guy has a 20 year lease, every 5 years to they--

Mr. Vargas: I don't suppose there is a set time that they re-evaluate. I suppose if market conditions change so there is no need at all and no demand for keeping that station open 24 hours, then the company and the operator meet on that problem and negotiate. I don't think you'll find in any of these companies a flat situation which says 3 months from now we'll reevaluate this situation. I don't think they do that.

Mr. Price: So what you're really saying is once a contract is entered into and the dealer has agreed to the hours, or whatever, if he wants to change he has to get permission of the company.

Mr. Vargas: That's right. He would have to request negotiation for that permission. Which, when you look at the overall picture here, is a reasonable situation.

Mr. Weise: Pardon me, Mr. Vargas, are there instances where maybe a dealer has been established for a long period of time and both the wholesaler and the oil company drastically changes the next lease contract as an arm-twisting device, something else that they might want to be getting at. In other words, let's say they have established a period of a 12 hour operation

for years and years, are there instances where the oil companies come back in and say we'd like you to, we'd like this a 24 hour station?

Mr. Vargas: For reasons other than an advancing marketing situation?

Mr. Weise: Yeah. Maybe they want to put in their own type of station, or this kind of situation.

Mr. Vargas: Mr. Weise, I'm not aware of any such situation. Let me tell you about this company situation. There are very few company operated stations in Nevada. Union Oil has none. Mobile has none. Chevron USA presently has 3 company operated stations.

Mr. Weise: Well, there must be a reason for the bill and I'm wondering what abuses have developed.

Mr. Vargas: Have we heard any testimony here of specific abuses in Nevada? We saw a movie which related to Long Island and California and British Petroleum and that sort of thing. Now, there is a national service station dealer's movement. It's going all over the country and some of the people in the city have seen this film presented in other legislatures. It doesn't really address itself to Nevada, but I am sure this legislature is concerned with the questions and problems in Nevada. Now, I know of no instances such as you mentioned. I have an instance, for example. I don't know if this is the same one the witness testified to or not, whereby by reason of numerous customer complaints, a service station lease was not renewed in Las Vegas. The next thing the company knew, and with the assistance of the National Dealers Association on the other side, which, believe me, is a pretty potent outfit, they talk about an oil company being big, that company was hauled through many hearings in the Federal Trade Commission. Finally the Federal Trade Commission was satisfied that the thing was proper. We had to go into court to get the station back. We got it back. There was $150,000 defamation claim filed against the company. This has been sitting there for 5 years and they've never moved to try it.

Mr. George Chadwick, District Manager of Shell Oil Company, spoke from the audience to answer Mr. Weise's question. Mr. Chadwick stated that he had been with Shell 22 years and to his knowledge he has never used subterfuge to fire a service station manager. Further, if any of his employees did this, they would be severely disciplined.

Mr. Chadwick, in answer to the question concerning hours of operation, there are trial periods. They have leases covering 3 month trial period for hours of operation, also six months or a year. If it is found the hours of operation are not appropriate, they have changed the lease. They do not unreasonably withhold

this kind of change.

Mr. Weise: Do your contracts have built-in renewable provisions for the dealers or not?

Mr. Chadwick: Our contracts go for three years and then they are renegotiated. For the most part they are 3 year contracts.

Mrs. Hayes: Mr. Vargas, I would like to say one thing. I don't believe that Mr. Nye is with the Dealers Association now. Is that true?

Mr. Vargas: That's right.

Mrs. Hayes: Also, in regard to Mr. Cason's telegram, the bill passed. As a consumer and also as a resident of Clark County, I have not felt any of the dire predictions that you predicted would happen when the bill passed last time.

Mr. Vargas: Yes, I understand that Mr. Nye was voted out as president of that association. The next president, I think, was under indictment for illegal pricing.

Tom White (from the audience): Not at the time when he was president.

Mr. Vargas returned to reading his presentation covering A.B. 427, A.B. 429 and A.B. 430. At one point in the presentation, Mr. Vargas stated:

Mr. Vargas: Now this legislature, two years ago, established something of a record in unconstitutional legislation. A lot of major bills--

Mr. Mello: Will you say that again, please, for the record.

Mr. Vargas: I say this legislature, two years ago, established something of a record, I think, in passing unconstitutional legislation. I know that the legislature is concerned about that subject and, hence, I think the consideration of this Robinson-Patman Act, in fact, on this particular bill is quite important. Mind you, Assemblyman Mello, I am not criticizing the legislature, I know that the bill drafters' office was responsible for a lot of the difficulties, but the public, I think, criticizes us all, us lobbyists as well as everybody else.

Mr. Mello: The difficulties we have are that the attorneys draft the bills and then the attorneys sit in judgment of the bills.

Mr. Vargas: I agree with you entirely. That is why I think it

is my responsibility to point out the serious unconstitutional effect --

Mr. Mello: You are an attorney also, is that correct?

Mr. Vargas: That's right, Mr. Mello, and I attempted to point out some of the unconstitutional situations. I think it is my duty to try and do that because I think I would be failing my duty if I didn't point out what I think is a pretty obvious unconstitutional situation when I'm appearing before a committee because I have respect for the responsibility that you folks have and the difficulties that you have.

Mr. Mello: We appreciate that.

Mr. Vargas continued reading his presentation to its conclusion.

Mr. Weise: Do any of the companies you represent, wholesale companies at the rack, I guess to use a term, discriminate in the price they sell the same product?

Mr. Vargas: Mr. Weise, I think one of the company people will discuss that rack pricing situation. I am not prepared to discuss it at all because I didn't know it was coming up until the bill was amended and the motion picture was shown.

Mr. Weise: That's basically what 28 and 31 address themselves to.

Mr. Vargas: That wasn't what they addressed themselves to as they were written and those were the only ones I studied. But I think that is right with the amendments that were just offered and Mr. Kowal will discuss that subject.

Mr. George Chadwick, District Manager of Shell Oil Company, was the next speaker. He stated that he would address his comments to A.B. 426 which is the temperature correction bill. Shell Oil Company does not offer temperature correction for its dealers. They do in California because it was legislated in California.

Mr. Chadwick: ... I gather from Mr. Bowlen's statement that we should do this because it would make everybody the same. I disagree with that because we are different. We have different franchise packages that we offer our dealers. I don't believe we should be legislated to be the same. I don't believe sameness is what made this country great or this industry great.

I want to make one point very clear. We do sell gasoline on a volume basis, and a Shell dealer is selling the same number of

gallons that he purchases from Shell Oil Company, except for any variation for temperature correction. Temperature correction does not play a part in volume losses. Numerous tests from 1932 on up to the present day establish that fact.

Mr. Chadwick proceeded to discuss Shell's franchise package and how it differed from other companies. Mr. Chadwick does not feel that any company should be legislated so that all companies will be the same. He then returned to the discussion of temperature correction.

Mr. Chadwick: Now, if the dealers' basis for requiring or requesting temperature correction is one to have everybody the same, that is not correct. If his reason is that he's getting ripped off and he is not getting the volume he pays for, all of the studies I have mentioned before tend to refute that fact. In Texas in 1954, 60 stations were involved, and the conclusion of the test showed that the average loss ratio was 1/4 of 1%, none of which was due to temperature correction because the gasoline actually raised in temperature after it was put in the tank by an average of 1.31 degrees. The laws of thermodynamics are the same in Texas, Nevada, Phoenix or California. The factor is .0006 x the number of degrees difference x the gallons, whether is shrinks or whether it expands.

Now just let me mention some of the tests and surveys that were run. The U.S. House of Representatives, Ways and Means Committee, asked the Treasury Department to conduct a survey. 1/8 of 1% loss was recorded out of 79 stations tested. The City of Richmond, Virginia, also conducted tests. The California State Board of Equalization, the State of Washington, the State of Virginia, the Province of Manitoba, Canada, and finally, I did my own last year. The range of part gain or loss in all these studies went from 1/4 of 1% gain to about 1/2 of 1% loss. Losses can be traced to meter tolerances, human error, spillage, evaporation, billing and inventory areas, and in some cases, employee theft.

We had a temperature correction bill at the Arizona legislature last year and the legislators said we hear about all these other tests, what happens in Phoenix. I had 2 of my engineers perform very simple test. It was limited, which I acknowledge, the instrumentation was good. We checked the temperature of gasoline at the loading rack at the time it was being loaded in the delivery truck, checked the temperature in the delivery truck after loading, checked the temperature of the delivery truck after it arrived at the service station, checked the temperature of the product in the ground before delivery and the temperature of the product in the ground after delivery. We did this during the months of August, September, October and also in January. Without a doubt,

the temperature at the rack in every instance of delivery was lower than the temperature of the gasoline in the ground which in effect gives a volume bonus to the dealers because cooler gasoline going into the tank actually expands. This was not a surprise to us because it simply supported all the other tests.

Now, why do I stand here and say we don't want to do it? Again, I don't believe it is necessary. Over a long haul, if there is a slight variation in areas where you do not have the extremes as you have in Arizona or Las Vegas, it does tend to equalize. As far as Shell Oil Company is concerned, it would be an administrative cost, an administrative hassle. These would add to our costs. I agree with the gentleman that it is something that should not be legislated. If the fact that we did not temperature correct our gasoline caused us, or made us unable, to recruit good dealers for our service stations, and as a result of this our service stations were closed because we couldn't recruit good dealers, then it would be a simple economic decision that Shell Oil Company would have to make to determine whether it would cost us more to have the closed stations or would cost less to say the temperature correction is causing this........

I submit to you this is a bad bill and respectfully request that it be denied.

Mr. Mello: Did you say that California has a similar law?

Mr. Chadwick: California has a temperature correction law.

Mr. Mello: Same temperature?

Mr. Chadwick: Yes, I believe they use 60 degrees.

Mr. Mello: Do you comply with that law in California?

Mr. Chadwick: Yes, sir.

Mr. Mello: Do you add it to your administrative costs?

Mr. Chadwick: I'm sure we do.

Mr. Mello: Do you pass it on to the consumer?

Mr. Chadwick: It has not been passed on to the consumer at this point. But I would simply say this, that all costs, at one point or the other, will be diffused in the price of the commodity, whether we're dealing with nylon hose, gasoline or apples. When costs build up, they will be diffused into the price. Eventually they will go to the consumer.

Mrs. Hayes: In the movie we saw a tanker selling gas to another company. They were apparently from Arco or something, and they were selling gas to Shell or whatever. I don't remember the names. But you, as a Shell dealer, do you ever sell gas to other dealers with other major names?

Mr. Chadwick: No.

Mrs. Hayes: Do you in turn ever buy gas from other major dealers?

Mr. Chadwick: Here you use a dealer in one context and I'm not quite sure ---

Mrs. Hayes: I'm not really that familiar with the terminology.

Mr. Chadwick: A Shell truck, to my knowledge, does not deliver to a Mobil dealer, or a Union dealer or a Phillips 66 dealer, not by Shell Oil Company. Now if there is a Shell distributor and he decides that he wants to sell to somebody else, that would be his decision. Once he buys the gasoline from Shell Oil Company, he can sell it to whomever he pleases. Shell Oil Company, as a matter of policy, will not sell to another dealer.

Mrs. Hayes: Well, you said you were all different. And I know for a fact that some of the dealers, or whatever you call them, buy from other major companies. I know the companies do exchange and you don't want the legislation passed because you want to be different.

Mr. Mello: Does Shell deliver to one of their dealers at one price and one of your self-service stations, I think you have one in Sparks, at a different price?

Mr. Chadwick: No. If we're delivering to dealers it makes no difference if they're operating a Shell full-service conventional station or a self-service. It's dealer tank wagon price. There are instances where a dealer may be owner-operator of the premises. In those instances we may have a competitive allowance and it may vary from a penny to a penny and a half because we have no investment there. That same kind of allowance would be available on a competitive basis by any dealer that had that situation. Discrimination between dealers who lease from us does not exist as far as Shell Oil Company is concerned.

Mr. Price: What states does your district cover.

Mr. Chadwick: New Mexico, Arizona, parts of Nevada--the Las Vegas area, Southern Utah and Southern Colorado.

Mr. Price: Within your own district you do not have any other temperature controls?

Mr. Chadwick: No, I do not. I fight it every time, because I don't believe it's the right bill.

Mr. Price: Now, at one point you said you objected to this because we would be attempting to legislate into a contract specifics and Shell would object to that. Would you object to general guidelines or should I say guarantees of some nature that a distributor or a dealer could have.

Mr. Chadwick: I'd have to know what the guidelines are to determine whether we would object or not.

Mr. Price: I'm not talking about specifics; I'm talking about conceptions, you know, like consumer protection. Do you feel that you have objections to us attempting to set some unknowns, and I'm not talking about specifics.

Mr. Chadwick: Basically I'd have to say yes, because I'm strong for free enterprise.

Mr. Price: One of those things that you said, which doesn't relate exactly to this bill, but maybe relates to the problem, you said there are people waiting in line for stations. Now, if we're to believe that and there are 3 or 4 people in line for every station to take a guy's franchise, then it would appear to me that that would not jell the same as what the gentleman before you said that the major company and the independent dealer is on an equal basis. Because if that dealer knows there are 10 people out there waiting to take his place, I would suggest that it puts him under somewhat of pressure to do whatever the major wants him to do.

Mr. Chadwick: Mr. Price, it puts him under pressure of doing a real fine job and most of our dealers do a fine job. ----

Mr. Price: Does Shell get any kind of a tax rebate based on temperature loss from the state, from here or any other states?

Mr. Chadwick: I don't know about here and I don't even know if I can answer that question factually. I believe there is an allowance for losses, but I don't know what the number is.

Mr. Price: So you don't know whether this state or any other state--

Mr. Chadwick: No, sir, I don't.

Mr. Mello: I have a question to ask Mr. Vargas. Mr. Vargas, I was not a member of Commerce last session, but I believe that there were hearings on legislation in regard to the service station people, and I believe at that time you testified that legislation was also unconstitutional. Of that legislation

that you testified was unconstitutional, how much of it passed and how much of it is still on the books?

Mr. Vargas: My testimony was then that in my opinion as a lawyer that pact is unconstitutional. That act is still on the books because cases haven't arisen to test it. But we have two now in Las Vegas that will eventually do that.

Mr. Mello: You are bringing suit then?

Mr. Vargas: Oh, yes. There are two pending down there now which involve the constitutionality, but they haven't gone any farther than that. We had one in Carson City and Judge Gregory held that the law would not be retroactive so it was not applicable to that case. These other ones haven't as yet gotten to that stage.

The next speaker was James D. Kowal, General Counsel for Atlantic Richfield Company in Los Angeles. Following are excerpts from Mr. Kowal's testimony:

Mr. Kowal: In the California legislature, the hours bill was heard 5 years in a row and took 22 hours before it finally passed with an exemption for all state highways,throughways, expressways, freeways and situations where the municipalities determined there was an inadequate service and situations where the lease imposed on the landlord required that he in turn pose hours on dealers. Hundreds of hours were spent in the California legislature in '74 on 6 bills that were essentially similar to these.

Definition is where you have to start. Dealers. In our case, and its a fairly representative example, there are 4 types of service stations. We have 3500 stations that we call lessee dealers. Some 30 are in Nevada. A lessee dealer by definition has a lease with us and a products agreement. The next type of dealer is a contract dealer. He owns his own location, or he leases it from someone other than Arco. We have 3500 of those. Then there are another 3500 dealers in the United States that we don't have any direct relationship with at all because they're either a lessee dealer of a distributor or they're a contract dealer of a distributor who is between us and that dealer. Then we have 166 company operated service stations for the reasons that Mr. Vargas described--experimental in a new community where they're not going to be economical. You figure they will in 25 years, but not the first 4 or 5. Some capital intense facilities, this sort of thing. We have none in Nevada at the moment.

Basic bill support for this type of package comes from branded lessee dealers. I have yet to find a dealer association that was not comprised of 90 percent or more branded lessee dealers.

Contract dealers, who simply buy a product from any oil company of their choice, and comprising a third of the dealers in the United States, don't care about these kind of bills because it doesn't further their purposes or their objectives. And I say it is a small minority of the branded lessee dealers because the vast majority are succeeding, are successful and they are not threatened. But there is a distinct, identifiable group of branded lessee dealers who are threatened in today's marketplace.

Is that threat to be ameliorated by a series of strategies at the expense of the consumer? And in my view, and more importantly, at the expense of the successful percentage of our dealers who are not subscribers to the association and/or to these particular strategies. What are those threats? They're competitive pressures in the market place. The oil companies haven't fostered them. The oil companies haven't designed them to hurt the dealers. You've got changes in consumer buying patters, you've got price consciousness, you've got FEA price constraints, FEA allocation. We sell in volumes and at prices that are dictated by the Federal Government and have been since 1972, Phase 1 under the old cost of living counsel which left us with the only industry that is price controlled in the United States with the advent of the Emergency Petroleum Allocation Act of 1973.

So, we sell in volumes and at prices that are dictated by the Government. There are, under those price controls, tremendous incentives for efficiency. That boils down to two things. If we're going to respond to changes in consumer buying patterns and remain a competitive part of the marketplace, albeit an 8 or 9% market share, we have to have dealers with prices that are responsive under the Federal system to maximum efficiency on our part. Our profits, our competiveness, our ability to respond to changes in the marketplace comes through cost reduction. If you realize all of those things are impacting all branded dealers, and especially lessee dealers, the strategy if you find yourself to be the target of the threat, you're the guy that's going to get shut down....

We've closed nearly 50% of our stations in the United States in the last 4 years. We had 17,000 stations. We're down to 11,000. We owned a little over 5,000; we're down to about 3,400, and we're going to keep right on closing them to the extent that we can continue to be competitive and continue to serve the consumer....

If you wanted to perpetuate your lease against the impact of marginalization, you would attempt to monopolize the marketplace and monopoly is the elimination of competition. For example,

how about eliminating direct marketing by oil companies? You want to immunize yourself against nonrenewal or make it dangerous for the landlord to nonrenew your lease even though you have no renewal option; you want to extend your tenancy as long as possible if its inevitable that you're going to be closed. You want to establish minimum margins, if possible, to guarantee yourself a profit no matter what the impact on the consumer, and you want to maximize your profits as, for example, by being allowed to close your service station during hours you choose to do so regardless of a contractual obligation to the contrary.

The decision then comes down--do you subscribe to those goals being achieved through legislative action if its at the expense of the consumer? In my view, it is at the expense of the great majority of the branded lessee dealers. To the extent that you perpetuate marginalization and deny efficiency and deny consumer responsiveness, it is my suggestion and perception in the marketplace today that that old style of marketing will atrophy and die.

You've heard the statistics in the movie. It is true. The independents are taking over the marketplace. That's a fact of life. It is not something that's being stimulated or fostered or subsidized by anybody. It is just going on because the consumer is changing his buying patterns.

The movie suggested that product exchanges represent the elimination of competition...What is incredible is that every study by the Department of Justice, Federal Trade Commission and the U.S. Congress has indicated that if it were not for product exchanges you wouldn't have 8, 10, 15 and 20 different oil companies marketing. For example, the San Francisco Bay Area, which is the source of the product that comes to this town, does not have an Arco refinery in it. We market very aggresively here in Carson, we market in Reno, we market in Las Vegas, and we don't have any gasoline. We could not, if we had to bring it from Watson, California, or Bellingham, Washington, transport it up here and be competitive. But, we have a refinery in the State of Washington and only 3 other companies do. Yet there are 15 companies marketing up there. We make gasoline to the specifications of different marketers in Washington. They additize it at their termins or at their racts, and they're out there banging heads with us for gasoline we made at our refinery..... It is the exchange mechanism that enables a variety of marketers to be in a given town without the refinery economics to get there. In fact, it is a violation of the Federal Trade Rules to deny an exchange to somebody who requests it on reasonable economics.

