

416
No. 11342

**In the District Court of the United States
for the Western District of Wisconsin**

UNITED STATES OF AMERICA

v.

SOCONY-VACUUM OIL COMPANY, INC., ET AL.,
DEFENDANTS

INDICTMENT

JOHN HENRY LEWIN,
HAMMOND E. CHAFFETZ,
W. B. WATSON SNYDER,
GRANT W. KELLEHER,

Special Assistants to the Attorney General.

JOHN DICKINSON,

Assistant Attorney General.

JOHN J. BOYLE,

United States Attorney.

FILED NOVEMBER 6, 1936

**In the District Court of the United States
for the Western District of Wisconsin**

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss.

INDICTMENT

The Grand Jurors of the United States of America, at a regular term of the District Court of the United States of America for the Western District of Wisconsin, to-wit: the Madison, December 1935, term thereof, held at Madison, in the County of Dane, in said Western District of Wisconsin, after being duly impaneled, sworn, and charged at the term of court aforesaid, inquiring for the said district, upon their oaths find and present, as follows:

COUNT I

A. The defendants.

1. The following named corporations engaged principally in the petroleum business are hereby made defendants herein. Each of said corporations is duly authorized to do business under and by virtue of the laws of the state of incorporation as indicated. Each may be described as an integrated company, i. e., a company which is engaged in the combined functions of production, transpor-

tation, and refining of crude petroleum, and the transportation and wholesale and retail marketing of the products thereof, principally gasoline. Each is also sometimes known as either a "major" or "semi-major" company, as distinguished from "independent" or smaller company. Each will sometimes be referred to herein, for convenience, by the abbreviated name as indicated. Said corporations, and those of their subsidiaries hereinafter named as defendants, will sometimes be referred to as "defendant major oil companies":

| Name of corporation | Abbreviated name | State of incorporation | Principal place of business |
|--------------------------------------|----------------------|------------------------|-----------------------------|
| Socony-Vacuum Oil Company, Inc. | Socony - Vacuum. | New York. | New York, N. Y. |
| Standard Oil Company (Indiana) | Standard of Indiana. | Indiana. | Chicago, Ill. |
| Cities Service Company | Cities Service. | Delaware. | New York, N. Y. |
| Continental Oil Company | Continental. | Delaware. | Ponca City, Okla. |
| Gulf Refining Company | Gulf. | Delaware. | Pittsburgh, Pa. |
| The Pure Oil Company | Pure. | Ohio. | Chicago, Ill. |
| Shell Petroleum Corporation | Shell. | Virginia. | St. Louis, Mo. |
| Sinclair Refining Company | Sinclair. | Maine. | New York, N. Y. |
| The Texas Company | Texas. | Delaware. | New York, N. Y. |
| Tide Water Oil Company | Tide Water. | New Jersey. | New York, N. Y. |
| Mid-Continent Petroleum Corporation. | Mid Continent. | Delaware. | Tulsa, Okla. |
| Phillips Petroleum Company | Phillips. | Delaware. | Bartlesville, Okla. |
| The Ohio Oil Company | Ohio Oil. | Ohio. | Findlay, Ohio. |
| Skelly Oil Company | Skelly. | Delaware. | Tulsa, Okla. |
| Barnsdall Refining Corporation | Barnsdall. | Delaware. | Tulsa, Okla. |
| The Globe Oil & Refining Company | Globe. | Oklahoma. | Blackwell, Okla. |
| The Globe Oil & Refining Company | Globe. | Illinois. | Lemont, Ill. |
| The Globe Oil & Refining Company | Globe. | Kansas. | McPherson, Kan. |
| National Refining Company | National. | Ohio. | Cleveland, Ohio. |
| Deep Rock Oil Corporation | Deep Rock. | Delaware. | Tulsa, Okla. |

2. The following named corporations, subsidiaries of the respective defendant parent companies as indicated, similarly engaged in the petroleum business, are hereby made defendants herein, their respective abbreviated names, states of in-

corporation, and principal places of business being as indicated:

| Name of subsidiary | Abbreviated name | Parent company | State of incorporation | Principal place of business |
|----------------------------------|---------------------|-----------------|------------------------|-----------------------------|
| Empire Oil and Refining Company. | Empire. | Cities Service. | Delaware. | Bartlesville, Okla. |
| Cities Service Oil Company. | Cities Service Oil. | Cities Service. | Delaware. | Tulsa, Okla. |
| Marathon Oil Company. | Marathon. | Ohio Oil. | West Virginia. | Tulsa, Okla. |
| Wadhams Oil Company. | Wadhams. | Socony-Vacuum. | Wisconsin. | Milwaukee, Wis. |

