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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners,
v.
ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER

No. 135

PANAMA REFINING COMPANY ET AL., PETITIONERS,
v.
A. D. RYAN, S. D. BENNETT AND J. HOWARD MARSHALL

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Texas [1] is reported in 5 F. Supp. 639.

[1] No. 260, R. 149–171; No. 135, R. 149–171.

The opinions of the Circuit Court of Appeals for the Fifth Circuit [2] are reported in 71 F. (2d) 1, 8.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on May 22, 1934 (No. 260, R. 192; No. 135, R. 191). Petition for certiorari in No. 135 was filed June 20, 1934, and in No. 260 on August 6, 1934, and both petitions were granted October 8, 1934 (No. 260, R. 197; No. 135, R. 195).

Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The following questions [3] are presented with respect to the production-control provisions [4] of the Code of Fair Competition for the Petroleum Industry (approved by the President under the National Industrial Recovery Act), which provide for the ascertainment by a Federal Agency of the national demand for crude petroleum, the allocation thereof

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[2] No. 260, R. 180–192; No. 135, R. 178–190.

[3] As no substantial questions are presented in the *Panama* case (No. 135) not raised in the *Amazon* case (No. 260), and since the cause of action in both cases arose in the East Texas oil field, it is believed that it will save the time of the Court if one brief is submitted by respondents for both cases. Where a particular question is presented in only one of the cases that fact will be clearly indicated under the appropriate heading of the brief.

[4] The questions with respect to the Code of Fair Competition for the Petroleum Industry are presented only in No. 260 (the *Amazon* case).

equitably among the producing States and the subdivision into individual well quotas by a State of that part of the national demand assigned to it, and which make production in excess of quotas thus assigned by a State a violation of the code:

(1) Whether such provisions are a valid exercise of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(2) Whether such provisions are in violation of the due process clause of the Fifth Amendment to the Constitution.

(3) Whether Title I of the National Industrial Recovery Act in authorizing the President to approve Codes of Fair Competition invalidly delegates legislative powers to the President.

(4) Whether the production-control provisions of the Code of Fair Competition for the Petroleum Industry are authorized by Title I of the National Industrial Recovery Act.

The following questions are presented with respect to Sec. 9 (c)[5] of the National Industrial Recovery Act, which authorizes the President to prohibit the transportation in interstate and foreign commerce of petroleum or its products produced or withdrawn from storage in violation of State law:

(5) Whether such prohibition is a valid exercise of the power vested in Congress by the Constitution

[5] In both of the cases the two questions with respect to Sec. 9 (c) are presented.

to regulate commerce among the several States and with foreign nations.

(6) Whether the authorization vested by this section in the President is an invalid delegation of legislative power.

The following questions are presented with respect to Regulations IV, V and VII [6] (promulgated under Sec. 10 (a) of the National Industrial Recovery Act to aid in the enforcement of Sec. 9 (c) of the Act), which require monthly reports from producers and refiners and the maintenance by them of books and records open to inspection, covering all transactions involving the production and transportation of petroleum and its products:

(7) Whether such regulations are authorized by Title I of the National Industrial Recovery Act.

(8) Whether they are valid exercises of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(9) Whether they are in violation of the due process clause of the Fifth Amendment to the Constitution.

(10) Whether they violate the guarantee against self-incrimination contained in the Fifth Amendment to the Constitution.

(11) Whether they violate the guarantee against unreasonable searches and seizures contained in the Fourth Amendment to the Constitution.

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[6] The validity of all three regulations is presented in No. 135 (the *Panama* case). The validity of Regulations IV and VII is presented in No. 260 (the *Amazon* case).

STATUTE, CODE PROVISIONS, AND REGULATIONS INVOLVED

The pertinent provisions of the Act of June 16, 1933, known as the National Industrial Recovery Act, and the Code of Fair Competition for the Petroleum Industry, and the pertinent Regulations are set forth in Appendix A, *infra,* pp. 196–228.[7]

STATEMENT

These cases came to the court below upon appeal by the respondents from decrees entered on February 21, 1934, by the United States District Court for the Eastern District of Texas (No. 260, R. 131–135; No. 135, R. 133–134). A number of causes were consolidated with each case (No. 260, R. 131–135; No. 135, R. 133–134). No. 260 will hereinafter be referred to as the *Amazon* case, and No. 135 as the *Panama* case.

In the *Amazon* case several owners and operators of oil-producing properties in the East Texas oil field filed a bill in equity on October 27, 1933, in the District Court of the United States for the Eastern District of Texas (No. 260, R. 1–15) against Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior in charge of the Tyler, Texas, office of said Division; S. D. Bennett, United States Attorney for the

[7] For the convenience of the Court the provisions of the Act, Code, and Regulations directly involved in these cases are also summarized and, in some instances, set forth in full in the statement (*infra*, pp. 7–18).

Eastern District of Texas; and Phil E. Baer, United States Marshal for said District, seeking to restrain them from enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry (hereinafter called the Petroleum Code) and Regulations IV and VII promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the National Industrial Recovery Act (hereinafter called the Recovery Act).[8] The bill contained allegations relating to numerous other provisions of the Code (No. 260, R. 8–9, 11), but at the trial of the case no evidence was offered by the complainants with respect to these provisions, and the decree entered by the District Court (No. 260, R. 131–135) was limited to Section 4 of Article III of the Petroleum Code and Regulations IV and VII.[9]

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[8] In the same bill the complainants also sued to restrain the Railroad Commission of Texas, and other officers of that State, from enforcing orders issued by the Commission under the laws of Texas fixing the allowable production of oil for the entire State, and for each of the wells therein (No. 260, R. 1–15). This cause of action was severed from that against the Federal officers, and was tried before a statutory three-judge court (No. 260, R. 63–64, 133, 150), which upheld the orders of the Railroad Commission. *Amazon Petroleum Corporation* v. *Railroad Commission*, 5 F. Supp. 633.

[9] Although the bill of complaint and the decree of the District Court in the *Amazon* case did not in terms refer to the provisions of Regulation VII, the prayer for relief (No. 260, R. 15) and the decree (No. 260, R. 134) are sufficiently broad to include restraint of the enforcement of this Regulation. The Circuit Court of Appeals in its opinion in the *Amazon* case passed upon the validity of Regulation VII (No. 260, R. 182, 187, 190).

In the *Panama* case several producers and refiners in the East Texas oil field filed a bill in equity on October 23, 1933, in the District Court for the Eastern District of Texas (No. 135, R. 1–23) against Ryan and Bennett, and also against J. Howard Marshall, a Special Assistant to the Attorney General, seeking to restrain them from enforcing Regulations IV and VII, above referred to, and in addition, Regulation V, likewise promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the Recovery Act.

A brief description of the pertinent provisions of the Recovery Act, the Petroleum Code, and the Regulations will be helpful in clarifying the issues presented in these cases.

Pertinent provisions of the Recovery Act.—The Recovery Act, approved June 16, 1933 (c. 90, 48 Stat. 195), is entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes." Title I is entitled "Industrial Recovery" and Title II (not material here) is entitled "Public Works and Construction Projects." Section 1 of the Act states:

> A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.

This section then asserts the policy of Congress in enacting this Act to be as follows:

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Section 2 (a), (b), and (c), entitled "Administrative Agencies", authorize the President to establish such agencies and to appoint such officers and employees as he may find necessary to effectuate the policy of Title I, to delegate any of his functions and powers under that title to such officers, agents, and employees as he may designate or appoint, and to establish an industrial planning and research agency to aid in carrying out his functions under that title, and provides that Title I shall

cease to be in effect, and any agencies established thereunder shall cease to exist at the expiration of two years after the date of the enactment of the Act, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 has ended.

Section 3 is entitled "Codes of Fair Competition." Section 3 (a), pursuant to which the Petroleum Code was approved by the President, reads as follows:

> Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: ***Provided further,*** **That where** such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section

> shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3 (b) declares that the provisions of a code approved by the President shall be the standards of fair competition for the trade or industry in question, and provides that any violation of such standards "in any transaction in or affecting interstate commerce" shall be deemed an unfair method of competition in commerce, within the meaning of the Federal Trade Commission Act.

Section 3 (c) vests the several District Courts of the United States with jurisdiction in equity to restrain violations of any code approved under Title I.

Section 3 (f) provides as follows:

> When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a

> misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Section 9 (c) of the Act authorizes the President:

> to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. * * *

Violation of an order of the President issued under this provision is made punishable by fine of not to exceed $1,000, or imprisonment of not to exceed six months, or both.

Section 10 (a) authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of Title I and makes any violation of any such rule or regulation punishable by fine of not to exceed $500, or imprisonment of not to exceed six months, or both.

The foregoing are the only provisions of the Recovery Act directly involved in these cases.

Approval of the Petroleum Code.—On August 19, 1933, the President, pursuant to the authority conferred by Section 3 (a) of the Recovery Act, approved a Code of Fair Competition for the Petroleum Industry (Appendix A, *infra,* p. 208).

Article III of the Code provides in Sections 3, 4, and 5, as follows:

> SEC. 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly. (As modified September 13, 1933.)
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> SEC. 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or Article III of this Code not be made within the State, or if the production of petroleum within any State ex-

ceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State, any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code. (As amended September 13, 1933, and September 25, 1934.)

SEC. 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State.

> If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State, may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

By Executive Order of August 28, 1933, the President appointed the Secretary of the Interior to be the Administrator of the Petroleum Code and designated the Department of the Interior as the Federal agency provided for in the Code. (Appendix A, *infra,* p. 209.) As such Federal agency, the Department of the Interior has periodically estimated the amount of crude oil required to balance the national consumer demand, and has allotted the total among the producing States, including Texas.[10]

The Railroad Commission of Texas is the agency charged under the laws of that State with the duty of making allocations of production of crude oil to pools and wells within the State. The amount

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[10] See Appendix A, *infra*, pp. 213–216, for orders estimating the national demand for September and October 1933, and making allocation thereof among the producing States.

allotted to the State of Texas was certified by the Department of the Interior to the Railroad Commission of Texas, which thereupon allocated the share of the national demand thus assigned to Texas to the individual wells within the State. As previously stated (*supra,* p. 6), the validity of the orders of the Railroad Commission of Texas was attacked by the complainants in the *Amazon* case and upheld by a statutory three-judge court. No appeal was taken from this decision and the time for appeal has expired.

Under the provisions of Section 4 of Article III of the Petroleum Code, production by any producer in Texas in excess of the quota thus assigned to him by the Railroad Commission of Texas is an unfair trade practice and a violation of the Code (*supra,* p. 13). It was the threatened prosecution by the Federal Government under the Recovery Act for violation of this section of the Code which the complainant producers in the *Amazon* case sought to enjoin.

Executive Order under Section 9 (c) and the Regulations.—On July 11, 1933, the President, pursuant to the power granted to him by Section 9 (c) of the Act, issued an Executive Order prohibiting the transportation in interstate or foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted by State law or valid regulation, or order prescribed thereunder. (Appendix A,

infra, p. 217.) On July 14, 1933, the President, pursuant to Section 2 (b) of the Act, delegated to the Secretary of the Interior all of the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act and the Executive Order of July 11, 1933, "including full authority to designate and appoint such agents, and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary." (Appendix A, *infra,* pp. 217–218.).

On July 15, 1933, pursuant to the authority thus conferred upon him and under Section 10 (a) of the Act, the Secretary of the Interior promulgated certain rules and regulations. Regulations IV, V, and VII are directly involved in these cases.[11]

Regulation IV required certain monthly [12] reports from all producers of petroleum; Regulation V required similar reports from refiners, shippers, and purchasers, and Regulation VII required that such producers and refiners, *inter alia,* maintain

[11] These Regulations were amended on July 25, 1933, August 2, 1933, and August 21, 1933. They are summarized above as they read when these suits were instituted. By the order issued August 2, 1933, Regulation IV was suspended except in States or areas where producers are required by State proration laws to make monthly reports, and Regulation V was suspended except as to purchasers, shippers, or refiners of petroleum derived in whole or in part from the East Texas and Oklahoma City areas. (Appendix A, *infra,* p. 222.)

[12] The statement in petitioners' brief in No. 135 (p. 6) that *daily* reports were required under Regulations IV and V is in error.

records available for inspection by agents of the Division of Investigations of the Department of the Interior, covering all transactions involving the production and transportation of petroleum and its products.