"Competition is squeezing profits," was the statement thrown out as one of the difficulties facing the marketers displayed in the movie. I think competition does squeeze profits. The absence of competition, or monopoly, tends to maximize profits. If that is a problem for them, it is not a problem I feel threatened by, because you are either going to have to hope for monopoly and enhancement of profits by enacting these bills, or you're going to have to not enact the bills and live with the fact that they tell you that competition does squeeze profits. If you want to outlaw competition, this dealer package is the way to do it. It's a step in that direction.

"Independent style is threatening the full-serve dealer," was another statement. Do you want to legislate back to the 1950's? Is that what you're going to do to the consumer? Today the dealer margins are looking at 3, 4 and 5 cents and sometimes less on some of their products because there are competitive forces and there's a change in the consumer buying pattern that responds to 4 and 5 cents differences down the street with the independent. The consumer has his choice. He can go to the full-serve, the mini-serve or the self-serve. If the consumer goes to the self-serve, you're being asked to pass bills that will in effect bring him back to the full-serve or lament the passing of the full-serve. The question is whether or not you're going to vote on something to deny a trend that is evolving as a result of the consumers' buying pattern indicated by his purchases.

"Closure puts a dealer out of business." I've told you about various kinds of dealers, and there's only one type of dealer that can possibly be put out of business by a station closure. It's going to have to be a branded lessee dealer. It can't be a contract dealer because we don't close those stations. It can't be a distributor dealer because we don't have anything to do with those stations. So, it's got to be we're talking about this landlord-tenant problem again, and if he is going to be put out of business by our decision to abandon the investment, it means he is unwilling to make the same investment that something like a third to 1/2 of all the dealers in the United States made. Under Federal law he could relocate in the same community within a reasonable period of time and he must be supplied a product at the same price...

"Distributors rack price is 4¢ under dealer tank wagon," sas the statement. My answer, true. It is a functional price discount to a distributor who not only delivers, which costs money, but he typically has the expenses with many of his dealers that we have and which we're spared because a branded by-sell distributor has come between us and the dealers. He's got to buy the service station. He's got to take care of the credit. He's got to put up the capital investment. He's got

to provide the point of purchase materis. He's got to deliver the motor oil. Is 4¢ enough? Probably too much. Testimony in Congress the last year and a half is that the by-sell distributor ought to be 2-3/4 to 3¢ today, because in today's marketplace the expenses are not as bad as they were in 1972 when we got locked into a 4¢ profit margin by price controls....

The companies do have volume programs... It is true for Arco and it is true for our properties. Split island. What do we do for a guy? We reduce his rent 15% if he'll put in a self-serve island. Why? We know there is a growing segment of the consumer motoring public that are becoming responsive to self-serve.... January 1st of this year we eliminated the whole system. They're doing it now on their own. They have seen what it did for their volume. Their initial fears that their full-service customers would drive across the island to the self-serve have not materialized.

Mr. Kowal explained Arco's policy with regard to the hours that stations were required to stay open. Arco abandoned the hours enforcement policy on January 1, 1977. He also explained the circumstances surrounding the case of Mr. Ritter and Mr. Mankins who appeared in the movie.

Mr. Kowal: A.B. 428 you were told is rack pricing and it was what they really wanted to do. Operators and distributors would pay the same price. We have a program that's been in place for 3 years. It's ready to go anytime the Federal Government will allow it. It will compartmentalize and break out the price for delivery, the price for the franchise, price for the trademark and price for the credit cards. None of that is legal now. You mandate it and we'll just have to wait for federal price controls to go away to see if it will work....

Mr. Weise: I would like to know, first off, specifically what the objections are to A.B. 427 which is primarily a question of definition of who is a franchise dealer. Primarily there are 2 bills here which people need attention on. I can figure out the one on the question of degrees by myself, but I would like to know what the problem is you have on definitions in A.B. 427.

Mr. Kowal: I have no comments in addition to those of Mr. Vargas in regard to A.B. 427.

Mr. Weise: Forgetting what the bills might say. It seems there is a situation now where some wholesale entity, I don't know who it is, but whole sale entities in the state at the rack sell their product, gasoline. I presume that when Arco buys it, it buys it from someone else and they make their additives at the rack, is that correct?

Mr. Kowal: No.

Mr. Weise: Where do--

Mr. Kowal: Atlantic Richfield Company has gasoline at 2 terminals in Nevada which we have acquired title to by exchanges.

Mr. Weise: So you get gasoline somewhere in the State of Nevada?

Mr. Kowal: Yes, sir, 2 places.

Mr. Weise: Do you sell to anyone other than people with the Arco sign out at retail prices?

Mr. Kowal: I believe we do pursuant to federal assignment orders.

Mr. Weise: Do you discriminate to any of the people with an Arco sign at the retail level in terms of the price you charge them? I don't know--do they bring their own truck up to your rack to buy gasoline or do they visit the Arco--

Mr. Kowal: If it's a distributor, a person who takes title from us and takes all the problems past the rack--he has to resell it, set his own price, find customers--he gets a wholesale price from us which under the Robinson Patman Act is cost justified and/or functionally justified and/or competitively justified as being less than the wholesale price to a dealer who is in place at a service station.

Mr. Weise: Now, if you sell to that person, do you haul gas to them?

Mr. Kowal: No.

Mr. Weise: He bring his own trucks to the terminal?

Mr. Kowal: The distributor, yes, sir. Or he sends a common carrier.

Mr. Weise: You do not allow, for example, your franchise dealers, your retail dealers, to go buy gas at that same price if they want to hire a truck or a common carrier?

Mr. Kowal: That's right.

Mr. Weise: What's the problem with doing that?

Mr. Kowal: Our price to the dealer includes all the things he gets with the gasoline, like the service station, the logo, the credit, the credit services, the sales services, the delivery and our expense of ownership and administration of that asset.

Mr. Weise: You own all your stations then in Nevada?

Mr. Kowal: No, we own half. 29 or 27.

Mr. Weise: Well, then you have some adjusted price that you charge for the ones that you own outright because of your initial costs, and you have another price that you sell to people who own their own stations?

Mr. Kowal: No, they both pay the same.

Mr. Weise: They both pay the same?

Mr. Kowal: They both pay tank wagon, delivered tank wagon.

Mr. Weise: I'm starting to get a handle on all this.

Mr. Kowal: The distributor is the guy who pays a lower price than that, who delivers it, who does or does not extend credit to his dealers, who does or does not have the expenses of ownership of a service station, which are substantial. For example, who carries the expense when a station is closed? That's us, if it is one of our branded dealers. It's a distributor, if it's one of his stations.

Mr. Moody: You did say that you do sell the independents? And you did say that you sell to them cheaper than you do the branded dealers?

Mr. Kowal: Where we have been instructed by the Federal Government to sell to somebody who doesn't want the Arco branc but who is entitled to some portion of the hydrocarbon pool of the U.S., and we are ordered to do it, we do it. We don't give them the Arco additive, we don't give them the Arco credit card, not a thing, and he gets is about 2¢ less typically than one of our branded dealers would get it.

Mr. Moody: That was my next question was how much cheaper and you said 2¢ a gallon. Now, can you explain to me how an independent can sell gas 3¢ to 4¢ a gallon less than a branded dealer pays for it? And sometimes 5¢.

Mr. Kowal: Less than he paid for it or less than he's selling it?

Mr. Moody: Less than a branded dealer pays for it. An independent is selling it 4¢ or 5¢ a gallon cheaper.

Mr. Kowal: I've got to be very careful because over here we were talking about distributors and you're talking about dealers.

Mr. Moody: No, I am talking about independent stations selling gas 5¢ a gallon less than what you are selling it to your branded dealer stations.

Mr. Kowal: I am not conscious of any in Nevada, which doesn't mean that there aren't any up here. We have them in California that are a full nickel under. The octanes are 3 or 4 points less. The customer complaints for their supreme are routine because they blend it down. We have no product quality control after they leave the rack. They're getting the same price that they were getting in 1972 when they were the spot purchasers in the marketplace and didn't take a contractual position or any risk. They have been locked in under federal price control since 1972. That is why the independents are taking over the marketplace at the expense of the branded dealers. We sell the volume we're told to sell at the prices we're ordered to sell them at by the Federal Government. It's insidious, what it is doing to the branded dealer. The FEA said independent businessmen are to be protected, that's what Congress told us. And they said anybody wearing an Arco or Exion shirt aint no independent. Not in the FEA's book. These guys don't get much more of a break when they walk into Region 9 in San Francisco than I would. The guy is a major oil company service station dealer. But, if you walk in there, I assure you that you could get an allocation tomorrow to sell a million gallons a month at a location of your choice--just as long as you don't walk in there wearing one of these shirts. And we're fighting tooth and nail because it is clobbering these people.

Mr. Price: Does Arco offer temperature corrected gasoline?

Mr. Kowal: Yes, sir.

Mr. Price: In Nevada?

Mr. Kowal: If it's requested.

Mr. Price: So, it's an optional thing?

Mr. Kowal: Yes, sir.

Mr. Price: Are you a district manager?

Mr. Kowal: No, I'm the general attorney of Atlantic Richfield for the western states.

Mr. Price: For the record, I contacted our tax commission in response to the question awhile ago, and we do find that you oil companies to receive from the state a 2% discount for losses, including temperature losses, plus another specific discount only related to temperature corrected losses.

Mr. Kowal: Mr. Price, that is accurate. I didn't volunteer earlier because it seemed there were too many people getting up and down. I can tell you that we get it in all five of the western states that I'm best acquainted with, for this reason. Tax is structured by the legislature and in every instance as a tax on a consumer, whether its the gallonage tax for your highway funds, or the sales tax like California that imports. But, for the convenience of the state, they don't want to have to collect it from the consumer. They've got 9 refiners. Why don't we just collect it at the refinery and be done with it. So, they collect the tax from us which we in turn have to collect from the distributor and/or dealer who in turn collects it from the consumer. They only have to collect taxes from 9, 10 or 15 of us as compared with several million. And they realize that coming out of the refinery where it is measured it is usually in the range of 100 to 140 degrees, and that's where the weights and measures people, on behalf of the various tax jurisdictions, measure it. They recognize that that gasoline, through spillage, evaporation, leakage losses and temperature, is not going to equal the number of gallons that ultimately reach the public. Since the legislature said the tax is going to be 2¢ a gallon, you'd better not collect 2.10¢ by measuring it when it's hot at the refinery which is the cheapest, fastest, easiest place to measure it and collect the tax.

Mr. Price: In earlier testimony from Mr. Chadwick, he indicated that the temperature corrected formula was not really significant. You're telling me that it is significant for the companies.

Mr. Kowal: Mr. Chadwick is in Arizona and he doesn't have a refinery. The phenomena I'm talking about only exists in Los Angeles, San Francisco and Bellingham, Washington, in the entire petroleum allocation District 5 which is the western part of the United States. Significant? .0006 is what happens between 120 120 degress refinery stock and the 60 or 70 or 80 degree stuff that is in the marketplace which can vary from 30 up to 80. It is insignificant, unless you are talking about, as we are, 270,000 barrels a day. Do we want to overcollect the tax, or do we want it to reflect what is really going on in the world?

Mr. Weise: What is the actual price per gallon discrepancy or variation that you have beteen whatever you call your people who wholesale it out themselves and your actual dealers?

Mr. Kowal: Basically, 4¢.

Mr. Weise: That 4¢ a gallon then would represent only the capital investment, I presume?

Mr. Kowal: No, there is dealer credit losses. There is expensive closed service stations. There is insurance, taxes,

delivery, scheduling, staff, sales people and getting point of purchase materials delivered to our dealers that we don't deliver to distributor dealers. Those have to be handled by the distributors.

Mr. Weise: The maximum spread is 4¢?

Mr. Kowal: Yes, and the testimony I've heard in Congress from a variety of sources is that today that's probably in the magnitude of 2-3/4¢ to 3¢, which would be more reflective of today's market.

Mr. Weise: What's the problem with the last bill if it were to be enacted?

Mr. Kowal: That bill doesn't talk to that subject at all.

Mr. Weise: It talks to what, 4¢ over the retail--

Mr. Kowal: No, sir. That bill talks to if I had a company operated station, my price to the public must be 4¢ more than my price to the dealer. Now, you're looking at the retail price and you're talking about a minimum margin law that the consumer cannot get gasoline at a company station for less than a fixed price. You're setting a minimum price.

Mr. Weise: I'm not too sure of the bill the way it is structured right now. I'm not too sure about any of the 6 bills in the package the way they're written right now.

Mr. Kowal: I'm sorry. 431 is a retail price law. The other problem we've been talking about is wholesale margin on a functional discount to distributors.

Mr. Weise: I suppose what I'm trying to get at is the foundation as to the difference at the rack that you sell to your retail dealers and whatever you want to call your other people.

Mr. Kowal: Two wholesale prices. One to the seller and one to the distributor.

Mr. Weise: The maximum gap there is 4¢?

Mr. Kowal: Yes, sir. But this bill says that nobody can come into Nevada and open a service station without charging the consumer a minimum markup. No matter how efficient you are, no matter what the competitive circumstances are.

Vice-Chairman Mello said that concluded the testimony against the bills and asked for any further testimony from service station operators.

Mr. Usner again testified. He stated that there is a great love affair between FEA and the oil producers and refiners. The oil companies have created the inequities themselves. Thirty to forty thousand lessee dealers have lost their businesses in the last 3 years. They are locked into high wholesale prices and the oil companies refuse to compete.

Mr. Usner further stated that the attempt to pass this package of bills is to make the service station operators be able to compete on a fair and equitable basis. The industries prices have gone up at the wholesale level, they've gone up at the refinery level and the production level. The only ones not making a profit are the filling station operators.

Mr. Weise asked Mr. Woolley if someone in his group could tell him what the specific problems are with rack pricing within the state. Mr. Woolley replied that they are endeavoring to get the prices of gasoline at competitive levels, and that most unbranded independents are selling gasoline for 4/10ths of a cent a gallon less than he is paying for it.

Mr. Weise: Do they buy it from the same place you buy yours?

Mr. Woolley: No. They buy it from distributors. I can't say where they buy it.

Mrs. Hayes: Is it the same quality gas?

Mr. Woolley: The law says the octane ratings have to be posted. I haven't checked their postings, so I can't answer.

Mr. Pyatt said all they want to do it be competitive and they cannot be competitive in price when someone can sell for less than their cost.

Mr. Weise: I understand that. I just want to know what statute we can enact to correct that.

Mr. Pyatt: That's the reason we're here seeking help.

Mr. Virgil Anderson, representing Triple A, said their opposition to A.B. 291 was the potential of nonavailability of service to the motoring public. The system now provides for 24 hour service in many localities and interfering with this through this bill or some other mechanism to restrict the availability if to the disadvantage of the motoring public. Mr. Anderson urges a no vote.

Mr. Cliff Newman, appearing on behalf of the service station operators, urged the committee to get some laws on the books in their interest so they could fight in courts.

Vice chairman Mello thanked all the people for being present and assured them that their statements would be entered in the record. As vice chairman, Mr. Mello said he would make no decisions but would turn it over to the chairman who will determine whether or not there will be a subcommittee or what action will be taken.

The meeting was adjourned at 6 p.m.

Jane Dunne
Assembly Attache

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
GARY A. MOYLE	SHELL OIL CO		✓
Ward Hinckley	Western [illegible]		
JON MADSEN	Washoe [illegible]		
C B NORRIS JR	NORR-WEST TERMINAL		
Linda Shapiro			
Mark Bass	Exxon		
[illegible] Smith	Arco		
J D Kowal	ARCO		✓
Geo. W. VARGAS	#179 (Oil Co's)		✓
PETE WOOLLEY	NORTHERN NEV. PETROLEUM	✓	
Wes Bowlen (Wells Nev.)	Wes' Chevron Station	✓	
DAN USHER	NEV SERVICE STATION [illegible]	✓	
George Chadwick	Shell Oil Co.		✓
Robert G. Nelson	ARCO		
[illegible]	[illegible]		
Harold Smith	West End Mobil.		N/O
Jim Thompson	Atty Gen		429
Bill [illegible]	[illegible] for Shell		
Virgil Anderson	AAA		291
[illegible]	Mobil Dealer	✓	
[illegible]	[illegible]	✓	
N. L. Swain	ROYAL SHELL	✓	
[illegible]	[illegible]	[illegible]	

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
Richard Scarselli	KEYSTONE SHELL	✓	
[illegible]	[illegible]		
[illegible]	[illegible] Texaco	✓	
[illegible]	Texaco	✓	
[illegible]	Mobil	✓	

AB 428 - Mr. R. T. Bedell, Nevada Service Station Association

Section 1 line 1

All service station operators or wholesale purchasers whether they be branded or unbranded who purchase purchase gasoline and other fuels in tank wagon quantities of 5000 gallons or more, pay the same basic raw material price at the distribution point or terminal. Then the various charges for transportation, trade mark, credit cards -- will be added at agreed on reasonable cost.

The service station operator or wholesale ~~personnel~~ purchasers will have the option to transport and/or use the trade mark and credit cards. This option will be renewable on a yearly basis by giving 90 days written notice to the supplier.

Exhibit 1

PROBLEMS OF SMALL RETAIL

PETROLEUM MARKETERS

A REPORT

of the

SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

of the

COMMITTEE ON SMALL BUSINESS

HOUSE OF REPRESENTATIVES

94th Congress, 2d Session -------- House Report No. 94-1762

October 20, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Exhibit 2

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M. CALDWELL BUTLER, Virginia

LETTERS OF TRANSMITTAL

CONGRESS of the UNITED STATES,
HOUSE of REPRESENTATIVES,
COMMITTEE on SMALL BUSINESS,
WASHINGTON, D.C., October 20, 1976

HON. CARL ALBERT,
The Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith is a report of the Subcommittee on Energy and Environment entitled "Problems of Small Retail Petroleum Marketers."

This report is submitted with the approval of the full Committee.

With kindest regards, I am

Very sincerely yours,

TOM STEED,
Chairman.

U.S. HOUSE of REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE on ENERGY and ENVIROMENT,
WASHINGTON, D.C., October 20, 1976

HON. TOM STEED,
Chairman, Committee on Small Business
U.S. House of Representatives, Washington, D.C.

DEAR MR.CHAIRMAN: Transmitted herewith is a report of the Subcommittee on Energy and Environment entitle "Problems of Small Retail Petroleum Marketers."

The report, transmitted to you as Chairman of the Committee on Small Business, has the approval of the Subcommittee.

With kindest regards and best wishes, I remain

Sincerely yours,

JOHN D. DINGELL,
Chairman.

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PROBLEMS OF SMALL RETAIL PETROLEUM MARKETERS

CHAPTER I.—INTRODUCTION

In a 24-month period between the beginning of 1972 and the end of 1974, the total number of retail gasoline service stations in operation in the United States decreased by more than 30,000 which is equivalent to about 15% of the number of such outlets. While the loss of this many business opportunities within the general economy would be disturbing, a decrease of this magnitude within just one sector of a single industry is disastrous. Even more alarming is the prediction that, if present trends continue, an additional 40,000 service stations will go out of business by 1980. The combined loss of 70,000 retail petroleum marketing outlets within an eight year period will mean that by 1980, one out of every four service stations which existed in 1972 will be permanently closed. This will not only mean that 70,000 businessmen have lost the opportunity to compete in our economic system, but that consumers will be deprived of 70,000 alternative sources of fuel and automotive repair services and of the competitive prices from the continued operation of those alternative sources of supply.

