STANDARD OIL CO. OF INDIANA-OCCIDENTAL PETROLEUM CORP. MERGER

HEARING

BEFORE THE

SPECIAL SUBCOMMITTEE ON INTEGRATED OIL OPERATIONS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

THE PROPOSED MERGER OF STANDARD OIL CO. OF INDIANA AND OCCIDENTAL PETROLEUM CORP.

DECEMBER 3, 1974

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STANDARD OIL CO. OF INDIANA-OCCIDENTAL PETROLEUM CORP. MERGER

TUESDAY, DECEMBER 3, 1974

U.S. SENATE,
SUBCOMMITTEE ON INTEGRATED OIL OPERATIONS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell presiding.

Present: Senators Haskell, Nelson, Metzenbaum, and Bartlett.

Also present: Jerry T. Verkler, staff director; Gregg K. Erickson, professional staff of the committee; and Betsy Moler, legislative assistant to Senator Haskell.

Senator HASKELL. The hearing of the Subcommittee on Integrated Oil Operations will commence.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. The purpose of this hearing of course is to examine the proposed merger of Standard Oil of Indiana and Occidental Petroleum.

On Friday, November 15, 1974, Standard Oil Co. of Indiana announced it is considering a bid to take over Occidental Petroleum Corp.

The merger, likely involving nearly a billion dollars worth of stock, would mean the Nation's 6th largest oil company would be buying out the 11th largest.

The surviving giant, with assets of $10.8 billion, would be larger than all other oil companies in the United States except Exxon, Texaco, Mobil, and Gulf.

These two companies now compete directly or indirectly in oil and natural gas exploration and production, chemicals, fertilizer production and oil shale.

In addition Indiana Standard is a potential entrant into the coal business while Occidental would like to enter the domestic refining business.

Both have extensive mineral operations and have bid together and in opposition to each other in recent Federal sales for Outer Continental Shelf leases.

The merger is under active scrutiny by the Federal Trade Commission and has been vociferously opposed by Dr. Armand Hammer, chairman of the board of Occidental.

Hammer has characterized it as being in violation of this Nation's

antitrust laws as well as against the interests of Occidental shareholders and the public.

In light of the two companies' importance to the U.S. energy picture—both now and in the future—I have called this hearing to examine the nature and impact of the proposed acquisition in detail while it is still in the preliminary stage.

Even at first glance we see:

Both companies have oil shale holdings. Oxy has been experimenting with an in situ or underground process while Amoco has spent vast sums developing an above ground retort.

Oxy owns the Permian Corp., a 480,000 barrel per day crude gathering operation which is the largest single supplier of crude to independent refiners.

Amoco's 1973 annual report said though the firm's refineries functioned at 97 percent capacity, they "would have done even better except for a lack of crude oil to process."

Amoco would be in a position to capture this independent crude supply.

Oxy and Standard both sell their natural gas production to the same interstate pipelines. Deregulation proposals hinge upon the advancement of competition in this area, not its further demise.

The merger would result in immediate reduction of competition between suppliers of natural gas.

Amoco and Hooker, Oxy's chemical company, compete directly in fertilizer, anhydrous ammonia, flame retardant chemicals for fabrics and molding resins.

Amoco is a substantial buyer of phosphate and sulfur while Oxy's Jefferson Lake Sulphur Co. is a major producer of both these products.

In the last 8 months alone Amoco and Oxy have submitted 3 joint bids and 10 rivals bids in OCS lease sales.

Occidental, along with Gulf + Western Industries, is in the process of developing a rechargeable high-energy zinc-chloride battery system for automotive use.

Amoco is one of the Nation's largest suppliers of gasoline for automotive consumption. This again suggests the need for concern over the potential for suppression of technological rivalry.

Standard is a major producer of plastic pipes and other synthetics which can be used in place of metal pipes in highly corrosive environments.

One of Oxy's subsidiaries, the Parker Co., is developing a new technological process for treating metal pipes for corrosion resistance.

The potential for suppression for innovative technological rivalry is clear.

The list goes on and on.

The proposed takeover is an important one and deserves careful examination.

It is important for its economic effects and its effects on public policy.

Senator Bartlett, do you have any comments?

Senator BARTLETT. Mr. Chairman, thank you very much. I have no statement.

Senator HASKELL. Senator Metzenbaum.

STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Mr. METZENBAUM. I would like to commend the Chairman for convening this hearing. I think the matter is of major moment and the rest of the country would like to know what the rest of the implications for this proposed transaction is.

Senator HASKELL. Without objection, I will submit for the record, copies of telegrams and responses sent out to people concerning this hearing.

[The information follows:]

NOVEMBER 20, 1974.

Hon. WILLIAM SAXBE,
Attorney General, Department of Justice,
Washington, D.C.

You are respectfully requested to testify before the Special Subcommittee on Integrated Oil Operations on December 3, 1974 concerning the impact of an acquisition by Standard Oil Company of Indiana of the controlling interest in Occidental Petroleum Corporation.

You will be asked to testify concerning anticompetitive impact if such a merger were to take place and actions which would be taken by the Department of Justice in the face of such a merger.

The hearing will commence at 10:00 a.m. in Room 3110 of the Dirksen Senate Office Building.

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

NOVEMBER 20, 1974.

Hon. LEWIS ENGMAN,
Chairman, Federal Trade Commission,
Washington, D.C.

You are respectfully requested to testify before the Special Subcommittee on Integrated Oil Operations on December 3, 1974 concerning the impact of an acquisition by Standard Oil Company of Indiana of the controlling interest in Occidental Petroleum Corporation.

You will be asked to testify concerning anticompetitive impact if such a merger were to take place and actions which would be taken by the Federal Trade Commission in the face of such a merger.

The hearing will commence at 10:00 a.m. in Room 3110 of the Dirksen Senate Office Building.

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

NOVEMBER 20, 1974.

Mr. JOHN SWEARINGEN,
Chairman of the Board, Standard Oil Company of Indiana, Chicago, Ill.

Mr. ARMAND HAMMER,
Chairman of the Board, Occidental Petroleum Corporation, Los Angeles, Calif.

You are requested to testify before the Special Subcommittee on Integrated Oil Operations on December 3, 1974 concerning the impact if Standard Oil Company of Indiana were to acquire the controlling interest in Occidental Petroleum Corporation. You will be asked to testify in detail concerning the status and nature of negotiations and the potential anticompetitive aspects of such a merger. Please make arrangements to be accompanied by the investment bankers and accountants with whom you have discussed the contemplated transaction.

A detailed list of points to be covered will be forwarded to you in the very near future.

The hearing will commence at 10:00 a.m. in Room 3110 of the Dirksen Senate Office Building.

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

OXYPETE, LA.,
November 21, 1974.

Hon. FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations,
Washington, D.C.

I, welcome the opportunity to testify before the Special Subcommittee on Integrated Oil Operations on December 3, 1974. As you know, Occidental believes Standard Oil Company of Indianas' proposed acquisition of a controlling interest in Occidental not only violates the antitrust laws, but is detrimental to the best interests of our country.

Preliminarily, you should understand that contrary to the possible implications in your Telex of November 20, 1974, there have been no negotiations with Standard at all and no investment bankers or accountants were consulted by Occidental concerning the making of such a transaction. The sole meeting on the subject with Standard is described in our letter to shareholders of November 17, 1974, a copy of which I am having delivered to you separately.

Sincerely,

ARMAND HAMMER,
Chairman of the Board.

CHICAGO, ILL., *November 22, 1974.*

Hon. FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations, U.S. Senate,
Washington, D.C.

In response to your request, I will be available to testify before your Special Subcommittee on Integrated Oil Operations on December 3 and will be accompanied by the appropriate personnel. Inasmuch as you are expecting us to respond to various detailed points, the sooner you can advise us as to such points the more complete is our response likely to be.

JOHN E. SWEARINGEN,
Chairman, Standard Oil Company (Indiana).

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., November 27, 1974.

Hon. RAY GARRETT,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: The Special Subcommittee on Integrated Oil Operations is currently inquiring into the anticompetitive implications of the tentatively proposed merger between Standard Oil Company (Indiana) and Occidental Petroleum Corporation.

We have noted, as a part of our investigation in this matter, the reported increase in the volume of Occidental shares traded in the two week period immediately preceding the announcement by Standard of its tentative intentions.

I expect that in the normal course of affairs the Commission will also be interested in this matter. I would very much appreciate your keeping the Subcommittee informed of the status of any investigation that you now have under way, or which may be initiated in the near future, pertaining to these corporations.

Best wishes.

Sincerely,

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

DEPARTMENT OF JUSTICE,
Washington, D.C., November 26, 1974.

Hon. FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has requested me to reply to your telegram of November 20, 1974, requesting him to testify before your Subcommittee on December 3, 1974, with respect to the acquisition by the Standard Oil Company of Indiana of a controlling interest in Occidental Petroleum Corporation.

Pursuant to our regular liaison procedures with the FTC, we have agreed with the Commission that they will undertake the investigation of this matter and any further proceedings with respect to it. This liaison procedure was developed in order to avoid the problem of two government agencies simultaneously investigating the same matter and, in general, has worked quite well.

It would thus seem that the FTC, rather than the Attorney General, would be the proper governmental agency to testify before your Subcommittee on this matter. We believe that, for us to testify, in view of the FTC's pending investigation, would be highly inappropriate.

Sincerely yours,

W. VINCENT RAKESTRAW,
Assistant Attorney General, Legislative Affairs.

DECEMBER 2, 1974.

Dr. ARMAND HAMMER,
Chairman of the Board, Occidental Petroleum Corporation,
Los Angeles, Calif.

Mr. MARVIN WATSON,
Occidental Petroleum Corporation,
Washington, D.C.

As my staff has indicated to Marvin Watson of your Washington, D.C. office please be prepared to discuss the following at the December 3, 1974 hearing before the Special Subcommittee on Integrated Oil Operations:

(1) Competitive overlaps between your firm and Standard Oil Company (Indiana) in fertilizer, chemicals, oil shale, petroleum and natural gas production and Outer Continental Shelf lease sales.

(2) Your statement that the proposed merger is in violation of the antitrust laws.

In addition please be prepared at the time of your testimony to provide all material provided the Federal Trade Commission in this matter and any documents, internal memoranda, memoranda of telephone conversations and other forms of communication pertaining to any meeting, discussion, or decision in this matter.

You will need at least 25 copies of your prepared statement for the Subcommittee's use. The hearing will commence at 10:00 a.m. in room 3110 of the Dirksen Senate Office Building.

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

DECEMBER 2, 1974.

Mr. JOHN SWEARINGEN,
Chairman of the Board, Standard Oil Company (Indiana),
Chicago, Ill.

Mr. RADY JOHNSON,
Standard Oil Company (Indiana),
Washington, D.C.

As my staff has indicated to Rady Johnson of your Washington, D.C. office please be prepared to discuss the following at the December 3, 1974 hearing before the Special Subcommittee on Integrated Oil Operations:

(1) Competitive overlaps between your firm and Occidental Petroleum Corporation in fertilizer, chemicals, oil shale, petroleum and natural gas production and Outer Continental Shelf lease sales.

(2) Your announced intention to acquire coal properties and to begin a coal mining operation.

In addition please be prepared at the time of your testimony to provide all material provided the Federal Trade Commission in this matter and any documents, internal memoranda, memoranda of telephone conversations and other forms of communication pertaining to any meeting, discussion, or decision in this matter.

You will need at least 25 copies of your prepared statement for the Subcommittee's use. The hearing will commence at 10:00 a.m. in room 3110 of the Dirksen Senate Office Building.

FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations.

Senator HASKELL. Our first witness is Dr. Armand Hammer.

I would like to make a brief statement. Dr. Hammer was scheduled as the first witness. Dr. Hammer's assistant, Mr. Watson, called a member of my staff on several occasions last night stating that Dr. Hammer would like to follow Mr. Swearingen of Standard of Indiana.

My assistant was unable to reach me and this morning when I arrived in the office, I found these requests had been made and had been renewed in the morning.

I said we had lined up witnesses in a certain fashion and announced the order of appearances and we could not change the order.

Mr. Watson called me and I talked to him. He said Dr. Hammer wanted to follow Mr. Swearingen for reasons which I do not know and will not speculate.

I told Mr. Watson this was not possible. The order had been already established.

He indicated to me on the telephone I had told him Mr. Hammer was going to be second. If that is the case, it did not register on my mind.

We will proceed with the hearing. If Dr. Hammer should appear, he will, if we have time, be heard. I think this might illustrate the desirability of sending subpenas as a matter of routine precaution.

With that, I will ask Mr. Swearingen, chairman of the board of Standard Oil Co. of Indiana to appear.

Mr. SWEARINGEN. I believe Dr. Hammer has arrived.

Senator HASKELL. Senator Metzenbaum just called that to my attention and I will ask Dr. Hammer to come to the witness stand.

Dr. Hammer, I just made a statement on our conversations with Mr. Watson. I am glad you are here and we look forward to hearing from you.

As I told Mr. Watson on the telephone, I would appreciate it if witnesses would stay. If there is some conflict in the testimony, we would want to give everyone an opportunity to express their viewpoint and to rebut the others.

If you would like to stay and Mr. Swearingen would like to stay after Mr. Leidquist has testified, I would certainly, with the permission of my colleagues, give people a chance to appear at the witness table.

Dr. Hammer, without further ado, we will proceed.

STATEMENT OF DR. ARMAND HAMMER, CHAIRMAN OF THE BOARD, OCCIDENTAL PETROLEUM CORP.