3. The following individuals are hereby made defendants herein, each having the address and being (or having been) associated with the company and having (or having had) the official title or position therewith, as indicated. Said individual defendants have, during the period covered by this indictment, been actively engaged in the management, direction, and control of the affairs and policies of the respective defendant major oil companies, particularly those affairs and policies of said companies covered by this indictment:

| Name of individual | Address | Official title or position | Company with which associated |
|--------------------|------------------|--|-------------------------------|
| Charles E. Arnott. | New York, N. Y. | Vice-President (Formerly President). | Socony-Vacuum. |
| Charles L. Jones. | New York, N. Y. | Vice-President in Charge of Domestic Trade Department. | Socony-Vacuum. |
| H. T. Ashton. | St. Louis, Mo. | General Manager, Lubrite Division. | Socony-Vacuum. |
| A. G. Maguire. | Milwaukee, Wis. | Chairman of Board of Directors. | Wadhams. |
| L. L. Marcell. | Kansas City, Mo. | General Manager, White Eagle Division. | Socony-Vacuum. |
| R. R. Irwin. | Kansas City, Mo. | Assistant General Manager, White Eagle Division. | Socony-Vacuum. |

| Name of individual | Address | Official title or position | Company with which associated |
|-----------------------------|-------------------------|---|--|
| Bryan S. Reid..... | Chicago, Ill..... | General Manager, Chicago Division. | Socony-Vacuum. |
| Howard A. Coffin..... | Detroit, Mich..... | General Manager, White Star Division. | Socony-Vacuum. |
| Allan Jackson..... | Chicago, Ill..... | Vice-President in Charge of Sales. | Standard of Indiana. |
| Amos Ball..... | Chicago, Ill..... | General Sales Manager. | Standard of Indiana. |
| Hiram A. Lewis..... | Chicago, Ill..... | Assistant General Sales Manager. | Standard of Indiana. |
| Harry D. Frueauff..... | Tulsa, Okla..... | Vice-President. | Empire. |
| O. J. Tuttle..... | Tulsa, Okla..... | Tank Car Sales Manager. | Empire. |
| W. H. Merritt..... | Tulsa, Okla..... | Vice-President and General Manager. | Cities Service Oil. |
| Dan Moran..... | Ponca City, Okla..... | President. | Continental. |
| Harry J. Kennedy..... | Ponca City, Okla..... | Vice President in Charge of Marketing. | Continental. |
| L. T. Cramer..... | Ponca City, Okla..... | Tank Car Buyer. | Continental. |
| Edward Karstedt..... | Denver, Colo..... | Formerly Vice-President. | Continental. |
| William V. Hartman..... | Pittsburgh, Pa..... | Vice-President. | Gulf. |
| Henry M. Dawes..... | Chicago, Ill..... | President. | Pure. |
| C. B. Watson..... | Chicago, Ill..... | Vice-President. | Pure. |
| G. C. Morris..... | Chicago, Ill..... | Sales Manager. | Pure. |
| R. H. McElroy, Jr..... | Chicago, Ill..... | Tank Car Sales Manager. | Pure. |
| | | President. | Shell Union Oil Corporation (Parent company of Shell). |
| R. G. A. van der Woude..... | New York, N. Y..... | Formerly President. | Shell. |
| Alexander Fraser..... | St. Louis, Mo..... | President. | Shell. |
| L. Van Eeghen..... | (Unknown) | Formerly Vice-President in Charge of Marketing. | Shell. |
| R. D. Ebbert..... | St. Louis, Mo..... | Manager, Tank Car Sales. | Shell. |
| P. E. Lakin..... | St. Louis, Mo..... | General Manager of Sales. | Shell. |
| J. W. Carnes..... | New York, N. Y..... | Vice-President. | Sinclair. |
| W. S. S. Rogers..... | New York, N. Y..... | President. | Texas. |
| H. W. Dodge..... | New York, N. Y..... | Vice-President in Charge of Sales. | Texas. |
| S. B. Wright..... | Chicago, Ill..... | Territorial Manager. | Texas. |
| Edward L. Shea..... | New York, N. Y..... | President. | Tide Water. |
| J. W. Warner..... | Tulsa, Okla..... | (Unknown) | Tide Water. |
| Jacob France..... | Baltimore, Md..... | President and General Manager. | Mid-Continent. |
| Robert W. McDowell..... | Tulsa, Okla..... | Vice-President in Charge of Sales. | Mid-Continent. |
| Frank Phillips..... | Bartlesville, Okla..... | President. | Phillips. |
| A. M. Hughes..... | Bartlesville, Okla..... | Sales Manager. | Phillips. |
| H. A. Gardner..... | Bartlesville, Okla..... | Tank Car Sales Manager. | Phillips. |
| C. L. Fleming..... | Findlay, Ohio..... | Vice-President in Charge of Refining and Marketing. | Ohio Oil. |
| N. T. Stover..... | Findlay, Ohio..... | General Sales Manager. | Ohio Oil. |