Because the vast majority of retail petroleum marketers are small businessmen and women, the House Small Business Subcommittee on Energy and Environment, under the Chairmanship of Representative John D. Dingell (D-Michigan), initiated an investigation to determine the causes of this dramatic decrease in the number of small business opportunities in this sector of the petroleum industry so that it could thereby formulate recommendations which would help preserve this vital segment of our Nation's economy.

In view of the fact that the decline in the number of retail petroleum marketers has occured in all sectors of the Nation, Chairman Dingell scheduled six days of hearings in various parts of the country so the Subcommittee could obtain a national view of the nature and scope of the problem. This would also allow those small businessmen and women most affected but who frequently lack the time and resources to come to Washington, the opportunity to testify. The Subcommittee met in the Bronx on October 16th, in Poughkeepsie, New York on October 17th, and in Babylon, New York on October 18, 1975, in Chicago, Illinois on February 27, 1976, in Holyoke, Massachusetts on March 5th, and in Fresno, California on April 23, 1976. The Subcommittee received testimony from more than 80 witnesses. These witnesses included representatives from various Federal and State agencies, the major integrated oil companies, oil jobbers, individual service station operators and officials of State petroleum retailer associations which had a combined membership of approximately 20,000 service station dealers.

In addition to Chairman Dingell, the members of the Subcommittee are: Rep. Fernand J. St Germain (D-R.I.), Rep. John J. LaFalce (D-N.Y.), Rep. John Krebs (D-Calif.), Rep. Martin A. Russo (D-Ill.), Rep. Herman Badillo (D-N.Y.), Rep. Floyd J. Fithian (D-Ind.), Rep. Silvio O. Conte (R-Mass.), Rep. Hamilton Fish, Jr. (R-N.Y.), Rep. William S. Cohen (R-Maine), and Rep. M. Caldwell Butler (R-Va.). The Chairman of the Full Committee, Rep. Tom Steed, is an ex-officio member of the Subcommittee.

CHAPTER II.—BACKGROUND

PREFACE

To fully comprehend the problems of the retail petroleum marketer, it is necessary to understand the relationship of retailing to the other segments of the industry. This is important because of the integrated structure of the petroleum industry and because retailing constitutes the final transaction within this system and is therefore affected by occurrences in those preceding sectors. As the hearings which are the main concern of this report were confined to an examination of only the marketing segment, the Subcommittee staff has compiled a description of the operations of and interrelations between the other sectors of this industry from numerous hearings and reports published by this Committee's predecessor, The House Select Committee on Small Business.

In the course of its 34 years of existence, the Select Committee conducted over 20 investigations into various aspects of the petroleum industry. Generally, those previous efforts were confined to an examination of the particular problems of small businessmen within an individual sector. Thus, the problems of the independent producers were discussed in terms of his position within the production sector. While these past efforts provide the data base for the following description of the industry, their limited scope and at times, their datedness created informational gaps. To correct this problem, the staff has, wherever possible, updated the information or utilized generally recognized although occasionally disputed theories. As this description is provided for informational purposes and relates to matters beyond the scope of this hearing, this background section does not constitute conclusions on the part of subcommittee or the full committee.

Additionally, the imposition of Government controls upon certain parts of this industry, especially upon the price of domestically produced crude oil and upon the wholesale price of gasoline, has resulted in the creation of certain temporary artificial conditions. Because of the expected removal of these controls, it is better to review the operation of the industry in the context of its historical development up to the point of the imposition of these controls. By so doing, the projected behavior of the industry after the elimination of the existing controls can be accurately anticipated.

Furthermore, while it is necessary to consider the problems of the retail petroleum marketer in terms of his relationship to the entire industry, it is important to realize that the position of the small independent gasoline marketer is unique among retailers of other extensively advertised products which are sold under the brand name of a supplier or manufacturer. For this reason, it is appropriate to compare gasoline retailers to marketers of other mass-produced goods. For example, service station dealers are often compared to automotive or appliance dealers because they all sell manufactured items, the production of which necessitates enormous capital investments. Unlike other manufactured goods, gasoline is a nonreusable consumable item which most consumers replace on weekly basis.

Because of the number of outlets and frequency of use, gasoline

retailers are also compared to fast food franchisees. But to millions of Americans, gasoline is an essential commodity, while fast food outlets are merely conveniences. Because of the necessity of their product, service stations are frequently compared to small grocery stores. However the integrated structure of the petroleum industry distinguishes gasoline marketing from the retailing of food. A small grocery store operator can independently obtain his needs from a variety of suppliers, and can even go directly to the producer, which in this case, would be a farmer or rancher, to secure his requirements. This is because the grocery store's supplier does not own the majority of farms or ranches. It does not grow or harvest the crops or breed and slaughter the animals. It does not own the most efficient means of transporting these commodities nor does it own the majority of the processing or canning facilities. Because gasoline in its natural state is commercially useless and because the cost of a refinery is prohibitive for almost all marketers, a service station dealer must secure his needs from a refiner. Because of this fact, and because, as will be shown, the large integrated refiners are so extensively involved in the ownership of all aspects of the petroleum industry, it is necessary to view the problems of the gasoline retailer as unique and therefore deserving of special legal consideration which is distinct from that afforded other retailers.

STRUCTURE OF THE PETROLEUM INDUSTRY

The petroleum industry can be divided into four separate parts which are most commonly identified as "production," "transportation," "refining," and "marketing." If it were not for the extensive participation of the same few firms in all four of these sectors, each would be economically significant enough to be considered a separate industry. However, because of the historical development of this industry and because of the economic forces and precedents which have resulted from the monopolistic practices which characterized formation of this industry, the vertical integration of oil companies has, to date, been considered an acceptable form of corporate organization. As a result, these individual operations involving petroleum have come to be considered as part of a single industry.

The production sector of the petroleum industry is involved in the exploration for and extraction of crude oil from the earth. When the House Select Committee on Small Business was established in the early 1940s, one of its first investigations concerned the problems of the independent oil and gas producers, who were those which were not owned or controlled by an integrated oil company. At that time, the Committee estimated that there were over 20,000 such producers in the United States. Thirty years later the American Petroleum industry estimated that that number of producers has been reduced to only 8,000. In 1944, those 20,000 independent producers accounted for approximately 50% of all domestic crude oil production. By 1960, the independent's share of crude oil production had fallen to 37% and by 1970 the independent producers accounted for only 30% of all domestic crude oil production. The decreasing share of the production sector held by a declining number of independent producers was offset by the growth of the 20 largest integrated oil companies' increasing control over domestic crude oil production, which rose from 50% in 1944 to 63%

in 1960 to over 70% in 1970. Consistent with the trend, the four largest producers expanded their share of crude oil production from 26% in 1960 to 31% in 1974; and the eight largest producers increased their share of crude oil production from 43% in 1960 to 49% in 1974. Thus, by 1974 the four largest producers accounted for more domestic crude oil production than the 8,000 independent producers combined, whereas just 30 years ago, the independents produced more domestic crude oil than the 20 largest integrated oil companies combined.

This trend toward increased concentration within the production sector is expected to continue unabated. The grounds for such a projection are numerous. First, according to the 1973 Federal Trade Commission's preliminary staff report on the petroleum industry, the 20 largest producers control 93% of the Nation's proven domestic reserves of crude oil. In fact, the eight largest producers control 64% and the four largest control 37% of our proven domestic reserves. These percentages significantly exceed each group's present share of domestic production.

Second, drilling rights in many exploratory areas of this country are being auctioned off in large blocks and the price of a single block can amount to hundreds of millions of dollars. Assuming an independent producer could obtain the capital to purchase off-shore drilling rights, additional financing would be necessary to pay for the exploratory drilling costs and today, if producible quantities of oil and gas are discovered, the construction of producing platforms and facilities can cost from $45 million to over $200 million each. Since most experts agree that a large portion of this country's future crude oil reserves will be found in hostile environments, such as Alaska or deeper off-shore waters, the cost of exploring for and producing oil cannot be realistically expected to decrease. Thus, given the prohibitive costs of purchasing exploratory drilling rights and equipment for such exotic areas and the degree of the major integrated oil companies' control of proven reserves, the independent producers today face the possibility of being excluded from the production sector of the oil industry.

Prior to the imposition of federal controls on the price of crude oil, the legislatures of most of the larger oil producing states had enacted laws which regulated the production of crude oil. These prorationing systems and spacing regulations and unitization practices have eliminated waste, improved efficiency and allowed for the recovery of a greater quantity of crude oil, but as a result of these practices, competition within the production sector has been eliminated.

In its natural state, crude oil is commercially useless and must be processed or refined to form usable fuels, such as gasoline, jet fuel, diesel fuel, home heating oils, etc. Today there are only about 130 refining companies in the United States and a small number of these own a majority of the industry's refining capacity. According to the previously cited 1973 FTC staff study, in 1970 the 20 largest integrated oil companies controlled 87% of this country's refining capacity, while the eight largest controlled 58% and the four largest controlled 34%. The concentration in the refining sector is so great that in 1970 the combined refining capacity of the two largest refiners exceeded the total refining capacity of the 110 smallest refiners. As a result, the bulk of crude oil production is refined by just the eight largest firms.

Because of the cost of a refinery, which is estimated to be about $500 million for a new 250,000 barrel a day refinery, it is necessary that it operate on a relatively continuous basis. This not only enables oil companies to maximize their return on investments, but also increases daily production, which spreads the cost over a greater volume and thereby reduces the per unit cost of production. Historically, American refiners have operated in the range of 85% to 93% utilization of capacity, with the maximum sustainable crude run being about 92% of "reported" refining capacity. Since domestic companies refine about 15 million barrels per day, the only feasible method for efficiently transporting this quantity of crude is through pipelines.

There are over 100 interstate pipeline companies in the United States today, but over 90% of the crude sent through this system is transported through pipelines owned, either individually or through joint ventures, by the major oil companies. The cost of constructing a pipeline is exceedingly expensive and a 20% interest in the trans-Alaskan pipeline system cost $1.5 billion. Historically, the profits from these operations have been, for an oil company, relatively small, amounting to only about 6% of an integrated company's profits. But the value of a pipeline lies not simply in its profits, but, more importantly, in its competively strategic significance.

Pipelines frequently begin at the oil field itself, and the presence of a gathering line greatly increases the economic value of the field. However, if a major oil company is not a significant producer in that field, it has little incentive to construct a pipeline to the field, and can sue the lack of a pipeline connection as a mechanism to pressure the independent producer to sell its well until the integrated company has accumulated a significant enough financial interest to justify an investment of the size needed to construct a pipeline. Lacking the necessary financial interest in the crude production, but perhaps in need of the field's output to meet its own refining requirements, the pipeline company can nonetheless construct a gathering line and require the shippers to either guarantee a minimum through-put or establish some other mechanism, such as a tariff, to insure the recovery of its investment.

Crude is sold at the well head and it is the buyer's responsibility to arrange transportation. The quality of crude oil varies, and such factors as its specific gravity, boiling range, hydrocarbon composition and sulfur content greatly affect the quality and even the end uses os the refined product. Because of these factors and because of the effect impurities can have on the refining process and the end product, crude is shipped through pipelines in "batches." By requiring that crude be transported in certain quantities, the number of instances where the varying grades join one another is reduced, and thus the amount of mixing and contamination between differing grades is decreased. This thereby assures that a specific refiner will be provided with a substantial quantity of homogenous grade of crude, which is important to the refinery's efficiency.

To assemble a batch of homogenous crude, the integrated oil company's crude oil purchasing division, or oil traders as they are called, purchase large quantities of crude from numerous producers through division orders. These division orders establish how the price is to be set and how payment is to be made to the royalty

owners. The traditional method is for the oil trader to simply publicly post a price, which is essentially an offer to buy. This in itself, indicates the dominance of the refining sector over the production sector. Occasionally, however, the division order may set the price at the highest posted price in the field or area or at the price posted by another specifically namec company. As the field buying organization or oil trader is usually buying for more than just one refiner, it will purchase more than one grade of crude. It will then combine the production of many wells into large batches of homogeneous crude and arrange for their transportation.

The transportation of crude through a pipeline is an exceedingly complex operation. As explained previously, the efficient operation of a refinery requires a relatively constant flow of crude, and the transporting of as much as 250,000 barrels a day of the same grade of crude to a single refinery involves extensive planning and scheduling. Furthermore, the quality of the grade of crude affects the rate at which it can be refined and the speed at which it can be transported through the pipeline which, in turn, affects the rate and thus the quantity of other oil which can be shipped. Additionally, the efficient operation of the pipeline requires that a certain flow pressure be maintained.

The major integrated oil companies have consistently denied that their extensive ownership of the pipelines which carry the bulk of this Nation's crude oil adversely affects competition by pointing out that pipelines are regulated by the Interstate Commerce Commission. However, it has long been recognized that the ICC's regulation of pipelines has been nominal at best. Indeed, when the Subcommittee on Special Small Business Problems of the House Select Committee on Small Business examined the anticompetitive impact of oil company ownership of petroleum products pipelines, it stated in its 1972 report (H. Rept. 92-1617) that "In general, the Subcommittee finds that the attitude of the Commission, as expressed by Chairman George Stafford, may fairly be characterized as complacent. It is extraordinary that pipeline transportation, which accounts for more than 20 percent of all intercity freight movement in this country, should be so casually regulated."

In defense of their ownership, Mr. W. T. Slick, Jr., Vice President of Exxon USA, in testimony before the Senate Judiciary Subcommittee on Antitrust and Monopoly, asserted that there are seldom any complaints regarding a shipper's inability to transport his crude and that if tenders do exceep capacity, existing regulations require that shipments be allocated in proportion to recent shipments or current tenders of new shippers and historic tenders alike. However, as the Small Business Committee's 1972 report explained, there "...is an understandable lack of complaints due to fear of reprisals." Additionally, the FTC, in its 1973 staff study, states "Our investigation disclosed charges leveled against these pipeline owners by non-owners who claim they have been excluded from using the common carrier lines. The inherent technological nature of the pipeline system and the petroleum industry provides the basis for such exclusionary practices."

Because of their ownership of pipelines which carry the bulk of this country's crude and because of the rules regulating the transportation of crude through pipelines, the major integrated oil companies have the means by which they can deny the non-owner access to this most efficient and economical method for shipping crude. Lacking access to this system, small and non-integrated refiners

have little to gain by relying on independent oil traders, for any savings realized in purchasing the crude would probably be eliminated through the increased costs of alternative transportation.

The integrated company's ability to deny independent traders access to pipelines also enables these companies to apply additional pressure on the independent producer. As the 1973 FTC staff study explains, "The result of this pipeline system is to place the major firms who own the pipelines in an excellent position to discriminate against the independent producer. The opportunity to require the independent to enter into an agreement to sell his product at the well head in order to obtain regular sale and transportation of crude clearly exists for the majors."

Since the major oil companies' ownership of the pipeline systems effectively discourages small and non-integrated refiners from independently purchasing their own crude needs and instead encourages them to rely on the integrated companies to secure their requirements, their absence in the crude oil buying market prevents them from exerting competitive pressures on the price of crude. Thus the only remaining effective restraint on crude oil prices is the retail price of refined petroleum products which, to a large extent, is the result of the competitive forces which still operate in this section of the petroleum industry.

Competition in the marketing sector of the petroleum industry is not simply the result of the number of retailers but also and, perhaps more importantly, a consequence of the independence of a significant portion of these retailers. Throughout the other segments of the industry, the term "independent" has usually been used to describe someone who is separate from and has no continuing relationship with a major integrated oil company. However, in the marketing sector the term "independent dealer" can and, in most instances, does apply to a retailer who not only has a continuing relationship with a refiner, but who markets gasoline using the refiner's brand name or trademark.

There are approximately 300,000 locations in the United States where a motorist can purchase gasoline. About 100,000 of these sell gasoline as an adjunct to their principal source of business. Within this category are grocery stores, parking garages, and general stores which are usually located in the rural areas of the country. This segment of the marketing sector sells approximately 20 percent of all the gasoline sold at the retail level. Although these operators have secured their locations on their own and do not rent them from a refiner, about 90 percent sell gasoline using the brand name of their supplying refiner. However, these outlets, which are called "open outlets" by the Federal Energy Administration, derive, by definition, less than half of their income from the sale of gasoline and provide it mainly as a convenience to the customers of their principal source of business. As they are frequently located in rural areas, they are usually less affected by the intense competitive pressures which are exerted upon urban petroleum retailers who are dependent upon gasoline sales for their economic survival.

According to the Federal Energy Administration's most recent monthly report on petroleum market shares, there were, as of January, 1976, 186,000 service stations operating in the United States. As service stations, by FEA's definition, derive more than

half of their income from the sale of gasoline, these outlets are dependent on gasoline sales for the bulk of their income and are, therefore, sensitive to the competitive influences of the marketplace. An individual station's degree of sensitivity to price competition is somewhate related to the type of station it is.

Over 90% of all retail petroleum outlets in this country market gasoline by displaying a brand name of the supplying refiner. As in other industries, refiners emphasize brand names through extensive advertising campaigns in order to assure the consumer that the products and services provided at every location displaying that brand comply with certain minimum standards, and that the refiner will remedy any consumer complaints. By so doing, the refiner hopes to develop customer loyalty to his particular brand and thereby retain this individual's business as he or she travels about the city or country. Most refiners are so protective of the image they believe they have developed in regard to their brand that they have created secondary brands in order to market gasoline at outlets which provide a cut-rate price or offer self-service. For example, Exxon uses the name Alert, and Phillips uses as many as 40 different names. While it is debatable whether a consumer first develops an allegiance to a particular brand or to a particular retailer and then seeks out other retailers displaying the same brand, it does appear that there is some consumer reliance on brand names. As a result of this allegiance, which may be partly lethargy, consumers are normally unwilling to alter the customary buying patterns in order to obtain minimal savings. Consequently, branded service stations have traditionally been somewhat immune to price competition from non-branded outlets which amounts to only one or two cents a gallon.

Additionally, branded service stations have traditionally offered the consumer a full line of service, which included checking the oil, battery, radiator, tire pressure and offering engine repair service. Most non-branded dealers had reduced their cost by eliminating these services and concentrating on gasoline sales alone. Non-branded outlets have also pioneered in the development of self-service. Full service branded dealers have survived the competition from the non-branded retailers because they appeal to the kind of customer who is willing to pay more to have the attendant provide the service and who wants to rely on a brand name for product quality assurance. Thus, when refiners began to compete with branded dealers by opening high volume, low overhead company operated outlets managed by a company employee and displaying the refiner's brand name, they injected a new element in the competitive system. These refiner outlets could provide the customer of the quality assurance which comes from using a brand name and at a lower price than offered at a dealer station. By combining many of the benefits that had historically been available at separate outlets, these refiner operated stations undermined the branded dealers' traditional market advantage. While some of the large integrated refiners, such as Exxon and Standard of Ohio, have historically operated such stations, the recent market increase obtained by refiner managed outlets has resulted from the expansion in the number of these operations by such integrated refiners as Gulf, B. P. and particularly such large refiners as Marathon, Atlantic Richfield, Cities Services, Hess, Ashland, Getty, etc.