Dr. HAMMER. Mr. Chairman, I apologize for being a few minutes late. I was informed that I would be the second witness and apparently there was a misunderstanding.

I am very happy I will have the opportunity of rebuttal which I wish to avail myself of.

Also, I hope that Mr. Baird would have an opportunity to present some of the answers to the public statements which have appeared in the release by Standard Oil of Indiana indicating they would be in a position to develop our resources much faster than we could, after Mr. Swearingen, of course, and assuming there is enough time.

Senator HASKELL. Assuming there is enough time and if this hap-

pens to be the position of Standard—I do not know what their position is going to be—we will give Mr. Baird an opportunity.

Dr. HAMMER. Thank you very much. Mr. Chairman, members of the Senate committee, my name is Armand Hammer and I am chairman of the board and chief executive officer of Occidental Petroleum.

I thank you, Mr. Chairman, and the members of the committee for inviting me here this morning.

Over the years, I have been privileged to testify before committees of the Congress, but I believe these hearings are of greater national importance than any in which I have previously participated.

In saying this, I readily concede my strong personal feelings, since the freedom and independence of Occidental Petroleum is at stake.

This is a matter of vital importance to our 300,000 shareholders, to our 32,000 employees and to the many companies, large and small, with which we deal in the free marketplace.

As I will explain in my testimony, it is also of crucial relevance to the public interest—for if Occidental falls into the hands of one of the major oil companies, then the American people will have lost the Nation's largest independent energy company and with it a strong champion of competition in the world of oil, coal, chemicals, fertilizer, and international trade.

Mr. Chairman, let me first clarify our position with regard to Standard of Indiana's efforts to seize control of Occidental Petroleum.

I feel I should do this because the public representations made by officers of Standard of Indiana have been carefully designed to obscure the facts of our position.

The chairman of the board of Standard of Indiana, Mr. John Swearingen, whom I had met casually before, telephoned me on Wednesday, November 13, seeking an appointment for the following morning.

However, Occidental's board of directors had already been convened for Thursday morning, so I agreed to see Mr. Swearingen late Thursday afternoon.

Mr. Swearingen did not state the purpose of the meeting, but since we had previous discussions with his company about our oil shale process, I assumed Mr. Swearingen wished to discuss this matter further.

Therefore, I had my senior oil shale expert, Dr. Donald Garrett, on hand for the meeting.

Mr. Swearingen was accompanied by an associate, Mr. Robert Greenhill.

After some preliminary discussion about their interest in Russia and about our oil shale process, and after viewing our shale oil film they asked if Dr. Garrett could be excused so that they could meet with me alone.

I refused the request, pointing out that they would be two to my one and that Dr. Garrett was an executive vice president of Occidental Petroleum, from whom I had no secrets.

Mr. Swearingen then said, "I would like to offer you some Standard of Indiana shares for all of Occidental Petroleum's shares."

I answered: "I would like to offer you some of Occidental Petroleum's shares for all of Standard's shares," and further added, "you can't be serious. This would never be allowed by the Government as

it seems to me it would obviously be a violation of antitrust laws."

Mr. Swearingen replied that his lawyers had been working on this matter for a long time and that they were of the opinion that they could get away with this.

I told him that I believed our own lawyers would disagree with this opinion and that I, personally, would be opposed to such talks, but that I would poll our board of directors and felt certain they would support me.

I have polled the board and they do support me, unanimously.

In the dialog that followed, Dr. Garrett and I both felt that Mr. Swearingen and his associate threatened us by indicating that they would go directly to our shareholders over the opposition of our board of directors.

As they were leaving, I asked Mr. Swearingen's associate for his business card and was surprised to learn that he was a managing director and a partner in the Wall Street investment firm of Morgan Stanley & Co. Occidental has had this firm on retainer for services throughout 1974.

About 2 hours later, I received a call from Mr. Swearingen, who said that he would issue a statement the next day to the press, anouncing that there had been talks about a merger and that I had stated I was not interested.

Mr. Swearingen said that he was sorry I took that attitude. I told him I could not stop him from saying anything he might wish to the press but immediately after his statement I would put out a denial that there had been merger negotiations of any kind.

The next morning, as I prepared to leave for Paris to conduct important Occidental negotiations on a potential liquefied natural gas import deal with representatives of Russia and Japan, I was notified by my office that Standard had issued a statement announcing that there had been talks exploring the possibility of combining the two companies.

In my view, Mr. Chairman, that interpretation of what happened in my office on November 14, gave a false impression by suggesting that I participated in negotiations.

That is entirely contrary to the truth.

I wish to state to this committee today that there have been no merger talks and the directors and management of Occidental Petroleum are fully, firmly, and irrevocably opposed to any combination with Standard of Indiana.

We will exert every effort to stop this takeover attempt and avert its injurious impact on the public, and on our shareholders, employees, suppliers, and customers.

To implement our determined policy in this regard, attorneys for Occidential Petroleum will this day file suit setting forth our conviction that the actions of Standard of Indiana are in violation of antitrust laws, and we intend to vigorously prosecute this legal action.

With your permission, Mr. Chairman, and members of the committee, we will file a copy of our detailed complaint of some 35 pages tomorrow as part of the record of these proceedings.

Senator HASKELL. Without objection, it will be so accepted.

[The material referred to was not received in time to be included in the record.]

Dr. HAMMER. Our firm determination to resist seizure by Standard stems from fundamental precepts that have served Occidental well, just as they have served America well.

Occidental is an independent company and it has responsibly exercised its right to go its own way and do the unexpected as a vital and aggressive competitor.

The story of Occidental's success is the story of what America's free enterprise system can accomplish, a system which has given us the highest standard of living of any nation in the world and has enabled us to help other less fortunate countries, while at the same time not sacrificing any of our freedom.

In line with this, I think a few words about the history of Oxy, as we call it, are relevant.

Eighteen years ago, at the age of 58, I retired to California after having enjoyed what I think can be called an interesting and successful career in several fields of business.

By chance, I became associated with a small company—Occidental—which had a net worth of some $34,000, a few almost depleted oil wells and only three employees.

As someone once said, in those days, I would not have known a barrel of oil if I fell into it. But good luck—which came as a result of working a 14-hour day, 7 days a week—and good people whom we brought in as management, together with a dedication on the part of all Oxy employees to do better and be better, rapidly moved us from a small, insignificant Los Angeles company into one of the largest and most successful independents.

Occidental has made its way alone—and succeeded alone—to become in 1973 the 36th largest company in the United States and the 10th largest oil company.

Based on our estimated sales for this year, we are now approximately a $6 billion company and our after-tax profit will be about $300 million.

Among the statements by Mr. Swearingen in his original press release was this:

> Swearingen also said he believed the ultimate combination of the two companies would be in the public interest in that, among other things, it would permit accelerated development of Occidental's petroleum reserves and its coal resources without diminishing Standard's efforts or planned expenditures in the exploration and production of oil and gas or the development of its oil shale properties.

We disagree with this misleading statement that they can develop our reserves faster than we can and following my testimony and the testimony of Mr. Swearingen, I ask permission of the chairman to allow Mr. Joseph E. Baird, our president, to rebutt this statement.

As Occidental has made its way, it has been supported by an unusually large number of small shareholders, for Oxy is a company which is owned by small investors holding mostly 50 and 100 shares.

Many who held the stock for a long time have made considerable profits and, even today with a market price of about $13 a share after a three for one stock split, this would be equal to $39 a share, compared to the 18 cents a share which was the market price when I first became associated with Occidental.

Our company now has a total equity in excess of $1 billion, compared with the original $34,000 of net worth.

Senator HASKELL. You say total equity in excess of $1 billion? Are you using total equity in the usual sense?

Dr. HAMMER. Yes; equity would be our net worth, Mr. Chairman, as distinguished from the market value and the net worth is reflected on our books. It is our book value.

Senator HASKELL. Thank you. Please continue.

Dr. HAMMER. I believe that seldom in the history of American business has there been such a success story, a success based on our dedication to be industrious and to be enterprising.

Throughout these years, Oxy has been stubbornly independent. Some call it a maverick. We have not always done the expected. Oxy is distinctive because it has insisted upon remaining free to seek out new sources of raw materials, to pursue the development of new technology, new products, and marketing concepts and to compete creatively with the considerably larger companies that dominate most of the markets in which we participate.

We have no interlocking directorships. We have no hidden friendships.

To succeed, Occidental has had to be quick and innovative and this, we think, has been good for us and for those we serve. We have not simply paid lip service to the competitive ideal—we have had to live by it to survive and to succeed.

Mr. Chairman, let there be no mistake. A principal object and the primary consequence of this takeover attempt by Standard would be to eliminate a leading independent competitor and, in the words you used announcing these hearings, "The potential for immediate damage to the consumer is obvious."

What Standard is embarked on is conquest, plain and simple, conquest insidious in its anticompetitive consequences and overwhelming in its economic implications; a conquest which is an unprecedented challenge to the antitrust policies of the United States.

If Standard succeeds, it will accomplish the largest corporate seizure ever consummated in the United States . . . and a message will reverberate through every competitive zone of American business: Free enterprise and independence are dead.

Standard apparently believes they can accomplish their monopolistic drive because no power can stop them.

I say this time they can be stopped.

I say that Occidental's management and shareholders will stop them.

I say that our Government will stop them, not because it defends Occidental, but because I believe the laws of our land are designed to halt rapacious takeovers such as this which would have such injurious impact and give Standard a commanding position of more influence.

If not, I believe Congress then has the power to enact the necessary legislation.

Standard of Indiana has suggested an exchange based on a $17 valuation of Oxy's common stock. Even assuming that such a takeover was permitted by the Government—which I believe highly unlikely—such an exchange would be very unfair to our shareholders, who may not realize as well as Standard does the tremendous value of Occidental's assets and the vast potential for their development in the future.

If Standard were to take over Occidental Petroleum, it would have—according to our year-end estimates—an annual sales revenue of over $15 billion and at least a profit of about $1.3 billion.

I need not tell you, gentleman, what effect removing competition and permitting a bigger colossus will have on the future energy economy of our country, ranging down to the price your constituents will pay for gasoline for their cars, heating fuels for their homes, fertilizer for their farms and food for their tables.

A Standard of Indiana takeover would create the 10th largest industrial corporation in the United States, as measured by Fortune's sales data for 1973 and the 10th largest also in terms of Fortune's 1973 assets ratings.

Indeed, our own economists, projecting 1974 year-end figures, tell us that the company may even rank higher than that, possibly as high as the sixth largest industrial corporation, a company bigger than United States Steel, Westinghouse, Dupont, Chrysler, IMB, and ITT.

Among the nonoil companies, only General Motors and Ford may rank larger. Among the oil companies, Standard of Indiana would have hurdled into fourth position directly behind Exxon, Texaco, and Mobil, with all that this implies in an anticompetitive regard.

I know you gentlemen are familiar with the existing suit the Federal Trade Commission has filed against the eight biggest oil companies, including Standard of Indiana.

Among those charges are the following:

Pursuing a common course of action of accommodating the needs and the goals of each other in the production, supply, and transportation of crude oil to the exclusion or detriment of independent refiners and potential entrants into refining.

Pursuing a common course of action to abuse and exploit the ownership and control of the means of gathering and transporting crude oil to refineries.

Pursuing a common course of action to use their vertical integration to keep profits at the crude level artificially high and profits at the refining level artificially low, thereby raising entry barriers to refining.

Pursuing a common course of action in refusing to sell gasoline and other refined petroleum products to independent marketers.

The Federal Trade Commission's 22-count complaint concludes that the companies—and this includes Standard of Indiana—have restrained trade and maintained a noncompetitive market.

I submit to you, gentlemen, that permitting Standard of Indiana to become even larger foredooms the smaller companies to foreclosure or merger and foredooms the American taxpayer to higher costs.

Those Federal Trade Commission charges—and other charges levied by the Attorney General of Connecticut—speak for themselves in the present instance where Standard of Indiana now seeks to seize Occidental, which is the nation's largest independent marketer and transporter of crude oil.

This proposed conglomerate would be the fifth largest chemical company in the United States. Based on 1973 figures, the combined chemical companies of Standard and Occidental would rank ahead of such major chemical producers as Exxon, W. R. Grace, and Allied Chemical.

But size by itself is not a vice, gentlemen, and you cannot identify the difficulties which would flow from a takeover such as this simply by adding and projecting numbers.

The most damaging effects of this proposed takeover must be weighed in other ways. Let us look at the potential impact this will have on the national energy situation at a time when control of our national resources has become increasingly concentrated.

By our calculations, the combined North American energy reserves of Occidental and Standard would give Standard control over energy sources equivalent to 25.7 billion barrels of oil—and that is only in North American and does not include Occidental's vast overseas holdings.

This starkly portrays the immensity of this coalition and I believe you will agree that it is unwholesome for one company to exert such a vast degree of control over the current and future energy markets of America.

If the United States is to meet the energy challenge, now and in the years a head, we will obviously need to find additional energy resources, to which Occidental is contributing enormously through its successful search for oil, gas, and the development of its coal and shale oil reserves.

If those resources are to be found and sufficiently exploited, another ingredient is also vital—competition, the single most powerful economic stimulus.

And it is this competition—in all its forms—which Standard's takeover of Occidental would severely inhibit.

This capture would make Standard the No. 3 U.S. supplier of natural gas and Oxy's actual and potentially significant competition would be eliminated.

Standard would also have 11,500 acres of oil shale land, estimated to contain over 7 billion barrels of oil, and would have the opportunity of blocking Occidental's plans to sell oil from shale more cheaply in Midwest markets.