Regulations IV and V provided, prior to recent changes [13] hereinafter referred to, in summary form as follows: [14]

Regulation IV.—Producers of petroleum shall file statements under oath before the 15th day of each month with the Division of Investigations of the Department of the Interior showing for the preceding calendar month the state allowable for each property and well; the actual daily production in barrels; the persons to whom petroleum was delivered; the quantity involved in each delivery, and the amount of all petroleum in storage at the beginning and end of the calendar month.

Regulation V.—Purchasers, shippers, and refiners of petroleum shall file statements under oath by the fifteenth of each calendar month with the Division of Investigations of the Department of the Interior showing, for the preceding calendar month, the place and date of all receipts and deliveries of petroleum, and the names of the persons from whom it was received or to whom it was de-

[13] These changes do not appear to be material to these cases (*infra*, pp. 23–26).

[14] For exact text of the Regulations as they read when these suits were instituted see Appendix A, *infra*, pp. 218–221.

livered; the amount received or delivered; the amount held in storage at the beginning and end of the calendar month; and such other detailed information necessary to identify the source of the petroleum or its products received, as may be required by the Division of Investigations of the Department of the Interior.

The reports required by Regulations IV and V at the time of the commencement of these suits were also to contain declarations on knowledge by producers and on information and belief by refiners that none of the petroleum produced or received had been produced or withdrawn from storage in violation of State laws, but this requirement was eliminated by an amendment made subsequent to the decision below. (*Infra,* p. 24.)

Proceedings in the courts below.—The bill in the *Amazon* case, as amended and supplemented (No. 260, R. 1–15, 54–58, 61–63), alleged, substantially, in the portions material here, that the complainants are producers of oil in the East Texas field; that the defendants have been demanding from them monthly reports (e. g. those required by Regulation IV, above described); are demanding that they produce from their wells only the amounts of oil permitted under the orders of the Railroad Commission of Texas; are making repeated inspection of their properties and gauging their tanks to ascertain the amount of oil produced by them, and have threatened to prosecute them criminally unless they

comply with the orders of the Railroad Commission of Texas fixing their quotas and furnish the reports required. The bill alleged that the Recovery Act, and particularly Section 9 thereof, exceeds the power of Congress under the Constitution; that it contains an invalid delegation of legislative power; and that it violates the Fourth, Fifth, Eighth, Ninth, and Tenth Amendments to the Constitution, and alleged, further, that the orders of the President and of the Secretary of the Interior under the Act, and the acts of the defendants, are not authorized by the Recovery Act.

The bill of complaint (No. 135, R. 1–23) in the *Panama* case alleged, substantially, that the complainants are a producer and a refiner in the East Texas field; that they are not engaged in interstate commerce, with the exception, as to the refiner, of that portion of its refined products which it ships to other States; that the defendants are demanding that the complainant producer furnish the reports required by Regulation IV and that the complainant refiner furnish the reports required by Regulation V and are demanding that the complainants keep open for inspection adequate books and records as required by Regulation VII, and that the defendants have threatened to prosecute the complainants criminally for failure to comply with these Regulations. The complaint also alleged that the defendants have come upon the property of the complainants by force and gauged their tanks and

dug up their pipe lines, and have otherwise interfered with their operations. The complaint alleged that Section 9 (c) of the Recovery Act exceeds the power of Congress under the Constitution and contains an unconstitutional delegation of legislative power, that the Regulations in question are in excess of the power of Congress to regulate interstate and foreign commerce, and that they violate the Fourth and Fifth Amendments to the Constitution.

The answers of the defendants, so far as material here, alleged, substantially, the validity of the Recovery Act, the pertinent provisions of the Petroleum Code, and the Regulations in question (No. 260, R. 15–54, 58–61; No. 135, R. 23–37). In the *Panama* case they deny entering upon the property of the complainants by force.

The *Panama* case came on for hearing on November 6, 1933, and the *Amazon* case on December 14, 1933. By stipulation it was agreed that evidence submitted by the parties in affidavit form upon these hearings for preliminary injunction should constitute the evidence upon which the court should finally determine the cases (No. 260, R. 63–64; No. 135, R. 131), and the issues were thereupon submitted to the court for decision upon the merits. The evidence thus submitted, so far as material to the issues presented in these cases, will be considered under the appropriate headings in the Argument.

On February 21, 1934, the District Court entered the decrees here in question. The decree in the *Panama* case (No. 135, R. 133–134) permanently enjoined the defendants from:

(1) "Enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce"; and

(2) "Going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or regulations promulgated thereunder."

The decree in the *Amazon* case (No. 260 R. 131–135) permanently enjoined the defendants from:

(1) Enforcing or attempting to enforce against complainants, their agents, and employees, Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry;

(2) Requiring from complainants, their agents, servants, and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior, under Section 10 (a) of the National Industrial Recovery Act;

(3) Instituting any actions of a civil or criminal nature against complainants for violations of "the

aforesaid Code provisions and regulations above mentioned"; and from

(4) Going upon the property of complainants "under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned."

On March 17, 1934, the District Court filed its findings of fact and conclusions of law in both cases (No. 135, R. 134–138; No. 260, R. 135–139).

An appeal from both decrees having been taken by the defendants to the Circuit Court of Appeals for the Fifth Circuit, that court reversed the decrees and remanded the causes with directions to dismiss the bills (No. 260, R. 192; No. 135, R. 191).

The opinion of the Circuit Court of Appeals.— The Circuit Court of Appeals held in both cases that Section 9 (c) is valid and that the regulations thereunder are valid and enforceable against petitioners (No. 135, R. 178–190; No. 260, R. 180–192). In the *Amazon* case the court held that injunctive relief could not be had against the enforcement of Section 4 of Article III of the Code, because "an adequate remedy against abuse is afforded in the proceedings indicated by the statute [Sections 3 (b), 3 (c), and 3 (f)]" (No. 260, R. 188), although the court was also of the opinion that "the provision of the Code thus enforced [e. g., as provided in Sections 3 (b), 3 (c), and 3 (f)] does not appear to be unconstitutional" (No. 260, R. 188).

In view of the uncontroverted evidence establishing that petitioners in No. 260 (the *Amazon* case) were in danger at the time of the filing of the suit of criminal prosecution for violation of the Code provision (No. 260, R. 71–72, 182), the opinion of the court below, so far as it is based on the impropriety of injunctive relief, does not appear to be in accord with other decisions. See *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 238; *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 621–622.

EFFECT ON THESE CASES OF RECENT CHANGES IN THE REGULATIONS AND THE CODE

As to the Regulations.—Since the decisions below were handed down, the regulations involved herein have been amended. The Government wishes to call the attention of the Court to these changes and their possible bearing upon these cases.

The Secretary of the Interior by an order dated July 20, 1934 (as amended by his order of July 24, 1934), amended the prior regulations promulgated by him to carry out the provisions of Section 9 (c) by substituting therefor new regulations insofar as future transactions are concerned. The new regulations are set forth in Appendix A, *infra,* pp. 223–228.

The new regulations embody substantially all the requirements of the three earlier regulations (IV, V, VII) under attack in these cases. The earlier regulations required monthly reports by producers of petroleum (Reg. IV), and by purchasers, shippers, and refiners of petroleum (Reg. V), contain-

ing certain data. The new regulations require such producers, purchasers, shippers, and refiners to keep and preserve the same and other data (Reg. V, A, B) and to file reports with the Secretary of the Interior from time to time, as called for by him [15] (Reg. VI). The only obligation imposed by the earlier regulations and not by the present ones was that the reports of producers, purchasers, etc., should contain a declaration that none of the petroleum which they have produced and shipped, or received and disposed of, was produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order prescribed thereunder. The provisions of the earlier regulations (Reg. VII) that all persons subject to Section 9 (c) and to regulations issued thereunder shall keep and maintain, available for inspection by the Department of the Interior, adequate books and records of all transactions involving the production and transportation of petroleum, are continued in force by the new regulations (Regs. IV and V).

A suit attacking the validity of an order by a Federal regulatory body does not become moot because of expiration of the order, where the order

[15] An order issued on the same day (July 20, 1934) that the new regulations were promulgated called for monthly reports from producers and refiners, *inter alia*, and approved forms for such reports (Appendix A, *infra*, p. 228). These forms require all of the information demanded by the earlier regulations (Appendix A, *infra*, following p. 228).

is a matter of public interest and is likely to be repeated or renewed. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, 514–516; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, 452. See also *McGrain* v. *Daugherty,* 273 U. S. 135, 181–182. *A fortiori* the case is not moot where, as here, the order under attack is merely modified and substantially all of its pertinent provisions are continued in effect by the amending order.

Furthermore, the suit was brought to enjoin prosecution of past as well as future violations of the regulations (No. 135, R. 2, 9; No. 260, R. 15). Petitioners' liability for prior violations of the original regulations is still at issue in this case, since the new regulations promulgated by the Secretary on July 20, 1934, are substituted for the earlier ones only "insofar as future transactions thereby or hereby regulated are concerned" (Appendix A, *infra,* p. 223). In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, *supra,* which held that a suit to enjoin an order of the Interstate Commerce Commission fixing reasonable transportation rates did not become moot upon expiration of the order, the Court referred (p. 452) to "the possible liability for reparation to which the railroads might be subjected if the legality of the order were not determined."

Apart from the foregoing considerations, the validity of Section 9 (c) is an issue in these cases

not affected by the change in the regulations. The complaint in both cases alleged the invalidity of this section (No. 135, R. 3; No. 260, R. 12). The decree entered by the District Court in the *Panama* case enjoined the enforcement of "any rule or regulation promulgated by the Secretary of the Interior" under the National Industrial Recovery Act insofar as it applies to the production, refining, storage, or transportation of petroleum in intrastate commerce (No. 135, R. 133), and also enjoined interfering in any way with the conduct of petitioners' business by reason of the provisions of that Act "or regulations promulgated thereunder" (No. 135, R. 134). The Circuit Court of Appeals sustained the validity of Section 9 (c) (No. 135, R. 178–190; No. 260, R. 180–192), and one of the grounds upon which petitioners in both cases relied for the allowance of a writ of certiorari is that this holding is erroneous.

As to the Code provisions.—Prior to the allowance of the writ of certiorari in the *Amazon* case, the attention of the Court was directed to the omission of the second paragraph of Section 4 of Article III of the Code in the Executive Order of September 13, 1933, which made various modifications of the Code, and to the reinstatement of this paragraph as a part of the Code by Executive Order of September 25, 1934, certified copy of which was filed with the Clerk of this Court. (See Respondents' Memorandum and Supplemental Memoran-

dum in No. 260.) It was stated that the Government cannot and therefore does not intend to prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas. But, as further stated, the Government does intend to prosecute petitioners or other producers if they produce or have produced in excess of such quotas after September 25, 1934.

The Government believes that the Court may, on the record in this case, consider and determine the validity of Section 4 of Article III, as thus amended by the Executive Order of September 25, 1934. See *Texas Co.* v. *Brown,* 258 U. S. 466, 474; *Pugh* v. *McCormick,* 14 Wall. 361, 374; *Watts, Watts & Company* v. *Unione Austriaca &c.,* 248 U. S. 9, 21; *American Foundries* v. *Tri-City Council,* 257 U. S. 184, 201. Both courts below considered the case on the assumption that the second paragraph of this section was a part of the Code. Moreover, the considerations bearing upon the validity of this paragraph are in no material respects now different from those existing at the time of the original adoption of the Code. Finally, petitioners have assumed during the entire course of this case that this paragraph had not been eliminated from the Code (see Pet. pp. 25–26) and have informed the Government that they desire the Court on this record to consider and determine the validity of this paragraph.

It is submitted that there is sufficient basis for jurisdiction in equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934. See *Hygrade Provision Company* v. *Sherman,* 266 U. S. 497, 499–500; *Terrace* v. *Thompson,* 263 U. S. 197, 212, 214–216; *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 620–621; *Pierce* v. *Society of Sisters,* 268 U. S. 510; *Euclid* v. *Ambler Realty Company,* 272 U. S. 365.