The forward integration of these refiners into the marketing sector represents a significant shift in the petroleum industry. Historically integrated companies realized most of their profits from the production sector. With the end of the depletion allowance and certain foreign investment tax credits and the loss of, or at least reduction in, many foreign production concession agreements, refiners have increasingly been forced to seek new areas of profit. As supply approached demand in the marketing sector, retailing became a potentially profitable activity and many refiners, especially those who lack extensive crude holdings, have been quick to expand their marketing operations and establish their market position by offering branded gasoline at a price below that offered by the branded dealers.

Most people in the petroleum industry, and integrated refiners in particular, have historically looked upon price competition with great displeasure. This is because the demand for gasoline is inelastic, which means that, at any given time, motorists need a set amount of gasoline and will pay the prevailing price to obtain it. Consequently, refiners have avoided price competition and instead relied on other forms of competition to attract new customers. Advertising has been the most obvious form of competition, and this method has occasionally been supplemented by special offers of such items as steak knives or dishware and, occasionally, by sweepstakes contests or games. However, the use of games has been virtually discarded as a result of a 1968 investigation of these contests by the House Select Committee on Small Business, which disclosed that many of the major oil companies had coerced dealers into participating in these contests and placed winners at favored stations, and had deceived the public by awarding few or smaller prizes than the amount advertised.

The major integrated oil companies have also traditionally viewed other integrated oil companies as their competitors, and have tried to ignore the nonbranded marketers and even the smaller refiners. As the Vice President of Marketing for Exxon Company USA, Mr. Du Val Dickey, explained in his November 13, 1975, testimony to the House Small Business Subcommittee on SBA and SBIC Legislation, "...We do not consider private brands, like Hess, like Save-Way, as the competition we look at in the marketplace. We will take into consideration, but we will look at the Texacos, the Shells, the Gulfs and the Exxon." This is because these integrated companies have a strong economic incentive to maintain retail price stability.

The major integrated oil companies realize that as long as there is price stability in the retail sector, consumers have been conditioned enough by advertising to maintain their loyalty to their traditional outlets and will ignore the minor savings achieved by patronizing lesser known or private brand competitors. However, they fear that this loyalty is not strong enough to survive price competition from major brands and, in order to maintian this loyalty, a price reduction by one large refiner would have to be met by the others. This would then enable their own branded outlets to maintain their volume of sales. Because of their integrated structure, any decline in the volume of their dealers' slaes would have serious consequences in the other sectors of the industry, which could jeopardize its entire profit structure.

The immediate result of a decline in branded sales of one refiner's product would be the creater of a greater surplus of

gasoline, which would affect the operation of the refinery. If an integrated company were to significantly reduce refinery operations, its crude oil operations would be affected. Since crude production historically has been an integrated oil company's principal source of profits, a decreased demand could necessitate decreased production or even lower crude prices. Furthermore, a prolonged retail gasoline price reduction would create pressure from the smaller refiners for a crude oil price reduction which would be the only way they could afford to continue to maintain low retail prices. If the integrated companies did not respond, these non-integrated refiners may attempt to independently obtain their crude, which would seriously disrupt these large companies' economic structures. Moreover, these smaller companies may utilize some of the savings realized from purchasing crude at a lower price than offered by the major's crude purchasing division to pay the higher price of alternative transportation. Consequently, the large integrated oil companies have a common economic interest in maintaining retail price stability.

Historically, most of the large oil companies have not been significantly involved in the direct retail marketing of gasoline. Because of their integrated structure and the fact that they have traditionally realized most of their profits from production of crude oil, the large integrated refiners had already realized the profits they made on gasoline before it reached the marketing sector. Indeed, to an integrated company, the retail distribution system had primarily been a means for disposing of a product which had already provided the company with all the profits which would be realized from it. However, in order to insure the stability of the integrated structure, these companies must maintain control over the retail price to avoid any market pressures which, as previously explained, could disrupt the existing structure.

To maintain their control over the retail price of gasoline, and thereby insure their profits through the other and more profitable sectors of the industry, the integrated oil companies established a distribution system that was built upon the brand name of a refiner. Although there are categories of gasoline, such as regular, premium and unleaded, all gasoline within those categories and having the same octane rating is functionally the same, regardless of the refiner. Indeed, refiners not only exchange gasoline among themselves but also frequently pay a competitor to refine some of their crude. As a result, gasoline which for example, is sold as Gulf through a Gulf dealer may have actually been refined by Exxon.

Because of this similarity, many refiners have developed additives which, as their name implies, are added to gasoline. While the actual effectiveness of these additives is questionable, their existence provides the refiner's advertising agency with a means for asserting the superiority of one gasoline over another. If fact, the similarity of gasoline frequently causes advertisers to emphasize not product characteristics, but instead other factors such as the "bell-ringer service," "man who wears the star," "the tiger in your tank," or more recently, the unending and expensive efforts of these companies to find new sources of oil to meet this country's needs and the alleged consumer benefits resulting from the integrated structure of the petroleum industry. However, it is done, the major oil companies spend vast sums of money promoting their own brand name gasoline, and consumers respond by purchasing

almost 90% of gasoline from branded outlets.

Another reason why consumers have traditionally purchased most of their gasoline from branded dealers is because there are so many of them. In fact, over 90% of service stations display the brand of a refiner. Since to an integrated oil company the marketing sector was the mechanism by which it disposed of a product upon which it had already realized a profit, these large companies invested great sums of money to insure that there would be enough outlets to distribute the quantities of gasoline they produced. In fact, they actually constructed too many service stations which had the effect of making many marginally profitable and even unprofitable. However, since retailing profits were not important, the efficiency of the retailing system was not a significant consideration. Indeed, there is some evidence that some of the integrated oil companies have historically lost money on their marketing operations, but their integrated structure makes this difficult to determine.

In order to avoid or minimize the losses which have historically been associated with the direct marketing of gasoline, most refiners relied on independent busniessmen to sell their product. There are various categories of branded service station operators. The largest single category is the branded lessee dealer. According to the FEA, there were 87,600 such dealers in operation at the end of 1974. A branded lessee dealer is one who leases the station he operates from the refiner whose also his landlord. Since most branded dealers are given only one year leases, the dual role of the refiner enables it to exert significant pressure over the dealer's business decisions, especially in regard to the retail price of gasoline.

The second largest category of branded stations are operated by what FEA calls "open dealers" who sell gasoline under the brand name of the refiner which supplies them, but who either own their own stations or, in a small number of cases, lease them but from someone other than the supplying refiner. As of the end of 1974, the FEA reported that there were 54,000 open dealers.

The third largest category of branded marketers is the oil jobber, who is essentially a wholesaler who purchases his gasoline from a single refiner and then resells it. Most jobbers are also retailers, and while they do sell to some branded and open dealers, they distribute a large amounts of it through stations which they own and which are operated primarily by an employee working on a salaried or commission basis. The FEA reported that at the end of 1974, there were 9,400 stations operated by jobbers.

Regardless of the category to which he belongs, a branded dealer is locked into a single supply source for the term of his contract. In most cases, the dealer must pay a fee to become identified with a refiner and, in the course of the contract, he usually purchases most of his supplies, including his tires, batteries and accessories, from that refiner. Furthermore, his customers develop some loyalty to the brand he displays. Given these facts, even an open dealer becomes tied to his supplying refiner and switching may not be financially profitable for many. Thus, although a branded dealer only has a supply contract with a refiner, that refiner can exert considerable pressure on the dealer. Because of this and because of the fact that the refiner unilaterally determines the wholesale price, which is called the dealer tank-wagon price, the

refiner can manipulate the retail price of gasoline. If a dealer does not follow the refiner's suggested retail price, the refiner can simply fail to renew the contract.

The large integrated oil companies' control over the branded dealers left the independent non-branded marketer as the only price disruptive actor in the retail sector of the petroleum industry. When there was a surplus of gasoline, the non-branded retailer performed an important function, even for the refiners. But now, for a variety of reasons, there no longer is any significant surplus. And so, because of his continuing ability to market gasoline more cheaply than branded dealers, which is primarily due to his more efficient marketing techniques and his low margin, the large refiners have taken certain actions which will at least mitigate the influence of the non-branded retailer and probably eliminate him altogether.

Certainly, the most concerted and probably the most serious action taken by the large integrated oil companies has been their refusal to sell gasoline to non-branded marketers. This practice has been directed primarily at the larger, non-branded chain operators who sell almost one-third of all the non-branded gasoline sold in this country. These retailers were able to obtain less than 2 percent of their supply from the 8 largest oil companies who refine over half of all gasoline. These large companies now sell their surplus to the smaller and non-integrated refiners who, in turn, sell to the independents. Thus, while the non-branded chain operator can still obtain a supply, he does so at a higher cost because he must now pay a commission to the smaller refiner. Additionally, although these integrated companies do exchange gasoline among themselves, independent marketers allege the large refiners have consistently refused to exchange product with the independent marketers, which increases the transportation costs.

Additionally, as previously explained many refiners, and especially the large independent ones, have begun to aggressively compete with the non-branded marketer by imitating his marketing techniques. By concentrating on high volume outlets which emphasize gasoline sales and which are managed by company employees, these refiners have eliminated the small independent dealer. Furthermore, by closing their low volume and marginally profitable stations, refiners have substantially reduced the total number of gasoline outlets in this country, which thereby increases the volume at the remaining stations. Some of these refiners have capitalized on the consumer's awareness that branded stations have higher prices by creating secondary brand names which give the impression that they are not associated with a refiner. As these companies have traditionally been the major suppliers of the non-branded marketers, their growing involvement in the direct retailing of gasoline through secondary brand and through company operated branded stations will result in the diversion of increasing quantities of the refiner's product to these operations. Thus, the forward integration of the large refiners not only provides the non-branded marketer with increased competition, but, more importantly, raises the possibility that the independent retailer will soon no longer be able to obtain gasoline from his traditional supplier.

The success of the independent and non-integrated refiners marketing strategy can be seen in the fact that their company operated stations have almost tripled their market share, rising

from 3.7 percent in 1972 to 9.7 percent by March of 1976. During this same period of time, stations operated by large integrated refiners increased their market share from 4.5 percent to 7.8 percent. Overall, the market share of refiner operated stations has risen from 8 percent in 1972 to 17.2 percent in March of 1976. Moreover, the total number of company operated stations has increased from 12,480 in January of 1972 to 15,500 in March of 1976, with the independent and non-integrated refiners accounting for 1,200 additional refiner operated stations.

The success of the company owned and operated stations has resulted in serious disruptions throughout the other segments of the retail marketing sector of the petroleum industry. The most seriously affected have been the branded lessee dealers, who experience a 19 percent decline in the number of stations, going from 142,000 in the first quarter of 1972 to 115,000 in the third quarter of 1974.

The total number of open dealers also declined during this same period, from 64,000 in 1972 to 54,000 in 1974, and their market share fell from 20 percent in 1974 to 16 percent by the end of 1975. The market share of the branded stations directly operated by jobbers decreased from 6.2 percent in 1974 to 4.5 percent by the end of 1975.

Meanwhile, the market share of the non-branded independent retail marketer increased from 7.4 percent in October of 1974 to 10.6 percent in October of 1975. However, in this instance, the statistics are somewhat misleading in that at the time the FEA survey began in 1974, independent retailers were still experiencing marketing problems resulting from their inability to obtain gasoline during the Arab oil embargo, which forced many non-branded dealers to close a large number of their outlets. Thus, while the statistics show that they increased their market share by 3.2 percent, in actuality they merely regained their previous market share which most people in the oil industry concede was about 10 percent. The failure of the FEA to accumulate these figures is inconsistent with the mandate of the legislation which directed the agency to maintain each segment's market position.

One of the principal causes for the growth of certain marketers has been their ability to sell large quantities of gasoline at low prices. In 1974, the refiner operated stations sold an average of 61,000 gallons per month, and the non-branded stations sold 55,500 gallons per month, while the branded lessee dealer sold 24,600 gallons per month, and the open dealer sold 21,300 gallons per month, and the jobber operated station sold 32,800 gallons per month. In February of 1976, the weighted average price over all grades of gasoline and types of service stations for outlets directly operated by major oil companies was 53.8 cents per gallon, while the price at branded dealer stations was 58.5 cents per gallon; and the non-branded retailers price was 53.5 cents per gallon, while the price at the independent and non-integrated refiner operated stations was 54.5 cents per gallon.

The fact that integrated oil companies are selling gasoline through company owned and operated stations for an average of 5 cents a gallon less than their own branded lessee dealers has serious implications for the small business retailer. The branded dealers' market share has already fallen by 8% and they traditionally have not maintained their volume in a market that offers such price

differences. This is particulary true in those instances where the refiner's company operated station sells gasoline under its own brand name as does Exxon, Marathon, Hess, ARCO and others and thus directly competes on a brand name basis with its own branded dealers.

By concentrating on self-service and low retail gasoline prices, these refiners can undercut their own branded dealers. While many branded dealers believe they can survive the competition from the independent marketers and even from the secondary branded outlets, they strongly assert that they cannot endure price competition from their suppliers who market gasoline using the same brand name nor can they long endure the coercive economic pressures which can be exerted against them by a refiner upon whom they are dependent for their supply.

While the refiners' marketing practices are jeopardizing the economic survival of branded dealers, the large integrated oil companies' continuing refusals to directly supply independent non-branded marketers in endangering their continued existence. Already the refiner owned and operated service stations have substantially reduced the difference in the retail price to an average of one cent a gallon. As supply problems continue, these marketers become increasingly dependent upon foreign suppliers who refine the higher priced foreign crude; and as the price of his product increases, so then must the retail price of gasoline, which will eventually eliminate his ability to compete. No longer able to serve his function, the independent non-branded retail marketer cannot long survive.

In order to protect their independent marketers, some European governments have adopted regulations which impose limitations on the number of stations a refiner can own and which separate the refiner from retailing. The United States has yet to adopt any policy which would effectively protect a small business dealer or independent marketer from the coercive economic power of refiners. As a result, refiner owned and operated stations are increasing their share of the market, and the individual dealers are being forced out of business. While this in some instances may be temporarily providing the American consumer with lower priced gasoline, the ultimate effect will be destruction of the independent segment of the retail sector of the petroleum industry. Since the independent marketer has historically supplied the price competition in the retail sector and since integrated companies have traditionally avoided price competition, the existing restraints on retail prices will be gone forever.

CHAPTER III.—HEARINGS

Although the Subcommittee on Energy and Environment held hearings in various parts of the country, complaints of the individual retailers were almost universally the same. In essence, the small independent retail gasoline marketers were concerned about the policies of their supply refiners which were impeding their capacity to effectively compete and endangering their ability to economically survive.

Most of the testimony received by the Subcommittee concerned the problems of the branded lessee dealers, who constitute the largest single category of dealers, accounting for 64% of all branded stations and over 57% of all service stations in the country. As of November 1974, there were 115,000 branded lessess dealers, which is 27,000 fewer than existed in the beginning of 1972. According to the FEA, 81,000 of these are directly supplied by an integrated refiner, 2,362 are directly supplied by a large refiner, and 5,248 are supplied by small refiners, for a total of 88,000. An additional 27,000 branded lessee dealers are supplied by wholesale distributors who are called oil jobbers.

The distinguishing characteristic of a branded lessee dealer is that he not only markets gasoline under the brand name of his supplying refiner but also leases the station he operated from the same refiner. This dual supplier-landlord relationship is somewhat unique among franchise agreements, and gives the refiner almost total economic control over the individual dealer. To further insure this control, most dealers are given only a one-year lease. Lacking the security of a long-term lease, the branded lessee dealer lacks the means to effectively reject the suggestions of his supplying refiner without jeopardizing his business. As stated by Mr. Mac Victor, the Executive Director of the New York State Association of Service Stations, Inc.:

> Because the oil companies are allowed to exercise this dual position, they can and do bring undue pressure on dealers through overt threats, intimidation, and coercion. These forms of harassment work successfully upon the dealer because the oil company controls the life of the lease, its termination or non-renewal.
>
> Using, then, the threat of lease cancellation or non-renewal as their most potent weapon, the oil companies pressure the dealer to capitulation on a variety of business decisions which the dealer, as an independent businessman, should be free to determine for himself.

The branded lessee dealers recited a litany of complaints about certain provisions which are included in most leases. One provision which the dealers found to be particularly obnoxious related to the fact that the refiners determined the hours during which an individual station was to be open. Many dealers felt that some of the hours were unreasonable in that they required the dealer to remain open during times when it would be unprofitable to do so, especially late at night when the costs of hiring additional attendants, paying for increased utility bills and large insurance premiums would exceed the profits realized from the low volume of business available after dark.

As explained by Mr. Bob Jacobs, the Executive Director of the Illinois and Indiana Gasoline Dealers Association:

> You get some areas where you open up at six in the morning and Mister, after seven at night, you can sit there and knit, because the public, they're home. These suburban areas are watching the boob tube. They're home with their families, and yet those oil companies say, "You stay open from 6 a.m. till midnight."

Since the refiner does not bear those expenses, but does realize a profit from the increased volume of gasoline sales, which, while at an individual station may be small but when added to others is appreciable, the refiner has used its superior bargaining power to include such provisions in the lease.

Dealers also complained about recent changes in most companies' leases which transferred the responsibility for maintenance from the refiner to the dealer. The purpose of this transfer was to circumvent FEA's rent control limitations by reducing some of the refiners' financial liabilities without monetarily increasing the price. As a result, dealers now must pay for a variety of services which were once provided without costs. This would include the upkeep, repair and paint and a variety of other items. What dealers find especially objectionable is the fact that many of the items they must now pay to repair are the property of the refiner. Mr. Phillip M. Hudson, President of the Central California Service Station Association, raised an additional consideration regarding maintenance costs when he explained that:

> * * * before the embargo, most dealers would be able to pick up the phone and say, "I have go a light out" or "I have got a hose broken." But this day and age, they say "You replace your own hose, you replace your own lights." Now they give you a bucket of paint and a paint brush and they tell you "Do your own painting." Those are things that may actually seem trivial to you, but it's a burden on the dealer's time in pumping gas or tuning a car, and he has to utilize every bit of time that he has. So this is another added cost to the dealer.

The refiners argue that the terms of lease are negotiable, and by signing the lease dealers freely choose to abide by its provisions. This argument understates the case in that, by refusing to sign the lease, the dealer must then give up his business. Some dealers stated that they had consulted attorneys about objectionable provisions. Mr. William Grillo, a New York Gulf dealer, related a typical response. In Mr. Grillo's words, "The lawyer said, 'Bill, you want the station, you have got to sign it, whether you like it or not.'" A Long Island Exxon dealer, Mr. Russel Murway, was also told by his lawyer that he had no alternative. Mr. Murway further stated that Exxon would not provide him with a copy of the lease until after he had signed it and that if he wanted a lawyer to look at it he would have to make arrangements with the sales representative and the district manager.

The dual landlord-supplier relationship also provides the

refiner's sales representative with an effective means for coercing dealers into purchasing other products. Under the law, a refiner cannot condition the sale of gasoline on the dealer's agreement to purchase additional products such as tires, batteries and automotive accessories, which are commonly known as TBA's. While the courts have forbidden coercive TBA practices, the fact that dealers have short-term leases, which are normally only one year in length, causes them to constantly contend with the possibility of not being renewed, and they are thus vulnerable to questionable suggestions from their landlord, and many of the refiners' sales representatives are ready to emphasize the tenuousness of the dealer's position.