Standard, already a highly potential entrant into the coal industry, according to its own chairman's public statements, would suddenly possess 3½ billion tons of coal, of which more than a billion tons would be the low-sulfur coal so desperately needed to satisfy our energy needs on environmentally acceptable terms—and in so doing, would also have halted the competition between our two companies to develop new coal gasification technology.

A takeover by Standard would eliminate Oxy as a competitive bidder for Federal offshore lands, where we have been spirited toe-to-toe competitors on several occasions in the past.

At the same time, it would also eliminate the opportunities of some of the other independent companies which we bring into our bidding, companies that require Oxy's knowledge and expertise for their participation.

It would eliminate Oxy in the domestic crude oil marketing business where we are the largest independent competitor of the major oil companies, purchasing approximately 450,000 barrels a day and handling an additional 50,000 barrels for the account of others.

We service 23,000 leases involving 80,000 individual interests. We supply 62 independent refiners, many of whom have their own independent chain of retail outlets which are in direct competition with Standard of Indiana. We own about 6,000 miles of inter- and intra-State pipeline and over 400 truck transporters.

It would also eliminate Occidental as a potential competitor in refining and retail marketing, an area in which we gained important experience in Europe.

For the past several years, we have seriously negotiated possible entry into the domestic refining and retail marketing business. We received extensive attention about our plan to build a refinery in Machiasport, Maine.

There is still another large anticompetitive threat involved in this attempted seizure—a further concentration of control over mixed agricultural fertilizers and even in basic ingredients that go into their manufacture, such as sulfur and ammonia.

We are one of the strongest and most vigorous competitors in this area where Standard also has a major position and it seems very clear that elimination of competition does not bode well for future agricultural fertilizer prices with all that this means to the farmer and the consumer.

If this takeover is permitted, our Government will be creating a new and greater monopoly. I submit to you that this Nation will have taken a long step backward to be monopolistic period dominated by the parent company of Standard.

Of course, Standard prefers to say that there are only limited areas where our corporate activities overlap and therefore competition will only be killed a little bit, not enough to bother you or the executive branch of our Government.

Well, I have just recited a number of examples of direct overlaps and beyond that there are literally hundreds of smaller companies who will also be affected.

The fattening of the Standard of Indiana giant, with enormous supplemental business, increases its vertical monopoly while destroying competition with those companies engaged in supplemental business.

In other words, it is not only horizontal competition which is affected by acquisition; vertical power can wipe out competition just as effectively. And its effect on the economy and prices can be deadly.

Our Supreme Court has recognized this, stating in a case brought by the FTC against Proctor and Gamble:

> All mergers are within the reach of Section 7 and all must be tested by the same standard, whether they are classified as horizontal, vertical, conglomerate or other.

There are four evils which the Supreme Court focuses on. Everyone of them exists in this present situation. They are the following.

One, the advantages of combined advertising and marketing power; two, the dissuasion of new entrants; three, the dissuasion of present competitors due to their fear of retaliation; and four, the elimination of the acquired firm as a competitor.

Standard of Indiana may tell you its purposes are pure. It does not matter. As the Supreme Court has also said, Brown Shoe Co. v. U.S., section 7 of the Antitrust law: "* * * can deal only with probability, not with certainties."

I have just described both probabilities and certainties to you when I recited the many areas where we are actively in competition and where we will be even more active as competitors.

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We have heard that Standard's executives have expressed the thought that "Standard needs Occidental because Standard is a poor relation in international oil."

If Standard feels it needs greater activities in the international oil basins, that lack is sad for its shareholders, but it demonstrates that perhaps Standard's management has not been as good as its competition in its development of a basic energy supply—crude oil—and I do not believe this failure should be rewarded now by permitting the shortcut of taking over a successful competitor.

I will quote to you from a Business Week article which refers to this:

"Ironically, Standard of Indiana, a spinoff from the 1911 breakup of the Standard Oil trust, threw away a big chance to become a leading international producer some 40 years ago.

"It sold a rich oil property in Venezuela to Standard of New Jersey for $48 million and 1.8 million shares of stock.

"The decision to change was slow. Even in the midfifties, Robert Wilson, who was then chairman, said that he was satisfied that a 'substantial interest in a company like Jersey is a very comfortable way to engage in foreign production.' "

Mr. Chairman, I came into the oil business about the same time Standard's former chairman made that statement in the fifties and in these past 15 years, we have discovered or acquired larger reserves of energy than Standard has been able to accumulate during the last 85 years.

Specifically, in worldwide energy reserves expressed in barrels of oil equivalents, our engineers estimate that we have net to our interest some 16.5 billion barrels of oil compared to their 12 billion.

I call that good management. I call that being a good independent and I say that a company which has done this should not be victimized by a larger company simply because it feels it needs more oil so it will not be a poor relation in the international oil business.

It is a curious fact—and one which reflects the arrogance of Standard of Indiana—that they should attempt a takeover of this magnitude when the Government is attempting to break up the very kind of mammoth operations Standard seeks to create.

It would be incredible if the Government permits Standard to succeed in this endeavor at the same time the Government is seeking to break up A.T. & T. and IBM.

As Deputy Assistant Attorney General Wilson recently said: "Unscrambling eggs is much more difficult than preventing them from being cracked in the same pot in the first place."

Federal Reserve Board Chairman Arthur Burns last week called for an energy austerity program to help control our economy.

Now it is true that we must conserve energy in America. That is a necessary short-term emergency measures. But the long-term answer is increased production and finding substitutes for oil.

That is why this country needs companies like Occidental, to bring in more oil and to develop substitutes as Occidental is doing in its projects for oil from shale, oil from garbage, coal gasification, and oil from coal.

Every time an independent is taken out of business—taken out of

competition—it only contributes further damage to our national energy picture, to our defense posture, and to our economic situation. Frustration of competition will not benefit America.

Mr. Chairman, there are a number of areas where I could detail the importance of an aggressive company such as Occidental.

To select two, I would briefly like to describe our creativity in international trade and in the development of new technology.

At Oxy, we have been successful in finding new ways to marry our skills with fresh opportunities.

Through patient negotiations with Russia, for example, Occidental—with the cooperation and approval of the U.S. Government—developed its plan to sell the U.S.S.R. superphosphoric acid from American phosphate, of which our country has plenty, in exchange for ammonia and urea, important fertilizer ingredients made from natural gas, which is in short supply in this country.

Occidental pledged itself to bring this much needed ammonia and urea to the U.S. market, and it will have a significant impact on the availability of fertilizer for farmers in the late seventies and throughout the remainder of this century.

This transaction carries great benefits for our country, including immediate benefits to the hundreds of U.S. suppliers who are our subcontractors, to the employment of thousands of persons who will have the opportunity for newly created jobs and to the deficit in our balance of payments.

Occidental had the perserverance to work out this transaction. If we had not had the business freedom to go our own way, and, instead, had been ensnarled in the bureaucracy of a much bigger and more traditional company like Standard, it is my opinion that this venture would not have materialized.

In our North Sea discoveries, which have an important impact on world oil, we did not hesitate when we discovered the Piper Field as operator for a group we had put together, which also includes Getty Oil, Allied Chemical, and Thomson Associates.

With only a few discovery wells drilled, we immediately ordered the equipment and pipe necessary for full development, a move other companies might not have taken, but a decision which was clearly the right one and the successful one, for now we expect to bring out oil from those waters next summer, much earlier than otherwise might have been possible due to current delays in the delivery of steel.

When we made our discovery in Libya, we did not hesitate, though others said we did not have the financial muscle to get the oil from the desert to the sea.

In 364 days—a major engineering and construction feat—we financed and built a pipeline 150 miles across the desert, built a terminal on the Mediterranean and were suddenly in business as an important challenger to others.

We are planning the same rapid, innovative moves now in Peru where a pipeline will be built in the jungle to connect with a line the Government is constructing, so that this oil could be shipped to the west coast of the United States within 3 years.

Incidentally, we were the first company to be granted oil rights by the new Peruvian Government under a novel production-sharing contract designed by Occidental.

This was after the Government had nationalized Exxon's operation. Of the 20 companies who have followed us into Peru—including Standard of Indiana—we are the only company to find oil in commercial quantity.

This is the whole image of Oxy—effective in management, fast in reaction, competitive in sales, and imaginative in its financing.

In Colorado oil shale, which I know is of interest to all members of the Interior Committee, Oxy has once again been a leader where others have failed.

Over the past several years, we committed millions of dollars for scientific research to develop an environmentally sound process which could produce cheaper oil, while at the same time protecting Colorado from the depredation of above-ground retorting and all the environmental damage this could loose upon the land.

Our process is called in situ—inside the mountain—and we leased and bought some privately owned acreage to prove our process.

Last year, the Government opened selected richer tracts for bid. Standard of Indiana won a 5,000-acre lease for the astronomical bid of $210 million in a joint venture with Gulf Oil Co.

What has happened since then?

Standard of Indiana and those other companies which concentrated on the aboveground concept, have encountered very serious economic and environmental problems, as might have been expected.

Some have suspended operations and others are reevaluating their position because of the escalating costs of their aboveground facilities.

So instead of being closer to developing shale, with all this could mean for our national security, the oil is still sitting in the ground while Oxy is actively and daily continuing development of our test plant.

Our pilot plant has been successful and we expect to have prototype commercial size underground operation, capable of producing 500 barrels a day for a sustained period, on stream by the middle of next year.

If this successfully confirms the economics achieved in two earlier underground tests, we would then move immediately into full commercial production, which we envision could produce 30,000 barrels a day by 1978–79 on our limited shale properties.

We intend to add to our existing acreage and we also intend to license our process to others, so that the potential of these vast shale deposits can be realized and the country hopefully can achieve independence from foreign imports within the Project Independence time frame.

We also believe we can competitively sell our oil from shale into Standard's Midwest market.

As to the other companies, we now read in the Government's blueprint for Project Independence that in order to get the major companies to produce oil from shale the Government will have to provide price supports.

In other words, Government would be asked to subsidize a questionable process.

Oxy is undetered by this. We are not looking for a free ride. We are proceeding on our own, risking our own money. We believe we will be successful.

We know that in any technological breakthrough there are risks,

but we have always had to take them and we will, because this is what distinguishes a company like Oxy from a major company like Standard—we are competitive, we do not sit on our capital, we keep planning and moving.

Mr. Chairman, in his economic address of October 8, 1974, President Ford told the Congress and the Nation: "To increase productivity and contain prices, we must end restrictive and costly practices, whether instituted by the Government, industry, labor, or others."

Our President added: "And I am determined to return to the vigorous enforcement of the antitrust laws."

In an address to the 1974 Fall Conference of the Financial Analysts Federation, the chairman of the Federal Trade Commission, Mr. Lewis Engman, expressed his firm conviction that inflation can be reduced by purging the economy of anticompetitive behavior.

He added:

> The Federal Trade Commission and the Justice Department's Antitrust Division are both looking with special care into the types of trade restraints, collusion, and unfair marketing practices which reduce competitive and lead to higher prices for consumers.

Senator Philip Hart has called the Federal Trade Commission a very important weapon in the war on inflation.

And Mr. Chairman, you and the members of this committee have demonstrated, by so swiftly convening these hearings, your own deep concern for anticompetitive undertakings in an economy already severely crippled by anticompetitive activities.

In spite of these expressions of concern by our President, by the Chairman of the Federal Trade Commission and by Members of Congress, it is astounding that Standard of Indiana pursues their ambitions with what I believe is complete disregard for the public welfare.

I see here a clear demonstration that the acquisitiveness of Standard will do irreparable damage to the national interest.

The national interest has always been well served by the free enterprise system, the great motor which drives America.

I am not one of those who believes in placing a governor on that great motor—but I also believe that only our Government can keep the motor tuned and in balance.

Monopolies always try to dominate the marketplace while justifying their depredations by arguing that it will achieve economies and maybe lower prices.

Experience has taught us to doubt such promises. Our law is more realistic for it knows that with power, ultimately comes higher prices.

As the Supreme Court has said:

> Possible economies cannot be used as a defense to illegality. Congress was aware that some mergers which lessen competition may also result in economies, but it struck the balance by protecting competition.

Occidental will continue that competition.

The fires of American ingenuity have always been lit by the competitive spirit, and if ever we needed that spirit to overcome inflation and recession it is now.

Greed and arrogance and financial muscle cannot be allowed to triumph, for their victory means the consumer's loss.

Members of the Senate, I am here today to tell you that Occidental

has no intention of permitting such ambitions to triumph. We will struggle with every power at our command and we intend to preserve our independence.

Senator HASKELL. Thank you, Dr. Hammer, for an excellent statement. I would certainly like to congratulate you on what you have done in your time.

You mentioned, I believe, in the course of your statement, when Mr. Swearingen visited you on November 15, that he was accompanied by a partner from the Morgan Stanley & Co. investment company of New York.

Dr. HAMMER. Yes, sir.

Senator HASKELL. What was the gentleman's name?

Dr. HAMMER. Mr. Robert Greenhill.

Senator HASKELL. I think you also mentioned Morgan Stanley was on retainer from Occidental—is that correct?

Dr. HAMMER. Yes.

Senator HASKELL. Can you give me a description of the nature of the retainer?

Dr. HAMMER. Yes. Morgan Stanley received a retainer, I believe, of $25,000. They were also promised, in a written contract with one of their associated companies, that they would receive a larger commission if they were successful in disposing of all or any part of Occidental's real estate company which involved about $150 million of Occidental's assets.

Senator HASKELL. Was the retainer basically in connection with the real estate company?

Dr. HAMMER. It was basically in connection with the real estate company, but discusions between Morgan Stanley and our executives made available to them further information about our company.