| Name of individual | Address | Official title or position | Company with which associated |
|--------------------------|------------------------|--|-------------------------------|
| L. B. McCammon..... | Tulsa, Okla..... | General Sales Manager. | Marathon. |
| Edward B. Reeser..... | Tulsa, Okla..... | President. | Barnsdall. |
| W. G. Skelly..... | Tulsa, Okla..... | President. | Skelly. |
| W. T. Atkins..... | Kansas City, Mo..... | Vice-President in Charge of Marketing. | Skelly. |
| I. A. O'Shaughnessy..... | Minneapolis, Minn..... | President. | Globe. |

B. General nature of the business and the interstate commerce involved.

4. The States of Michigan, Wisconsin (including the Western District thereof), Minnesota, North Dakota, South Dakota, Iowa, Illinois, Indiana, Missouri, and Kansas compose one of the great marketing areas for gasoline in the United States. Said area comprises the gasoline marketing territory of defendant Standard of Indiana, and is sometimes known as the "Standard of Indiana territory" by reason of said defendant's dominant position in the distribution of gasoline in each of said states. Said area is sometimes also known as the Mid-Western area and will be so referred to herein. Each of defendant major oil companies, either directly or through subsidiary or affiliated companies, markets gasoline in some or all of the states comprising said Mid-Western area.

5. Gasoline distributed in said Mid-Western area is manufactured largely from crude petroleum produced in the States of Texas, Oklahoma, Kansas, Arkansas, and Louisiana. Large quanti-

ties of the crude petroleum produced in these states are transported in interstate commerce, principally by pipe lines, from the states of production to refineries located in the aforesaid Mid-Western area, principally in the States of Illinois, Indiana, and Missouri. Gasoline refined from such crude is further transported in substantial quantities in interstate commerce from the states in which refined to other states in said Mid-Western area. Refineries are also located outside the said Mid-Western area, and substantial quantities of gasoline manufactured outside the said Mid-Western area are transported in interstate commerce, principally by tank car, into each of the states in the aforesaid Mid-Western area. Defendant major oil companies throughout the period covered by this indictment have together controlled, manufactured, shipped and sold, largely in interstate commerce, more than 85% (now approximately 4,500,000,000 gallons) of all gasoline distributed yearly in said Mid-Western area.

6. Each of said defendant major oil companies throughout the period covered by this indictment has distributed and marketed gasoline in said Mid-Western area in the manner following, that is to say: Each has owned or leased, and has operated or controlled the operation of, large numbers of retail service stations through which gasoline is sold directly to consumers. Each has usually delivered gasoline to such retail service stations by

tank truck or tank wagon from its bulk storage plants conveniently located to supply the retail stations in the various local marketing areas, said bulk storage plants being supplied with gasoline by tank cars principally from the refineries of the respective defendant major oil companies. Each has also sold and distributed large quantities of gasoline from the same or similar bulk storage plants to numerous independent retailers or dealers owning or operating retail service stations, said gasoline being usually sold to such independent dealers under supply contracts. In addition to selling through company owned or controlled retail service stations, and to independent dealers, each of said defendant major oil companies, with the exception of defendant Standard of Indiana, has sold gasoline in large quantities in tank car lots to jobbers.

7. Jobbers usually own and operate bulk storage plants conveniently located so as to serve, by their tank trucks or tank wagons, retail service stations either owned or operated by them, or independently owned or operated, in the various retail marketing areas served by them. Approximately 50% of all gasoline distributed to retail service stations in said Mid-Western area is distributed by or through jobbers. There are in excess of four thousand jobbers of gasoline doing business in the states comprising the aforesaid Mid-Western area. Great numbers of said jobbers have

been engaged in the distribution of gasoline during the period covered by this indictment and for many years prior thereto and their investments in capital assets have been and are substantial.