The Executive Director of the Bay State Gasoline Association, Mr. Maurice Langelier, explained the praticalities of the situation by saying:

> Well, legally, the dealer can go to outside sources, but it's not practical for him to do so, because he's going to get hit, probably, right over the head immediately if he does. The sales rep comes into the station and says, "Well, look, I've got a quota to make, and you've got a quota on this station to make. And, look, if you don't buy from us, you know, many things can happen." In other words, when your lease comes up again, you might have a little bit of a problem getting a lease.
>
> Or there are a few favors to be given out by the company: "If your place needs maintenance, needs repairs, we might not be able to do it, or your deliveries could be a little bit late—24 to 48 hours late."
>
> So it's not practical for a dealer to buy outside. In other words the Sword of Damocles is over his head at all times.

Mr. Tom Anderson of the Pennsylvania Gasoline Retailers' Association related his experience when he explained to the company why he was not purchasing their TBA's:

> And I said, well, you know, your price is too high. If you come down, I would be glad to buy them off you; but right now I am buying the same identical tire, which happened to be Goodyear at the time, and I said I am paying $5 less for it, so why should I buy from you. They said, well, I will give you the best reason in the world—you want your lease renewed. You think about it!

Mr. Bob Jacobs, the Executive Director of the Illinois and Indiana Gasoline Dealers Association, asserted that the prices of a refiner's TBA's were not competitive:

> There isn't a product that Standard Oil or Shell Oil or ARCO or any of the oil companies sells to which TBA stands up, not one product, not one tire, not one piece of equipment, not anything that any dealer in America with 2 cents' worth of brain can't go out and buy cheaper someplace else, and the coercion is there.

When Robert Nyland, a Worcester, Massachusetts, Getty Dealer, was having lease problems, he told the Subcommittee that the refiner's salesman came in and said "Well, gee, it might help, you know, if

you ordered a big load of tires, get some oil in, you know—a big order. They might think you're selling a lot of TBA, and they might reconsider, you know."

In Long Island, the Territory Manager for the New York District of Shell Oil, Mr. Charles A. Baldwin, testified about some of the pressures salesmen place on dealers. When asked by Representative Downey if he had ever seen or engaged in any coercive sales tactics, Mr. Baldwin replied, "I have seen them. I have been subjected to subtle and blatant coercion by my district management to perform these practices." Mr. Baldwin also related the comments of a Shell sales manager during a June 6, 1975, meeting. In speaking about the purchase of TBA and product, Mr. Baldwin stated that the sales manager said, "We want to load them up in the summer. We want our product on the roofs, under the lifts, and in the bathrooms."

Mr. Baldwin further supplied the Subcommittee with Shell Oil Company's New York District 1975 sales objectives, which called for 210 stations to sell 25,974 tires, 14,902 batteries, 156743 filters, and $113,700 in specialties and $254,300 in accessories.

The fact that the salesmen's discussions are not idle threats can be seen from the testimony of a New York City Mobil dealer. Mr. Paul Rubenfeld told the Subcommittee that in 1054, he responded to a newspaper advertisement soliciting people to become independent businesmen. After being accepted by Mobil, he participated in the company's training program and was given a station in 1955. For 17 years he operated that station, and in 1970 the company presented him with a new car for outstanding sales, and he was the only recipient of this award on the Eastern Seaboard.

The very next year, Mr. Rubenfeld decided he was not obtaining the best price or even the best quality merchandise on the TBA's he was purchasing from Mobil. Consequently, he begain to obtain his requirements from independent suppliers. Up until this time, Mr. Rubenfeld had followed his company's suggestions on prices for both their gasoline and their TBA items, for, as he explained, "When a person like myself deals with a major oil company, it is a known fact that when they give me a 'suggestion,' and that is in quotes, it is not a suggestion. This is an out-and-out order."

After he ceased purchasing his TBA's from Mobil, Mr. Rubenfeld was contacted by a company representative who explained to him that the company had been very nice to him by obtaining this station for him and that the company had spent a lot of money to develop it and people came there because they liked Mobil products. Mr. Rubenfeld said that "...he explained to me that I was not appreciative of what they had done for me and that my lease was up on September 30 and that I would not be renewed unless I conformed to the standard industry practice that had been going on." Mr. Rubenfeld rejected this threat and, on Sunday, October 1, 1972, the day after his lease expired, the metropolitan area manager came to his station and requested that he turn over the keys to his station because he was no longer in business. After he refused, he received an eviction notice which he went to court to fight. Although the lower court asserted the company must show "good cause" to terminate the contract, Mobil Oil Company exerted its right to appeal until eventually a court upheld Mobil's action. At the time of the hearing, the court had not ruled on Mr. Rubenfeld's appeal.

The case of Paul Rubenfeld not only shows that the oil companies

do use their landlord-supplier relationship to coerce dealers into complying with questionable and perhaps illegal company policies, but that, more importantly, dealers have no means by which they can protect themselves from the arbitrary actions of their supplying refiner. The fact that a refiner can simply fail to renew a branded dealer's lease at the expiration of its term without having to provide any explanation whatsoever was of major and immediate concern to most of the branded lessee dealers who testified.

To avoid the growing problems resulting from the ability of the oil companies to arbitrarily terminate their retailers, the branded lessee dealers advocated the enactment of National Dealer Day in Court Legislation, which would require the oil companies to establish a case for terminating a dealer. By limiting the actions of refiners to certain established grounds, the individual dealers would be free to reject the coercive practices of their suppliers and become truly independent businessmen with the right to purchase their supplies from whomever they wish and individually determine the retail price of gasoline.

While a Dealer Day in Court bill is necessary to establish the independence of dealers, additional action must be taken to protect them from new pressures which are being exerted by their refiner's increased interest in the direct retail marketing of gasoline. As Mr. William Griffin, the Executive Director of the Long Island Gasoline Retailers Association, explained:

> Since we have fought for and obtained, through the New York State Legislature, our dealers day in court bill to protect New York dealers from arbitrary cancellation, the major oil companies have taken a different tactic. They control the retail market through economic pressure, using company owned and operated outlets as their means of control. They are forcing their own franchise dealers into economic ruin by depressing the price.

Mr. Griffin went on to state that "once a market is sufficiently in the control of a few majors, the retail price will be dictated to the public in just the manner the wholesale price has been dictated to captive dealers by the major companies over the years."

Company owned and operated stations pose a dual threat to branded dealers. First of all, a dealer that has a good location with a high volume of business may be terminated so his supplier can convert this station to a company operated outlet. The dealer who has worked hard for years to establish a successful business may be the most vulnerable. Ironically, the dealer's success is what makes the station attractive to the supplier. Without some form of dealer day in court legislation, dealers have no defense against this type of action.

Many witnesses complained that stations directly operated by refiners are posting retail prices for gasoline which are substantially below the retail price posted by competing branded dealers. The Federal Energy Administration's monthly Petroleum Market Shares Report provides statistical evidence that such assertions are valid. The March, 1976 weighted average price over all grades of gasoline and types of service stations was lower for refiner operated stations than for stations operated by branded dealers, with the greatest disparity existing between the average retail price of

integrated oil company operated stations, which was 54 cents a gallon, and their own dealers, which was 53.3 cents a gallon. Since the 20 largest refiners accounted for over 83.2% of gasoline sales in 1974, with the eight largest having 54% and the four largest having 30.9%, this disparity in the retail price of gasoline affected most service stations. This price difference is unquestionably a significant factor in the startling increase in retail sales through company operated stations, which, according to the FEA, grew from only 8% of all retail gasoline sales in 1972 to 17.% by March of 1976.

Some branded dealers asserted that the retail price at certain stations was almost the same as the wholesale price they paid. Mr. Frank Jones, a Chicago area Texaco dealer, and a Danny Boy station eight blocks away both sell gasoline refined by Texaco. Mr. Jones' dealer tankwagon price was 49.1 cents per gallon, while the Danny Boy station posted a retail price of 51.9. In New York, Mrs. Eileen Grillo and a competing station both sell gasoline supplied by Gulf Oil, and the competing station posted a retail price of 55.9, which she said was below her dealer tankwagon price.

The dealer tankwagon price is merely the wholesale price of delivered gasoline. The dealer must add to this price his costs of operation. The Treasurer of the New York State Service Station Dealers Association, Mr. William Keller, explained that, as a rule of thumb, the average rent used to amount to about 2 cents a gallon and the dealer's payroll costs added another 2 cents, while the cost of electricity, heat, insurances, accounting fees and other miscellaneous expenses came to an additional cent a gallon. Thus, a dealer must add at least 5 cents a gallon to the tankwagon price to make a profit. Mr. Keller emphasized that these were base estimates, and would frequently be higher for many dealers, especially in light of recent rent increases. Consequently, branded dealers cannot compete with stations selling gas at retail prices which approach their tankwagon price.

To a great extent, the difference in the retail prices of gasoline reflects a difference in the wholesale prices. Jobbers pay a lower wholesale price because they purchase their gasoline at the refinery or bulk plant and deliver it to their stations themselves. This is known as the rack price and is usually substantially below the dealer tankwagon price. Mr. James Campbell, the Executive Director of the California Service Station Association, submitted lists of the dealer tankwagon price and the rack price of gasoline in the Los Angeles Basin for March 31, 1976. It showed that the rack price for Gulf premium gasoline was 42.95 cents a gallon, while the tankwagon price was 50.20 cents a gallon, and the prices for unleaded were 42.25 and 47.70, and the prices for regular were 41.20 and 46.40, respectively.

Mr. Steve Shelton, the Executive Director of the Southern California Service Station Association, complained that Gulf Oil Company's policies were causing serious problems in Southern California. Mr. Shelton asserted that Gulf, operating through company owned and operated stations bearing the secondary brand names of Economy and Go-Lo, are posting retail prices as low as 48.9, which was 2 cents a gallon below the dealer's tankwagon price. Mr. Shelton said:

Our primary problem in Southern California is the same

> as you probably heard all over the country. It is our inability to buy gasoline at a competitive price. Our dealers are forced to pay from 5 to 8 cents a gallon more for the product than the rack price or the wholesale value of the product. This historically has been made up in the past at least through August, 1972 by the presence of price supports. Since the oil companies have discontinued this normal business practice, our dealers are suffering badly. Failures and closures are accelerating. The new trick seems to be for the oil companies to coerce, persuade or however get their branded lessee dealers to engage in below cost selling.* * * We have cases where Shell and Arco are both pressuring or coercing dealers to set retail prices that are injurious to the dealers and result in injury to other dealers.

Refiners assert that the delivery of gasoline to the stations they directly operate is not a sale, but merely a transfer, and thus they contend that they do not maintain records on such transactions. As a result, it is impossible to determine the wholesale price of gasoline delivered to company operated stations. Consequently, whatever profits or losses which result from their retailing activities are buried in an integrated accounting structure. Nonetheless, it cannot be ignored that marketing has traditionally been the least profitable sector of the petroleum industry, and a refiner has already realized a profit on the product by the time it reaches the retail level. Thus, refiners have the financial ability to forego retail profits and this may account for the low retail price of gasoline at company operated stations.

Jobbers who operate retail stations avoid certain costs and many branded dealers contend that they should either have the ability to purchase gasoline at the rack price or that jobbers who compete at the retail level should be required to pay the dealer tankwagon price. The dealers assert that the differing prices are discriminatory and consequently all retail competitors should be treated equally and afforded the opportunity to obtain gasoline in whatever manner they determine to be best suited to their needs, and that all purchasers of gasoline be treated equally.

While the concept of rack pricing may eliminate price discrimination, refiners who are directly involved in retail marketing would still enjoy certain advantages. Obviously, refiners realize a profit on all gasoline sold through branded stations, although that profit may not come from the retail level. Nonetheless, the refiner has a financial interest in the stations, and, to the extent that a refiner realizes a profit from the lessee, that lessee is contributing to the economic success of his retail competitor. Furthermore, since the refiner exerts certain controls over its competing lessee, it can affect that lessee's ability to compete.

Aside from the wholesale price of gasoline, one of the dealer's greatest expenses is his rent, which is determined by his landlord, who is also his supplier and his competitor. Thus, by adjusting the rent, a refiner can significantly affect a lessee dealer's ability to offer competitive prices. Since the court ruled that the Federal Energy Administration lacked the authority to control rents, many dealers have experienced substantial rent increases. Mr. Ken Nyland, a Getty dealer in Worcester, Massachusetts, had his

rent increased from $350 a month to $850 a month. According to Mr. John Pankau, in Chicago, Shell increased rents from 2 1/4 cents a gallon to 3 3/4 cents a gallon, raising his rent from about $1,100 a month to about $2,300 a month. In California, Mr. Stan Tauber had the rent on his Gulf station increased from $1,100 to $3,700 a month. These examples are representative of the experiences of many dealers.

Historically, rents have been related to volume, with an established minimum and maximum rent. Thus, the greater the volume the lower the per gallon cost for rent. Additionally, rent was collected on a per gallon basis. With rents doubling and tripling, dealers are having to increase their retail price, which makes them less competitive which then decreases their volume which increases the per unit costs, and thus further weakens the economic and competitive position of the dealer. As the gallonage decreases, dealers are put under increasing pressure to lower their price, which, if unsuccessful, further jeopardizes the dealer's business. Since the branded dealer's major competitor is increasingly becoming the company operated station, it is unlikely that his competitor will experience a similar rent increase, if it experiences any increase at all. As the refiner operated station has a fixed rent, if it has any at all, and as it is receiving gasoline at a lower price than the dealer, it is fruitless for the dealer to try to compete, yet the refiner continues to pressure the dealer to do so. As the dealer's market position deteriorates, he becomes more vulnerable to the pressures of his supplier, who can then use this advantage to either fix prices or further enhance the position of the company operated station.

The experience of Mr. William Grillo, a Long Island Gulf dealer, demonstrates how a branded dealer's situation can deteriorate in the face of cut-rate competition. In December of 1974, the Gulf representative informed Mr. Grillo that he would have to vacate his station because Gulf wanted to convert it to a company operation. After receiving some publicity, Gulf relented and offered Mr. Grillo another one-year lease. Since then, a new marketer entered the area and began to post cut-rate prices. As a result, Mr. Grillo's volume decreased. Then, another Gulf station opened within a mile of Mr. Grillo's station. Just before it opened, the Gulf representative told him that the new station would be posting 55.9 cents and 57.9 cents a gallon, and suggest that Mr. Grillo post 56.9 and 57.9 and 60.9 on self-service, and 2 cents more for full service. Mr. Grillo decreased his price and his volume declined even more. Meanwhile, the new Gulf station is doing very well, and Mr. Grillo is, in his words, "taking a beating." At the time of the hearing, the company was urging him to extend his hours of operation.

Another problem confronting dealers in changing marketing practices. Branded dealers have traditionally relied on providing full service to their customers. Given the cost of providing this service, many dealers are dependent upon the profits from their repair business for their economic survival. Some refiners have begun to compete for this repair business by establishing car care centers which are able to provide a variety of services. Because the cost of repair equipment, such as wheel balancers, is expensive, individual dealers can only afford to purchase certain items and thus cannot offer the variety or volume of service available at their refiner's large centers. Additionally, by concentrating on

performing certain repair services and extensively advertising the availability of these services, the refiner's center can increase its volume and achieve full utilization of its equipment, which enables it to reduce its price for that service. Because a service station operator cannot concentrate on providing certain services, but must constantly switch from air condition repairs to tune-ups to oil changes, the dealer does not achieve the full utilization of his equipment, which means that he must spread the cost of that equipment over a fewer number of times the equipment is in use, thereby increasing the per unit cost of each use.

Additionally, suppliers pressure dealers to purchase repair equipment through the company, rather than from an independent automotive parts wholesaler. This not only frequently deprives local businessmen of the opportunity to supply other local businesses, but also can increase the cost of the equipment to the individual dealer. Mr. Mervin Klein of the Automotive Wholesalers Association of New England told the story of Lappen Auto Supply, which had sold a Hoffman Wheel Balancer to a Gulf station for $3,500. After closing the deal, Lappen was informed by the dealer that he could not purchase the wheel balancer from them because the dealer's "...TBA quota had been set so high that he had no reasonable chance of reaching his quota, unless he purchased that piece of equipment from the Gulf TBA jobber, even if he had to pay a higher price." Ironically, the TBA jobber did not have the equipment available and bought it from Lappen and had it sent to the original purchaser. Nonetheless, it is clear that oil companies pressure dealers to obtain their repair needs from the company, which not only can increase the dealer's cost but which also harms independent local suppliers.

While some major oil companies have begun to market repair service, other marketing changes have affected ealers' gasoline sales. Aside from the increased marketing competition from refiner operated stations, one of the most significant changes has been the growth of self-service. In California, self-service reportedly accounts for 46% of all retail sales. In 1972, there were only 30 self-serve stations in Massachusetts, and by 1975 this number had increased to 375, with 150 additional applications pending in the State Fire Marshall's Office. Some States have banned self-service for safety or fire reasons, but the growth continues and presently about 40% of all gasoline is dispensed in this manner. Self-service reduces the need for numerous attendants, thereby reducing overhead and operating costs, which is passed on in the form of lower prices. Indeed, in some areas of the country, the attendant has been totally eliminated, and replaced with gasoline pumps which dispense gasoline when a dollar is inserted into a slot, as a vending machine.

Non-branded marketers were the originators of self-service, and the concept was greatly expanded when many refiners converted the stations they directly operate to this marketing method. Operators of full service stations complain that these "gas 'n' go" stations, as they are called, have taken the word "service" out of retail marketing, and thus do not adequately serve the motoring public. As the Executive Director of the New York State Association of Service Stations, Inc., Mr. Vac Victor, stated:

> How will this serve the consumers? These small, low-gallonage service stations are a necessary part of

business for the consumer, so they can get quick emergency service. With gas and go operations, there is no service whatsoever. Sell them the gas and get them out. If there is a tire ready to blow out, nobobdy is there to anticipate it. If there is something under the hood that should be taken care of that could result in some trouble on the road, nobody is there to see it.

Gas 'n' go, as far as we are concerned, will not, in terms of safety, serve the best interests of the consuming public.

Although many full service stations have responded to gas 'n' go outlets and self-service stations by establishing self-service islands, they must still maintain full service islands and all that goes with them, and thus do not realize the savings that high volume-low service stations do.

The non-branded independent retail marketers have also experienced competitive problems. During the Arab Oil Embargo, these retailers experienced the greatest difficulty in obtaining gasoline. While most stations were able to almost continuously receive 100% or more of their 1972 quantities of gasoline, the non-branded dealer was, at times, able to obtain less than 85 % of his base period quantities. As a result, many non-branded stations were forced to close, and it has taken a considerable amount of time for them to regain their market position. Although precise figures are not available, it is generally conceded among those is the industry that non-branded marketers had about 10% of the market share prior to the embargo and had fallen to 7.4% in October 1974. It is estimated that the 1973 market share was even lower, but because FEA has refused to compile these figures, there are no reliable estimates available. By March 1972, the non-branded retailers had increased their share to 11.2%.

The independent non-branded retail marketers have traditionally capitalized on innovative and efficient marketing techniques and low wholesale gasoline prices. Refiner owned and operated stations have imitated these marketing techniques by concentrating on high volume-low overhead outlets and, as a result, have greatly decreased the price advantage non-branded marketers historically had. In February, 1976, the weighted average price over all grades of gasoline and types of service stations for outlets operated by major integrated oil companies was 53.8 cents a gallon, while the same price for non-branded marketers was 53.5 cents a gallon.