Senator HASKELL. Thank you. You have elaborated very well, the aggressiveness and I believe you used the word maverick as describing the nature of Occidental which I commend as—which I think is commendable and useful.

You also have a subsidiary called Permian which carries how many barrels a day on average? Can you tell me the number of barrels a day?

Dr. HAMMER. Mr. Chairman, we purchase for our own account, 450,000 barrels a day and we purchase another 50,000 barrels or we handle another 50,000 barrels in addition to that.

Senator HASKELL. The sales from Permian—what percentage of those sales would go to independent refiners?

Dr. HAMMER. I believe about half.

Senator HASKELL. You also mentioned in your statement you had attempted to construct a refinery at Machiasport, Maine. Can you tell us the attitude of the majors in the industry toward your attempt to construct this refinery?

Dr. HAMMER. Yes. All of the majors opposed this. They were very aggressive in their efforts to prevent us from building this refinery in spite of the fact all of the Governors, Senators, and Congressmen of the New England States supported our plan.

Senator HASKELL. Were any economic countermeasures taken against Occidental by the majors at the time the Machiasport refinery was under consideration?

Dr. HAMMER. Not to my knowledge.

Senator HASKELL. In connection with the Permian operation, in which you purchase and then sell a very substantial amount of crude, would you agree with the statement made in 1948 by an official of Atlantic which reads as follows: "Ownership of a pipeline outlet from a producing region is second only to ownership of proven and developed acreage as a means of supplying crude."

Would you concur with that statement?

Dr. HAMMER. Yes.

Senator HASKELL. If it is still true, and I gather you agree with the statement, please describe the significance to the industry as a whole if roughly half a million barrels of crude a day are no longer sold by an independent firm, Occidental, but handled by a major?

Can you describe the impact on the industry?

Dr. HAMMER. To give you some idea of the magnitude of this impact, 500,000 barrels a day is more production than Union Oil Co. has throughout the whole United States.

It is more production than Cities Service has throughout the United States. It is an enormous weapon if anyone wanted to use it to control this source of oil and keep it from so many independent producers.

Just think for a moment, 80,000 individuals or individual interests are billed by us every month for the oil we buy from them, from 23,000 leases.

All of this would go into the hands of Standard of Indiana. Of the Nation's refiners, some 62 independent refiners are supplied by Occidental as compared with the 16 refineries of the majors to whom we sell. Many of the independent refiners who have their own chains of retail outlets which compete directly with Standard Oil of Indiana would suddenly find themselves cut off from their supplies of oil and be dependent on their competitor, Standard Oil of Indiana, for their precious gasoline supplies, without which they cannot survive.

Senator HASKELL. Thank you. Do you happen to know if Permian has ever competed with a major company for the business of purchasing crude oil from a field?

Dr. HAMMER. They compete daily.

Senator HASKELL. Do you happen to know if Permian has ever offered any purchase of crude at a price higher than being paid established purchasers in the field?

Dr. HAMMER. I do not know that.

Senator HASKELL. Would you be able to supply such information, whatever the information is, for the record?

Dr. HAMMER. Yes.

Senator HASKELL. The hearing record will stay open for 10 days.

I realize this is impossible under the present circumstances with FEA's allocation rules, but—as I understand it from your testimony, Occidental is active in the coal industry and you articulated in your statement, by its activity.

I want to ask you this question. Would you consider coal to be a competing fuel with petroleum products?

Dr. HAMMER. Definitely. I think coal right now is the greatest hope the United States has to meet the threat of another Arab embargo with all of the implications that this has for he security of our country and for the peace of the world.

Senator HASKELL. Going to shale, for a moment, I gather you con-

sider your process, your so-called in situ process, superior to Standard.

Would you mention briefly why you think your process is superior?

Dr. HAMMER. Yes, Mr. Chairman. Our process, first of all, is the only process that is environmentally acceptable. Everything takes place inside the mountain.

We do not have to mine the shale, carry it to the surface, which is a very expensive process, then retort it above ground in very expensive facilities, then carry the waste shale away again.

Perhaps you are familiar with the fact that shale, after you extract the oil, swells so it occupies more space than it did originally.

Here is this tremendous problem of getting rid of this spent shale. All of this is obviated in Occidental's process.

Occidental simply blasts out a chamber in the mountain. The rubble is then ignited with a stream of gas. The heat that is generated from some of the shale oil, a small amount, is sufficient to raise the temperature sufficiently to cause the shale oil to become separated from the rock in this chamber.

The oil then drops to the bottom of the chamber. It is caught in a sump and then pumped out. That is how simple it is.

When we made our first test, the chamber was about 60 feet high and about 30 feet in diameter. There were many problems which we had to find the answer to.

One was whether or not there was subsidence after the oil was removed. This did not happen. Second, there was a question of water entrance. We were able to prevent this.

Everything worked out almost perfectly in our first pilot chamber. We have since had a successful test on a second chamber which is larger than the first one.

Now the third chamber, which is a commercial sized chamber, is expected to produce 500 barrels a day for a sustained period of many months, is underway and will be ready for retorting in April of this year.

Our engineers are convinced we will have the same success we had with the other two chambers and if we do, we can multiply this chamber as many times as we wish and produce any quanity we want to by duplication of the process, by duplicating the building of these chambers.

Simple explosives are used, dynamite. We do not require atomic bombs or atomic energy. The whole process is really so simple, as those of you who have seen the film can attest. If there was any desire on the part of this committee to see the film, which is only 14 minutes long, we would be glad to make it available.

If you wish, I am sure we could set up this film now. If it is not today, we would be glad to come before your committee again.

I think this film would provide a good visualization of the whole process as depicted right there on the mountain. It is so important to the future of this country that I came here to Washington to report to our Government the news right after we made the successful test.

I saw Secretary Morton and showed him the film. I saw Secretary Simon and I showed him the film. Then they were all enthusiastic, but nothing happens fast here in Washington.

Bureaucracy is such that Occidental has decided to do the job itself and we are doing it with our own money. I believe we are going

to prove that we do have the answer and this will be the best answer to the OPEC cartel.

Senator HASKELL. Excuse me. Have you ever shown the film to Standard of Indiana?

Dr. HAMMER. Yes. The first thing I did when I heard Standard had bid $210 million was to call Mr. Swearingen on the phone and I offered immediately to have our experts come out to Chicago, bring the film and discuss this process with his experts.

He said come ahead. I did not go, but Dr. Garrett went. Mr. Swearingen was present. He did not stay to the film, unfortunately, but his president, his executive vice president were there and at least a half dozen of the top brass. There must have been 20 of his experts in every division.

They saw the film, asked questions of our experts for 2 hours and they told me, when they came back, they were the most penetrating kind of questions.

As Dr. Garrett was leaving, the president of Standard Oil of Indiana put a hand on his shoulder and said, "This is the most fascinating thing I have ever seen. I wish I were the inventor."

He then said they would sign a secrecy agreement. We left the secrecy agreement with them; mind you, that was a year ago.

On August 20 of this year, we received a telephone call from their patent attorney. It had evidently taken them almost 8 months to verify our patents. I guess that is what they must have been doing.

When they finally called on August 20, that is almost 4 months ago, they said, "Will you send us your secrecy agreement?"

Dr. Garrett said he did not want to embarrass them by saying, we already left one, so he sent another. We still have not heard anything further from them.

Mr. Swearingen came to my office, as I told you, and I invited him to see the film. For the first time, he saw the film.

Senator HASKELL. Senator Metzenbaum.

Senator METZENBAUM. Dr. Hammer makes an interesting suggestion. It might be worth while, and I, at least as one member of the committee, would like to take him up on his offer to show the film, and I think other members of the Interior Committee might well be interested in seeing this.

Perhaps we can provide some antidote to the slowness of bureaucracy, and I would like to ask the chairman to take it up with the chairman of the full committee and to show it at the convenience of the Interior Committee's request.

Senator HASKELL. I will be very glad to do that. I, personally, have seen the film and had with me a technical expert, since I am not technically competent. I will take it up with the chairman of the full committee.

I would also suggest the committee itself have its own technical advisers. I would also suggest that Dr. Garrett, or whoever the technical, competent person in your organization is, be present so that the technicians can talk to each other and straighten out things for us laymen.

Dr. HAMMER. Mr. Chairman, I am delighted to accept your invitation. I think there is nothing, in my opinion, that is more important for the United States than finding a substitute for oil just as we found

a substitute for rubber when the Germans thought they had us on our knees, just as we developed the Manhattan project when we were almost licked in the World War. I think we are now at that stage.

Senator HASKELL. I concur, Dr. Hammer. I assume it is Occidental's intention to cooperate with the Federal Trade Commission investigation?

Dr. HAMMER. Yes; fully.

Senator HASKELL. That includes sending to them all relevant documents which they have requested?

Dr. HAMMER. Yes.

Senator HASKELL. Would Occidental make the same documents available concurrently to this subcommittee?

Dr. HAMMER. Yes, sir.

Senator HASKELL. In your November 17 letter to shareholders, you mention you characterized the proposed acquisition "in violation of the antitrust laws." I assume you consulted with counsel before you made such a statement?

Dr. HAMMER. Yes, sir.

Senator HASKELL. Do they agree with your characterization of the merger, "that such an attempted combination between two of the leading oil companies in this country, would be a violation of the antitrust laws"?

Dr. HAMMER. Yes, sir, and you will see that from the complaint.

Senator HASKELL. Would you supply this committee with any documents or memorandums, either internal or external, which support this conclusion?

Dr. HAMMER. Yes, sir.

Senator HASKELL. At this time, I have no further questions. Senator Bartlett.

Dr. HAMMER. I suggest the committee staff treat this and protect the confidentiality of this material just as the Federal Trade Commission will.

Senator HASKELL. We will treat it the same way the Federal Trade Commission will. Senator Bartlett.

Senator BARTLETT. Dr. Hammer, in your testimony you mentioned once or twice that Occidental is an independent oil company. Where do you draw the line on major oil companies versus independents?

Dr. HAMMER. That is a good question, Senator. I struggled with that myself last night, and I came to the conclusion there are eight major oil companies.

Sometimes they have been referred to as the seven sisters. Now I think they are the eight sisters, with Standard of Indiana added.

I think any companies not part of these eight major oil companies could be classified as an independent.

Senator BARTLETT. Dr. Hammer, how do you believe competition within the oil industry compares with other industries, such as steel, autos, computers, aviation, and so on?

Dr. HAMMER. Senator Bartlett, unfortunately, I am not familiar with any of those industries. I am not competent to answer that question.

Senator BARTLETT. How do you consider competition within the oil industry?

Dr. HAMMER. I think there is competition in the oil industry, and

that is why we are here. I think to continue to keep that competition, we do not want it to get to the point where it becomes necessary for Congress to pass legislation breaking up the oil companies as is sought with A.T. & T., or even establishing a national oil company as has been suggested.

I think all of us who believe in competition and in free enterprise should support Occidental.

Senator BARTLETT. Dr. Hammer, do you favor the divestiture of the component division's production, pipelines, refiners marketing by oil companies?

Dr. HAMMER. No, sir.

Senator BARTLETT. Do you favor the divestiture by oil companies of different types of energy, such as coal, oil and gas, atomic energy?

Dr. HAMMER. No, sir.

Senator BARTLETT. What do you consider, in laymen's language, the legal test required of a merger of these two oil companies being in conformity with the antitrust laws of this country?

I realize you have covered that in your testimony but in a rather concise, succinct way.

Dr. HAMMER. I think it would be very difficult to put it in a few words. I could take an hour to tell you about it, particularly since we took 35 pages in our complaint to tell you the same thing.

Senator BARTLETT. Anticompetitive, is that the main thing?

Dr. HAMMER. Yes; definitely. I think one of the big areas that Standard perhaps will pay less attention to than they should is the possible and potential entry concept of competition.

Occidental always knew some day they would enter into the refining and marketing business in the United States. We are integrated in Europe, but we are not integrated in the United States.

We felt we would have to, one day, become integrated and would have to have our own refining and marketing. This is why we tried at Machiasport. This is why we have had negotiations with at least half a dozen more companies in refining and marketing.

Unfortunately, none of these negotiations were successful, but the record is there for everyone to see, and there is no question with the oil at our disposal, with our discoveries in Peru, with our discoveries in the North Sea, Occidental has the wherewithal, with our great financial improvement taking place last year, to become a factor in domestic refining and marketing.

Senator BARTLETT. Dr. Hammer, I still have remaining a number of questions. If we can have a short answer, it will speed it up a little bit.

Do you believe a group of independent oil companies, merging together to become a major domestic oil company in the top 15 in sales, would, with a management of average capability, increase, decrease, or not change the competition of the oil industry?

Dr. HAMMER. Did you say grouping of companies?

Senator BARTLETT. A grouping of independents. I am not using your classification. I am using a group of independents who would form a domestic oil company in the top 15 in sales—I just do not have 15 marked here—yes, I do. Put it just above some $3.4 billion in sales per year?

Would that tend to increase, decrease, or not change the competition of oil industry?

Dr. HAMMER. It is a hypothetical question. It is an iffy question. I do not think it is a practical concept. It would be hard for me to conceive 15 independents getting together.

I think it would be hard enough for 2 independents to get together, much less 15——

Senator BARTLETT. I was not saying 15 independents. I was saying a group merging to form a company that would be in the top 15 in sales and it would be a major company according to most classifications.

Dr. HAMMER. If it were possible to do it—and I say again, Senator Bartlett, it is highly improbable—anything that would increase competition would be good for the country, but I think we have competition in the oil industry now.

I think the oil industry has been accused of many things they are not guilty of. I really believe this attempt by Standard Oil of Indiana does not have the support of the other major oil companies.