8. Jobbers marketing gasoline in the Mid-Western area are, and during the period covered by this indictment and many years prior thereto have been, supplied with gasoline for the most part by defendant major oil companies, except Standard of Indiana. By means of intensive advertising campaigns defendant major oil companies have created a public acceptance of, and demand for, their gasoline which is sold under their respective brand designations. Most jobbers have been persuaded, or induced, to enter into contracts for the purchase of their supplies from said defendant major oil companies, and during the period covered by this indictment in excess of 80% of all gasoline purchased by such jobbers has been purchased from said defendant major oil companies. Gasoline sold by each of said defendant major oil companies to such jobbers is sold and transported largely in interstate commerce, delivery being made from the states in which the refineries are located to the states in which the various jobbers are located, principally in tank cars as aforesaid.

9. Said defendant major oil companies do not sell any substantial part of their gasoline to jobbers in spot transactions. Nearly all gasoline sold by them to jobbers in the Mid-Western area is, and

has been throughout the period covered by this indictment, and prior thereto, sold under long term supply contracts. By far the greater part (not less than 90%) of all gasoline so sold under contract by said defendant major oil companies to jobbers is so-called "regular" or "house-brand" gasoline, having at the present time an octane (or anti-knock) rating of 68-70, the remainder of said gasoline being either so-called "third grade" gasoline, having an octane rating of less than 65, or "premium" gasoline, having an octane rating of 76 or above.

10. Prior to the conspiracy hereinafter alleged, said defendant major oil companies (or their predecessors) were in active competition with each other with respect to the several terms and provisions of such jobber supply contracts, and jobber accounts were solicited and contracts negotiated and renewed by them in the course, and on the basis, of such competition. Such jobber supply contracts have for many years last past usually provided for the guarantee by the supplying company of a minimum margin to the jobber, i. e., a minimum differential between the retail price at which the purchased gasoline would normally be sold and the tank car price paid by the jobber. Such guarantee provisions have, prior to the conspiracy hereinafter alleged, been especially the subject of active competition among the supplying companies. From time to time, and particularly since in or about Septem-

ber, 1934, to the date of the presentation of this indictment, by reason of the narrow spread existing between the normal retail prices and the basic tank car prices to the jobbers provided for in said jobber supply contracts, the amounts of gross margins enjoyed by the jobbers have usually been determined by the amounts of the said guarantees.

C. The conspiracy.

11. Beginning as early as the year 1931, the exact date being to the grand jurors unknown, and continuing to the date of the presentation of this indictment, defendants and certain persons hereinafter referred to, and others to the grand jurors unknown, well knowing all the foregoing facts, have been engaged in said Mid-Western area, and particularly in the Western District of Wisconsin, in a wrongful and unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in gasoline in violation of Section 1 of the Act of Congress of July 2, 1890 known as the Sherman Antitrust Act, that is to say:

12. Defendant major oil companies, acting through the individual defendants herein and others of their respective officers and agents hereinafter referred to, and others to the grand jurors unknown, have been continuously engaged during and throughout the period of time aforesaid, from early in the year 1931 to the date of the presentation of this indictment, in an unlawful combination and conspiracy to regulate, and

to fix and make uniform, the amounts of guaranteed margins to be allowed to jobbers in the sale of gasoline in interstate commerce, as aforesaid, under the aforementioned jobber supply contracts. Pursuant to said continuing combination and conspiracy, defendants, by concerted action, have regulated, and from time to time have fixed and made uniform, and have restricted and narrowed said guaranteed margins. In so doing defendants have unlawfully eliminated, restricted, and suppressed competition among themselves in the solicitation of jobber accounts and in the sale of gasoline to jobbers in interstate commerce, and have unlawfully regulated and restricted the ability of said jobbers to compete with them and each of them, and with each other, in the sale of gasoline to retail dealers or directly to consumers.

13. Said combination and conspiracy has been effectuated by the means and in the manner following: Commencing in 1931 numerous private meetings have been held by representatives of defendant major oil companies at which, among other things, the subject of jobber guaranteed margins in the aforesaid Mid-Western area has been discussed and debated for the purpose and with the effect of arriving at agreements and understandings whereby the same were arbitrarily fixed and made uniform. Such meetings have been held at frequent intervals in each of the years 1931 to 1936 inclusive, usually at Chicago, Illinois