More importantly, non-branded marketers are experiencing increasing difficulty in obtaining gasoline at competitve prices. Mr. Jim Lawrence, the Assistant General Manager of Thrift Oil Company, testified that at the time of the hearing, the Arco dealer tankwagon price was 34.4 cents a gallon and the rack price was 34.2 cents a gallon. The Hudson Oil Company representative stated that his company on the average was being required to pay one cent more a gallon than the major oil companies' dealer tankwagon price. Moreover, Mr. Lawrence also testified that some major oil companies are refusing to sign supply contracts with non-branded dealers while they are signing long term contracts with branded jobbers. Additionally, the major integrated oil companies have consistently refused to directly supply non-branded retailers with any significant quantities of gasoline and presently supply them with only 2%

of their needs. Because of their concerted refusal, non-branded marketers are being forced to obtain an increasing amount of their gasoline from brokers, who add their costs and profits to the price, or from foreign sources, whose prices are higher because they refine the higher priced foreign crude.

As a result of higher wholesale costs and increased competition from low priced refiner operated stations, the competitive position and financial existence of the non-branded marketer is being jeopardized. Mr. Bob Stallings, the Marketing Vice President of Hudson Oil Company, which is the largest independent marketer in the country, supplied the Subcommittee with his company's average operating margin for its California stations, which shows a decline from 6.3 cents a gallon on January 3, 1975, to 2.6 cents a gallon on April 9, 1976. As Mr. Stallings said, "It does not take a soothsayer to readily see that Hudson's position as a viable independent marketer on the West Coast is in extreme jeopardy." Mr. Lawrence of Thrifty Oil Company stated that, "Our margins have shrunk to an unprofitable level. In short, Mr. Chairman, we can no longer afford to stay in business."

To remedy this situation, the Executive Director and General Counsel of the Independent Marketers Council, Mr. T.J. Oden, urged the creation of an equitable pricing system which would require that all refiners establish a base price for gasoline, so that all purchasers would be assured that they are paying a reasonable and fair price. Under this proposal, gasoline would be priced from the refinery forward and each refiner would be required to publicly disclose this base price on each major petroleum product. Price differentials would exist only to account for the functional differences performed by various classes of purchasers, and differences within the same class of purchasers must reflect the actual cost of providing additional services, such as credit card, transportation, brand identification, etc.

Mr. Oden also recommended the creation of an independent petroleum appeals board to assure the availability of adequate supplies at reasonable prices once Federal price and allocation controls end. This board would have the authority to deal with matters relating to price discrimination and refusals to deal on the part of refiners and suppliers. Finally, Mr. Oden urged the establishment of a moratorium on any future increases in the number of company owned and operated stations.

A Long Island retailer complained that FEA regulations impeded her ability to open a new station for months, during which time two other stations opened without having to follow the procedures she did. A New York Exxon dealer filed a complaint and found that one reason it was being delayed was because FEA sent the complaint to Texaco. Mr. Charles Latorella, the New York State Assistant Attorney General of the Antitrust Division, complained that the FEA did not properly assist his office in prosecuting a law suit that related to their regulations and stated that he felt that "...the FEA should have done something about it," and that the problem would not have existed if the Agency had properly enforced its regulations. Mr. Mac Victor of the New York State Association of Service Stations, Inc., stated that "...we have seen areas where the major oil companies have ignored the regulations and have gotten away with it. We have complained about it. There have been investigations and so often it has been put off and time goes by and they can never always

accomplish what they want with oil companies."

Many dealers complained about the ineffectiveness of the Federal Energy Administration. Mr. Stan Tauber, A California Gulf Dealer, stated that it took the FEA 2 years to resolve a dispute he had with his supplying refiner, whereby Gulf improperly altered their normal business practice in the system they used to charge for gasoline. Mr. Tauber testified that this change cost him over $10,000. Despite the fact this affected all Gulf dealers in California, the FEA imposed only a minor fine against Gulf while the dealers were not reimbursed for the losses they sustained as a result of this improper action.

Mr. Maurice Langeller, the Executive Director of the Bay State Gasoline Retailers Association, complained that FEA's cooperation "hasn't been acceptable for the dealer." He went on to explain:

> The slow process of the FEA in ruling on any problems or complaints that are made. The process is unbelievable, the length of time involved. We have had complaints that have been sitting there since last October, and they've been assigned to investigators or assigned to auditing teams in the various sections of the country, wherever the refiners are located.
>
> And we're told it takes a long time for the auditing team to look into the situation, and that priorities exist. And obviously the dealer is not a priority, or the dealer is at the bottom of the totem pole.
>
> So, as far as success or any evidence of good cooperation on their part, no, it hasn't been evident.

The overall effectiveness of FEA can, in part, be judged by testimony of the Agency's Assistant Administrator for Regulatory Programs, Mr. Gorman C. Smith. Appearing before the House Small Business Subcommittee on SBA and SBIC Legislation, Mr. Smith disclosed that from January 1974 to December 1975 FEA received approximately 675 complaints relating to the termination of dealer leases. The Agency decided that it had no jurisdiction over 175 of these cases, and, of the remaining 500, 195 were resolved in favor of the dealer and 305 were resolved in favor of the oil company. As a result of these cases, the Agency took some kind of formal enforcement action against an oil company in 70 instances. Since 1972, over 42,000 dealers went out of business, and the market share of branded dealers has fallen from 79.3 percent to 71.5 percent.

CHAPTER IV.—FINDINGS

The Subcommittee finds that the continued economic and competitive viability of both the independent branded and non-branded retail petroleum marketer is being jeopardized by the forward integration of refiners into the retail marketing sector of the petroleum industry. The Subcommittee believes that if this trend is allowed to continue, the small independent marketer will cease to be a competitive force and will continue to experience a decline in both numbers and market shares, which will not only be harmful to the interest of small business, but will also be detrimental to the best interests of the American consumer who will be harmed by the increased economic concentration in the petroleum industry which will result from this forward integration by refiners.

The Subcommittee believes that refiners are accomplishings this forward integration into the retail marketing sector of the petroleum industry by unfairly employing their superior economic resources to undercut the independent marketers' retail price of gasoline and thereby forcing them into either a non-competitive retail price or a competitive market price which will be financially ruinous for the individual dealer to maintain.

Furthermore, the Subcommittee finds that individual dealers lack the economic power to effectively negotiate equitable lease terms and, as a result, refiners have forced them to enter into agreements which deny them the authority to make important business decisions and thereby impedes their ability to perform as truly independent competitors.

It is the opinion of the Subcommittee that refiners have purposefully perpetuated the use of an unreasonably short term lease, even for experienced dealers, in order to emphasize to the dealer the tenuousness of his business relationship with his refiner. The common use of the one-year lease enables refiners to terminate their agreements with lessee dealers by simply failing to renew the lease. In the absence of any State law to the contrary, refiners are not required to establish any cause for their failure to renew a lease, and thus a branded lessee dealer is totally unprotected from the arbitrary actions of his supplier. Lacking the security of a long-term agreement and defenseless against the arbitrary actions of the supplying refiner, the lessee dealer is deprived of any effective means by which he can resist the pressures exerted against him by his supplier.

The Subcommittee finds that refiners have unfairly and improperly taken advantage of the lessee dealers' tenuous economic position to coerce them into unreasonable agreements which only serve the interest of the refiner and which frequently harm the interests of the small businessman and women. The most blatant example of this activity is the continuing pressure placed upon dealers to purchase the refiner's tires, batteries and automotive accessories. Service station dealers in all parts of the country complained that they are repeatedly being threatened by company salesmen that their leases will not be renewed if they purchase their TBA's from independent sources, and that they have no means by which they can effectively resist these pressures. Since most dealers assert that they can obtain superior products at lower prices through

local suppliers, their inability to do so not only affects their competitive position but also harms the economic interests of the local small business supplier who is being deprived of the opportunity to competitively obtain a significant volume of business.

Refiners have also used their superior bargaining position to insert inequitable provisions into the lease as by specifying the hours a station shall be required to be open during periods of time when it is unprofitable to do so. This is particularly true for late night hours, when the available volume of business does not compensate the dealer for the increased costs of hiring additional attendants, or paying for higher utility bills, and insurance premiums. Many refiners have recently changed certain lease provisions and now the dealer is responsible for maintaining and repairing the refiner's property. Many dealers must now, at their own expense, repair and maintain the pumps, the lights, the repair equipment, heaters, plumbing and other equipment and even paint the station. This is not only costly in monetary terms, but also consumes a great amount of the dealer's time which could be devoted to profit-making activities.

The Subcommittee questions the economic justification for the recent rent increases which are being imposed upon dealers. Many dealers have complained that their landlord refiners have recently greatly increased these rents, which in some cases amount to 500 percent increases. Some dealers have asserted that these increases are unjustified and further inhibit their ability to effectively compete and are actually being used to coerce dealers out of business or make it unprofitable for them to continue to operate.

The forward integration of refiners into the retail marketing sector of the petroleum industry raises serious public policy questions. The refiners assert that, by directly marketing their own gasoline through high volume stations, they can eliminate the middle man and decrease their overhead costs and pass these savings along to the consumer in the form of lower retail prices. The dealers argue that, by concentrating on gasoline sales alone, these refiner operated stations fail to provide the consumer with the regular service needed to properly maintain the car, and that the low prices are an attempt to eliminate the competition and will disappear once a monopoly is established. At that time, the dealers assert, the refiners will unilaterally dictate the retail price of gasoline to the consumer as they now dictate the wholesale price to the dealer.

There is some evidence to support the contention that once a refiner obtains a significant share of the market he becomes less price competitive. In New Orleans, Exxon has opened a number of company operated stations and has gained a sizable share of the retail sales. According to the testimony of Mr. DuVal Dickey, Vice President of Marketing for Exxon Company U.S.A., before the Small Business Subcommittee on SBA and SBIC Legislation, Exxon "...sets the retail price" at company operated stations "at the level of the prevailing price of retail stations in the marketplace surrounding the individual station so there are no circumstance...where we would ever price a company station below the level of the prevailing price in the market." Mr. Dickey further stated Exxon does "...not consider that private brand, like Hess, like Save-Way, as the competition that we look to in the marketplace..." but instead looks at

Texaco, Gulf, Shell, etc.

The implication of this testimony is that, having gained its share of the market, Exxon now only meets the price of its competitors, which is not true competition, especially when there are "no circumstances" when Exxon would ever price a company station below the prevailing level. Thus, it is clear from this testimony that once having obtained a significant share of the market, the largest integrated oil company is not aggressively pursuing price competition through company operated stations and is interested in meeting the retail price of only its major integrated competitors. With the elimination of the independent and non-branded retail marketer, price competition can be expected to decrease, and the Exxon testimony establishes that in such case the company operated station does not provide the consumer with the lowest possible retail price, but instead the highest price that can be charged without being undercut by another major integrated company. Since the demand for gasoline is inelastic, integrated refiners have historically avoided retail price competition and thus the Subcommittee questions if the recent lower retail price serves the long term interests of the consumers.

The European activities of Exxon also support the dealers' argument that low prices are only temporary. In 1968, Exxon unilaterally lowered its retail price at all its outlets throughout Europe, in some places by as much as 20%. This unprecedented action was in response to price wars initiated by independent marketers in various parts of Europe which had resulted in their obtaining an increasing share of the retail market, reaching a high of almost 20% in West Germany. Exxon continued this policy for two years, until the position and existence of the independent marketer had been eliminated. Although losses resulting from this action totaled almost a billion dollars in revenues and profits, Exxon and the other integrated oil companies survived, and, at the conclusion of this effort, they all raised their retail price which is, in Europe, no longer seriously subject to price competition from independent marketers.

The Subcommittee finds that the increasing forward integration of refiners in America has already seriously weakened the competitive position of both the branded and the non-branded independent retail petroleum marketers. The statistics show that for the first two years during which the Federal Energy Administration maintained records, over 42,000 individual independent retail marketers were forced to permanently cease operations, decreasing from 235,859 in early 1972 to only 193,500 in late 1974. Since 1974, the market share of the independent branded dealer has continued to dramatically decrease, going from 79.3 percent in October 1974 to 71.5 percent in March 1976. It is more than mere circumstance that the forward integration of refiners has resulted in a substantial increase in the market share of company operated stations during this same period, going from only 8% in 1972 to 17.2% by March 1976.

The Subcommittee believes that the large integrated refiners have engaged in a concerted effort to deny independent non-branded retail marketers access to gasoline at competitive prices. Presently, integrated oil companies refuse to sell any substantial quantities of gasoline directly to these retailers, and provide the larger independent marketers with less than 2% of their needs, although

they supply substantial quantities of excess gasoline to smaller refiners who, in turn, resell it to independent marketers at a higher price. Additionally, many integrated refiners are refusing to sign long term supply contracts with independents. These policies have unnecessarily increased the wholesale price of gasoline and have thereby undermined their ability to compete at the retail level. Furthermore, the inability to obtain supply contracts is increasingly forcing independent marketers to rely on the higher priced foreign gasoline which is further impeding their ability to compete.

It is the opinion of the Subcommittee that the existing wholesale price structure for refined petroleum products lacks an economic foundation and is being manipulated to serve the competitive interests of refiners. It is inconceivable that the wholesale price of delivered gasoline can be lower than the wholesale price of undelivered gasoline from the same refiner. Nor is it economically possible for refiners to profitably post a retail price at company operated outlets which is almost the same as their wholesale price to dealers.

The disparity in wholesale prices is reflected by the fact that, in February of 1976, the weighted average retail price over all grades of gasoline and types of service stations for major refiner operated outlets was only 53.8 cents a gallon, while the same price for their branded dealers was 58.5 cents a gallon. By providing discounts or allowances to certain purchasers within a particular category and lacking any requirement that price reflect cost, refiners have unilaterally dictated varying wholesale prices to different categories of purchasers. By so doing, refiners have successfully established arbitrary wholesale prices which discriminate against certain classes of purchasers and which have enabled them to effective manipulate the retail price of gasoline for their own competitive advantage.

The Subcommittee finds that the preservation of both the branded and the non-branded independent retail marketer is essential to the maintenance of competition in the retail sector of the petroleum industry. The Subcommittee believes that the independent marketer cannot successfully endure the pressures created by the forward integration of refiners into the marketing sectors as long as those refiners are able: to impose unprofitable terms in their leases with dealers; to coerce dealers into purchasing large quantities of TBA's at excessive prices from their supplying refiners; to intimidate dealers through short term leases and business relations which afford no protection from arbitrary action by the refiner; to require dealers to purchase their gasoline at a non-competitive price which is unilaterally dictated by the refiner; to unfairly compete at the retail level with a dealer while maintaining absolute control over many of the dealer's costs and marketing practices; to manipulate the wholesale pricing system to the competitive advantage of their company operated stations; and to use the profits in the other endeavors to underwrite the financial cost of petroleum retailing. Subjected to these pressures, independent marketers cannot resist the concerted efforts of their supplying refiner.

The 1956 Report of The Attorney General's National Committee to Study Antitrust Laws states that "Effective competition may be affected not only by the number of sellers; their relative size and

strength must also be considered. This does not mean that close equality in size among various firms is essential for workable competition to exist, but only that the rivalry should not depend entirely upon sellers who are so weak or inefficient as to exist by sufferance." Given the success refiners have achieved with their forward integration efforts, their ability to control supply and the price of that supply and the power to require dealers to comply with their demands, and mindful of the experience of European marketers, the Subcommittee concludes that independent dealers do not have the strength to effectively compete against refiners and their existence is therefore at the sufferance of their supplying refiner. The Subcommittee believes that the dealers' weakened position is the result of their unequal bargaining power which places them under serious competitive handicaps which are irrelevant to their efficiency. Thus, the Subcommittee reiterates the finding of the United States Supreme Court which, in *Atlantic Richfield Company v. FTC*, 381 U.S. 357, 85 S. Ct. 1498, ruled that "Substantial evidence supports the conclusion that notwithstanding Atlantic's contention that it and its dealers are mutually dependent upon each other, they simply do not bargain as equals. Among the sources of leverage in Atlantic's hands are its lease provisions and equipment loan contracts with their cancellation and short term provisions."

Previous hearings held by the House Select Committee on Small Business have noted the unequal bargaining position of small, independent retail marketers. In a 1955 report entitled "Alleged Coercive and Discriminatory Practices against Retail Gasoline Operators by Oil Companies," the Select Committee found that "the dealer operating his station under a short-term lease with the oil company supplier is frequently not in fact independent and is subject to control by the oil company supplier. The freedom of choice of the dealer with respect to the manner in which he operates his station is circumscribed by the economic power of his oil company supplier, whether or not such power is specifically exercised against him." The Subcommittee recommended that the industry adopt long-term leases, but after 20 years, short-term leases remain the most common. The Committee also found that the refiners' sales practices in regard to sponsored TBA's "...have had the effect of operating against a dealer's freedom of choice in using or dealing in competitive products, and operate to substantially lessen competition and tend to eliminate price competition."

In 1957, the Select Committee again considered the problem of the small business petroleum retailer and found that "the extent to which small business distributors and retailers of petroleum products are truly free and independent is severly limited by their awareness that their suppliers can wield great economic power." The Committee also concluded that "Price discrimination and coercion still exist in the industry." To remedy these problems, the Chairman of the Subcommittee which conducted the investigation, the Honorable James Roosevelt (D-Calif.), introduced legislation which would divorce producers of petroleum products who sell at wholesale from selling at retail.

Most European governments have adopted policies which separate the refiner from the retailing activities or which impose severe limitations on the number of stations a refiner may own. Additionally, many of these European governments have nationalized parts of the petroleum industry and now directly compete with large integrated

refiners. These actions have not impeded the economic viability of these integrated corporations or in any way weakened their ability to effectively function on an international scale. Indeed, since the imposition of these European restrictions, these companies have experienced their most profitable years.

The Subcommittee is of the opinion that immediate Federal action is needed to preserve the independent retail marketer from the coercive and inequitable competitive practices utilized by refiners who are using their superior bargaining position to increase the market share of company owned and operated stations. The need for Federal action is clear from the fact that dealers in all parts of the country are experiencing the problem which is being caused by a variety of refiners. The action must be immediate because over 42,000 dealers have already been forced out of business and because within the last 18 months for which figures are available, the independent branded dealers have experienced a significant decline in their market share, going from 79.3% in October of 1974 to 71.5% in March 1976.

Although the FTC has initiated a court action which would require the major oil companies to divest themselves of certain operations, a decision will not be reached until at least 1980, and it is estimated that, if this trend is not stopped, at least another 40,000 dealers will have gone out of business. Additionally, the courts have repeatedly acted to curtail the activities of the major oil companies, but those actions have failed to prevent the problems which exist today. Therefore, the Subcommittee believes that it is time for Congress to directly exercise the power it delegated to the courts under the Sherman Act and the Clayton Act and legislatively impose restrictions on the scope and methods of the activities of the integrated oil companies by preventing them from directly engaging in the retail marketing of petroleum products.