Senator BARTLETT. On this particular question, you are not saying whether it would increase, decrease, or remain the same.

Dr. HAMMER. It would increase competition.

Senator BARTLETT. Do you believe if 2 domestic oil companies in the top 15 sales merger, which is the case here, that the reduction of 1 major oil company of the top 15 in sales would increase, decrease. or not change the competition of the oil industry?

I am not necessarily talking about these 2 companies, but companies in the top 15 which both of these are.

Dr. HAMMER. I think any combination of 2 companies or more, in the top 15, would be bad for the country, would be bad for the oil industry, and would certainly decrease competition.

Senator BARTLETT. Do you favor mergers of oil companies of any size?

Dr. HAMMER. Yes; I do.

Senator BARTLETT. Has your company ever been involved in mergers?

Dr. HAMMER. Very much so.

Senator BARTLETT. Where would you draw the line?

Dr. HAMMER. I would draw the line when the effect would be to eliminate competition or inhibit competition and whether it is competition vertically or horizontally or by potential entry into the same type of business.

Senator BARTLETT. Would you have, as a test, size, sales, profits, capitalization or would you have as a test, the kind of involvement?

Dr. HAMMER. At the present time——

Senator BARTLETT. To increase competition?

Dr. HAMMER. It would be healthy if it would increase competition, but if I had to choose between the two, I think I would be satisfied to maintain present competition.

Senator BARTLETT. How would this merger affect, if at all, the citizens of the United States, say the consumer, if you like?

Dr. HAMMER. I think it would be disastrous for the farmers because of the increased prices for fertilizer. I think it would have an impact on consumers leading to higher prices of gasoline at the pump.

I think it would have an effect on our food supply, because if fertilizers are more expensive, food will be more expensive.

Senator BARTLETT. How will this merger affect, if at all, the suppliers of domestic energy of the United States?

Dr. HAMMER. I think it would reduce the availability of supplies. For one thing, if Standard Oil of Indiana, for example, were to inhibit our development of shale oil, that in itself, could have a bad effect on the energy supplies of the United States.

Senator BARTLETT. How would this merger affect, if at all, the supplies of foreign energy available to the United States?

Dr. HAMMER. It would also inhibit the supplies of foreign energy. Occidental has been more successful in foreign exploration than Standard of Indiana.

In the last 8 years, Occidental has discovered approximately 4½ billion barrels of oil. That is a lot more than Standard Oil has discovered according to their published reports.

Senator BARTLETT. What are the advantages or disadvantages of one management compared to two managements with the same total assets with companies of this size in the top 15?

Dr. HAMMER. I do not believe in two managements. I think every business should have one management. I do not think you can have two men riding on the front end of a horse.

Senator BARTLETT. That was not the question, but that is a good answer to another question. What I am talking about here is the total assets of the two companies. What are the advantages?

You are suggesting continuation of the two managements, Occidental staying as it is and Standard as it is. What is the advantage of one management as compared to two managements—one management with two assets or two managements with diverse assets?

Dr. HAMMER. What we have here is a desire to take over Occidental and substitute for Occidental's management Indiana's management, which we think is inferior and we think we have proven it by our record.

Senator BARTLETT. It is often said the Federal Government is too large to manage efficiently. Can a corporation be too large to manage efficiently considering the present size of the corporations?

Dr. HAMMER. I do not think size has anything to do with it. You can have good management in a large corporation and have poor management in a small corporation. Size does not have anything to do with it in my opinion.

It depends on the individuals who are running the company and depends on their motivation. I will say that Occidental has been very liberal with stock options.

I do not believe we have lost a single one of our chief executives or important executives of any of our divisions unless we wanted them to leave in the years I have been chief executive.

It all depends on the kind of people you have running a company, the kind of management and not size.

Senator BARTLETT. Dr. Hammer, thank you very much. Thank you, Mr. Chairman.

Senator HASKELL. Senator Metzenbaum.

Senator METZENBAUM. Dr. Hammer, your statement is an excellent one. You did not address yourself to a couple of areas in which I have interest.

What companies has Occidental acquired under your leadership in the last 18 years?

Dr. HAMMER. We acquired the Permian Corp. We acquired the Hooker Chemical Co.

Senator METZENBAUM. In connection with each of them, would you tell me what that company was doing when you acquired it and whether or not Occidental was in a similar business at the same time?

Dr. HAMMER. No. The company was doing what it is doing now and Occidental was not in a similar business at the same time.

The same was true of Hooker Chemical Co. There was one slight overlap in Hooker. Hooker had a fertilizer plant and Occidental had a fertilizer plant.

The Federal Trade Commission asked us to divest ourselves of this fertilizer plant which we did.

Other than that, there was no overlap.

Finally, Island Creek Coal Co. was acquired. Occidental had no interest in coal and had no previous experience in the coal business.

Those are the principal acquisitions.

Senator METZENBAUM. Thank you. You mentioned in your testimony the benefits to the suppliers, the benefits to the employees and that it would help our Nation's balance of payments by reason of Occidental's activities and it also contributed to provide a more adequate energy supply.

In your very last statement, the second to the last paragraph, I believe it is, you, I think, at the very thrust of the question that concerns me and that is that greed, arrogance, and financial muscle cannot be allowed to triumph.

Their victory means consumers loss. That is your quote. In what way has Occidental's competitive posture acted to serve the consumer of this Nation?

Dr. HAMMER. I will give you one example, Senator. When Occidental decided to enter the fertilizer business, we found that all of phosphate reserves in mines were in the hands of a comparatively small group of companies and they were concentrated mostly in central Florida.

We had no phosphates. We put our geologists to work. We believe when the Lord laid down the phosphates, he did not know the difference between central Florida and north Florida.

We took our geologists and put them to work in northern Florida. We were told we were wasting our time. The other major oil companies were in the fertilizer business and other companies who were in central Florida, and there were some who had been in north Florida.

They had been there and said it was no good. We did not take no for an answer.

Low and behold, we developed our own source of phosphates. We have over 100 million tons of fine phosphates, just as good as central Florida and it has enabled us to compete to put our fertilizers on the market in competition with the entrenched companies in the fertilizer business and competition by its very nature lowers prices.

That is what this country needs, more competition, not less.

Senator METZENBAUM. Have fertilizer prices gone down?

Dr. HAMMER. We believe we played a role in it.

Senator METZENBAUM. I do not think you answered my question. I said have fertilizer prices come down since Occidental entered the market?

Dr. HAMMER. They came down drastically, so much so, half of the companies got out of the fertilizer business. Now they are coming back, but we at Occidental stayed in, when companies, even Mobil Oil Co. sold their fertilizer business.

Many other oil companies got out because prices got down so low.

Senator METZENBAUM. Are they not at their all-time high?

Dr. HAMMER. They have turned around again. We know business goes in cycles. You know that, Senator. You are a businessman yourself. You know if you stay long enough with something, it turns around and goes back up again.

Senator METZENBAUM. Hopefully. Are the prices that Occidental charges for fertilizer or its petroleum less than that which its competitor charges?

Dr. HAMMER. If we have to get business, we certainly lower our prices to get business. That is the law of competition. That is the law of supply and demand.

Senator METZENBAUM. The thing that concerns me is this whole question of competition and who is getting the benefit of it and whether it works out in any way to help the public.

I think that is really the intent and purpose of the antitrust laws as well as most other legislation in this area.

The independence of Occidental would seem to me—it would naturally flow from that, a competitive factor in bringing down prices.

What I am driving at, are there any instances with which you are familiar in which Occidental as an independent, has brought down the prices of fertilizer, of petroleum products?

During the embargo, did your prices rise to the same point as other companies? It is a known fact, Mr. Hammer, we cannot overlook it that Occidental's profits in the recent year have increased in greater proportion than most of the other major oil companies in this country although they have nothing to apologize for with respect to their stockholders since they have all increased very vastly.

Yours have particularly been meteoric.

Dr. HAMMER. There is a reason for that, Senator. We compare ours with a base that is much lower.

As you know, Occidental has its principal source of oil in Libya. When the revolution took place in Libya, some of our executives felt we would lose Libya and in order to protect themselves, they entered into contracts to charter tankers at a time when the tanker market was soaring.

We felt we would have to transport our oil from the Persian Gulf to take care of our contracts and our customers, when the bottom fell out of the tanker market, because Libya did not nationalize all of the oil companies, Occidental suffered a loss for 2 years.

When you compare the profits of Occidental this year, you are comparing them with a year that was greatly depressed. This is one of the reasons why it looks like Occidental's profits are really more than that of other oil companies.

Senator METZENBAUM. Your 1973 profits were lower than 1972?

Dr. HAMMER. 1972 was worse, and 1973 was a little better. Then 1974 was greater.

Senator METZENBAUM. If we follow your line of reasoning, this will concentrate too much power in Standard of Indiana. Would

that indicate that you support the Government suits against IBM, A.T. & T., because that is also directed at the question of concentration of economic power?

Dr. HAMMER. Not necessarily. I do not know enough about the IBM case or the ITT case or the A.T. & T., I do not know enough about it to pass judgment, but I do know that in a merger with Standard Oil of Indiana, there would be a lessening of competition, and I addressed myself to that in my testimony.

Senator METZENBAUM. Inasmuch as Standard of Indiana would then be No. 4 in the petroleum companies, would you think the Government should consider similar action in order to create greater competition against Exxon, Texaco, and Mobil?

Dr. HAMMER. Not now. If Exxon tried to take over Mobil, I think we would have a revolution in this country.

Senator METZENBAUM. Since there would be more competition if you break Exxon into two as the original Standard Oil of Ohio was broken up several years ago, to follow your line of reasoning, putting these two companies together would be bad for the American people.

Would not it be equally as good to break up the biggest of the companies in the country?

Dr. HAMMER. That would depend on their activities. I have no reason to think Exxon now is engaged unnecessarily in activities that would require such drastic action as breaking them up.

Senator METZENBAUM. You think they are fostering competition now?

Dr. HAMMER. I think the breaking up of the old Standard Oil was a good thing at the time. I think there is a great deal of independence between the various subdivisions of Standard, the old Standard Oil, and I think with the good sense of Congress and the police action of our Antitrust Divisions of the Department of Justice and the Federal Trade Commission, we can keep a good balance.

That is not what Standard Oil of Indiana is trying to do here. They are trying to get away with something none of the other major oil companies would dare to attempt.

In fact, from my talks with the officials of other companies, I think they are just as much as amazed and disturbed by the actions of Standard of Indiana as I am.

Senator METZENBAUM. I think you mentioned the real basis of antitrust action, the standard that has to be used is whether it will or will not eliminate competition?

Dr. HAMMER. That is right.

Senator METZENBAUM. That was in answer to Senator Bartlett's question. Would it not then be in the interest of true competition to have the petroleum companies prevented from entering into other energy fields which may become competitive and which are competitive such as coal, gothermal energy, and solar energy?

My point is, since solar energy could become a substitute for petroleum as an energy resource, since geothermal could also be an energy substitute, since coal could be a substitute, since the petroleum companies now have entered into a situation where they control 20 percent of the coal production in this country and 20 percent of the resources that are in the ground, would not it be truly in the interest of people

of this country to eliminate or prevent the oil companies from owning those products or those developments which may eventually become competitive and actually eliminate the need for as much petroleum?

Dr. HAMMER. That is a good question, Senator, but I think each case should be investigated and decided on its own merits.

I think it would be unfair to make any sweeping statement. I think that is why we have the Federal Trade Commission. That is why we have the Department of Justice looking into matters of that kind.

I would not feel I was in a position to make any sweeping statement. For example, I know the oil companies are acquiring coal reserves.

Senator METZENBAUM. And they have also moved into the field of solar energy.

Dr. HAMMER. But it is one thing to go out and acquire coal reserves, and another thing to take over the third largest operating coal company which is what Standard is attempting to do.

This is not just acquiring reserves, as their chairman has stated he intends to do; this is something far beyond that. This is going out and capturing, if you will, by conquest, the third largest coal company in the United States with reserves of 3½ billion tons of coal.

This, to me, is something that should be looked into by the Federal Trade Commission, by your committee, and of course, by the Department of Justice.

Senator METZENBAUM. I follow you exactly on that, but I am having some difficulty understanding why it is better for you—certainly a major in the petroleum field, making available 500,000 barrels a day—to control the third largest coal company in this country, than it is for Indiana Standard.

Dr. HAMMER. When we acquired Island Creek Coal Co., no one wanted Island Creek Coal Co. There was no energy shortage at that time; there was no question of the crisis we are in now.

Why did not Standard Oil of Indiana, if they wanted to get into the coal business, not acquire coal companies years ago. Why did they wait until today, when companies such as Island Creek were available?

Senator METZENBAUM. You have not answered my question. You made an acquisition that was not worth much then.

I am not talking about either you or Standard having any particular laurels around you, but I am questioning if whether in the people's interest, either of you ought to be in the coal business.

Dr. HAMMER. I feel it should be examined on its own merits, and then I think a decision should be arrived at. I think simply being in the coal business by itself is not necessarily destructive of competition.

I would have no objection and I do not think any American ought to have any objection to Standard of Indiana going out and acquiring coal reserves, buying coal; I do not see any reason why they should not, but it is one thing to do that and another thing to go and acquire an operating coal company with all of its management and all of its independence.

I think there is a difference between buying that and buying reserves.

Senator METZENBAUM. Let us assume for a minute the petroleum companies of this country owned all of the coal companies. Do you not think that would eliminate competition?

Dr. HAMMER. That is an iffy question, Senator. It is hard for me to conceive of anything like that happening in the United States.