at the Blackstone Hotel, the exact number and times and places of holding all of said meetings being to the grand jurors unknown. Said meetings have usually been attended by the following persons, and other representatives and employees of defendant major oil companies to the grand jurors unknown, each representing and acting for his company or its affiliated companies: Each of the individuals named as defendants herein, and C. B. McCollough, W. H. Ware; and R. D. Mering, representing Socony-Vacuum; R. A. Raupaugh, representing Standard of Indiana; P. M. Miskell (now deceased), representing Cities Service, Empire and Cities Service Oil; George J. Woods, representing Continental; R. R. Johnston and G. R. Nutty (now deceased), representing Gulf; J. G. Sinclair and Frank E. McSweeney, representing Shell; Adolph H. Sus and Ferrin McMahon, representing Sinclair; D. S. Wixson and Walter J. Herr, representing Mid-Continent; H. A. Trower, N. S. Moon, E. M. Kelly and John A. Getgood, representing Phillips; H. B. Carpenter, representing Ohio Oil; Joseph F. Adams, representing Barnsdall; C. S. Smith, representing National; Bernard L. Majewski, representing Deep Rock; C. W. MacKay, representing Marathon; and Martin G. Peeters, representing Wadhams.

14. Each of said individuals, including each of said individual defendants, has attended one or more of said meetings and has participated ac-

tively in the discussions had and agreements and understandings arrived at therein. Defendant Charles E. Arnott has usually called and has usually acted as chairman of said meetings. At said meetings the amounts of guaranteed margins to be allowed to jobbers in said Mid-Western area were agreed upon, fixed and made uniform, and arbitrarily changed from time to time by agreements, understandings, and concerted action, and have thereby been continuously regulated by defendants during the period of time aforesaid.

15. In or about December, 1934, by agreement made and concerted action taken pursuant to and in the course of said continuing combination and conspiracy, said guaranteed margins to be allowed to jobbers in said Mid-Western area were uniformly fixed at $5\frac{1}{2}\text{¢}$ below the prevailing normal retail prices, subject to the reduction therefrom of one-half of the amount by which at any time the differential between the basic tank car price to the jobber (as uniformly defined in said jobber supply contracts), and the normal retail price, might be less than $5\frac{1}{2}\text{¢}$. Said agreement has from time to time been renewed and reaffirmed at similar meetings held by defendants throughout the year 1935 and in the year 1936, and has continued in effect down to the date of the presentation of this indictment.

D. Jurisdiction and venue.

16. The combination and conspiracy herein set forth has operated and has been carried out in part within the Western District of Wisconsin. During and throughout the period covered by this indictment defendant major oil companies (with the exception of Gulf) have marketed, either directly, or indirectly through affiliated or subsidiary companies, large quantities of gasoline in interstate commerce within said district in competition with jobbers whose margins have been fixed and reduced by agreement and concerted action and whose ability to compete with said defendant major oil companies has been restricted, as aforesaid. Said defendant major oil companies (with the further exception of Standard of Indiana) have sold and delivered to jobbers large quantities of gasoline within said district in interstate commerce. Said defendant major oil companies selling to jobbers throughout the period of time aforesaid have, pursuant to said combination and conspiracy, substantially restrained competition among themselves within said district in soliciting jobber accounts, in contracting with jobbers, and in allowing guaranteed margins to jobbers, and have refrained, within said district, from competing freely with each other in respect thereto. Said defendant major oil companies selling to jobbers, in effectuating and carrying out said combination and conspiracy, have from time to time within

said district solicited jobbers by offering them the uniform, arbitrary, and non-competitive guaranteed margins agreed upon and established by concerted action, have contracted with such jobbers on the basis of said uniform guaranteed margins, and have sold and delivered in interstate commerce large quantities of gasoline to such jobbers on the basis of said uniform guaranteed margins.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find and present that defendants, throughout the period aforesaid, at the places, and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of the aforesaid trade and commerce among the several states; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II

17. Paragraphs 1 to 9, inclusive, of Count I of this indictment are hereby realleged and incorporated herein as if hereinafter set forth in full.

18. Prior to the conspiracy hereinafter alleged, said defendant major oil companies (or their predecessors) were in active competition with each other with respect to the several terms and provisions of such jobber supply contracts, and jobber accounts were solicited and contracts negotiated and renewed by them in the course, and on the basis, of such competition.