SUMMARY OF ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

Congress has plenary power under the Constitution to regulate commerce among the States and with foreign nations. This power is not confined to the regulation of transactions occurring in interstate and foreign commerce but extends to any and all kinds of activity which substantially burden or affect such commerce. The transactions subject to regulation by Congress may often include matters which the States may regulate, but if conflict should arise this Court has held that State law must yield to the paramount Federal power (*infra,* p. 46). The decision of this Court in *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S.

210, sustaining the power of the States to restrict production of oil, does not, therefore, preclude the exercise of Federal power, providing that conditions attending the production of oil are shown to have a direct and substantial effect upon interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code seek to stabilize the interstate market in petroleum and its products through limitation of the production of petroleum to the national consumer demand. The Code provides for the ascertainment by a Federal agency of the national demand for petroleum and the allocation thereof equitably among the producing States. It is provided that those States, such as Texas, which have official agencies charged with prorating production, shall apportion the share of the national demand assigned to them among the individual wells and properties within the State. Production in excess of quotas assigned by a State is made a violation of the Code. The quotas involved in the *Amazon* case were assigned to petitioners under these provisions of the Code by the Railroad Commission of Texas, the agency charged with the administration of the conservation laws of that State.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

The petroleum industry is national in scope and importance. Commerce in petroleum and its products is carried on between all of the States and between the United States and foreign nations.

At least ninety percent of the products of this industry is shipped into interstate and foreign commerce. The greater part of the nation's crude petroleum is produced in Texas, Oklahoma, California, and other Western States and is consumed in the centers of population in the East and Middle West. Crude oil produced in each of the eighteen producing States competes for the national market with crude from every other producing State, and there is a similar competition in the marketing of petroleum products between the many refining areas in the country. Practically all crude petroleum moves from the producing areas to market through great interconnected pipe-line systems extending across many States. In the course of the movement of oil from the well to the ultimate consumer, that portion of the oil or its products in intrastate commerce is physically commingled with that destined for other States.

A large portion of the industry is controlled by a number of major integrated companies whose activities extend throughout all branches of the industry and over many different States. Fierce competition prevails in the industry, particularly in the retail market. Because of the wide-spread activities of the integrated companies and the speed with which crude oil moves from the well to the consumer, the price structure of crude oil and its products is quickly responsive to conditions in nearly any branch of the industry or any section of the country.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geological, legal, and economic factors governing the production of crude oil in this country has compelled excessive production of oil. The fugitive nature of oil, when combined with the law of capture and the leasing system under which production of oil is carried on, has led to a wild race between the many separate operators in an oil field to capture as much oil as possible from their own and adjacent properties, regardless of the demands of the market. The rush to produce has been intensified by the cost advantage enjoyed by flush fields as against those of settled production and by the abnormally large production of the first wells drilled. Such excessive production has resulted in extreme declines in the price of crude oil and its products throughout the country. The law of supply and demand has, in this industry, failed to assert a corrective influence upon production; on the contrary, decline in price has accelerated production, with consequent further and further price declines. The inelastic nature of the demand for petroleum in recent years has been an aggravating factor in such price declines.

Prior to 1926 fear of a scarcity of oil and the increasing demand for petroleum products operated to some extent as a stabilizing influence upon the market. The discovery after 1926 of a series of

prolific new pools replaced fear of scarcity by knowledge of enormous excess capacity and caused the development of a potential production many millions of barrels in excess of current consumption. In 1931 and again in 1933 the interstate market in petroleum and its products, the stability of which had been continuously threatened since 1926 by the production from these new fields, was completely demoralized, primarily by reason of the excessive production of the Oklahoma City and East Texas pools. Production from these two fields broke the crude-oil price structure in every producing area in the country, driving prices far below the cost of production, and causing a parallel collapse of the price of refined products. The tremendous surplus stocks of crude oil and gasoline which were accumulated and the inelastic nature of the demand for gasoline led to vicious competitive excesses in the struggle between retail marketers for gallonage. The huge amounts of oil produced in violation of State law exerted a particularly depressing effect upon the interstate market because of the large discounts at which such "hot oil" or its products were offered for sale in interstate commerce.

Producers in the "stripper" or pumping well areas were drastically affected by the collapse of the price structure resulting from the excessive production of the flush fields. Prices in the "stripper" well areas were driven far below the

cost of producing oil from such wells, causing many of them to be abandoned, with the permanent loss of oil reserves. Cheap oil from the flush fields deprived many "stripper" well areas of their normal interstate and foreign markets and threatened to monopolize the entire market of most of the "stripper" well areas in the country. The "stripper" fields contain a large proportion of the total oil reserves of the nation; the shutting down of these fields would involve a serious loss of oil reserves.

C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for Federal control

The efforts of the industry and the States to control the production of oil have failed to prevent the collapse of the national market. The facility with which oil moves in interstate commerce from different sources of supply has made it impossible for proration to operate successfully as a local matter. Any field or State which refused to restrict production to a fair share of the national demand would merely absorb a part of the market of other fields or States which attempted such restriction. Efforts to coordinate the activities of the producing States upon a national scale proved unsuccessful. By the spring of 1933 both the industry and the States had come to realize that stabilization of the market could only be achieved by Federal control of production.

D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress

Unrestricted production from the flush fields has had a direct and substantial effect upon interstate commerce in petroleum and its products: (1) It has caused violent fluctuations throughout the country in the price of crude oil and its products, and (2) it has absorbed part of the market of the "stripper" well fields, thus diverting the normal flow of oil from the "stripper" areas. Such direct and substantial effects upon interstate commerce afford sufficient basis for the Federal control of oil production embodied in the Petroleum Code.

This Court has held that local activity which directly affects the price of commodities moving in interstate commerce may be regulated by Congress. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Patten,* 226 U. S. 525. See *Standard Oil Co. (Indiana)* v. *United States,* 283 U. S. 163, 169. Local acts, such as production or manufacture, which occur before interstate commerce has commenced, are nevertheless subject to the Federal commerce power when they directly affect interstate commerce. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Standard Oil Co. (Indiana)* v. *United States, supra,* p. 169. Decisions of this Court have sustained regulations of local acts which affected interstate commerce much less directly than does the volume of oil produced in the flush fields. *Stafford* v. *Wallace,* 258 U. S.

495; *Colorado* v. *United States,* 271 U. S. 153; *Florida* v. *United States,* 292 U. S. 1; *United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

In the Sherman Act Congress sought to prevent the exaction of monopoly prices from the consuming public, and it has been held that Congress had the power in carrying out this statutory purpose to prohibit local acts, including interruption of or restraint upon production, which affected interstate commerce directly or substantially. In the Recovery Act Congress adopted the view that interstate commerce required protection from overproduction or nonremunerative prices. These Acts thus represent different economic policies. But so far as concerns the kind of activity subject to Federal regulation there can be no difference in constitutional power because of the difference in economic policies. See *Northern Securities Co.* v. *United States,* 193 U. S. 197, 337.

The Federal Government may properly seek to protect the economic welfare of an industry which is predominantly interstate. Where, as in the case of the oil industry, regulation of the purely interstate aspects of the business cannot be accomplished without control of local acts, such as production, regulation of such local acts is within the Federal commerce power. *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Railway Co.* v. *United States,* 234 U. S. 342. This Court has

recognized that the practical course of interstate business has expanded with the growth of the country. *Stafford* v. *Wallace, supra,* pp. 518–519. With the development of industries organized on a national scale and the extraordinary increase in the facilities of transportation, regulation of many intrastate aspects of such industries may be necessary for the protection of interstate commerce.

The purpose of Congress in the Recovery Act was to remove obstructions to interstate and foreign commerce resulting from the general industrial depression. See *Wilson* v. *New,* 243 U. S. 332, 348. The evident purpose of the Act is sufficient to distinguish it from the child labor law involved in *Hammer* v. *Dagenhart,* 247 U. S. 251, in which this Court found that Congress was not attempting to regulate interstate commerce, but was in fact seeking to control the social policies of the States.

II

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE REASONABLE REGULATIONS DESIGNED TO ACHIEVE PROPER OBJECTIVES OF THE FEDERAL GOVERNMENT, OF VITAL CONCERN TO THE NATION; THEY DO NOT, THEREFORE, INVOLVE ANY INFRINGEMENT OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

The Fifth Amendment does "not prohibit governmental regulation for the public welfare", but demands only that the law shall not be unreasonable and that the means selected shall have a real relation "to the object sought to be attained."

Nebbia v. *New York,* 291 U. S. 502, 525. The end sought by the Recovery Act was to free interstate and foreign commerce from obstructions brought on by a grave industrial emergency requiring prompt remedial measures. The formulation of codes of fair competition provided for in the Act, permitting simultaneous action with respect to many industries, was a reasonable and well-adapted means of regulating the hundreds of trades and industries whose activities had so injuriously affected the free flow of interstate commerce.

The petroleum industry was in particular need of immediate remedial measures because of the complete collapse of its market structure resulting from overproduction in the flush fields. The severe decline in prices had brought about tremendous wastes of oil. Such wastes were of vital national concern because of the limited supply of this important irreplaceable natural resource upon which agencies of transportation depend for an economic supply of fuel, as does the nation in time of war.

The Petroleum Code was adopted by the industry and approved by the President in order to carry out, with respect to this industry, the purposes of Congress declared in the Recovery Act. It was sought through control of production to restore stability to the market as a means of eliminating wastes and other abuses resulting from a demoralized market. The production-control provisions of the Code are reasonable regulations having a "real

and substantial relation to the object sought to be attained." *Nebbia* v. *New York, supra,* p. 525.

The Court has sustained the power of the States to restrict production to market demand as against the claim, analagous to that now made by petitioners, that such restriction involved a violation of the due process clause of the Fourteenth Amendment. *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210.

III

THE AUTHORIZATION BY CONGRESS OF THE PRESIDENT TO APPROVE CODES OF FAIR COMPETITION IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWERS

The extent to which Congress is permitted to delegate authority must be determined essentially by the necessities of practical administration. The emphasis upon practical considerations in determining whether a Congressional delegation of authority is constitutional is found in each of the leading decisions of this Court. *Wayman* v. *Southard,* 10 Wheat. 1; *Field* v. *Clark,* 143 U. S. 649; *Buttfield* v. *Stranahan,* 192 U. S. 470; *Union Bridge Co.* v. *United States,* 204 U. S. 364; *United States* v. *Grimaud,* 220 U. S. 506; *Hampton & Co.* v. *United States,* 276 U. S. 394.

The magnitude of the subject regulated in the Recovery Act, the need for speed and flexibility in carrying out the statutory purpose, and the emergency situation confronting Congress in the spring of 1933, made it essential that a delegation such as

is embodied in the Recovery Act be employed. It would have been impossible for Congress to prescribe detailed regulations applicable to trades and industries generally. Moreover, the attempt at such legislation would have delayed other measures which the public welfare demanded. Congress was confronted with the alternative either of not legislating effectively or of making a broad delegation.

The phrase "fair competition" in the Recovery Act is given substance and meaning by the context in which it is used. See *New York Central Securities Corporation* v. *United States,* 287 U. S. 12, 24, 25; *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.,* 289 U. S. 266, 285. This phrase, construed in the light of the purposes set forth in Section 1 of the Recovery Act and given expression in other sections of the Act, establishes just as intelligible a standard as the expressions "unfair methods of competition", "public interest", "public necessity and convenience", and "just and reasonable" found in other statutes which have uniformly been sustained by this Court.

IV

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE AUTHORIZED BY THE RECOVERY ACT

Production in excess of quotas assigned by a State agency pursuant to the provisions of the Petroleum Code is "unfair" (*Federal Trade Commission* v. *Keppel & Bro., Inc.,* 291 U. S. 304) and

concerns "competition" and may, therefore, be prohibited in a code of fair competition approved under the Recovery Act. The competition of industrial concerns may extend to any step in the industrial process, including production of raw materials. This is particularly so in the case of the oil industry. Various provisions of the Recovery Act evidence the intention of Congress that codes should contain regulation of production where necessary to carry out the purposes of the Act. The consistent administrative construction of the Act also supports the conclusion that code provisions regulating production are authorized. Such a construction of the Act by those charged with administering it "will not be overturned except for very cogent reasons." *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315. Congress has, in effect, ratified the restriction of production contained in the Petroleum Code, since it subsequently enacted a statute taxing the sale and processing of crude oil, a secondary purpose of which was to assist Federal officers in enforcing the code provisions regulating production.