Senator METZENBAUM. Since they now own 20 percent of the coal reserves, I do not think it is impossible. If they keep up the present pace, I think they will have all of the coal companies in a period of 10 years.

Dr. HAMMER. I think the coal of the United States now is in strong hands. I read in the newspapers that the divestiture of Peabody from Kennecott Copper has been ordered. Kennecott is not even an oil company, and yet this divestiture has been approved by the courts.

I think we have good enough laws in this country, if they are enforced; we have good judges, and we have the Supreme Court of the United States, Thank God, and I think we can protect ourselves.

This is what Occidental intends to do in Standard Oil of Indiana's takeover attempt.

Senator METZENBAUM. Thank you very much. One question has been bothering me. Is Arm & Hammer soda part of your company, part of Occidental?

Dr. HAMMER. Senator, I have been accused of many things, but that does not belong to me. I used to have a boat and it had the arm and hammer emblem on its pennant. Every place I went people would say that must be the soda king and finally I said to my brother, let us buy that company.

We were then in the distilling business. I said let us buy it so we do not have to apologize. He found it was owned by two brothers in their seventies.

They never issued a financial statement. Their balance in the bank was over $10 million and all they did was to back up their trucks to Allied Chemical's plant in Niagara Falls and get this waste product by the carload and put it in little boxes. [Laughter.]

Senator METZENBAUM. Did you buy the company?

Dr. HAMMER. Not yet, but I still have got my eye on it. [Laughter.]

Senator HASKELL. Dr. Hammer, I really have just one more question. What percentage—what number of the common shares of Occidental would you consider necessary to be concentrated in one group that would constitute effective control?

Dr. HAMMER. It is very difficult for me to answer that. We have fully diluted some 70-odd million—70 million odd shares and I would think you would need at least 25 percent of that.

Senator HASKELL. You think you would need 25 percent for effective control?

Dr. HAMMER. I would think so. As I said before, the shares are so widely held, there is no large shareholder. I happen to be the largest shareholder and I only happen to have about 3 percent primary shares of Occidental.

Senator HASKELL. The reason I asked, I have in front of me, a rundown on the common share turnover for November and I notice prior to the November 15 announcement, commencing about the 6th of November, there was a substantial rise in volume, something in the neighborhood of about 4 million shares turned over at that time.

Do you have any reason to suspect anyone is acquiring your stock?

Dr. HAMMER. We have been unable to trace it, although we have some indication some of the Arab entities have been buying it.

Senator HASKELL. What indications?

Dr. HAMMER. One very prominent Arab said he had acquired in excess of 1 million shares of our stock recently. He stated to me that his group had acquired in excess of 3 million shares of our stock, and it is possible there are some Arab interests who may be interested in acquiring control of Occidental.

I hope this does not happen, particularly because of the great future I think there is in the shale oil.

Senator HASKELL. Thank you. I am going to ask Mr. Greenhill from Morgan Stanley, if he is in the room, to stay. I would like to ask his opinion of the activity of the stock.

I would also like to ask him certain questions on his representation of Occidental and his firms' representation of Morgan Stanley.

Thank you very much, Dr. Hammer.

Dr. HAMMER. Mr. Chairman, I think it is obvious Mr. Baird will not have time to testify. May I ask permission to have his testimony included in the record?

Senator HASKELL. Yes, if he has written testimony, we will include it in the record. I would think it would also be proper if Standard has any comments on his testimony that they submit their comments on that testimony in writing, but in a 10-day period following the hearing.

Dr. HAMMER. Thank you.

Senator METZENBAUM. Mr. Hammer, do you intend to remain through Mr. Swearingen's testimony?

Dr. HAMMER. Yes, I do.

[The prepared statement of Mr. Baird together with letter of correction follows:]

STATEMENT OF JOSEPH E. BAIRD, PRESIDENT AND CHIEF OPERATING OFFICER OF OCCIDENTAL PETROLEUM CORP.

Good morning. I am Joseph E. Baird, President and Chief Operating Officer of Occidental Petroleum.

Mr. Chairman, I will speak briefly to several important financial and operating points which I believe will further clarify Oxy's remarkable success story and its equally remarkable recovery from reverses.

Standard of Indiana has implied that it will be able to develop Occidental's vast reserves more rapidly and efficiently than can our company, that Standard can do this without slowing its own development and that it can accomplish this through what it considers its superior financial and managerial capabilities.

As Doctor Hammer has pointed out, this is playing fast and loose with the realities of this situation and is only aimed at helping their shareholders at the expense of ours, while stifling Occidental as a competitor.

Doctor Hammer indicated that Occidental in its 15 years has acquired and discovered more energy reserves on the basis of barrels of oil equivalency than Standard has in its past 85 years. Indeed, in the past eight years alone we accomplished the main part of this. One element comes from our acquisition of Island Creek Coal Company, an acquisition which Standard's management could have as easily made if they had possessed the foresight to go after coal assets in the mid 1960's.

Appproximately 4.5 billion barrels of oil were discovered for itself and its partners in the past 8 years. This comes directly from Oxy's capacity to obtain concessions and explore and develop oil quickly. Although Standard prides itself on having one of the best exploration records during that period of any of the world's major oil companies . . . and we admit they do, indeed, have one of the best. However it is not as good as Occidental's.

Further, Standard's contention that they might develop our reserves faster, once their takeover is complete, is not in accord with the historic facts of Occi-

dental's speed in bringing production onstream. In the course of this, we have continually demonstrated that financing on the basis of our proven reserves is not a problem. Financial power alone is not the key to rapid, efficient application of people and equipment.

We have shown this in Libya and we are showing it in the North Sea, as well as in the United States.

The inference that Occidental does not have a strong enough financial base to develop its reserves optimally is of course another case of playing fast and loose with the facts. The truth is that Occidental's financial base is growing stronger with each passing month.

As to the Occidental reserves which Standard seeks, permit me to put these in perspective:

RESERVES AND NET REVENUES

Independent engineers have estimated that Occidental has, net to its interest in the U.S. and Canada, 104 million tons of phosphate rock, 18.7 million barrels of oil and gas liquids, 284 million MCF of gas, and 4.7 million tons of sulphur, plus approximately 1.2 billion barrels of oil and one bill MCF of gas in Libya, Peru, and the U.K. North Sea. Company engineers estimate that Occidental owns or holds under lease bituminous coal reserves in the U.S. totalling approximately 3.4 billion tons.

For purposes of computing debt coverage in connection with various Occidental loan agreements, estimates of reserves under certain properties have been made by independent engineers who have also calculated the discounted present worth of future net revenues from these properties. In other cases, these engineers have made independent appraisals of mineral reserves for financing purposes.

The following is a tabulation of certain of these independent estimates based on market prices and costs at the dates noted below, and in some cases, taking into account escalation, and future net revenues discounted to present worth at 5% as stipulated in the loan agreements, except 6% for Canadian reserves.

Coal (Degolyer and MacNaughton): Future net revenues from certain mines, 615,000,000 tons ($2,400,000,000 as of December 31, 1974).

Phosphate Rock (Degolyer and MacNaughton): Future net revenues on 104,000,000 tons ($1,526,000,000 as of December 31, 1974).

Oil and Gas—U.S. (Degolyer and MacNaughton and Babson and Burns): Future net revenues on 12,193,000 barrels of oil and 94,000,000 mcf of gas ($41,591,000 as of October 1, 1973).

Oil, Gas and Sulphur—Canada (McDaniel Consultants (1965) Ltd.): Future Net Revenues On 6,545,000 barrels of oil and natural gas liquids; 190,000,000 mcf of gas; and 2,716,000 tons of sulphur ($93,560,000 as of April 1, 1974).

Piper Field—North Sea (Degolyer and MacNaughton): Future net revenues on 234,000,000 barrels of oil ($464,776,000 as of March 12, 1974—based on a price of $7.90 per barrel and a U.K. tax rate of 50 percent).

Total, $4,525,927,000.

The book value of the foregoing reserves at September 30, 1974, totalled $217,500,000 which can reasonably be expected to increase as further development takes place. Obviously none of the above estimates can take into account all possible political, geological, price, cost and other uncertainties, nor are the net revenues estimated above necessarily indicative of net revenues from the remainder of Occidental's reserves.

Oxy had a major problem in recent years—the change in government in Libya in 1969, an event which took place just as Oxy was developing a swift payback on its exploration and equipment investment. During this period, Oxy made a conscious decision to keep operating in Libya, to be the very best company in those fields, and we believe that our financial statements now demonstrate how well that policy has repaid our shareholders. We have survived the curtailment in Libyan production and 51 percent nationalization. We have survived a serious loss we suffered in our emergency tanker fleet acquired as insurance against further curtailment of our Libyan production which subsequently proved unnecessary, and we have come back, since 1972 to the point where in the first nine months of 1974 we have earned after tax profit of $247 million (up 360% over the preceding comparable period) and are predicting—subject to possible LIFO—last in first out—adjustments and the duration of the current coal strike, and no adverse action by any government—that the earnings for 1974 can approximate $300 million, with an after tax cash flow approximating $450 million.

During the period from the end of 1972 on, our equity to debt ratio and our net

working capital have steadily improved, allowing our management to move forward with programs which over the next five years are intended to approximately double production capacities of coal, chemicals and oil. This involves capital expenditures averaging approximately $800 million in each of the next three years. I submit to you, Mr. Chairman, that only a strong, competitive company could achieve the kind of record for financing and development which I will set forth in my statement, and could contemplate such huge investments in the future. We need no help from Standard's superior financial position as Oxy's oil, coal, and fertilizer reserves are now being fully developed at the fastest rate consonant with efficient economic utilization in the interest of both our country and our shareholders. Rather, we believe that when all our plans are complete, Occidental will be an even greater rival of Standard.

For the first nine months of 1974, our chemical company reported $96 million net after tax versus $29.7 million for the previous year, the highest earnings growth rate of the nine large chemical companies in the United States, of which it is the ninth.

I believe our third quarter report to our shareholders gives appropriate specifics.

"Since the beginning of the third quarter, financing arrangements were concluded for the development of the Piper Field in the North Sea, for a new phosphate chemical complex adjoining Occidental's existing facilities at White Springs, Florida, and for an expansion of the Taft, Louisiana, chlor-alkali plant.

"The total funds committed by lenders for these projects amount to $288 million of which $138 million consists of third party borrowings and will not be included in Occidental's funded debt.

"During the first six months of 1974, an additional $168 million of new financings was arranged making a total for the year to date of $456 million of new financing of which amount $309 million remains available for use.

"In addition to the $456 million of financing, in February, 1974, Occidental restructured a previously arranged $300 million bank credit of which the $160 million medium-term revolving portion is presently unutilized." (I might add that since that report, Senators, we have also received $55 million as an advance against future coal sales.)

To continue from the 3rd Quarter report which I ask permission to submit for the record, we concluded:

"Cash flow from operations for the first nine months totalled $340.9 million, compared to $133.5 million for the same period in 1973. Working capital and equity to debt ratios have continued to improve since the first of the current year."

Financing for the capital programs through the end of 1976 has already been arranged by the financings I have described or is expected to be provided by internally generated funds and proceeds from disposition of assets not meeting our longer term goals.

In our subsidiaries, we feel equally confident that our dedication to the competitive ethic, our willingness to be lean in management and, our ability to be fast in decision-making will pay added dividends to our shareholders. We anticipate that our coal company will earn in excess of $100 million on a net after tax basis this year. Although only the third largest in the industry, it is now the most profitable of all. What other company has announced such a program which would double our coal production within five years, consonant with the goals of Project Independence? Incidentally, Standard says they will give us greater managerial expertise—I wonder how they can do this in our coal business, where they have no previous experience ever?

We have already proven that financing in excess of the requirement to accomplish this doubling of coal production is available against our extensive coal reserves in the ground and that the limiting constraints on this development are only in the areas of availability of equipment and new people who must undergo training for the work force, coupled, of course, with any adjustments which might be necessary for safety or environmental legislation.

In our Chemical Division, our phosphate reserves will be fully developed, approximately doubling in output, when our new mine comes onstream in 1976.

Aside from access to the equity and debt market, public or private, that may be necessary to find and develop still further new reserves in any of our three principal divisions, Occidental always has the option of selling part of its rich existing reserves and structuring new partnerships—all of this aimed at rapid development of our energy resources in an industry which in recent years has not always been renowned for equal speed.

If figures don't lie * * * if performance tells * * * then I must submit to you gentlemen that perhaps in this case we have the cart before the horse. Standard's argument about its superior management and financial capabilities collapses in the face of Occidental's better performance. Occidental obviously makes better use of its people, its products and its potential than does Standard. Perhaps our energy crisis, our national interest and the security of our futures could be more optimally handled if Standard, in the interests of its shareholders, were to permit Occidental to manage Standard.

However, I am doubtful that Standard's shareholders will be given the benefit of our managerial expertise, so Occidental Petroleum, whose nine month earnings reflect the highest year-to-year improvement of any major oil company, will have to bumble along attempting to serve the public and our shareholders. Standard may feel we are financially inferior, but we will continue to demonstrate to them that we are fiercely independent.

Thank you.

OCCIDENTAL PETROLEUM CORP.
Los Angeles, Calif., January 9, 1975.

Hon. FLOYD HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs, U.S. Senate Washington, D.C.

DEAR SENATOR HASKELL: Referring to the statement by Mr. Joseph E. Baird submitted at your Subcommittee hearing on December 3, 1974, we would like to make the following correction.