The Subcommittee further believes that the Federal Government should enact legislation which prohibits suppliers from arbitrarily terminating their dealers. Terminations or non-renewals of leases should be conditioned upon the showing of "good cause" and all lease provisions should be subject to a rule of reasonableness with the right of judicial review. To avoid the possibility of protracted and expensive legal costs, suppliers should be required to bear all the expenses of court action so that they cannot unfairly use their superior economic power to deprive a small businessman of his day in court, unless the court rules that the suit was maintained solely to harass the supplier. The Subcommittee realizes that protecting the dealers from the arbitrary actions of their refiners does not adequately protect them from coercive economic pressures which the supplier can exert through direct retail competition from company operated stations and thus concludes that refining activities must be totally separated from retailing activities, although refiners should not be required to sell their stations. Additionally, the Subcommittee believes that the Federal Government must act to prevent refiners from manipulating the wholesale price of gasoline and that an equitable pricing system must be established that is built upon a base cost at the refinery which is offered to all legitimate wholesalers and retailers, and that the price of any additional service which the buyer elects to have the refiner perform reflect the actual cost of providing that service. Furthermore, the Subcommittee finds that the Federal Government must anticipate the

end of allocation and price controls and establish an independent petroleum appeals board to insure that all marketers receive adequate supplies at fair and equitable prices.

Finally, the Subcommittee finds that the Federal Energy Administration has failed to effectively protect individual dealers from the coercive practices of refiners. Specifically, the Subcommittee notes that the FEA has failed to enforce the provisions of the Emergency Petroleum Allocation Act of 1973 which instruct the agency to protect and maintain the non-branded independent retailers' market share. This can be seen from the fact that the FEA has failed to accumulate statistics to determine what the non-branded marketers' share was prior to the disruptions caused by the Arab embargo. Additionally, the Subcommittee believes that the agency has failed to adequately protect or efficiently process the complaints of individual dealers and that it has made an insufficient effort to determine and prevent a repetition of the causes which have resulted in the substantial declines in the number of independent small business retailers. The Subcommittee finds it inconceivable that the agency has taken only 70 formal enforcement actions in light of the fact that over 42,000 dealers have gone out of business and that the market share for branded dealers has fallen from 79.3% to 71.5%.

CHAPTER V.—RECOMMENDATIONS

On the basis of the testimony, evidence and findings, the Subcommittee recommends:

A. That the Federal Energy Administration:

(1) Restructure its enforcement division to insure that complaints are responded to within 10 days of receipt and that they are thereafter efficiently processed;

(2) Review its regulations to determine where they fail to adequately protect the interests of dealers, and make such revisions as needed;

(3) Aggressively pursue remedial action against suppliers that results in equitable solutions for dealers and which fully compensates them for any losses they suffered as a result of any refiner's violation of the regulations;

(4) Make a concerted effort to locate dealers who have been forced out of business to determine if any refiner's violation of FEA's regulations was responsible for the discontinuation of their business;

(5) Evaluate the economic justification for recent rent increases to determine if they are attempts to circumvent price controls;
and

(6) Report to this Subcommittee by April 1, 1977, of the actions taken to implement these recommendations.

B. That the Federal Trade Commission:

(1) Investigate the sale techniques of supplying refiners to determine if they are using illegal or coercive practices to require dealers to purchase refiner supplied tires, batteries and accessories;

(2) Promulgate a trade regulation which would establish a functional pricing system within the wholesaling segment of the petroleum indusry;

(3) Investigate the wholesaling practices of the major integrated refiners to determine if they are engaged in a concerted effort to refuse to sell to independent non-branded retail marketers; and

(4) Report to this Subcommittee by April 1, 1977, of the actions taken to implement these recommendations.

C. That the appropriate committees of Congress favorably consider legislation which would:

(1) Prevent refiners and suppliers from arbitrarily terminating or failing to renew a dealer's lease or supply contract by requiring that such action be dependent upon a judicially reviewable showing of good cause;

(2) Prohibit refiners from engaging in the wholesale distribution of tires, batteries or any other automotive accessories which are not a refined petroleum product;

(3) Prevent refiners from directly competing with the small business retailers they supply by prohibiting them from directly operating retail gasoline outlets or engaging in the direct retail marketing of gasoline;

(4) Require refiners to establish a functional pricing system for determining the wholesale price of gasoline, and

that all buyers within the same category of purchasers be allowed to purchase gasoline at a base price, and that charges for any additional services be the same for all buyers and reflect the actual cost of providing that service; and

(5) Establish an independent petroleum appeals board which would have the authority to insure that all marketers receive an adequate supply of gasoline at a fair and equitable price once Federal price and allocation controls end.

10. Enter into any franchise agreement with a (service station operator) retailer which is not in writing and signed by all parties to(such) the agreement, or their agents.

11. The above provisions are intended to codify the preexisting public policy of the State of Nevada

Sec. 8. NRS 598.660 is hereby amended to read as follows:

598.660 1. No (supplier) refiner or distributor may fail to renew the franchise of any (service station operator) retailer without good cause and without fairly compensating (such operator) him at a fair going business value including but not limited to good will of the business prior to failure to renew.

(a) The capital investment was entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and

(b) The cancellation or failure to renew was not done in good cause.

2. For the purposes of this section, "capital investment" includes, but is not limited to, tools, equipment and parts inventory possessed by the (dealer) retailer on the day of notification of cancellation or nonrenewal and which are still within possession of the (service station operator) retailer on the day the nonrenewal is effective.

Exhibit 3

MEMORANDUM

A. B. 291, prohibits contracting for hours of operation.

This bill would totally prohibit the freedom of contract with reference to hours, or even minimum hours, of operation. In our tourist-oriented state, this certainly does not seem to be in the public interest. In determining the location of a new service station, a company will do an extensive marketing study and spend considerable time, effort and money in site determination and in then constructing a modern service station, $350,000-500,000 may be involved as a capital investment. In many instances, these stations are then leased out to independent retail dealers on a gallonage rental. Such a form of rental does not normally return, nor is it designed to return, anywhere what would be a reasonable fixed rental producing a business-like or reasonable return on investment. In addition, companies spend money in maintenance and upkeep in order to provide the traveling public with the cleanest most attractive and well kept facilities. Certainly, these things justify at least the right to contract for hours of operation. In some instances, a lease may provide a contract agreement to keep the premises open for such hours and days as are necessary to fully serve and develop available business and in no event no less than those hours of operation required to compete effectively with service stations in the vicinity.

Exhibit 4

Certainly, this is a reasonable service station provision, yet even this would be outlawed under this bill.

This bill may create substantial additional difficulties by reason of violation of required federal standards which require on interstate highways at least sixteen hours of operation per day in order to permit the use of service station logos.

Beyond this, this bill can certainly work to the detriment of the Nevada consumer and the Nevada tourist. These minimum hours of operation are designed to provide adequate service to the public in accordance with market demand and to effectively compete in the market. The history back of Chapter 598, as developed before this very committee two years ago, indicates that the public welfare is not the basis upon which this type of legislation was and is sought. Briefly, it developed two years ago that Herbert Nye, Jr., then, I believe, President of the Southern Nevada Retail Petroleum Dealers Association, had attempted to boycott the public in Clark County by seeking an agreement that all service stations would close in protest to a price freeze placed during the gasoline crisis. Mr. Jack Cason. an independent Phillips jobber, and

then and perhaps now the largest volume gasoline dealer in Southern Nevada, while himself not liking the frozen prices, refused to cooperate with Herbert Nye, Jr., and his organization because such a boycott was not in the interest of the City of Las Vegas, the County of Clark, the consuming public of Southern Nevada, nor the many thousands of tourists upon which the economy of Southern Nevada depends. Herbert Nye, Jr., finally testified before this committee two years ago that the person he and his group wanted to get by the proposed legislation was Mr. Jack Cason. As a result of that situation, Mr. Cason forwarded to me a telegram which read as follows:

(read telegram)

Mr. Herbert Nye, Jr's activities, in complete disregard of the welfare of the public and of the economy of Clark County in pulling this boycott was roundly condemned in an editorial in the Las Vegas Review Journal, Sunday, October 14, 1973, which reads as follows:

(read editorial)

Such was the basis for this original legislation, a basis which certainly does not have any reasonable relation to the furtherance

of the public health, safety, welfare or morals. It was rather a basis of the promotion of a distinctly selfish self-interest which was pushed in complete disregard of the public welfare. It is such a similar basis from which this particular bill and all of the legislation before this committee today emanates. Nevadans in practically every area in this state, by reason of tourism and gaming, are working around the clock. It is certainly not in their best interest to enact this completely self-serving and prohibitory type of legislation. This matter should remain where it presently is, entirely in the realm of private industry, without attempted legislative mandate. As a matter of fact, it is not upon the independent retail petroleum dealer that the onus of closed stations falls. It is upon the companies whose credit cards are carried by both Nevada residents working at various hours around the clock and our tourist industry. Accordingly, my clients should have their constitutional right to contract upon this subject.

This bill, as does other legislation here proposed, infringes upon a guaranteed personal right for persons to contract and a like constitutional right of landlords to use their property as reasonable businessmen so long as it is not used in a manner adverse to the public health, safety,

welfare or morals. There may be a false impression that oil companies simply impose arbitrary hours of operation upon the dealer, The fact is that hours of operation are negotiated at and agreed upon by dealers and owners, and that these hours may be modified by written agreement as changing marketing conditions indicate. Operating hours for service stations are based upon several factors, including the anticipated needs in the area and the level of business needed to justify the expense and continued operation of the facility. If traffic patterns change, or if market conditions change in a certain area, the hours of operation are again subject to negotiation. Motorists, both our Nevada residents and our vast tourist population, should seriously question efforts to create a law which would in effect encourage service stations to close at night, on weekends, or otherwise wholly at the whim of the retail dealer. The thousands of people who work in Nevada around the clock and the millions of tourists puring through this state every year expect to find a service station open during hours suitable to them to provide gasoline and services they need. To provide this kind of service, it is necessary to operate serv ice stations during off-hours. If dealers are allowed at their own whim by a flat mandate of law to establish their own arbitrary operating hours, it is possible that many of our

residents and traveling motorists will be unable to acquire the services they require. The general public interest and welfare is served by a vigorous, competitive environment in the gasoline market place, and hence individual positions can only be maintained by being as responsive as possible to customer needs through good marketing practices, including providing convenient hours of operation for the traveling public. Hours of operation are based on normal competitive practices in trading areas as well as previous station experiences. A service station ought to serve the market around that station, and that market in Nevada includes night workers, shift workers, etc.

The proposal of this bill to remove this area entirely from the right or freedom of contract is clearly anti-consumer.

Telegram

1975 MAY [illegible]

REA073(1138)(2-017196E126)PD 05/06/75 1137
ICS IPMRNCZ CSP
7023825866 TDRN LAS VEGAS NV 498 05-06 1137A EST
PMS ATTORNEY GEORGE VARGAS, DLR
201 WEST LIBERTY ST 3 FLOOR
RENO NV 89504

REFERENCE AB265 I RESPECTFULLY REQUEST YOUR CAREFUL STUDY OF THIS BILL,I BELIEVE IT PASSED IN THE ASSEMBLY BECAUSE OF FACTS THAT WERE MISREPRESENTED IN THE HEARING BY MR HERB NYE PRESIDENT OF THE NEVADA SERVICE STATION ASSOCIATION,IN HIS TESTIMONY HE SINGLED ME OUT AND TESTIFIED THAT HIS REAL OBJECTIVE WAS TO GET ME.WHAT MR NYE DOESN'T REALIZE IS THAT I'M IN THE SAME BUSINESS THAT HE IS ENGAGED IN AND ANY BILL THAT WOULD BENEFIT HIM WOULD BENEFIT ME 50 TIMES BECAUSE THAT IS HOW MANY STATIONS I HAVE.EVERY STATEMENT THAT MR NYE MADE ABOUT ME OR MY OPERATIONS IN LAS VEGAS IS INCORRECT.HE IS SIMPLY TRYING TO CAMOUFLAGE THE TESTIMONY FOR THE BILL TO SERVE HIS OWN

-1201 (R5-69)

Telegram

SELF INTEREST.THIS BILL IF APPROVED WOULD LEGISLATE AGAINST AND TO THE DETRIMENT OF OTHER SEGMENTS IN THE PETROLEUM INDUSTRY INSTEAD OF LEGISLATING FOR A GOOD CAUSE THAT THE STATE AND CONSUMER WOULD BENEFIT.THIS IS LEGISLATION AGAINST THE SUPPLIER AND DISTRIBUTOR OF PETROLEUM PRODUCTS WHO PLAY A VERY IMPORTANT ROLE IN THE SYSTEM OF SERVING THE PUBLIC WITH PETROLEUM PRODUCTS.IN MY JUDGEMENT IN THE LONG RUN THIS BILL IF APPROVED WILL WORK THE EXACT OPPOSITE AGAINST THE SERVICE STATION DEALER I HAVE 20 DEALERS AND THEY ARE ALL AGAINST THIS BILL BECAUSE IT DOESN'T BENEFIT THEM.AND ALSO BECAUSE OF THE MISREPRESENTATION BY MR HERB NYE THIS BILL DOESN'T ACCOMPLISH ONE THING FOR THE DEALER THAT'S NOT ALREADY ENFORCED TODAY EXCEPT THAT MY 20 DEALERS HAVE NO WRITTEN LEASE.HOWEVER THEY HAVE NEVER ASKED FOR ONE BEEN REFUSED ONE NOR DO THEY WANT ONE.THEY ARE MORE SATISFIED WITH TH(ARRANGEMENT THEY HAVE NOW(RECOMMEND THAT YOU

western union Telegram

READ OR HEAR MR HERB NYE'S TESTIMONY TO THE ASSEMBLY THEN I BELIEVE YOU WILL REALIZE THAT THIS BILL IS ONLY A SELF SERVING OBJECTIVE OF A FEW AT THE EXPENSE OF MANY, THE ONLY ASSET OF THIS BILL IS TO HELP DEALERS THAT ARE IN TROUBLE WITH THEIR SUPPLIER BECAUSE OF IMPROPER ACTIONS OF THEIR OWN DOING THIS IS JUST THE ONE SIDED BILL, MR NYE IS THE SAME PARTY THAT LED THE SERVICE STATION BOYCOTT IN CLARK COUNTY DURING THE REAL ENERGY CRISIS OUR STATIONS WERE THE ONLY STATIONS THAT DIDN'T FOLLOW HIS DEMANDS, THIS WAS NOT BECAUSE OF THE OBJECTIVES DESIRED BY THE SERVICE STATION DEALERS BUT OUR REFUSAL TO HURT OUR COMMUNITY, INCIDENTALLY BEFORE HERB NYE PUT INTO FORCE THE BOYCOTT THE COST OF LIVING COUNCIL CHANGED THE REGULATION TO THE BENEFIT OF THE DEALERS AND STILL MR NYE FORCED THE BOYCOTT ANYWAY, IT SHOULD BE OBVIOUS THAT BEING IN THE SAME BUSINESS I WOULD BE FOR THE SAME OBJECTIVES BUT TOTALLY AGAINST THE METHODS USED BY MR NYE TO

SF-1201 (R5-69)

western union Telegram

GET HIS WAY AND MOST IMPORTANTLY YOU CAN BELIEVE THAT ANY ACTION TAKEN BY MR NYE AND HIS ASSOCIATION WILL NOT BE TO THE BENEFIT OF THE CONSUMERS I RESPECTFULLY RECOMMEND DENIAL OF AB265

JACK CASON PHILLIPS 66 DISTRIBUTOR 2424 SOUTH HIGHLAND LAS VEGAS NV 89102

NNNN

SF-1201 (R5-69)

50—Las Vegas Review-Journal—Sunday, October 14, 1973

R-J viewpoint

Nevada leadership—new man on the scene

From the fumes of the gasoline struggle that took place here last weekend, a new leader emerged on the Southern Nevada scene—Jack Cason, owner of 45 Phillips 66 stations here.

Cason, not afraid to speak out, said, "all of my stations will remain open despite threats of intimidation and thug-like tactics."

While the talk centered last weekend about the closing of some stations by 200 independent dealers, Cason said, "Speaking for Phillips 66 products and for my 45 dealers, we refuse to be a party to jeopardize the economy of the community and the jobs of 50,000 persons in the service trades industry which has been demanded by one man, who owns one service station."

The one man referred to by Cason was Herb Nye, president of the Nevada Service Station Association, who boasted that 90 to 95 per cent of the stations would be shut down last weekend. He was way off the mark. The majority of the independent dealers remained open, and for this we have sung their praise, and will continue to do so.

Nye's prediction of 90 to 95 per cent of the dealers closing was just as off as his prediction that the stations would probably remain closed for a week. By Monday, the few that did shut down were once again pumping gas.

We are in sympathy with the principles involved, but we feel their fight is in the court for higher prices. Intimidation is not the answer.

Like we said in an earlier editorial, this was another crisis that the people of Southern Nevada fought their way out of in dramatic fashion.

We wonder though if those who could have been hurt most by this shutdown—the gambling industry—realize how serious the gas situation was? Where was their leader? Who is their spokesmen these days?

Prior to so many corporations taking over the gaming houses, there was always some "leader" in the industry who would come to the front when the industry faced a threat. Not now. It certainly isn't the Resort Association. This organization has all the impact of a ping-pong ball being tossed against the wind.

And the Chamber of Commerce really didn't bring forth any statement that had teeth in it. Something stronger should have emerged from this organization.

No, the strongest voice during the ordeal was that of Cason. He wasn't about to knuckle under, and many others took their lead from him, and what could have been a disaster fizzled out.

We saw a new leader in action, and we welcome him aboard.

A. B. 426 - Temperature Correction

In the current area of private enterprise, there are various different siutations as to this question of temperature correction. Some companies give temperature correction to dealers, but this is based upon full truck and full truck and trailer loads and upon at least minimum periods of one year. Others do not provide temperature correction.

If the sole basis for the dealers asking this legislation to require by law that all companies bill on a temperature corrected basis is because some companies do and some companies don't and, therefore, there should be uniformity, then the dealers are asking the legislature to exercise an unauthorized use of the police power for their personal benefit, unrelated to public health, welfare, safety or morals, which might well be prohibited from the federal antitrust acts if accomplished through private cooperative action.

If the basis of the regulation is that the dealers are suffering from losses because they are selling less gasoline than they are buying because of temperature variance, then let's look at the facts and see if any loss does result to a dealer because of the difference between the temperature of the gasoline delivered and the temperature of the gasoline in the dealers' underground tank.

Many studies have been made to see if there is a loss due to temperature variation, beginning back in 1954 when the Dealers Association introduced in Texas such a bill as you have before you. At that time there was little research data to support or refute the claim of the dealers, and the Governor of Texas asked the industry for a design of a plan under which all interested segments of the industry could develop the data to promote, in the words of the report, "a mutually satisfactory settlement within the industry as it did not appear, the Governor said, to be a legislative problem." A plan was designed, and 60 stations throughout Texas were tested for a year. The over-all results showed that the dealer sold 997.5 gallons of each 1,000 gallons for which he was invoiced, a loss ratio of .25 of 1%. None of this loss was due to temperature correction because the tests showed that each gallon delivered to underground storage had an immediate temperature increase of 1.31°. After this volume remained in storage until the second day following delivery, there was a further increase of .56°.

Now, as the Texas study shows, there is an average loss of .0025 of the gallons delivered into the underground tank and the amount sold by the dealer; what, then, are the causes of this loss? At the insistence of a national dealers association, the United States House of Representatives Ways and Means Committee asked the Treasury Department to make a survey of the

extent of loss and its cause, and the Treasury Department did; its survey showed a total loss of 1/8 of 1% for the sample of 79 stations covered by the Treasury Department Study. The Treasury Department then made its report and cited the Texas study, together with its own, and studies by the City of Richmond, Virginia, the California State Board of Equalization, the State of Washington, the State of Virginia, and the Province of Manitoba, Canada. The Treasury Department concluded that all studies showed a very small variation between the amount of gasoline delivered to retail service stations and the amount delivered through the pumps of the stations.