C. The conspiracy.

19. Beginning as early as the year 1931, the exact date being to the grand jurors unknown, and continuing to the date of the presentation of this indictment, defendants and certain persons herein-after referred to, and others to the grand jurors unknown, well knowing all the foregoing facts, have been engaged in said Mid-Western area, and particularly in the Western District of Wisconsin, in a wrongful and unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in gasoline in violation of Section 1 of the Act of Congress of July 2, 1890 known as the Sherman Antitrust Act, that is to say:

20. Defendant major oil companies, acting through the individual defendants herein and others of their respective officers and agents herein-after referred to, and others to the grand jurors unknown, have been continuously engaged during and throughout the period of time aforesaid, from early in the year 1931 to the date of the presentation of this indictment, in an unlawful combination and conspiracy to regulate, and to fix and make uniform, the essential terms and provisions of the aforementioned jobber supply contracts. Pursuant to said continuing combination and conspiracy, defendants, by concerted action, have regulated, and from time to time have fixed and made uniform, the terms and conditions under which gasoline has been sold to jobbers under contract, as

aforesaid, in interstate commerce. In so doing defendants have unlawfully eliminated, restricted, and suppressed competition among themselves in the solicitation of jobber accounts and in the sale of gasoline to jobbers in interstate commerce, and have unlawfully regulated and restricted the ability of said jobbers to compete with them and each of them, and with each other, in the sale of gasoline to retail dealers or directly to consumers.

21. Said combination and conspiracy has been effectuated by the means and in the manner following: Commencing in 1931 numerous private meetings have been held by representatives of defendant major oil companies at which the terms and provisions of jobber supply contracts have been discussed and debated for the purpose and with the effect of arriving at agreements and understandings whereby the same were arbitrarily determined upon and made uniform. Such meetings have been held at frequent intervals in each of the years 1931 to 1936 inclusive, usually at Chicago, Illinois at the Blackstone Hotel, the exact number and times and places of holding all of said meetings being to the grand jurors unknown. Said meetings have usually been attended by the following persons, and other representatives and employees of defendant major oil companies to the grand jurors unknown, each representing and acting for his company or its affiliated companies: Each of the individuals named as defendants

herein, and C. B. McCollough, W. H. Ware, and R. D. Mering, representing Socony-Vacuum; R. A. Raupaugh, representing Standard of Indiana; P. M. Miskell (now deceased), representing Cities Service, Empire and Cities Service Oil; George J. Woods, representing Continental; R. R. Johnston and G. R. Nutty (now deceased), representing Gulf; J. G. Sinclair and Frank E. McSweeney, representing Shell; Adolph H. Sus and Ferrin McMahon, representing Sinclair; D. S. Wixson and Walter J. Herr, representing Mid-Continent; H. A. Trower, N. S. Moon, E. M. Kelly and John A. Getgood, representing Phillips; H. B. Carpenter, representing Ohio Oil; Joseph F. Adams, representing Barnsdall; C. S. Smith, representing National; Bernard L. Majewski, representing Deep Rock; C. W. MacKay, representing Marathon; and Martin G. Peeters, representing Wadhams.

22. Each of said individuals, including each of said individual defendants, has attended one or more of said meetings and has participated actively in the discussions had and agreements and understandings arrived at therein. Defendant Charles E. Arnott has usually called and has usually acted as chairman of said meetings. At said meetings the essential terms and provisions of said jobber supply contracts were agreed upon and made uniform, and arbitrarily changed from time to time by agreements, understandings and concerted ac-

tion, and have thereby been continuously regulated by defendants during the period of time aforesaid.

23. Thus, in addition to the agreements and concerted action with respect to jobber guaranteed margins as set forth in Count I hereof, defendants during the period of time aforesaid have from time to time unlawfully agreed upon and adopted by concerted action the following:

a. Uniform provisions in said jobber contracts limiting the length of time of such jobber contracts to one year, subject to automatic renewal unless cancelled before a specified period (likewise agreed upon and made uniform) prior to the expiration date.

b. Uniform provisions for determining the basic price to the jobbers, usually that such basic price should be the average spot market price, determined by averaging the high and low spot market prices for gasoline of comparable octane rating published by Platt's Oilgram, for the Tulsa, Oklahoma market, and by The Chicago Journal of Commerce on the date of shipment.

c. Uniform provisions to the effect that all gasoline should be sold only on the basis of all-rail delivered prices, f. o. b. Tulsa, Oklahoma, irrespective of the actual origin of the gasoline or method of its transportation.

d. Uniform provisions fixing minimum prices to jobbers.

e. Uniform provisions to the effect that the guaranteed margins allowed to jobbers

should automatically and uniformly change in accordance with changes in discounts allowed to dealers.

f. Uniform provisions for the minimum and maximum monthly and annual gasoline requirements of the jobber.

g. Prohibitions against the inclusion in said jobber contracts of any guarantee of protection to the jobber against local price cuts (it being usually agreed and understood that such so-called local protection might be given only voluntarily by the refiner in the latter's discretion and apart from the contract with the jobber).