In the tabulation of estimates by independent engineers of reserves under certain properties of Occidental and the discounted present worth of future net revenues from these properties, the number of barrels of oil included in the evaluations of U.S. oil and gas was incorrectly stated as being 12,193,000 barrels. The correct estimated total number of barrels of oil for the properties on which the evaluations were based is 9,535,750 barrels. The estimated total value of $41,591,000 for U.S. oil and gas reserves included in the tabulation is correct.

We would like to point out that this inadvertent error did not result in an overstatement of the company's U.S. oil reserves, inasmuch as the properties included in the evaluation comprise only a part of the company's reserves. At December 31, 1973, Occidental's total U.S. reserves were estimated by company engineers to be 15,903,000 barrels of oil.

Sincerely yours,

RONALD P. KLEIN.

Senator HASKELL. We are very happy to have you here today, Mr. Swearingen. Please proceed any way you want. You may read your statement or talk.

Mr. SWEARINGEN. If I may, I would like to read my statement into the record.

Senator HASKELL. Certainly, by all means.

STATEMENT OF JOHN SWEARINGEN, CHAIRMAN OF THE BOARD, STANDARD OIL CO., INDIANA

Mr. SWEARINGEN. Mr. Chairman and members of the subcommittee, my name is John E. Swearingen. I am chairman of the board of Standard Oil Co., of Indiana, and I welcome the opportunity to review those aspects of the proposal which we are considering to consolidate with Occidental Petroleum Corp. that may be of interest to this subcommittee.

Appearing with me today are Dr. James W. McKie, professor of economics and dean of the College of Social & Behaviorial Sciences at the University of Texas at Austin. Dean McKie is prepared to discuss the possible Standard-Occidental consolidation in the context of the competitive structure of the petroleum industry.

Also, Robert H. B. Baldwin and Robert F. Greenhill, president and managing director, respectively, of Morgan Stanley & Co., Inc. They are prepared to discuss the effect the proposed consolidation will have on the interests of the shareholders of each of the companies involved. Also Victor H. Brown, controller of Standard Oil. At the chairman's request, he is here to answer questions regarding the accounting aspects of the possible transaction.

At the outset, I wish to stress several points.

First, we have made no final decision to attempt to have an exchange offer for the stock of Occidental and have not purchased any Occidental stock.

In the weeks ahead, we will continue to appraise the merits of a possible consolidation while the facts are studied by appropriate governmental agencies.

Second, based on our study to date, it is our firm belief that a Standard-Occidental consolidation would accelerate the development of Occidental's energy resources, without any diversion or dilution of the financial capability of Standard.

Consistent with our obligations to our shareholders and customers, we will continue vigorously to deploy our financial resources to meet the energy needs of the future.

The capital and exploration budget of Standard Oil for this year alone amounts to over $1.7 billion—more than three times what we earned last year—with nearly $1 billion of this amount being spent to find and produce more oil and gas in North America.

The proposed consolidation would in no way affect the scale of investment in 1975 and thereafter, since the consolidation would be effected through an exchange of stock.

Third, the length of time that must necessarily lapse prior to any consolidation with Occidental will provide ample opportunity for those government units concerned with the proposal to gather and weigh the pertinent facts and evidence involved.

Even prior to Standard's public announcement of its initial meeting with Occidental, we were in touch with the enforcement agencies of antitrust to establish procedures under which we would supply information for their study.

A few days later, we made a preliminary presentation to the staff of the Federal Trade Commission and we are now in the process of assembling voluminous data that they have requested.

Within the next few weeks, we expect to make a full presentation to the Commission's staff of our case for a possible consolidation, well before the effectiveness of the exchange offer which we are considering.

I now wish to turn to a discussion of three broad subjects which I hope will answer any concerns the committee may have regarding a possible Standard-Occidental consolidation: One, why we think a Standard-Occidental consolidation makes sense; two, why such a consolidation is consistent with the public interest; and three, why the dynamics of the petroleum industry argue for our proposal.

In the course of this discussion, I intend to cover these specific questions which we received from the chairman yesterday.

Point 1, consolidation of Standard and Occidental makes sense for both companies.

Standard is mainly engaged in the domestic production of crude oil and natural gas, the refining and marketing of gasoline, and other refined products.

Historically, we have had a relatively small position in the petroleum business abroad, although we have been expanding that end of our operations in recent years.

We also have a chemical operation, which is principally petroleum based.

From years of experience we have found that there are some businesses where we have no particular skills, such as running a steel mill, manufacturing automotive equipment, or making ladies' dresses.

On the other hand, we do believe we have the management experience and technological ability to make a constructive contribution in a number of areas, particularly those connected with mineral resource extraction, processing, and marketing.

Hence, instead of attempting to grow into unfamiliar areas where we have no special talents, we have sought to diversify our business in three ways.

First, while intensifying our exploration efforts at home, we have been seeking geographically to diversify our petroleum operations in foreign areas.

Second, we have been looking at new energy sources, but have been unsuccessful in gaining entry into coal.

Third, we have been interested in a way to diversify our chemical operations into new product lines.

An amalgamation with Occidental presents a unique business opportunity in all of these areas.

The foreign oil and gas properties of Occidental, as well as their domestic coal reserves and mining technology, should provide an opportunity to further our first two objectives.

Consolidation with Occidental would also expand Standard's product line into inorganic chemicals and solid fertilizers.

Turning to Occidental, we believe that Standard can also make significant contributions to that company. Our proven record, with respect to management, financing, research, and efficent utilization of energy resources, demonstrates that we have the experience and skills necessary to deal with the tremendous economic risks and foreign political hazards that face all oil companies.

For example, in a period of worldwide energy shortage, Standard produced more crude oil and natural gas in 1973 than in any previous year and substantially increased its exploration.

Our research and development expenditures in 1973 amounted to $40 million, an increase of almost 25 percent over the prior year. Our scientists received over 276 patents and applied for 352 others.

Our capital, exploration, and development expenditures have increased every year since 1970. And our operating revenues, assets, shareholders' equity per share, and total taxes paid have increased every year for the past decade.

In contrast to Standard's steadily increasing capital expenditures, Occidental's performance during the 5-year period, 1969–73, as disclosed in a preliminary prospectus filed in April of this year, has been in quite the other direction.

Capital expenditures of Occidental dropped from $344 million in

1969 to $199 million last year in comparison to Standard's increase in the same period from $700 million to $901 million.

Moreover, Occidental reported a cutback of over three-fourths in capital expenditures for domestic oil and gas production and exploration, and a reduction of over two-thirds in capital expenditures for Occidental's coal operations.

While this same prospectus stated that Occidental projected that its capital expenditures in 1974 and 1975 for projects associated with its requirements would aggregate approximately $1.25 billion, it disclosed that it had no assurance that Occidental will be successful in obtaining the necessary financing on terms acceptable to it.

Senator HASKELL. Is the disclosure you read required by the Securities and Exchange Commission?

Mr. SWEARINGEN. No; that was never required of us.

Senator HASKELL. Very well. I guess our understanding is different.

Mr. SWEARINGEN. It also is worth noting that Occidental reported that the number of net oil and gas wells which it completed in the United States dropped from 17.5 in 1972 to 5 in 1973. This compared with Standard's domestic drilling activity which increased from 917 wells in 1972 to 966 last year.

Because of our conviction that a consolidation of Standard and Occidental could prove beneficial to both companies, we began an investigation of the financial and other aspects of such a step.

While we were studying these matters, we observed that activity in Occidental's stock increased sharply.

Not knowing whether this activity might be due to a takeover effort by some other organization—perhaps even a foreign government—we decided to contact Occidental's chairman, Dr. Hammer, to find out if he might be interested in exploring the amalgamation of our respective companies.

When I and Mr. Greenhill of Morgan Stanley met with Dr. Hammer, it was my distinct impression that he was willing to explore a consolidation with Standard.

I offered to draw up a mutually satisfactory press release regarding our meeting. Dr. Hammer objected to this and said that if we made any announcement, he would oppose the transaction.

After consulting further with counsel, I informed Dr. Hammer that a public release should be made. Dr. Hammer reiterated his opposition to the transaction, but had no further explanation, nor was he interested in exploring price or any other terms.

Nevertheless, it is my hope that if we go forward, we will ultimately be successful in convincing Occidental shareholders, as well as its management, of the wisdom of our proposal.

Parenthetically, I want to note in response to an inquiry of the chairman that we took care to keep our interest in Occidental confidential and have recently conducted an investigation to determine whether there was trading in Occidental stock based on improper use of such information by insiders.

We have found no evidence indicating that any such trading took place.

I would now like to direct my attention to our second main point; namely, that:

Point two, consolidation of Standard and Occidental is also consistent with the public interest.

We are of the opinion that Standard's management and financial resources can bring about a more rapid and efficient utilization of Occidental's energy resources, with no adverse effect upon competition in any of the markets in which either company participates.

Dean McKie will speak to this—and we will shortly be making a fuller presentation to the FTC, as I have mentioned—but I will make these brief comments.

There are over 5,000 independent oil and gas producers in the United States. There are over 125 companies engaged in refining, operating some 263 refineries, whose retail products are sold through more than 200,000 service stations.

There are at least 50 integrated U.S. oil companies. No matter where you look in the entire economy, it is hard to find a less-concentrated major industry than the petroleum industry.

This fact is also demonstrated in the marketplace. There is not a single company in the oil industry which accounts for as much as 10 percent of U.S. crude production, refinery capacity or gasoline sales.

In light of this industry setting and based on currently available information, we do not believe that Standard's consolidation with Occidental would violate the Department of Justice's Merger Guidelines, or section 7 of the Clayton Act, especially as interpreted in recent Supreme Court cases.

Whether viewed in terms of domestic production of crude oil and natural gas, proven reserves or refinery supply, the market shares involved fall below the limits set forth in the guidelines.

Moreover, Occidental's foreign production and operations involved will have either no, or at most, a de minimis effect on the U.S. market.

Nor will there by any measurable competitive impact outside the petroleum industry. There is a lack of significant overlap in the chemical and fertilizer operations of the two companies.

Occidental's chemical operations cover three main areas: chlor-alkali products, including chlorine and caustic soda; metal finishing chemicals; and plastics such as vinyls, phenolics and polyurethanes.

These are all products we do not make. Our principal lines are polystyrene, polypropylene, PTA, DMT and manufactured plastic products.

As for fertilizers, Occidental's line is based primarily on phosphorous, whereas our line is principally ammonia-based.

Moreover, Occidental mainly sells dry mixed fertilizer, while we sell liquid fertilizer products.

But even treating all fertilizers as part of a primary plant nutrient market, Standard's U.S. share is about 2.5 percent and Occidental's about 1.2 percent.

Occidental and Standard do produce both sulfur and ammonia, but there are large numbers of other producers and their shares of the U.S. market are in the order of magnitude of only a few percentage points.

In regard to coal, Standard's past inability to enter the coal market, along with its lack of coal mining technology, demonstrate that

it is not a competitively influential force on the periphery of that market.

Mr. Chairman I have here a news release from your office and I would like to call to your attention, some errors in this release.

Apparently whoever prepared this news release has confused our company, Standard Oil Company (Indiana) with Standard Oil Company of Ohio.

There are some figures that relate to Standard Oil of Ohio, particularly in the coalfield.

Senator HASKELL. What is the date of that release?

Mr. SWEARINGEN. I do not believe it has a date.

Senator HASKELL. I appreciate your calling it to my attention.

Mr. SWEARINGEN. Further, Standard's interest in the development of synthetic fuels from coal offers an obvious impetus to a fuller exploitation of the coal resources and competency of Occidental's subsidiary, Island Creek Coal Co.

I might note in passing that at the time of Occidental's acquisition of Island Creek in 1968, Island Creek has announced a $65 million construction program intended to boost annual coal production to 40 million tons by 1971. Wall Street Journal, October 5, 1967, page 5.

While we are not certain of the reasons, we do know that Island Creek's production, even by 1973, had still fallen short of that goal.

Finally, on the subject of the public interest, I would like to remind the subcommittee that this consolidation will divert no cash of Standard to the transaction. Accordingly, there will be no diminution of its own activities in the energy field.

I also want to assure the subcommittee that, if there is a consolidation of Standard and Occidental, we will vigorously continue our research and development efforts in new technology—including Occidental's in situ project—where they are economically viable as a source of synthetic oil.

It should be kept in mind that over 15 oil companies have interests in oil shale properties and at least 25 companies, including at least 14 oil companies, are actively participating in the development of processes for the production of oil from shale.

Accordingly, a Standard-Occidental consolidation should lead to no reduction in this competitive climate.

Point three, the proposed consolidation must be viewed in the context of the dynamics of the petroleum industry.

We believe there are important considerations favoring a possible Standard-Occidental consolidation which relate to the areas in which all of us are battling to secure this Nation's energy needs.

The global forces at work—political, economic, and military—are pervasive.

We are currently witnessing one of the most massive shifts of capital in recorded history, from the oil-consuming nations, including both the advanced and the underdeveloped, to a handful of the exporting countries which are banded together in a cartel of enforcing any terms they choose upon the rest of the world—at least for the time being.

The energy problems facing this country are so severe that they call for companies with outstanding resources, financing, and planning, plus the full cooperation of the Government.

The capital requirements in the petroleum business are on a scale

which has no counterpart. For the industry as a whole, conservative estimates place total capital needs in the United States alone at approximately $600 billion through 1985.

This is a staggering amount of money for a single industry to have to raise, and it will clearly take substantial improvement in earnings if such tremendous sums are to be generated.

For example, the cost of a major new refinery runs to one-half billion dollars, or more.

In the 5 years from 1968 through 1972, the domestic petroleum industry drilled more than 144,000 wells in the United States, at a cost of $43 billion.