V

SECTION 9 (C) OF THE RECOVERY ACT IS CONSTITUTIONAL

A. Section 9 (c) is within the commerce power of Congress

Section 9 (c) authorizing the President to prohibit transportation in interstate and foreign commerce of oil or its products produced or withdrawn from storage in violation of State law is a valid

regulation of interstate commerce. The transportation in interstate commerce of "hot" oil or its products contributes to harmful results, both in the States where "hot" oil is produced and the States to which it is transported. Prohibition of the use of interstate commerce as an instrumentality for the promotion of violation of State laws, or for the furtherance of injurious or harmful results in other States, has been consistently upheld. *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311; *Brooks* v. *United States,* 267 U. S. 432; *Champion* v. *Ames,* 188 U. S. 321. The statute involved in *Hammer* v. *Dagenhart,* 247 U. S. 251, is clearly distinguishable from Section 9 (c), since (1) no showing was made in *Hammer* v. *Dagenhart* that the transportation there prohibited produced harmful results in other States, and (2) Section 9 (c) clearly operates in aid of State laws and cannot, therefore, be regarded as invading the power of the States.

B. Section 9 (c) is not an unconstitutional delegation of legislative authority

The President's discretion under this section is limited to determining when the prohibition shall take effect. Delegations of this character have uniformly been upheld. *Hampton & Co.* v. *United States,* 276 U. S. 394; *Field* v. *Clark,* 143 U. S. 649. The general policies and purposes of the Recovery Act, of which Section 9 (c) is an integral part,

govern the President's determination of the time or times during which the prohibition against the transportation of "hot" oil shall be applied.

VI

THE REGULATIONS HERE IN QUESTION ARE IN ALL RESPECTS VALID AND CONSTITUTIONAL

A. The requirement of monthly reports from producers (Reg. IV) and refiners (Reg. V) and the maintenance by them of books and records open to inspection (Reg. VII) is authorized by Section 10 (a) of the Recovery Act as necessary to the enforcement of Section 9 (c).

The enormous extent of the East Texas field, the intricate gathering and pipe-line systems in the field, the large number of wells and operators, the intermingling of legal and illegal oil in the course of transportation from the field, and the numerous devices employed to conceal illegal operations make it impossible, as a practical matter, to detect movements in interstate commerce of "hot" oil or its products by ordinary policing methods. The only practicable and effective means of tracing the movement of "hot" oil in interstate commerce is by a complete system of reports from all persons handling oil from the well to the interstate carrier.

Reports from all producers in the field are essential since they alone can report facts concerning the legality of their production. It is impossible to distinguish between producers, and to require reports only from those whose oil moves in inter-

state commerce. Producers cannot ordinarily know either the immediate or ultimate destination of their oil. Eighty-five percent of the oil from the field flows eventually into interstate and foreign commerce and every well in the field contributes to this stream of commerce to some extent.

Reports from all refiners in the field are likewise essential in order that it may be determined whether the products which they ship into interstate commerce were manufactured from "hot" oil. Most, if not all, refineries in the field ship part of their products in interstate commerce. The refineries in East Texas constitute the principal outlet of illegal petroleum from the field.

The requirement that books and records be maintained open to inspection is a necessary means of checking the accuracy of the reports. The reporting system, supplemented by the inspection of books and records, serves not only to detect actual violations of Section 9 (c) but also to deter future violations.

B. The regulations impose no burden or inconvenience. They are clearly not unreasonable, arbitrary, or capricious.

C. Although the regulations require information as to intrastate transactions, they do not exceed the power of Congress under the commerce clause, since the information sought is necessary to the enforcement of Section 9 (c), a valid regulation of interstate commerce. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194.

D. The regulations do not violate the prohibition against unreasonable searches and seizures in the Fourth Amendment nor the privilege against self-incrimination in the Fifth Amendment. The language and history of these amendments and the decisions of this Court make it clear that these constitutional guarantees were not intended to apply to such matters as the filing of reports or the keeping of books for inspection as incidental to the enforcement of a regulatory statute. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Baltimore and Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co., supra; Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. The reports and inspections provided for are not merely preliminary steps in the preparation of court action against the persons subject to the regulations. Reports of those complying with the law aid in detecting violations by others without in any way incriminating the former.

ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

The commerce clause of the Constitution, as this Court has frequently stated, vests Congress with complete and plenary power to regulate commerce among the several States and with foreign nations.

This Court has said that "the power to regulate commerce is the power to enact 'all appropriate legislation' for its protection and advancement * * *; to adopt measures 'to promote its growth and insure its safety' * * *; 'to foster, protect, control, and restrain.'" *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570.

The full scope of this power has been affirmed by this Court in many cases, and it is now settled law that this power is not confined to the regulation of transactions occurring in interstate and foreign commerce, but extends to any and all kinds of activity which substantially burden or affect such commerce (*Swift & Co.* v. *United States,* 196 U. S. 375; *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Ry.* v. *United States,* 234 U. S. 342; *Stafford* v. *Wallace,* 258 U. S. 495; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1) even though such activity is in itself not commerce at all (*United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295). Moreover, it is immaterial whether the activity has occurred wholly within a State before movement in interstate commerce has commenced. *Local 167* v. *United States,* 291 U. S. 293; *United States* v. *Reading Co.,* 226 U. S. 324; *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

The transactions thus subject to regulation by Congress may often include matters which may also

be regulated by the States within their police power or taxed locally. In such cases, if the state regulation does not burden interstate commerce or in any way conflict with the Federal law, both Federal and State regulations may be in force at the same time. Compare *Bacon* v. *Illinois,* 227 U. S. 504, and *Dickson* v. *Uhlmann Grain Co.,* 288 U. S. 188, with *Chicago Board of Trade* v. *Olsen, supra; Minnesota* v. *Blasius,* 290 U. S. 1, with *Stafford* v. *Wallace, supra; Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172, with *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295. If conflict should arise, however, or if Congress has manifested any intention completely to occupy the field, this Court has held that State law must yield to the paramount Federal power. *Minnesota Rate Cases, supra; Houston, E. & W. Texas Ry.* v. *United States, supra; Florida* v. *United States,* 292 U. S. 1; *Adams Express Co.* v. *Croninger,* 226 U. S. 491. "The rule which marks the point at which state taxation or regulation becomes permissible" does not necessarily prevent "interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the States." *Swift and Co.* v. *United States, supra,* p. 400; *Stafford* v. *Wallace, supra,* p. 525. Such cases as *Kidd* v. *Pearson,* 128 U. S. 1, *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245, *Oliver Iron Mining Co.* v. *Lord, supra, Hope Natural Gas Co.* v. *Hall,* 274 U. S. 284, *Utah Power and Light Co.* v. *Pfost,* 286 U. S. 165, and *Chassaniel* v. *Greenwood,* 291 U. S. 584, which define the

permissible limits of action by the States, are, therefore, not applicable.

Thus the power of the States under their police power to restrict the production of oil (*Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210) does not preclude the exercise of Federal power over the same subject matter if the conditions surrounding the production of oil afford a reasonable basis for the view that Federal control of petroleum production is necessary for the regulation of interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code (Article III, Sections 3, 4, and 5, *supra,* pp. 12–14) have for their primary purpose the stabilization of the interstate market in petroleum and its products through the limitation of production of crude petroleum to the amount necessary to meet the national consumptive demand for petroleum products. This demand, once ascertained, is apportioned equitably among the States (Article III, Section 3). As large a measure of control as is possible is left to the States themselves. Thus it is provided that the subdivision into quotas within a State of the share of the national demand assigned to it is to be made within the State (Article III, Section 4). No provision is made for Federal determination of quotas within a State unless the States themselves fail to establish such quotas (Article III, Sections 4 and 5), or unless production within a State exceeds the share of the national de-

mand assigned to it (Article III, Section 4). Under these provisions the quotas under which the petitioners in the *Amazon* case operate have been assigned to them, not by the Federal Government, but by the State of Texas through its administrative agency, the Railroad Commission. The Petroleum Code, in effect, adopts the quotas thus assigned and makes production in excess of such quotas a violation of the Code (Article III, Section 4, second paragraph).

This case thus squarely presents the issue as to whether the Federal Government may, under the commerce clause, regulate the amount of oil produced throughout the nation. The determination of this issue depends essentially upon questions of economic fact involving a consideration of the structure of the petroleum industry, the conditions governing the production of oil, and the effect of such conditions upon interstate commerce in petroleum and its products.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

National scope and importance of the industry.[16]—The petroleum industry is nation-wide in

[16] In this and other parts of the brief citation is made to material not included in the record. All of the non-record citations are to published material falling into two main classes:

(1) Publications of Federal agencies: House and Senate Reports and Documents; hearings before Senate and House Committees; publications of the Federal Oil Conservation

scope. It is the third largest industry in the Nation (R. 79),[17] representing a capital investment of from twelve to fifteen billions of dollars (R. 79, 83), and engaging the services of over a million employees (R. 79). Crude petroleum is produced in substantial quantities in eighteen States (R. 79; Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 306). In these States there are approximately 325,000 wells, located on over four million acres of land,

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Board; statistical publications of the United States Bureau of Mines and other Federal agencies.

(2) Publications of non-Federal agencies: Reports of the Railroad Commission of Texas; publications of the American Institute of Mining and Metallurgical Engineers and numerous trade journals of general use in the oil industry.

These publications contain matters of common knowledge to persons familiar with the oil industry and are generally regarded as reliable sources of information concerning this industry. The Government believes that the nonrecord material referred to in this brief may properly be considered by the Court in determining whether a reasonable basis exists for the provisions of the Recovery Act, the Petroleum Code, and the Regulations here in question. See *Muller* v. *Oregon*, 208 U. S. 412, 419; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 16; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 10–15; *Nebbia* v. *New York*, 291 U. S. 502; *Burns Baking Company* v. *Bryan*, 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 10.

Some of the above-described material is referred to or quoted in the brief proper. Excerpts from some of the more important sources cited are reprinted in a separately printed appendix to the brief.

[17] The record references under Point I of this brief are to the record in No. 260 (the *Amazon* case), which alone involves the validity of the code provisions.

and there are about five hundred refineries and 325,000 marketing outlets employed in the industry (*Id.,* p. 299; R. 83). Commerce in petroleum and the products into which it is refined is carried on between all the States in the United States, and between the United States and foreign nations (R. 79). The United States consumes about 63 percent of the world's total supply of petroleum, and produces 60 percent of the world's total production, producing 785,000,000 out of 1,311,000,000 barrels in 1932.[18]

Interstate commerce and competition between producing areas.—Crude oil produced in each State competes for the national market with crude from every other producing State (Senate Document No. 61, 70th Cong., 1st Sess. (Federal Trade Commission, Report on Petroleum Industry, Prices, Profits, and Competition), p. 128 *et seq.*). At least 90 percent of the petroleum and its products produced in the United States is shipped into interstate and foreign commerce, and is produced with the expectation that it will be so shipped (R. 80). Ninety-five percent of the nation's crude oil is produced in Texas, California, Kansas, Oklahoma, Louisiana, and in the States bordering the

[18] The United States in 1932 consumed 835,482,000 barrels out of a total world production of 1,311,377,000, or 63.7 percent of the total. (Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, pp. 299–300.) In 1932 the United States produced 59.9 percent of the total. (*Id.*)

east of the Rocky Mountains (R. 83), and a substantial part of this crude oil is brought to the large consuming areas in the East where it is refined (R. 83). The products thus manufactured enter into competition with those refined from crude oil produced in the Eastern States (R. 92). Mid-Continent crude oil is transported by pipe line to Pennsylvania, Ohio, and Indiana, where it is similarly refined and the products placed in competition with those refined from the crude produced in such States (R. 92).

In 1932 out of a total production of crude oil of 781,845,000[19] barrels only 41,500,000 were produced in States east of the Mississippi, whereas California, Oklahoma, and Texas together produced over 84 percent of the total, and Texas alone produced over 311,000,000 barrels (R. 93). In that year 300,000,000 barrels of domestic crude, or 38 percent of the total production, were refined in the States east of the Mississippi, which area has 70 percent of the population of the country and of the automobile registration (R. 93). The northeastern States alone consume about 36 percent of the total petroleum products (R. 83).