D. Jurisdiction and venue.

24. The combination and conspiracy herein set forth has operated and has been carried out in part within the Western District of Wisconsin. During and throughout the period covered by this indictment defendant major oil companies (with the exception of Gulf) have marketed either directly, or indirectly through affiliated or subsidiary companies, large quantities of gasoline in interstate commerce within said district in competition with jobbers, the essential provisions and terms of whose contracts with defendant major oil companies have been determined and made uniform by agreement and concerted action, and whose ability to compete with said defendant major oil companies has been restrained and restricted, as aforesaid. Said defendant major oil companies (with the further exception of Standard of Indiana)

have sold and delivered to jobbers large quantities of gasoline within said district in interstate commerce. Said defendant major oil companies selling to jobbers throughout the period of time aforesaid have, pursuant to said combination and conspiracy, substantially restrained competition among themselves within said district in soliciting jobber accounts and in contracting with jobbers, and have refrained, within said district, from competing freely with each other in respect thereto. Said defendant major oil companies, in effectuating and carrying out said combination and conspiracy, have from time to time within said district solicited jobbers by offering them the uniform, arbitrary, and non-competitive contracts, the essential terms and provisions of which have been agreed upon and established by concerted action, have contracted with such jobbers on the basis of said uniform contracts, and have sold and delivered in interstate commerce large quantities of gasoline to such jobbers pursuant to said uniform contracts.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find and present that defendants, throughout the period aforesaid, at the places, and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of the aforesaid trade and commerce among the several states; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT III

25. Paragraphs 1 to 9, inclusive, of Count I of this indictment are hereby realleged and incorporated herein as if hereinafter set forth in full.

26. Prior to the conspiracy hereinafter alleged, said defendant major oil companies (or their predecessors) were in active competition with each other in their dealings with jobbers and jobber accounts were solicited and contracts with jobbers were negotiated and renewed by them in the course, and on the basis, of such competition.

C. The conspiracy.

27. Beginning as early as the year 1931, the exact date being to the grand jurors unknown, and continuing to the date of the presentation of this indictment, defendants and certain persons hereinafter referred to, and others to the grand jurors unknown, well knowing all the foregoing facts, have been engaged in said Mid-Western area, and particularly in the Western District of Wisconsin, in a wrongful and unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in gasoline in violation of Section 1 of the Act of Congress of July 2, 1890 known as the Sherman Antitrust Act, that is to say:

28. Defendant major oil companies, acting through the individual defendants herein and others of their respective officers and agents hereinafter referred to, and others to the grand jurors unknown, have been continuously engaged during

and throughout the period of time aforesaid, from early in the year 1931 to the date of the presentation of this indictment, in an unlawful combination and conspiracy to regulate and make uniform their practices and policies with respect to jobbers. Pursuant to said continuing combination and conspiracy, defendants, by concerted action, have from time to time adopted uniform and arbitrary rules and policies in their dealings and practices with or affecting jobbers in the sale of gasoline to said jobbers in interstate commerce. In so doing defendants have unlawfully eliminated, restricted, and suppressed competition among themselves in their practices and policies affecting jobbers, in their dealings with jobbers, in the solicitation of jobber accounts, and in the sale of gasoline to jobbers in interstate commerce, and have unlawfully regulated and restricted the ability of said jobbers to compete with them and each of them, and with each other, in the sale of gasoline to retail dealers or directly to consumers.

29. Said combination and conspiracy has been effectuated by the means and in the manner following: Commencing in 1931 numerous private meetings have been held by representatives of defendant major oil companies at which the practices and policies of said companies affecting jobbers have been discussed and debated for the purpose and with the effect of arriving at agreements and understandings whereby the same were arbitrarily determined upon and made uniform. Such meetings

have been held at frequent intervals in each of the years 1931 to 1936 inclusive, usually at Chicago, Illinois at the Blackstone Hotel, the exact number and times and places of holding all of said meetings being to the grand jurors unknown. Said meetings have usually been attended by the following persons, and other representatives and employees of defendant major oil companies to the grand jurors unknown, each representing and acting for his company or its affiliated companies: Each of the individuals named as defendants herein, and C. B. McCollough, W. H. Ware and R. D. Mering, representing Socony-Vacuum; R. A. Raupaugh, representing Standard of Indiana; P. M. Miskell (now deceased), representing Cities Service, Empire, and Cities Service Oil; George J. Woods, representing Continental; R. R. Johnston and G. R. Nutty (now deceased), representing Gulf; J. G. Sinclair and Frank E. McSweeney, representing Shell; Adolph H. Sus and Ferrin McMahon, representing Sinclair; D. S. Wixson and Walter J. Herr, representing Mid-Continent; H. A. Trower, N. S. Moon, E. M. Kelly and John A. Getgood, representing Phillips; H. B. Carpenter, representing Ohio Oil; Joseph F. Adams, representing Barnsdall; C. S. Smith, representing National; Bernard L. Majewski, representing Deep Rock; C. W. MacKay, representing Marathon; and Martin G. Peeters, representing Wadhams.