The range in the different studies varied from a gain of about .0025 to a loss of .004. These losses were attributable to such things as evaporation, allowable meter tolerances, human error in accounting, billing and inventories.

Some loss is usual when bulk goods are divided and sold in smaller quantities. For example, if you take a 100-pound sack of sugar and divide it into four 25-pound sacks, it is estimated you will have a loss of 4 ounces.

Now what is the nature of a temperature correction allowance? It is what it says: an allowance, and constitutes one element of the total price package of the supplier

to the dealer. This total price package is made up of many items, such as: the price charged for a product, the rent charged for the service station, allowance for utility bills, promotion costs, advertising, charges of handling credit card use and charge slips, repair and maintenance, finance available for purchase of products, the schooling available for teaching merchandising, mechanic skills, business management.

The oil companies all have different policies as to whether or not charges are made on specific items, and the amount of the charge if a charge is made.

Take any one of these allowances; it would not be within the authority of the legislature under the powers granted to it by the Constitution to tell all suppliers that the same rent, for example, should be charged by all suppliers to all dealers, or each to adopt the same repair and maintenance program, or require that the same schooling should be made available, or that each station should have the same number of bays, pumps and hoists.

Temperature correction allowances are no different than any other allowance.

Therefore, we submit that a dealer, so far as temperature is concerned, is selling the same number of gallons

that he purchases and that a dealer who purchases gasoline without temperature correction is no more entitled to have the legislature give him temperature correction than he would be to have the legislature say that he only has to pay the lowest rent charged by a company, or to receive the lowest of all the other programs, costs and charges.

A. B. 427. Changes of Definitions

Again, in connection with this proposed legislation, your attention is called to the previously recited background and basis for the original legislation two years ago. Accordingly, it is urged that there is no proper basis for this type of special interest legislation. I suggest that this is subject to the same consitutional infirmities which have been previously mentioned and which find support in the cases of our Supreme Court, State v. Redman Petroleum Company, 77 Nev. 166, and the Application of Martin, 88 Nev. 669, which will be later discussed. In my opinion, it is perfectly ridiculous to put all of these artificially created handcuffs on one party who, in a free enterprising system, is engaged in a constitutional freedom of contract and dealing with another party who may, under the terms of this bill, either be an independent retail service station operator or a distributor such as Mr. Jack Cason who has some 45 to 50 retail stations in his merchandising methods, and who is the largest retail volume gasoline dealer in this state. This simply serves to point up that these artificially created restrictions, in a world of free enterprise, regulated for the interest of a few self-interested individuals, have no place in the legislative halls.

M E M O R A N D U M

A. B. 428. To the extent that this bill provides that a service station operator may sell to any bona fide purchaser, it is wholly unnecessary as to border on the ridiculous in view of all of the anti-discrimination legislation currently existing.

To the extent that this bill authorizes a service station operator to set his own prices, again it is so wholly unnecessary as to be ridiculous in view of all of the current law against price fixing.

This bill, however, may have an insidious and rather hidden self-interest designed result.

This is in the provision that a service station operator may sell "any product". The phrase "any product" is nowhere defined or limited. Many service station leases provide some protection to the property owner from practically complete diversion of the use of the premises from the uses contemplated by the investment and the lease, i.e., leases in varying terms may contain a contract provision that the premises shall be used as a drive-in automobile service station for sale of gasoline, petroleum products, automotive accessories, minor repair service, and other items normally sold at such service stations, and this may be accompanied by a

prohibition against using the owner's property under the lease for parking, storage, rental or sale of motor vehicles, trailers, used cars, and such other endeavors as might substantially clutter up the premises and substantially interfere with the primary use-purpose of the premises. If so, this is again an attempt to secure by legislative mandate the positive protection of a complete self interest, and would render the owner of the property entirely helpless from attempting to assure that the property is used to a reasonable degree for the purposes for which the owner's investment was made. The legislature should not,by a positive and absolute prohibition, interject itself into an area of private enterprise, thus using its statutory muscle to effectively frustrate the provisions of a contract in favor of one party to that contract. If such be the case, either by the intent or the construction of this bill, it would completely free a service station operator to enter into any activity on the premises which he might desire to run, even though such activity is wholly unrelated to normal service station activities and to thus totally divert the service station property without the consent of the owner. Nowhere in the

law that I know of is such a provision presently existing. The expenses from market analysis and site determination to investment and leasing are all designed to furnish a facility possessing the capability to meet the requirements of the motoring public for such products, merchandising and services as are normally related to a bona fide service station. With investments of anywhere from $350 - 500,000.00, it seems only reasonable that a dealer be expected to meet the requirements of the motoring public by operating the service station as a bona fide service station.

If such is not the carefully screened intent of this bill, then, as previously noted, it is but an idle gesture to put this type of restrictive legislation on the books.

M E M O R A N D U M

A. B. 429. Provides a 10 day rescission period for cancellation agreements; a 3 year minimum term; requires the Attorney General to enforce this self-interest legislation and extends from 30 to 120 days a notice which is required to be given by one party to a contract. Again, we believe that any terms of a contract should be determined as practically all contracts are determined in the realm of private enterprise, through individual negotiation of parties to an agreement. Generally, our statute provides that any one of the age of majority (which is now 18 years old) is fully and legally qualified and capable of contracting. Why oil companies and independent businessmen retail service station dealers should be taken out of that category and considered, for at least a period of 10 days after they have mutually entered into a contract, that they are in fact of such immaturity or imbecility as to say their solemn agreements are not in fact contracts is exceedingly hard to fathom. In addition, this 10 day rescission provision could create serious problems relative to the service station operation during the 10 day hiatus. For the benefit of the traveling public, if there is a mutual agreement to terminate an existing service station operation, arrangements should be

immediately made for replacement so that the public would not be inconvenienced by a lapse of operation which might run for some time. Actually, contracting parties should consider all phases before they enter into a mutual contract of termination and once they have done so, that should be it. Very little justification can be supplied for this type of a regulation.

In addition, there is a serious problem in this bill by imposing a flat mandatory requirement that any franchise agreement shall be for not less than a term of 3 years. This prohibits a normal business practice of a trial period, normally 12 months, wherein actual operation of the station and adequate service to the traveling public can be tested. A further problem exists here where a supplier might have leased the station property rather than owning it, and where such supplier loses the right to grant possession of the leased premises through expiration of an underlying land lease. A supplier cannot guarantee a service station operator the right to occupy premises which the supplier does not control.

A serious problem would arise in the change from a period of 30 days in the present act to 120 days in advance of the expiration of the term as a required minimum

time for the supplier's notice of non-renewal. Many things can occur in a period of 4 months which, in the operation of a service station, could result in real detriment to the traveling public as well as the owner of the premises, and which would most substantially justify non-renewal. Yet by extending this minimum period to a 4 month's notice, there would be no possibility of the owner of the property or the supplier to comply with this act. It would simply mean that only voluntary abandonment by the service station operator, which is nowhere prohibited or penalized in all of this legislation, or conviction of a felony related to the service station business would be the only basis upon which non-renewal would be effected. This is a wholly unconscionable and very probably unconstitutional impression.

Finally, Section 4, empowering the Attorney General to enforce the provisions of this self-serving legislation "on the complaint of any person aggrieved" is not only a complete distortion of the constitutional duties of the office of the Attorney General, but is really a one-sided rip-off of the taxpayer in requiring, by legislative mandate, that the Attorney General become free counsel of certain contracting parties.

A. B. 431. This bill would require that any supplier that operates one or more service stations wherein it sets the retail price, must as a positive legislative mandate, offer gasoline to non-controlled service stations which it supplies at a wholesale price of at least 4 cents per gallon below the lowest price posted at any company station. This would mean that if, in a particular station area, the retail price was lowered to meet competition in that particular area, the company would then have to set a wholesale price at least 4 cents per gallon below that particular competitive area price throughout the entire State of Nevada. Local price competition in the immediate area of any service station may make it necessary for a company operated station in that area, in order to maintain any customers, to sell at a low, perhaps ridiculously low, price. A supplier should not be penalized for being competitive by requiring that if such a circumstance occurs in the very limited marketing area of one specific station, he must lower his wholesale price by 4 cents below that service station price throughout the entire State of Nevada. This is clearly an attempt at special interest price fixing which certainly would not be permissible by any type of agreement in private enterprise. It is equally inpermissible when attempted to be achieved through the agency of this legislature. The Federal Robinson-Patman Act, an

amendment to the Clayton Act (15 U.S.C. §§ 13(a) - (f). Section 2(a) of this Federal Act makes it unlawful for a person engaged in commerce to discriminate in price between different purchasers of commodities of like grade and quality, where either the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or destroy or prevent competition.

Under Section 2(b) of this Act, the U. S. Supreme Court has held that it is an absolute defense to a charge of price discrimination where a seller can show that in an individual competitive situation it reduced its price to an individual customer to meet the equally low price of a competitor. A California Act which has been called a little Robinson-Patman Act provided that as a defense to a charge of price discrimination, the seller had to show that his lower price was made in good faith to meet an equally low price of a competitor and "... <u>was also offered to any other of his purchasers in competition with the purchaser or purchasers receiving such lower price.</u>"

The critical difference between these two statutes is that the federal statute provides a seller an absolute defense when he grants a price reduction to an

individual customer to meet an equally low price offered by a competitor to that individual customer, whereas the California statute permits a seller to grant a lower price to meet the equally low price offered by a competitor to an individual customer only if the same price reduction is also granted to all other purchasers competing with the customer to whom the lower price is granted.

By order on summary judgment, this California statute was held unconstitutional, and of no force and effect because the field it occupies is preempted by and is in conflict with the Federal Robinson-Patman Act. Shell Oil Company v. Younger, United States District Court for the Northern District of California, decided July 11, 1976.

This proposed legislation denies suppliers rights and benefits guaranteed and preserved to a seller under the Robinson-Patman Act. Thereunder a seller has a right to selectively select a customer to whom it will lower its price to meet the equally lower price of a competitor. As a matter of deliberate Congressional purpose, in order to avoid price rigidity, to attempt to minimize conflict between the Robinson-Patman Act and the Sherman Act, and preserve competition, and to guarantee to a seller the fundamental right of competitive self-defense against a price raid by a competitor, the Robinson-Patman Act preserves to a seller the essential right to meet the qually low price of a competitor. Section 2(b) of the Robinson-Patman Act establishes an absolute defense for a seller against a charge of price discrimination in the circumstances

carefully provided for therein, without requiring that the seller "ruinously (cut) its price to all its customers to match the price offered to one." (emphasis supplied) Standard Oil Company v. Federal Trade Commission, 340 U.S. 231, 249-250 (1951). By this same U. S. Supreme Court case, it is established that the Federal Robinson-Patman Act unquestionably controls the supplier's practices in its sales of motor vehicle fuels and oils made in interstate commerce, even though the product temporarily comes to rest in local storage tanks before delivery to the customer. As there are no refineries in Nevada, this whole area is in interstate commerce.

This legislation would require the same lower price statewide when based upon a single retail price set to meet competitive standards within a single station marketing area. It thus would force the seller to choose "ruinously cutting its price to all its customers to match the price offered to one", or refusing to meet the competition and then ruinously raising its prices to its remaining customers to cover increased cost. Standard Oil Company v. Federal Trade Commission, U. S. Supreme Court, 340 U. S. at 249-250. It was this Hobson's choice which the Supreme Court said is not required by the Robinson-Patman Act which in "plain language

permits a seller through § 2(b) to retain a customer by realistically meeting in good faith the price offered to that customer, without necessarily changing (its) price to its other customers."

The Federal Trade Commission has stated:

> "The right of self defense against competitive price attacks is as vital in a competitive economy as the right of self defense against personal attack. " (The Basing Point Problem 139, Temporary National Economic Committee Monograph No. 42, 1941)

Under this legislation, a supplier would be faced with two alternatives, both practically or constitutionally unacceptable. First, faced with lower competitive price offered in a limited individual service station marketing area, a supplier could only respond by reducing its wholesale prices throughout the entire State of Nevada. This spreading of lower price throughout all of Nevada would create a violation of the Robinson-Patman Act and expose the seller to liability thereunder,or it could refrain entirely from reducing its price, thus maintaining its price at a higher price to its customers, thus denying any of them the benefits of lower prices, with the probaility of losing its customers. Hence, this attempt at special interest price fixing which would be

in violation of the Robinson-Patman Act should most certainly be rejected.

Finally, under this bill, there is no earthly reason why a termination contract reached by mutual agreement between a supplier and a wholesale purchaser should be subject to a 10 day delay period during which either party may rescind. The statement previously advanced with reference to this type of a proposal, as contained in A. B. 429, applies with even greater force here, where the parties are a supplier and perhaps a jobber having such extensive business as Mr. Cason.

M E M O R A N D U M

A. B. 430. This flatly limits company operated stations to 1976 volume.

In the first place, this would have an anti-competive and anti-consumer effect by prohibiting a company which had little or no company-operated volume in 1976 from entering into or becoming competitive in the market place. Likewise, unless a company could find an individual with risk capital, it would completely prevent construction and development of new modern stations which may be vitally necessary in the future of growing traffic to serve the public, but which for an interim may be uneconomic and hence carried on or operated by the company itself. If this is some kind of a backhanded effort designed to prohibit any substantial expansion of company-owned stations, it is not supported by any factual basis. The trend is away from, rather than in favor of, company-operated stations in Nevada. For instance, 10 years ago Standard of California, now Chevron, U.S.A., had 14 company-operated stations in Nevada, representing a mere 14% of the total number of Chevron stations in this state. At the present time, out of a total number of 180 service stations, only 6 of these, or 7%, are company-operated, which demonstrates that in this 10 year period,

there has been a 50% reduction.

Finally, this bill would totally deprive and prohibit Nevada motorists and the millions of tourists traveling by motor vehicle in this state each year from the advantages and convenience of added modern stations at locations where marketing surveys may indicate an absolute future necessity with an interim development period offering uneconomic return. Again, this bill is designed simply as a self-interest bill designed to limit and stifle competition, and hence is specifically anti-consumer.

Because of the use of the vague term "agents", this proposal could even restrict volume through consignee stations, and possibly distributor stations, depending upon the term "agent", as used in the context and history of this legislation as ultimately construed.

Finally, this legislation would be wholly invalid if enacted due to federal preemption, as it directly imposes a limit on the allocation of gasoline which is inconsistent with the federal mandate as administered by the Federal Energy Administration.

March 24, 1977

NEVADA LEGISLATION - 1977
A.B. 430
MORATORIUM ON COMPANY
OPERATED SERVICE STATIONS

Assembly Bill 430 would amend Nevada's existing dealer protection statute to prohibit distribution of a greater percentage of volume of gasoline through Company operated service stations than that distributed during the year 1976. It thus poses a moratorium on the growth of company operated service stations at 1976 volumes.

Chevron U.S.A. strongly opposes passage of this legislation.

The fact that such a moratorium is proposed within the framework of a dealer protection statute seems to imply that service station dealers are facing some threat from the existence of Company-operated service stations. In fact, this legislation is unnecessary and will only serve to deprive consumers and dealers alike of some very real benefits provided by company operated service stations. Ten years ago Chevron operated 14 salaried stations in Nevada or 14% of the total units owned and/or controlled by the Company. Today we operate but six such units representing only 8% of the stations we control. We have reduced the number of Company operated stations by more than half because of pure economic considerations but we should not be precluded from reversing this trend if market conditions so mandate. The number of salaried stations in and of itself offers no threat to dealer operations.

Company operated stations benefit dealers and consumers by providing the opportunity to conduct ongoing testing and experimentation of additional products and services in the service station field. Once such experimentation proves to be viable, it is shared with Chevron's independent dealers so they can continue to grow and serve the motoring public. On their own, dealers may lack the financial resources for such experimentation or the inclination to gamble on methods that may fail.

Company operated service stations serve as a base to train and develop a professional nucleus of independent service station dealers. A large percentage of Chevron dealers are men who started their careers in our Company operated stations and with the experience, knowledge and training received through our system, became successful independent businessmen.

Finally, it should be noted that imposing a moratorium on company operated service stations on the basis of volume percentages is a particularly unworkable system which could create problems not only for Chevron, but also for the motoring public in Nevada. Gasoline sales records would have to be carefully maintained to insure that sales percentages remained in line. If, for any reason, consumer purchase habits should change causing a disproportionate shift in sales to existing salaried stations, the Company could be forced to actually close these stations for a period of time necessary to bring sales percentages back into balance. Such closures would be made on a basis of arbitrary mathematical formula and without reference to consumer needs or product availability.

For the above reason, Chevron opposes passage of A.B. 430.

March 28, 1977

NEVADA LEGISLATION - 1977
A.B. 431
GASOLINE PRICING

A.B. 431 would require a minimum gasoline price differential for each grade of gasoline of 4¢ per gallon between posted prices at Company-operated service stations and delivered prices (dealer tank wagon) at dealer service stations selling the same brand of gasoline.

The Company strongly opposes passage of this legislation as being unnecessary and detrimental to Nevada consumers.

The apparent objective of A.B. 431 is to preclude a gasoline supplier from engaging in predatory pricing practices against its independent dealers through Company-operated service stations. It would do so by locking in a minimum 4¢ gallon margin at dealer stations vis-a-vis posted prices at Company-operated stations.

Such legislation is totally unwarranted. There are presently 180 Chevron service stations in Nevada. 174 or 93% of this total are dealer-operated. Chevron's average capital investment in a service station today approximates $350,000. It is economic nonsense to assume that any Chevron unit is constructed to serve in direct competition with another. On this basis alone, it is safe to say that our Company-operated stations present no real threat to Chevron dealer outlets.

Chevron dealers, as independent businessmen, set their own retail price for gasoline and in so doing establish their own profit margin. They may or may not be pricing in a similar fashion to any Company-operated service station and, of course, it is a dealer's decision alone whether he even chooses to price his products competitively.

What A.B. 431 would do to the detriment of Nevada consumers is to introduce a patently anti-competitive rigidity in the Nevada market by failing to recognize geographic variances in cost, taxes, marketing methods and competition. Gasoline prices at Company-operated stations are established on the basis of product and delivery costs, applicable federal, state and county taxes, costs arising from a specific type of operation and, of course, competitive factors in the marketplace. In Nevada, delivery costs vary by as much as 4¢ per gallon and while state and federal taxes are consistent, county taxes vary by as much as 2¢ per gallon. Given these ranges, it is difficult to understand why the legislature would attempt to rigidly regulate a fixed price differential throughout the entire state. In response to consumer demands, gasoline is marketed in differing ways such as through full service stations, self service stations, fast service stations and car washes. Operators marketing through self service stations generally sell at reduced margins which could conceivably be even less than 4¢ per gallon. If this were to happen near one of our salaried self service stations, Chevron would be precluded from meeting competition to the detriment of the consumer.

Finally, competitive forces are not uniform throughout the state. For example, a supplier facing heightened competition in Las Vegas would no doubt be reluctant to reduce prices and to offer price support to his dealers in the Las Vegas area because A.B. 431's required statewide differential of 4¢ per gallon could not only force the supplier to support its dealers in Las Vegas, but also in far off places such as Reno or Ely where such competitive pressures may not exist. Such an effect would be to the detriment of consumers, dealers and Company-operated stations alike.

For the above reason, Chevron opposes enactment of A.B. 431.