In 1932 Texas delivered 46 percent of the crude produced by it to States east of the Mississippi (R.

[19] The figures for 1932 in the Record were based upon preliminary Bureau of Mines reports made early in 1933. The final figures, which differ only slightly, are found in Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 303, since published.

93). It produced 22 percent of the total gasoline refined in the United States, of which it delivered 80 percent to other States (R. 93). Approximately 85 percent of the crude oil and its products produced in Texas moves into interstate and foreign commerce (R. 84, 111, 117), and almost every producer and refiner in Texas contributes to this stream of commerce to some extent (R. 84).

Dependence upon oil of agencies of commerce.—All agencies of transportation require the products of this industry for fuel or lubrication. All of the millions of automobiles, trucks, buses, and airplanes, and a large proportion of railroads and ships use petroleum products for fuel, as does a great deal of the installed horsepower of the United States (Bureau of Mines, Mineral Market Report (No. M. M. S. 154, November 16, 1932),[20] Appendix B, p. 11).

Movement of petroleum in interstate commerce—the pipe-line system.—Practically all petroleum normally passes in a continuous movement from the underground source of supply to market through great interconnected pipe-line sys-

[20] Virtually the entire production of gasoline, the principal product of crude petroleum, is consumed by motor vehicles. Almost one-half of the fuel and gas oil, the next largest derivative of crude petroleum, is consumed by railroads, steamships, and United States Navy and Army transports, which in 1931 consumed 150,000,000 out of a total of 356,000,000 barrels distributed in the United States in that year (Bureau of Mines, Mineral Market Reports (No. M. M. S. 154, November 16, 1932), Appendix B, p. 11).

tems. When crude oil leaves the ground it generally passes into temporary storage tanks near the wells, from which it passes into gathering pipe-line systems serving the field (R. 79, 114–117; Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 99, Appendix B, p. 9; Petroleum Facts and Figures (American Petroleum Institute, 4th ed. 1931), pp. 111, 112). The great bulk of the crude then moves into connected trunk pipe-line systems, which carry it to major refinery centers or to ocean terminals for transshipment by tanker (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 7, Appendix B, p. 4; House Report No. 2192, 72nd Cong. 2nd Sess. (Report on Pipe Lines), Map opposite p. lviii, Appendix B, p. 45). In some instances the oil moves from the gathering lines to loading racks for railroad distribution or to refineries located in or near the field, but the great bulk of the oil is transported though the major trunk pipe lines.[21] The interconnected character and the extent of the pipe-line network is graphically illustrated by the map contained in the Report on Pipe Lines, *supra,* which appears in Appendix B at page 45. From this it appears that several pipe lines extend in an arc

[21] The report of the Bureau of Mines for September 1934 (Department of the Interior, Press Release, November 1, 1934) shows that of 72,148,000 barrels total deliveries, 53,304,000 were by pipe line, 16,596,000 by ship, and 2,248,000 by railroad or truck. A large proportion of the oil shipped by vessel was delivered to the coast through pipe lines.

across the country from Texas, northeasterly through Oklahoma, Kansas, Missouri, and Illinois, and then due easterly through Indiana, Ohio, Pennsylvania, and New Jersey (R. 116). Lines from Wyoming, Louisiana, and Arkansas connect with this main trunk-line system (R. 116). In Texas and Oklahoma there is a network of lines, large and small, joining the main trunk lines to the north, and others leading down to tidewater on the Gulf coast (R. 116). California has its own system linking its fields with the refineries at tidewater (R. 116).

Of the 73 major pipe-line companies 21 are engaged exclusively in interstate commerce (R. 114; Report on Pipe Lines, *supra,* at p. lxxi). Those pipe lines engaged in both intrastate and interstate transportation have both operations so intermingled that it is impossible to separate them; in many operations the same pipe lines and pumping equipment are used for transporting oil both in interstate and intrastate commerce; and frequently oil originating in a given pool will move through the same pipe line in both interstate and intrastate commerce, part being delivered locally and the rest in interstate commerce. (R. 114, 115.)

Movements from East Texas.—There are thirteen pipe lines transporting crude oil from the East Texas field to various parts of the United States (R. 116). It is apparent from the map referred to above that the great bulk of the petroleum

from this field moves through pipe lines north into the Mid-Continent market, or south to Lousiana and Texas Gulf ports, from which it is shipped to the East Coast markets.[22] Even that portion of the crude oil moving to refineries located in the East Texas field is not out of the stream of interstate movement; although a small part of the products of oil moving to these refineries, chiefly gasoline, may be consumed locally, the major portion of the products actually move into interstate commerce (R. 117).

Intermingling of crude oil in inter- and intrastate commerce.—It is apparent that after oil leaves the well it is impossible to ascertain the ultimate destination of the crude oil, or of the many products which will ultimately be refined from it (R. 80). Some part of practically all crude petroleum is moved into interstate commerce in one continuous process. As soon as crude leaves the well for the storage tanks that portion destined for intrastate commerce is mingled with the larger portion destined to move in interstate commerce, and it is further commingled when it passes into the gathering pipe lines of the field and thence into the

[22] In September 1934, 38,080 barrels of crude were shipped by rail, 12,710,753 by pipe line, and 2,157,261 barrels were refined in the East Texas field (Railroad Commission of Texas, Oil and Gas Division, Monthly Production and Storage Report for East Texas Field (September 1934), p. 9 (Appendix B, p. 181).

trunk pipe lines or to the refineries near the field, or to truck, rail, or water carriers (R. 79, 80).

Intermingling of petroleum products in inter- and intra-state commerce.—A similar commingling of interstate and intrastate commerce in petroleum occurs after the crude oil has been processed at the refineries into its various byproducts. These, of which gasoline is the most important, are transported by pipe line, railroads, tankers, and trucks to jobbers, distributors, and retailers located in every city and village and on every highway in the country. As a practical matter, it is nearly impossible to separate strictly interstate transactions from those intrastate in nature, "because the whole is so interrelated that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines" (R. 84, 79, 80).

Interstate competition in petroleum products.—Just as crude oil from nearly every producing state competes with crude produced in the other states (*supra,* pp. 50–51) so is there wide-spread competition between the many refinery areas [23] in the country in the sale and distribution of petroleum products. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at pp. 206–211.) Gasoline sold in Ohio may come from the flush fields of East Texas through pipe line and boat; from the Mid-Continent fields of Oklahoma and Kansas or

[23] See map from Report on Pipe Lines, *supra*, Appendix B, p. 45, showing location of the refineries.

from Michigan by pipe line or railroad; from the "stripper" well areas of Pennsylvania, Ohio, Kentucky, or Tennessee by railroad or truck. The Chicago market likewise may be serviced from the distant and widely separated areas of the older producing states and the new Mid-Continent and Texas fields. On the East Coast gasoline produced in the East may compete with gasoline from the Mid-Continent and the Gulf Coast and with gasoline brought by tankers from California. Likewise fuel oil, lubricants, and distillates leave the refineries in search of nation-wide markets in competition with commodities from competing refineries and areas in the United States and abroad.

Corporate integration of the industry.—The national unity of the industry is greatly increased by the form of its corporate organization. The structure of the industry has changed since this Court compelled the dissolution of the Standard Oil Monopoly in *Standard Oil Co.* v. *United States,* 221 U. S. 1. Instead of one monopolistic company there are now many competing integrated units, each of which produces, refines, transports and markets its products in a great many States (R. 83, 115; Report on Pipe Lines, *supra,* at p. xxiii *et seq.*). About twenty integrated companies, whose activities encompass the entire industry, produce approximately 50 percent of all crude oil produced, control 63 percent of the refining capacity and 90 percent of the pipe-line systems, and own, lease, or control

the greater part of the market outlets[24] (R. 83, 115). The oil produced by an integrated company is transported over the company's own pipe lines to its own refineries, sometimes located in another state, where it is placed in temporary storage until refined (R. 115). After refining it is moved to the distributing stations of the company and sold either to wholesalers or to the ultimate consumer (R. 115). From the moment the oil reaches the surface of the well until it arrives at the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce, about 80 percent of all oil produced being sold ultimately in states other than that in which it is produced (R. 115).

There is the fiercest sort of competition throughout the industry, particularly in the retail trade (R. 83). Competing with the major integrated companies are a number of minor integrated companies and many semi-integrated companies engaged only in production and refining, or refining and marketing, and a host of completely independent non-integrated producers, refiners, and marketers. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.)

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[24] "In 1924 the gasoline production of 46 integrated companies reporting to the commission was 172,201,000 barrels, or 80.7 percent of the United States total; in 1925 they produced 200,780,000 barrels, or 77.3 percent of the total; and during the first half of 1926 their production was 108,413,000 barrels, or 75.9 percent of the total." Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.

The integrated companies, in addition to producing their own oil, purchase the crude produced by many individuals and nonintegrated producing companies who usually have no storage or pipe-line facilities of their own (R. 116; Federal Trade Commission, Report on the Petroleum Industry, etc., *supra,* at pp. 101–107). Unless restricted in their production the integrated companies can produce all of their crude requirements from their own wells, thus destroying the market of many small independent producers (R. 81). Moreover, the large integrated companies are better able to weather price fluctuations than the small producers, refiners, or marketers (R. 85). Conditions in the East Texas oil field have shown that uncontrolled production leads to monopoly and hardship to small producers (R. 81, 85).

Sensitivity of market structure.—Crude petroleum and its chief derivative, gasoline, have an extremely sensitive market structure, because of the facility with which crude oil moves through the highly developed agencies of transportation and the speed with which it may be converted into its products and delivered to the ultimate consumer. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution in the Oil Industry), p. 604, Appendix B, p. 52; National Petroleum News, June 1, 1932 (Holliday, Narrower Margins Essential), p. 25, 26, Appendix B, pp. 56–58.) The operations of the integrated

companies extending over many States intensifies the sensitivity of the market structure. Activity in any branch of the industry or in any section of the country directly affects the economic condition of the integrated companies operating in the same trade area, and is quickly reflected by reason of the closely integrated nature of their operations[25] in all other branches of the industry and all other sections of the country in which they operate (R. 80). Because of the interrelationship of the different branches of the industry, fluctuations in the price structure of gasoline in any retail market of the country quickly work through the refinery market to the price of crude oil, and back on the price structure of the entire nation. (See Swensrud, *supra,* and Holliday, *supra,* Appendix B, pp. 49–59.) Production of petroleum in any area in excess of what that area's normal outlets can absorb quickly breaks the price structure of crude, and that of the refinery markets of the entire nation, and produces chaotic conditions in retailing (Holliday, *supra,* Appendix B, pp. 56–58).

The stabilization of this extremely sensitive interstate market in petroleum and its products and, through such stabilization, the accomplish-

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[25] "Today we find the marketing of oil, with its preparatory steps of transportation and refining, to be a closely integrated enterprise, handling tremendous volumes of products, through diverging and ramifying channels of distribution of a unique and singularly efficient character." Pogue, Economics of Petroleum, p. 212.

ment with respect to this industry of the objectives of the Recovery Act, was the end sought by the production-control provisions of the Petroleum Code. Based upon the conclusion that the conditions under which oil has been produced exert a direct and substantial effect upon this interstate market, the Petroleum Code seeks to regulate these conditions through restricting the production of crude oil to the amount required to meet the national consumptive demand for petroleum products. That the control of production provided for in the Petroleum Code is essential for the protection of the interstate market of the oil industry will appear from a consideration of the conditions governing the production of oil and the course of the industry in recent years.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geologic, legal, and economic factors operate in the production of crude oil in this country. Because of the national scope of the business, these factors have been reflected throughout the United States.