30. Each of said individuals, including said individual defendants, has attended one or more of

said meetings and has participated actively in the discussions had and agreements and understandings arrived at therein. Defendant Charles E. Arnott has usually called and has usually acted as chairman of said meetings. At said meetings important practices and policies affecting jobbers were concertedly adopted and made uniform, and were arbitrarily changed from time to time by agreements, understandings and concerted action, and have thereby been continuously regulated by defendants during the period of time aforesaid.

31. Thus, in addition to the agreements and concerted action with respect to jobber guaranteed margins as set forth in Count I hereof, and the other essential provisions of jobber contracts as set forth in Count II hereof (and largely in order to support and reinforce the agreements and understandings set forth in said counts), defendants during the period of time aforesaid have from time to time unlawfully entered into and carried out agreements and understandings as follows:

a. To refrain from taking on new jobber accounts, or from taking on new jobber accounts under contracts providing for guaranteed margins.

b. To refrain from converting jobber accounts handling unbranded gasoline to jobber accounts handling branded gasoline, unless guaranteed margins were not allowed.

c. To refrain from converting retail dealers or groups of retail dealers to a jobber basis.

d. To refrain from converting any jobbers to commission agents.

e. To refrain from converting any jobbers to dealers.

f. To refrain from converting jobber accounts handling branded gasoline to jobber accounts handling unbranded gasoline, unless the accounts thus converted were "ethical", that is to say, unless the jobbers involved maintained the refiners' retail prices.

g. To refrain from selling to jobbers handling unbranded gasoline, unless such jobbers were "ethical" as aforesaid.

h. To refrain from leasing facilities from jobbers previously under contract with competitors and from employing such jobbers as commission agents.

i. To refrain from soliciting jobber accounts in areas where the refiner had marketing facilities of its own.

j. To refrain from accepting new jobber accounts in so-called depressed price areas.

k. To refrain from selling gasoline to so-called "cut price" jobbers, i. e., jobbers who failed to maintain refiners' prices.

l. To require each jobber to deal exclusively with one refiner.

m. To require each jobber to refrain from soliciting dealers of other defendant major oil companies.

n. Limiting the amounts of local protection, i. e., protection against depressed retail prices, which might be given to a jobber.

o. To refrain from giving any local protection on third grade gasoline.

32. Further to support and reinforce the aforementioned agreements and understandings affecting jobbers, defendants have throughout the period conspired to fix and make uniform commissions allowed company agents selling gasoline on commission basis in competition with jobbers.

D. Jurisdiction and venue.

33. The combination and conspiracy herein set forth has operated and has been carried out in part within the Western District of Wisconsin. During and throughout the period covered by this indictment defendant major oil companies (with the exception of Gulf) have marketed either directly, or indirectly through affiliated or subsidiary companies, large quantities of gasoline in interstate commerce within said district in competition with jobbers, the practices and policies of defendant major oil companies with respect to whom have been determined and made uniform by agreement and concerted action and whose ability to compete with said defendant major oil companies has been restrained and restricted, as aforesaid. Said defendant major oil companies (with the further exception of Standard of Indiana)

have sold and delivered to jobbers large quantities of gasoline within said district in interstate commerce. Said defendant major oil companies selling to jobbers, throughout the period of time aforesaid have, pursuant to said combination and conspiracy, substantially restrained competition among themselves within said district in their practices and policies affecting jobbers, in their dealings with jobbers, in the solicitation of jobber accounts and in contracting with jobbers, and have refrained, within said district, from competing freely with each other in respect thereto. Said defendant major oil companies in effectuating and carrying out said combination and conspiracy have employed said uniform and arbitrary rules and practices in their dealings with jobbers and prospective jobbers within said district, and have sold and delivered in interstate commerce large quantities of gasoline to jobbers within said district on the basis of said uniform and arbitrary rules and practices.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find and present that defendants, throughout the period aforesaid, at the places, and in the manner and form aforesaid, unlawfully have engaged in a continuing combination and conspiracy in restraint of the aforesaid trade and commerce among the several states; contrary to the form of the statute in such case made and provided,

and against the peace and dignity of the United States of America.

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