Geologic factors.[26]—This Court has taken notice of the geology of oil pools in *Bandini Co.* v. *Su-*

[26] See Report on Pipe Lines, *supra*, at p. ix, Appendix B, pp. 20–21; Federal Oil Conservation Board, Report III (1929), p 21, Appendix B, pp. 92–95; Miller, Function of Natural Gas in the Production of Oil (Cooperative report by the Bureau of Mines and American Petroleum Institute),

perior Court, 284 U. S. 8, 16, and in *Champlin Refining Company* v. *Corporation Commission,* 286 U. S. 210, 228. Crude oil is produced by piercing the cap rock of the domelike structure under which petroleum is found confined under high pressure (R. 79). It is usually associated with natural gas and water which act as propulsive agents in causing both a horizontal and vertical movement of oil through the porous-rock structure and up to the surface through whatever wells release the native pressure of the reservoir. Oil is fugitive in nature, and may be brought to the surface through wells drilled in various parts of the pool, with the result that one well drains from all parts of the reservoir (R. 79). Excessive and uncontrolled production causes premature exhaustion of the native pressure of the reservoir and diminishes the amount of oil ultimately recoverable. See *infra,* pp. 91, 136–137.

The migratory nature of oil whereby oil under the land of one operator may be brought to the surface through a well drilled on the land of another, differentiates competition in the production of petroleum from virtually all other mining operations (R. 79). In other extractive industries, one operator may compete for and capture another's market, but he does not thereby capture more of

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p. 120; American Association of Petroleum Geologists, Structure of Typical American Oil Fields (Symposium 1929); Petroleum Development and Technology, 1934, American Institute of Mining and Metallurgical Engineers (Umpleby, Efficient Utilization of Reservoir Energy), p. 168.

the mineral itself nor diminish the ultimate recovery of that mineral. Wherever conservation laws have not existed, or have not been enforced, the fugitive nature of oil has led to a wild race between the many separate property owners in a field to capture as much oil as possible from their own and adjacent properties (R. 80, 93, 95).

Legal factors—the law of capture and the leasing system.[27]—The so-called "law of capture" and the leasing system under which oil is almost universally developed have combined to compel wasteful competitive production, regardless of the needs of the market. By virtue of the "law of capture" competitive drainage by a neighboring operator taking from a common source of underground supply can "nowhere be enjoined or checked by the recovery of damages, however clear the damage. Pleas for judicial protection against the efforts of neighboring producers to exhaust the common reservoir have been met with the admonition of 'Go thou and do likewise'." (Marshall and Meyers, *supra,* at pp. 42–43; see *Barnard* v. *Monongahela Natural Gas Co.,* 216 Pa. 362, 365.) An equally specialized property law governing oil and gas leases has intensified the excesses of this competition. Because of the speculative nature of the enterprise, the production of oil is ordinarily carried on under leases

[27] For a discussion of the law of capture and the leasing system, see Marshall and Meyers, Legal Planning of Petroleum Production, 41 Yale Law Journal, pp. 33, 40–48.

whereby a landowner grants an oil operator the right to drill for oil on his land in consideration of the operator's covenant to pay the lessor a royalty if, as, and when oil is produced. The lessor's desire to realize on his bargain has led him to exact covenants compelling immediate and rapid drilling and diligent and continuous operation after discovery, and where such covenants have been omitted the courts have been quick to imply them. (Marshall and Meyers, *supra,* at pp. 43–44; see Summers, Oil and Gas, pp. 385–423.) While the more recent leases frequently contain provisions which permit the operator to delay the drilling of a discovery well upon the payment of "delay rental", the lessee under such a lease has not escaped the duty, both expressed and implied, of protecting the lease against drainage by drilling and producing offset wells the moment any nearby operator makes a discovery in any part of the structure under lease (Marshall and Meyers, *supra,* at pp. 47–48; Summers, *supra,* at p. 417.)

Competitive drilling and production.—The location of wells has necessarily been determined by the property lines of the surface, regardless of subsurface contours or of the demands of the market (Marshall and Meyers, *supra,* at p. 36). The bringing in of a discovery well in any new field has invariably precipitated an intensive drilling campaign throughout the field. Wells are located on small tracts and as close to property lines as possible for "the recognized purpose of draining as

much oil as possible from neighboring lands" (*Ibid;* Report on Pipe Lines, *supra,* at p. xii, Appendix B, pp. 26–27). Neighboring operators "are forced to counter with an off-set well on their side of the boundary line" (Marshall and Meyers, *supra,* at p. 36). From then on off-set follows off-set until the outermost limits of the field have been drilled (Report on Pipe Lines, *supra,* at p. xii). In the East Texas field alone, from whence this case arises, the prod of this kind of competition has resulted in 12,000 new wells in the short space of three years and in the teeth of a constantly rising surplusage of oil. See Oil Weekly, Feb. 26, 1934 (Reistle, East Texas Production) p. 14.[28] A twen-

[28] The growth of the East Texas field is described in this article as follows (p. 14):

> The East Texas field, the largest developed oil field in the world, is located in Smith, Rusk, Gregg, Upshur, and Cherokee Counties, Tex. The discovery well, drilled by C. M. Joiner, was completed on September 8, 1930, and is located approximately 7 miles north of the city of Henderson and near the eastern limit of the field. Within less than 1 year the new field became the predominant factor in the petroleum industry. On August 16, 11 months after the completion of the discovery well, there were 1,644 wells producing 584,475 barrels of oil per day. At this time, August 16, 1931, the field was placed under military control and production completely stopped until September 6, 1931. January 29, 1934, there were 12,170 producing wells in the field and approximately 70 new wells are being completed each week. Present average well spacing is approximately one well to 9.5 acres. Of the 12,179 wells, 1,702 are classified as marginal wells and allowed to produce 20 barrels per day, the remaining 10,468 wells are allowed to produce 5 percent of their 1-hour potential. The total allowable production for the field, January 29, was 399,095 barrels.

ty-acre spacing program was attempted, but small tracts and the necessities of off-setting led to over 5,000 exceptions, and today the field average is one well to each nine and one-half acres. (*Ibid.*, at p. 18.) Even a single recalcitrant operator has it in his power to set the pace of competition in spacing, drilling, and production in an entire field. In no other industry does property law thus conspire to force competition regardless of the market outlet for the product and of the total ultimate recovery from the sources of supply.

Economic factors—cost advantage of flush fields.—In the new fields of production the natural pressure of the reservoir is often sufficiently great to bring the oil to the surface without human intervention, but in some new fields, and in all fields after the natural pressure has been depleted, it is necessary to use pumps to lift the oil (R. 79, 90, 100–101). These pumping or "stripper" wells produce often as little as one-half barrel of oil a day. (R. 92; Bureau of Mines, Mineral Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49). The wells in the flush fields, because they do not require pumping, enjoy a temporary but tremendous cost advantage as against the fields of settled production in which the "stripper" wells are located.[29] (23 American Economic Review,

[29] Costs ranged from as low as 17.8 cents a barrel in the Kettleman Hills Field to $2.13 for West Virginia in 1932 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *infra*, Appendix B, pp. 68–91). In

Supp. March 1933 (Stocking, Stabilization of the Oil Industry) p. 55; U. S. Tariff Commission Report to the House of Representatives on Crude Petroleum and its Liquid Refined Products (Report No. 30, 2d Series) pp. 157–163, Appendix B, pp. 60–65; Department of the Interior, Petroleum Administrative Board, Preliminary Report on a Survey of Crude Petroleum, Cost of Production for the Years 1931–1933, pp. 5, 10–33, Appendix B, pp. 67–91.) Unlike most other industries, in which lower costs result from increased efficiency, low cost oil springs from the chance discovery of new flush fields, where the wasteful use of the natural propulsive forces of the reservoir lifts the oil to the surface at a temporarily negligible cost (Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum), pp. 12–13). This economic cost advantage, operative only during the flush period of the well, has intensified the urge of operators, already driven on by the geologic and legal factors previously described, to drain as much oil as possible from the underground reservoir.

Economic factors—large production of first wells drilled.—The competitive race to drill and produce is spurred on further by the abnormally large production gained by the first wells drilled. The high initial reservoir energy, which is responsible for

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1930, individual field variations ranged from 6 cents to $4.84 (U. S. Tariff Commission, Report on Crude Petroleum, etc., *infra*, at pp. 157–163, Appendix B, pp. 60–65).

the large production of the early wells, is rapidly dissipated by these wells, causing a permanent diminution of pressure in the entire field, so as not only to decrease the ultimate recovery of other and later wells, but to increase the cost of securing that recovery. (Report on Pipe Lines, *supra,* at pp. x–xii, Appendix B, pp. 22–27; National Petroleum News, Oct. 2, 1929 (Uren, Influence of Delayed Development on Ultimate Recovery), p. 65.[80]) Therefore all operators rush to early and large production.

Effect of geologic, legal, and economic factors—excessive production and depressed prices.—The peculiar conditions governing the production of oil,

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[30] In this article it is stated (p. 65):

> Maximum ultimate recovery of petroleum from an oil field by ordinary methods of flowing and pumping is secured only by systematic and timely drilling of wells, thus deriving the greatest benefit from the relatively high initial gas pressure. The time at which a well is drilled, in terms of surrounding development, determines to an important degree the amount of oil that it will ultimately produce.
>
> Delay of only a few months in offsetting a neighboring well may mean that 50 percent or more of the potential production of the later-drilled well will be left in the sand, unrecoverable by ordinary methods. Probably no single factor is of greater importance in determining the efficiency of recovery by ordinary well-production methods.
>
> Maximum recovery of oil from a "pool" requires prompt and complete development of the entire oil-bearing area once the discovery well has entered upon its productive life; and in areas where there has been considerable delay in bringing the land to complete development we may expect to find a high percentage of residual oil. The operator who fails to maintain the pace set by his neighbors, or who is unable to finance the rapid development of his property, not only loses some of his oil to his more active neighbors but also leaves in the sand oil which neither he nor

which have been described, have resulted in the excessive production of every newly discovered field (R. 88, 93, 95, 105) and have brought about extreme declines in the price of crude oil (R. 88, 105). The cost advantage accruing to operators in flush fields as against those in "stripper" well areas has enabled the former to continue to operate at a profit though the price be driven to extremely low levels. The law of supply and demand has in this industry utterly failed to exert a corrective influence upon production (R. 76; Oil and Gas Journal, March 26, 1931 (Holliday, Oil's Legal and Economic Handicaps) p. 34; Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum) pp. 12–13; Oil Weekly, Feb. 26, 1934 (Pogue, Balancing Supply and Demand in the Petroleum Industry) p. 43). On the contrary, decline in price has accelerated production with consequent further and further price declines. The major investment in the production of oil occurs in the drilling of the well, and thereafter the cost of production in flush fields remains substantially constant regardless of how much oil is produced.[31]

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his neighbors may secure; oil that is left in the sands gas-drained and without motivating force to bring it into the wells. The oil producer who merely protects his boundaries by offsetting neighboring line wells, leaving his interior locations to be leisurely drilled in later years, likewise suffers a loss of a large part of the potential production that his wells might have secured had the entire property been fully developed at an earlier date.

[31] Actual operating costs apart from drilling and prospecting expenses and general overhead were only 20.7 cents per

Price declines have therefore impelled operators in the flush fields to produce even more oil in order to maintain their income (23 American Economic Review, Supp., March 1933 (Stocking, Stabilization of the Oil Industry) pp. 55, 56–57 [32]). The pres-

barrel out of a total average cost per barrel for the country of 80.6 cents from 1931 to 1933 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *supra*, at p. 6). From 1927 to 1930 the average operating cost was 25 cents out of a total cost of $1.07. (Tariff Commission Report on Crude Petroleum, etc., *supra*, at p. 155.)

[32] In this article it is stated (pp. 56–57):

> A second economic characteristic of oil production is that capacity once called into being is driven into complete utilization by the irresistible forces of competition. This is the result of two factors: The fixed character of the investment in oil production, and the migratory nature of the mineral product. Oil production is an industry of relatively large fixed costs. The major investment is made in the process of drilling a well. It is an investment of a highly specialized sort. Once made, it can neither be withdrawn nor utilized for other than the purposes for which originally designed. This economic fact, coupled with the physical and geological character of an oil deposit—the disposition of oil to move through the pores of the underground rock once the equilibrium of the pool has been disturbed by the puncturing drill, and to move without regard to property lines on the surface—necessitates under a competitive regime production at maximum well capacity. As long as a well will flow under its natural pressure, it must be permitted to produce regardless of the price of oil. Any return on the original investment is better than none. Since oil is migratory, should an individual operator choose to curtail or cease production awaiting a better price for the product, it is for the benefit of a competitor on an adjoining tract who will reduce the fugacious mineral to possession. Even in the case of pumping wells, once the pumping facilities have been installed, it pays to operate them at maximum capacity as long as interest on purely liquid capital,

sure of all of these conditions has inevitably forced the price of crude oil to lower and lower levels.

Inelastic demand for petroleum.—These price declines have been aggravated by the relatively inelastic demand for crude oil. Demand for crude oil and its products is an indirect one depending upon the desire to use the machinery and the vehicles in which petroleum products are consumed. (Federal Trade Commission, Report on the Petroleum Industry, etc., *supra,* at p. 147.[33]) The de-

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which represents but a small part of total investment, can be secured.

In the light of its economic and geological characteristics, then, the oil industry promises to be recurringly plagued with overproduction. Paradoxically, oil may continue to be produced when it does not pay to produce it. The neat principles of theory are borne out by the stubborn facts of history. Despite continuous overproduction during the past decade, the speculative drive has persistently forced new capacity into existence; this has inevitably been translated into increasing annual output in the face of mounting stocks and a sharp downward trend in prices.

[33] In the report it is stated (p. 147):

SECTION 5. *Consumption of gasoline—General nature of the demand for gasoline.*—Gasoline has quite a rigidly fixed minimum demand in the field of its chief use as a motor fuel so that the price may increase considerably without any proportionate reduction in consumption, or price may be reduced without a proportionate increase in consumption. This is true for several reasons: (1) because gasoline has become a necessity to the millions of owners and operators of passenger cars, motor trucks, motor busses, motor boats, tractors, stationary and portable engines, and other internal-combustion engines; (2) because the chief demand for gasoline, that of a motor fuel, is dependent upon the demand for automobiles and other motor vehicles; (3) because the cost of gasoline is a small part of the total cost of operating an auto-

mand depends not on salesmanship nor to any great extent upon price, but rather upon other economic variables, such as general prosperity and the number of automobiles in use (R. 76). So inelastic is this demand that the Federal Oil Conservation Board and the United States Bureau of Mines have been able, through the drastic fluctuations in the price of oil and gasoline during the past five years, to forecast within a small margin of error the national demand for crude oil by translating the forecasted demand for gasoline into its crude-oil equivalent every six months.[34]

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mobile or other motor vehicle; and (4) because there is no commercially available substitute for gasoline at as low a price as has prevailed for gasoline. In addition to the uses enumerated above, gasoline, or naphtha, is used quite extensively (1) in the manufacture of varnishes, (2) as a solvent for rubber and other manufactures, and (3) in the dry-cleaning business. By far the largest factor in the rapid increase in the domestic consumption of gasoline has been the increased use of motor vehicles.

[34] See Federal Oil Conservation Board, Surveys of National Petroleum Requirements; affidavit of E. B. Swanson, Director of Petroleum Economics Division, U. S. Bureau of Mines, and member of the Petroleum Administrative Board, explaining the method of determining the national demand, Appendix B, pp. 184–201. (This affidavit was introduced in evidence by respondents at the trial before the District Court of the *Amazon* case (No. 260) but was not included in the record on appeal to the Circuit Court of Appeals. Counsel for petitioners in No. 260 have stipulated with the respondents that this affidavit may be presented for consideration by this Court.)

In Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), the accuracy of forecasts made from 1930 to 1933 is described as follows (p. 261):

Parallel declines in price of gasoline.—The overproduction of crude oil with the consequent declines in its price has necessarily resulted in parallel declines in the price of gasoline, its chief derivative, both because of the cheapness of the raw material and the excessive amount of gasoline refined from it and placed upon the market. (See Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution

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Since 1930 the Federal Oil Conservation Board has published six periodic surveys by volunteer economic committees which aimed at forecasts of demand, recommendation of refinery runs, and estimates of crude oil production. In only the last two (one now current, and its predecessor) has a rate of production been recommended, as distinguished from a prediction. The forecasts of demand, equated back to total crude consumption, have never been less than 95½ percent accurate; one was 99.25 percent correct, and the latest (save the current one), the most difficult because it recommended crude oil production rather than predicted it, was 97.5 percent accurate. All of these forecasts start with an estimate of gasoline demand and work back to crude oil production; demand for other products will be satisfied automatically by refining enough crude to yield the required gasoline. These forecasts have been made in the face of many uncertain factors. This two and a half year period has been one of depression, of diminishing use, and of wide fluctuations of imports. The wholesale gasoline price has varied between a minimum of less than 2.5 cents and a maximum of over twice that; and crude prices have ranged between a " low " of 10 cents and less, and a " high " 10 times as great. Six months or nine months have been covered by each survey. No State has been obliged to accept or follow the published figures. Under these conditions the accuracy of the work gives some indication of what can be done in forecasting the demand side of the equation, without requiring a fixed price as a basis for the determination.

in the Oil Industry), p. 610, Appendix B, pp. 52–53.) Such a decline has occurred in both the wholesale and retail gasoline markets (*Ibid*). The wholesale or refinery prices of gasoline are, of course, the prices at which gasoline is sold in the interstate market.

Excessive production and price trends prior to 1926.—The effect of the competitive conditions attending the production of crude oil upon the interstate market price of crude and its products has attained its fullest intensity within comparatively recent years. Even from the earliest days of the history of the industry, however, these competitive conditions had time and again exerted a demoralizing effect upon the price structure of this industry throughout the nation. The opening up of new large fields of production has almost invariably been characterized by declines in the price of crude oil within a very short time (R. 88, 105). The Spindletop Field in Texas in 1902, the Glen Pool in Oklahoma in 1906, the Lakeview gusher field in California in 1910 (R. 105), and to a more considerable extent the Cushing Field in Oklahoma in 1913 were followed by severe price reductions. Production in the Cushing Field in 1914 caused a market "decline which affected every type of high-grade oil produced in the United States and caused a decided curtailment of activity in practically every [other] oil field in the country" (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 659; Pogue, Eco-

nomics of Petroleum, p. 239). This field, however, was rapidly depleted [35] (Pogue, Economics of Petroleum, p. 239) and a steady rise in the price of oil followed until in March, 1920 Mid-Continent crude was selling as high as $3.50 per barrel.[36] (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 129.) This rise in price was accentuated by the absence of new discoveries of extensive oil fields with the resultant fear of shortage of supply which became so pronounced during the War that people were requested not to use their automobiles on "gasless Sundays" in order to preserve the supply for military purposes (*Id.,* at p. 148). In 1920–1921 new fields were discovered in Santa Fe Springs, Huntington Beach, and Long Beach, California, in Burbank, Oklahoma, and in Mexia, Texas, and production in these fields, together with the industrial depression then existing, soon brought about a severe decline in the price of crude oil (*Id.,* at p. 130; Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

Fear of scarcity and increased demand for petroleum prior to 1926.—Various factors existing prior

[35] Cushing production fell from 49,000,000 barrels in 1915 to 21,000,000 in 1918 and to 8,000,000 in 1925. (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 665; *id.*, Petroleum in 1918, p. 1070; Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 357.)

[36] Pennsylvania crude was selling as high as $6.10 per barrel. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 129.)

to 1926, however, prevented the competitive conditions attending these early fields from causing the complete demoralization of the interstate market. Prior to that year the national market for crude petroleum was dominated by fear of immediate scarcity. (See Federal Oil Conservation Board, Report I (1926), pp. 8, 13; World Petroleum, May 1930 (Thomas, The Law of Diminishing Returns), p. 171.) This fear had been stimulated by the rising demand for petroleum brought on primarily by the increase in the use of automobiles. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 148.) The rising demand for petroleum and the fact that the earlier fields were wastefully produced caused the flush production of these fields and their effect upon the interstate market to be very short lived.

New flush fields and excess capacity after 1926.— After 1926, however, fear of immediate scarcity was replaced by knowledge of enormous excess capacity. Spurred on by fear of scarcity and high prices, the geologists and engineers of the industry had been perfecting geophysical methods of finding new fields and engineering techniques for digging to deeper and deeper pools. (Federal Oil Conservation Board, Report IV (1930), pp. 6–7; see Oil and Gas Journal, August 23, 1934 (Engineering Era in Oil Production Practice Brought Many Improvements), p. 233.) Beginning in 1926 the improved technology of finding and drilling up oil fields culminated in the discovery and rapid development in

quick succession of a series of prolific new pools (Federal Oil Conservation Board, Report IV (1930), pp. 6–7), the most important of which were the Seminole field in Oklahoma and the Crane-Upton and Yates pools in Texas, discovered in 1926, and the great pools of Oklahoma City (1928), Kettleman Hills, California (1928), East Texas (1930), and Conroe on the Gulf Coast of Texas (1932) (Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

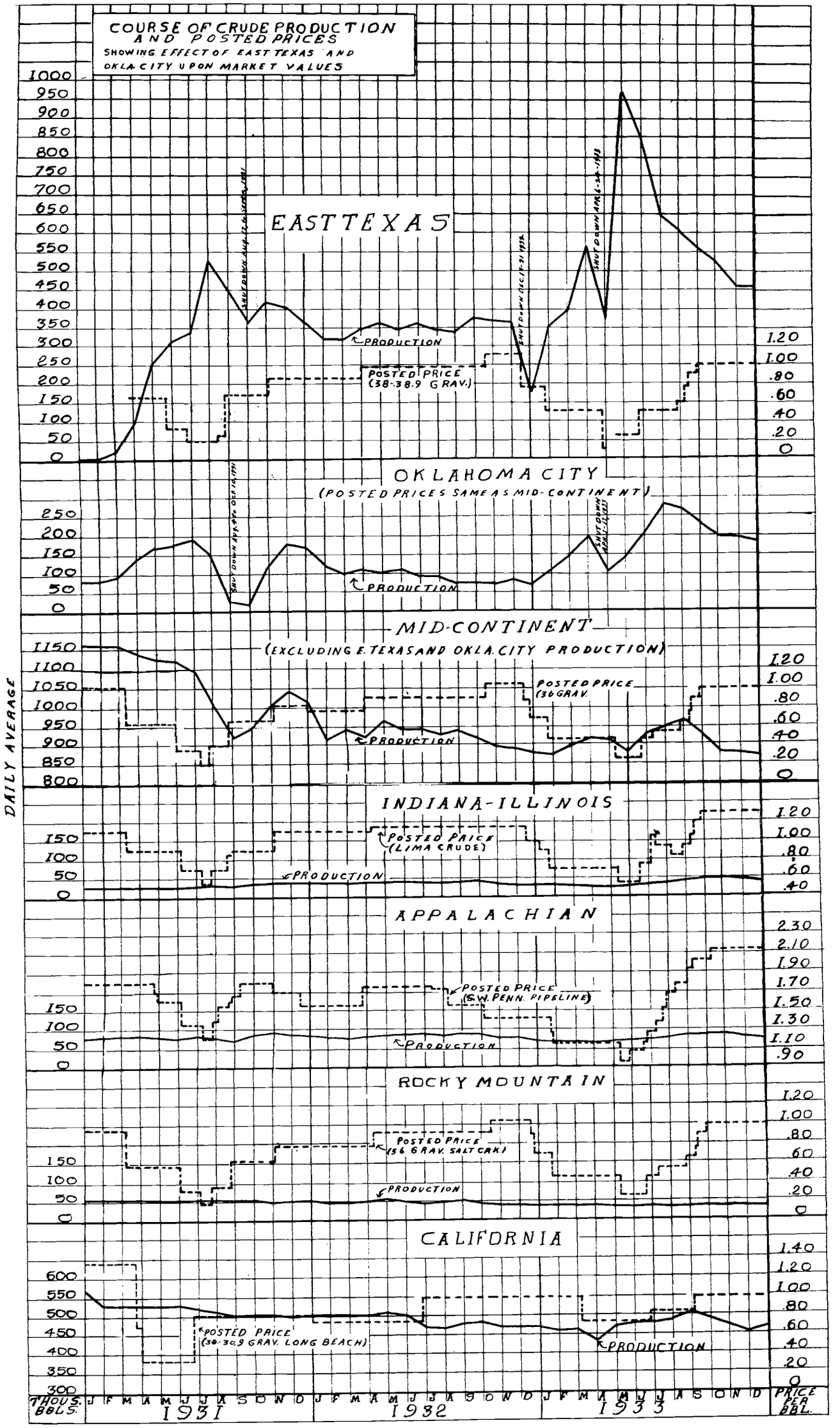
Present potential capacity.—The peculiar competitive forces inherent in the production of oil soon caused the development of a daily potential capacity many millions of barrels in excess of current consumption. So great had this potential become that by February 1931 one noted authority estimated the daily capacity to be 14 million barrels (Oil and Gas Journal, February 26, 1931 (Pogue, Economics of the Crude Oil Potential), p. 25). The Corporation Commission of Oklahoma found the potential of the United States to be about 10 million barrels. (See Transcript of Record, pp. 78–79, *Champlin Refining Company* v. *Corporation Commission, supra,* No. 122.) Estimates of the potential of the East Texas field alone have ranged as high as 120 million barrels daily [37] (Hearings, S. 1712, H. R. 5755, Senate Committee on Finance,

[37] The complaint alleges the potential production capacity of the East Texas field to be 100,000,000 barrels per day (R. 6). The estimate given by a witness for the respondents of 5,000,000 barrels per day (R. 101) would seem to be more reliable.

73d *Cong.*, 1st Sess., p. 168). While potential production figures are subject to many variables, all calculators agree that for several years in the immediate future, if all restraint were removed, production would be many times in excess of what the market could absorb (Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, p. 702, 704; R. 80).

Demoralization of prices after 1926.—The demoralization of the interstate market in petroleum and its products was continuously threatened from 1926 to 1931 by the production from these newly discovered fields. (See Osborn, Oil Economics (1932) p. 30.) In 1931 and again in 1933 the collapse became complete primarily by reason of the production from the East Texas and Oklahoma City pools. The peculiar conditions characterizing the production of oil which compelled the competitive exploitation of the newly discovered fields in the face of an inelastic domestic crude-oil demand of from two to two and one-half million barrels daily (R. 101; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300) made these collapses inevitable.[38] With the completion of the great trunk pipe lines, the establishment of intercoastal tanker routes and the vertical

[38]An aggravating factor was the falling off of the domestic and export demand commencing in 1930 (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300).



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organization of the business through corporate integration (*supra*, pp. 57–59), it was inevitable that the flood of oil from these fields should move into the channels of interstate commerce and have immediate repercussion in all other branches of the industry and in all sections of the country.

Collapse of the national market in 1931 and 1933.—The crash of the crude-oil price structure throughout the entire country which occurred in the summer of 1931 and again in the spring of 1933 as a result of this excessive production is graphically shown by the chart [39] facing this page. In every producing area in the country outside of East Texas and Oklahoma City, the price trend of crude followed closely that of crude in these two fields and rose or fell with the decline or rise of their production.

East Texas and Oklahoma City production in 1931.—The amount of oil actually produced from these two fields will never be definitely known, for in each of them huge amounts of unreported oil were produced in violation of state conservation laws. Reported figures show that the average daily production in the East Texas field rose from 3,000 barrels in January 1931 to 528,000 barrels in July

[39] The figures upon which this chart is based are set forth in detail in a table printed in Appendix B (facing p. 110). Both the chart and the table are based upon figures appearing in published documents and were prepared for use in this brief. The chart is intended for illustrative purposes solely.

of that year, and that production in the Oklahoma City pool, which in January 1931 averaged 82,000 barrels per day, had mounted to 193,000 barrels per day by the following June (Table, facing p. 110, Appendix B). By reason of production in excess of the orders of the Railroad Commission of Texas, actual production in the East Texas field was far in excess of the reported figures and by the middle of August 1931 is estimated to have reached the staggering total of a million barrels daily.[40]

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[40] The Bureau of Mines in its annual report on Crude Petroleum and Petroleum Products in 1931 (published in Mineral Resources of the United States, 1931, Part II) describes the production in the East Texas field during this period as follows (pp. 584–585):

> The discovery well was completed in October 1930, in Rusk County, in what is now called the "Joiner pool"; but the first large well was brought in near Kilgore, also in Rusk County, just before the end of 1930. Any doubt as to the possibilities of the area was dispelled when the field was extended into the Lathrop district, Gregg County, in the latter part of January 1931. A few months later the producing area was extended into Upshur and Smith Counties, virtually proving a total of 100,000 acres for production in four counties. From the standpoint of area the East Texas field far outranks all other known fields of the world. The prevalence of small, irregular leases, easy drilling, and the fact that only a few major companies had protected themselves with large blocks of acreage led to a competitive drilling campaign.
>
> In spite of the number of restrictive orders from the Railroad Commission production increased rapidly and by the middle of August reached 1,000,000 barrels daily. As production mounted prices declined, and considerable oil was sold for as low as 5 cents per barrel. Conditions became so chaotic that on August 17 the governor issued an order shutting down the field and called out the militia to enforce it. The shut-down lasted nearly three weeks, during which

Prices in 1931.—This production broke the price structure of crude oil throughout the entire country. In East Texas the price of crude fell nearly to the vanishing point. The posted price in this field had fallen to 20¢ per barrel by July 1931 (see Table facing p. 110, Appendix B), but large quantities were sold at even lower prices when major purchasers withdrew their postings, and sales as low as 2½¢ per barrel were recorded (Bureau of Mines, Mineral Resources of the United States, Part II, 1931, Crude Petroleum and Petroleum Products, pp. 605–606[41]). The declines elsewhere were almost as severe. 36-degree gravity Mid-Continent which in 1926 had averaged $2.13 (Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 386), and in January 1931, was $1.01 per barrel, had fallen to $0.20 a barrel in July

time surplus stocks were used up and a program was devised under which the field could be operated without demoralizing the entire crude oil market.

[41] This report stated (pp. 605–606):

> The majority of the changes in posted prices in 1931 were induced by developments in the East Texas field. Several lower postings were made in most grades in the Mid-Continent in the first quarter of the year before production in the East Texas field had passed the point at which it could be absorbed comfortably by the market. These undoubtedly anticipated the overproduction period that followed; the lower prices in the second quarter were brought on by the overproduction itself. Undercutting of prices in the East Texas field became so prevalent by midyear that the major purchasers withdrew their postings, and prices were reduced progressively until some producers accepted 2½ cents per barrel to obtain connections. Overproduction in the East Texas field tended to depress prices throughout the country, with the result that many so-called " marginal wells " were closed in.

of that year. See Table facing p. 110, Appendix B. The posted price for crude in the Appalachian District fell from $1.80 per barrel in January to $1.20 in July 1931; in the Indiana-Illinois area from $1.10 to $0.55; in the Rocky Mountain area, from $0.95 to $0.18; in the Gulf Coast area, from $0.69 to $0.31; and in California, from $1.38 to $0.81. (*Ibid.*)

Production and prices in 1932–1933: the collapse in 1933.—Production in the East Texas and Oklahoma City fields became so chaotic in the summer of 1931 that these two fields were completely shut down by the use of military forces. (National Petroleum News, August 12, 1931 (Oil Companies Prepare for Court Battle on Enforced Shutdown) p. 31; National Petroleum News, August 19, 1931 (Smith, Scramble for Crude as East Texas Output is Shut off under Martial Law) p. 19; see Transcript of Record, pp. 90–93, *Sterling* v. *Constantin,* 287 U. S. 378.) The use of troops granted respite for a time and increases in the price of crude were recorded throughout all producing areas (see Chart, *supra,* p. 79, and Table, facing p. 110, Appendix B), but soon the same competitive forces which had brought military forces into use had again disrupted the market, and further shut-downs of the East Texas field became necessary in December 1932 and April 1933, and of the Oklahoma City Pool in March 1933. (Oil and Gas Journal, December 22, 1932 (Bredberg, Shutdown in East Texas is Practically Complete and District Court

Dismisses all Injunctions), p. 33; Oil and Gas Journal, April 13, 1933 (Bredberg, Renewed Hope for Proration in East Texas Area; Field Shut down Awaiting Test of Key Wells) p. 45; Oil and Gas Journal, March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging some Companies Greatly Overproducing), p. 42.) These interruptions failed to stem the rising flood of crude oil. Estimated daily production in the East Texas field stood again at over one million barrels. (Oil and Gas Journal, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7; *Id.,* May 4, 1933 (Rowley, Wild Orgy in East Texas Brings Inevitable Cut; Voluntary Curtailment Elsewhere Suggested), p. 7.) In the Oklahoma City pool daily reported production rose steadily to a peak of 278,000 barrels in July 1933. See Table, facing p. 110, Appendix B. The crude oil price structure throughout the country was again broken. The price decline which had commenced in the latter part of 1932 gathered momentum. See Chart, *supra,* p. 79. In April 1933 the posted price for crude in the East Texas field stood at 10¢ a barrel and parallel reductions occurred throughout the country.[42] Mid-Continent *posted* prices dropped

[42] The spread of price reductions throughout the nation during this period is described in Oil Weekly, May 15, 1933 (Price Cuts Extend to Mid-Continent-Eastern Areas), p. 33 (Appendix B, pp. 124–129) and in National Petroleum News, May 10, 1933 (Crude Prices Drop Under Pressure of East Texas Situation), p. 15 (Appendix B, pp. 129–132).

to 25 cents a barrel, Gulf Coast to 30 cents, Rocky Mountain to 25 cents, Appalachian to 97 cents, Lima to 55 cents, and California to 75 cents. See Table, facing p. 110, Appendix B. The significance of these figures appears from comparison with production costs in these areas.

	Posted Prices in May 1933	Costs (first 9 months of 1933)
East Texas	[1] $0.10	[2] $0.496
Mid-Continent	.25	[3] .830
Texas Gulf Coast	.30	[4] .580
Rocky Mountain	.25	[5] 1.163
Appalachian	.97	[6] 1.885
Lima	.55	[7] 1.186
California	.75	[8] .724

[1] Prices posted April 25, 1933. On May 2 postings were discontinued until May 13 when they were raised to 25 cents. The posted prices appear in the Table, facing p. 110, Appendix B.

[2] See Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, etc., *supra*, at p. 17, Appendix B, p. 75.

[3] Oklahoma costs. *Ibid*, p. 21, Appendix B, p. 79.

[4] *Ibid*, p. 17, Appendix B, p. 75.

[5] Salt Creek, Wyoming Costs. *Ibid*, p. 27, Appendix B, p. 85.

[6] Pennsylvania costs. *Ibid*, p. 33, Appendix B, p. 91.

[7] Indiana costs. *Ibid*, p. 31, Appendix B, p. 89.

[8] Signal Hill costs (chosen because Signal Hill prices are used as representative). *Ibid*. p. 10, Appendix B, p. 68.

In every region except California costs were far above the prices of the oil.

Collapse of gasoline prices.—The collapse in the market structure of crude petroleum brought on by this excessive production was necessarily accompanied by a similar collapse in the market structure of the refined products.[43] Cheap crude flooded

[43] See Oil and Gas Journal, July 27, 1933 (Willson, New Lows in Average Prices for Refined Products Established in the First Six Months of 1933) p. 36, with table showing how prices of refined products rose and fell with the prices of crude oil.

the market with cheap gasoline. The price trend of wholesale gasoline closely paralleled that of crude oil, reaching as low as 2¼ to 2½¢ per gallon when the crude oil market collapsed in the summer of 1931 and again in the spring of 1933 (Oil and Gas Journal, July 27, 1933 (Table of Prices for Refined Products), p. 38).

Surplus stocks.—Because of the inelastic nature of the demand for petroleum products (*supra,* p. 71) the price declines did not bring about any material increase in their consumption, and this factor, together with the development of refinery technique [44] which had greatly increased the recovery of gasoline from crude oil, resulted in tremendous surplus stocks of crude and refined products. See Hearings on the Petroleum Code before the National Recovery Administration, Volume 2, pp. 3003–4. At the end of 1932, stocks of crude oil amounted to 339,715,000 barrels and stocks of refined products amounted to 247,188,000 barrels (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300). These surplus stocks are a constant threat to the stability of the market structure.

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[44] The cracking process was described by this Court in *Standard Oil Company (Indiana)* v. *United States,* 283 U. S. 163, 167. See also Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 142; Federal Oil Conservation Board, Report V (1932), pp. 26–27. It is now possible to obtain up to 70 per cent gasoline from crude oil instead of the 20–30 per cent formerly obtainable (Oil and Gas Journal, February 5, 1931 (Egloff, Nelson, and Truesdell, Cracking Steadily Gaining in Importance) p. 24).