During 1970 to 1972, nearly 80 percent of all development and exploratory wells drilled in the free world were drilled in the United States—and the pace has sharply accelerated over the past year.

If the consolidation goes forward, Standard will still have to deal with foreign governments promoting their own economic self-interests beyond the reach of our antitrust laws; we will still have to meet competition from a multiplicity of oil company rivals, including those that are governmentally owned; and we will still be subject to the constant scrutiny of the FTC, the FPC, the FEA, the SEC, and the numerous State regulatory authorities.

In this fabric, woven of so many influential and frequently conflicting threads of powers, we believe that a possible Standard-Occidental consolidation would have substantial advantages without any discernible adverse effect on the public interest.

Senator HASKELL. Thank you very much, Mr. Swearingen. Senator Metzenbaum.

Senator METZENBAUM. Due to the fact there is a quorum call and after that a vote on cloture, I wonder if this is not a proper time to recess and return at such time as the chairman designates so that we can examine Mr. Swearingen without interruption?

Senator HASKELL. If it is satisfactory with Senator Bartlett and satisfactory to you, Mr. Swearingen, we will recess now and come back at 2 p.m.

[Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2 p.m.]

AFTERNOON SESSION

Senator HASKELL. The hearing of the Subcommittee on Integrated Oil Operations will reconvene.

Mr. Swearingen, if you would return to the table. We appreciate your statement. I am sorry to recess for so long.

You are in the oil business obviously, and I gather you have been unsuccessful in getting in the coal business, but should you acquire Occidental you would be in the coal business.

Do you happen to feel that the products are competitive with each other?

Mr. SWEARINGEN. Mr. Chairman, first of all I would not try to run my automobile on coal. Obviously for some uses coal and oil are not competitive, or oil and gas are not competitive, but for other uses they are.

Senator HASKELL. Other industrial uses?

Mr. SWEARINGEN. In central station powerplant uses they are. But

may I interject here, Mr. Chairman, and suggest if it please the committee, I would like to suggest that Dr. McKie present his paper.

Senator HASKELL. I would prefer that we ask you some questions. Dr. McKie was not scheduled and we would like to take Mr. Liedquist from the Federal Trade Commission and we would be glad to hear from Dr. McKie and then he could submit his paper for the record.

Mr. SWEARINGEN. We also have Mr. Baldwin and Mr. Greenhill, of Morgan Stanley, whom you indicated earlier this morning you would like to ask some questions of.

Senator HASKELL. I would also like to ask some questions of Morgan Stanley. How did it happen that you took Mr. Greenhill, of Morgan Stanley, to your meeting with Dr. Hammer?

Mr. SWEARINGEN. I wanted to have the advice of our investment banker at the time I discussed with Dr. Hammer the possibility of a merger with his company with ours.

Senator HASKELL. Is Morgan Stanley your principal investment bankers?

Mr. SWEARINGEN. Yes. They have been for many years.

Senator HASKELL. Did you know at the time, and I assume you discussed the possible marriage of Occidental—even though it may have been a shotgun marriage, but nevertheless a marriage—with Standard of Indiana with Morgan Stanley to get their viewpoint as to whether it would be beneficial to the stockholders of Standard Oil of Indiana?

Mr. SWEARINGEN. We did.

Senator HASKELL. How long prior to the meeting with Dr. Hammer had these discussions with Morgan Stanley taken place?

Mr. SWEARINGEN. Fifteen to twenty days.

Senator HASKELL. Did you know, Mr. Swearingen, Morgan Stanley was also employed by Occidental?

Mr. SWEARINGEN. I did not know that until this morning nor do I know in what capacity. I think the Morgan Stanley people can answer that for you much better than I can.

Senator HASKELL. Assuming it to be a fact, and assuming you knew the fact that Occidental had employed Morgan Stanley in any capacity and given them some of their detailed management figures, would you still have felt that Morgan Stanley should have represented you in this transaction?

Mr. SWEARINGEN. Mr. Chairman, that is a question that should be posed to Morgan Stanley and not to me.

Senator HASKELL. I am asking you. You, obviously, as the chairman of the board of Standard of Indiana are naturally in a position to employ or not to employ. I am merely asking you whether under those circumstances you would have employed them?

Mr. SWEARINGEN. Let's put it on these terms. You are making certain assumptions and posing your certain questions——

Senator HASKELL. Based on the assumptions that I made.

Mr. SWEARINGEN. Those assumptions are all-embracing. Had Occidental employed Morgan Stanley to advise them with respect to disposing of a parcel of land in California and disclosed to them only figures which related to the disposal of a parcel of land in California; then I feel this would have constituted no conflict of interest on Morgan Stanley's part in their advising us on the nature of an overall transaction with Occidental.

Senator HASKELL. How, taking the presumption of Occidental having given Morgan Stanley complete financial information on Occidental, what would be your answer?

Mr. SWEARINGEN. If that information was nothing more than had already been published and available to the public, I would see nothing wrong.

Senator HASKELL. If it were something more?

Mr. SWEARINGEN. It would depend on what the material disclosed was.

Senator HASKELL. The reason I bring it out, obviously it is rather difficult to draw a line on that conflict of interest but I will discuss this with the gentlemen from Morgan Stanley.

This morning, Mr. Swearingen, you mentioned a news release that my office had put out had interchanged figures and had put down Standard of Ohio figures instead of Standard Oil Co. of Indiana.

Mr. SWEARINGEN. I did.

Senator HASKELL. That goes through the entire body of that release under the heading of Standard Oil Co. of Indiana, the figures are really of Sohio.

Mr. SWEARINGEN. Mr. Chairman, I received a copy of this release, which apparently originated in your office.

Senator HASKELL. It would appear to be——

Mr. SWEARINGEN. About 10 minutes before the hearing convened. I gave it a quick glance. I found in looking under Standard Oil of Indiana, under item B—Chemicals, a statement that Standard is involved with joint ventures with Monsanto and Allied Chemical and this is incorrect, to my knowledge.

Second, that we produce flame retardant chemicals for fabrics and this is incorrect.

With respect to coal, there is the statement, the third item, "owns almost 84.2 percent of its oil reserves jointly with Sohio. In 1973, 67.4 percent of Sohio's production was joint with Standard Oil Co. of Indiana;" this is totally incorrect.

The next statement, Sohio owns the Old Ben Coal Co., that is correct, but it has no bearing on the Standard Co. of Indiana. I have not had an opportunity to check all of the other figures on this list but I want to call these erroneous figures to your attention.

Senator HASKELL. I appreciate it. Does Standard of Indiana have any joint ventures either with Monsanto or Allied Chemical?

Mr. SWEARINGEN. Not that I know of.

Senator HASKELL. If that is the case, that line is clearly in error.

The third line, under C, Coal, there is a transposition where it should have said Sohio owns 84.2 percent of its gross oil reserves jointly with Amoco. Would that then be a correct statement?

Mr. SWEARINGEN. No, it would not be.

Senator HASKELL. What would be a correct statement?

Mr. SWEARINGEN. I don't know if we have any relationship with Sohio of any consequence.

Senator HASKELL. Would you mind submitting or talking to your management and asking them to double check your statement? You say to the best of your knowledge you do not have any joint ventures with Sohio. The information provided us has been quite different.

Mr. SWEARINGEN. I did not say that, Mr. Chairman.

Senator HASKELL. I thought you did.

Mr. SWEARINGEN. You asked me about Monsanto and Allied Chemical. Now you have asked me if we have any joint ventures with Sohio.

Senator HASKELL. I thought you were disputing the fact that if the third line, under three, read "Sohio owns 84.2 percent of its gross oil reserves jointly with Standard of Indiana," if the statement read that way I thought you said it would have been incorrect.

Mr. SWEARINGEN. It would be incorrect.

Senator HASKELL. Do you jointly own any oil reserves with Sohio?

Mr. SWEARINGEN. If we do, it is a very, very small amount. I think the confusion here arises between Standard of Indiana and British Petroleum Corp.

Standard of Ohio has an affiliation with British Petroleum and not with our company.

Senator HASKELL. I tell you what I would appreciate your doing. This is a long data sheet that obviously should be corrected.

I would appreciate it if you would have your people, to the extent you can get information on your company—and I mean only that, your company, not Occidental—and provide me with what would be correct statements on that page.

You have pointed out three that are erroneous. If there are any others, I would like to know and I would like to have accurate information and where I am incorrect, I would like to have it corrected.

Mr. SWEARINGEN. I would be glad to try to do that, sir.

Senator HASKELL. Thank you very much.

Now, in Standard of Indiana, how are your management decisions arrived at? I have reference actually to the committee structure that may be within the company itself. That is, the various management committees.

Can you describe the various management committees in Standard of Indiana?

Mr. SWEARINGEN. Mr. Chairman, we have a great many management committees that are concerned with different facets of our business. Our business is divided into four principal operations. One having to do with North American exploration and production; the second having to do with U.S. refining and marketing; a third having to do with the chemical business; and a fourth having to do with international operations.

Each of these particular activities is supervised or handled by a separate subsidiary company all of which are wholly owned. Each subsidiary company has a board of directors. They each have a management committee of experts in that particular business who pass judgment on specific propositions as they arise.

On matters which exceed the authority delegated to the heads of those subsidiary companies—and in our company, generally speaking, the individual subsidiary companies have authorization to spend up to $5 million on a single expenditure when it is provided for in their budget, and $1 million when it is not—anything exceeding those limits comes with a recommendation to the management committee of the Standard Oil Co.

This is a group of full-time employees of the company who in turn make recommendations to the board of directors of Standard.

Senator HASKELL. Are you a member of the management committee of the parent company, Standard of Indiana?

Mr. SWEARINGEN. Yes, I am.

Senator HASKELL. Are you a member of the management committee of any of these subsidiary companies that you mentioned?

Mr. SWEARINGEN. No.

Senator HASKELL. Which of your committees, either the parent committee or the subsidiary commitee, might have considered as to the desirability or undesirability of the economic effects of the acquisition of Occidental?

Mr. SWEARINGEN. No one of these committees.

Senator HASKELL. No management committee examined the proposed transaction?

Mr. SWEARINGEN. No.

Senator HASKELL. Who did examine the proposed transaction?

Mr. SWEARINGEN. A group of the management people to whom I directed that they study this and the matter was then taken directly to the board of directors.

Senator HASKELL. Who were those management people that you directed?

Mr. SWEARINGEN. I don't know that I can recall all of them completely, but the committee involved Mr. George Myers, who is president of the company, Mr. Frank Osment, an executive vice president, Mr. Dick Farrell, the vice president for law and public affairs, Mr. Bates Lea, the general counsel of the company, Mr. Victor Brown, the comptroller of the company, Mr. George Galloway, who is president of Amoco Production Co., and there may have been one or two others.

Senator HASKELL. Did these individuals that you gave this task to, did they report to you in writing?

Mr. SWEARINGEN. There was a memorandum prepared which was presented to the board of directors for discussion.

Senator HASKELL. Was there only one memorandum prepared?

Mr. SWEARINGEN. As far as I know, sir.

Senator HASKELL. Have you inquired of these gentlemen whether they made any memorandums about——

Mr. SWEARINGEN. No. I have had no occasion to.

Senator HASKELL. Do you intend to cooperate with the Federal Trade Commission in its study of the possible acquisition of Occidental?

Mr. SWEARINGEN. Yes. We do. As I stated to the committee earlier, we had contacted the Department of Justice before my visit with Dr. Hammer. We set up a meeting to discuss the entire matter with them, but later found that jurisdiction was transferred to the Federal Trade Commission and we have had a meeting with the Trade Commission and have agreed to furnish whatever materials they wish.

Senator HASKELL. By any chance, does this group of people to whom you delegated the job of studying it, do they have a staff, a special staff for this particular project?

Mr. SWEARINGEN. No.

Senator HASKELL. Do you intend to make the memorandum submitted to your board of directors or any other memoranda dealing with the effects, economic or otherwise, of the proposed transaction available to the Federal Trade Commission?

Mr. SWEARINGEN. We do.

Senator HASKELL. Will you make that same information available to this committee?

Mr. SWEARINGEN. If this committee will keep the memorandum in confidential status, I would be happy to.

Senator HASKELL. We will treat it exactly as the Federal Trade Commission.

Have you at any time—reading your statement, you said you made some effort to get into the coal business, and that these efforts were unsuccessful. Is my memory correct on that?

Mr. SWEARINGEN. Yes.

Senator HASKELL. Can you describe the effort you made?

Mr. SWEARINGEN. Well, at one time we had some negotiations with the Ayreshire Coal Co. which was later acquired by American Metal Climax. We had some discussions with Reynolds Metals Co. who had some coal properties in the Western States, which we were unable to acquire. We have had some discussions with Peabody Coal Co. about acquiring some part of their coal reserves or dedicating some part of their coal reserves to our future use, and we were unsuccessful in work ing out anything along these lines.

Senator HASKELL. Is it a fair statement to say that the coal subsidiary of Occidental is one of the attractive features of his possible merger?

Mr. SWEARINGEN. Yes.

Senator HASKELL. In connection with your crude oil operations, am I correct in my understanding that you purchased some of your crude, or would it be correct to say that you were in crude surplus and therefore did not need to prchase for your refining operations?

Mr. SWEARINGEN. We purchase some of the crude we use.

Senator HASKELL. In your refining operations would it be possible that you could use more crude than you get?

Mr. SWEARINGEN. Not today.

Senator HASKELL. Let's assume for the moment that the regulations of the Federal Energy Administration were not in effect, would your refineries be able to run at maximum capacity upon your own crude and the crude you would be able to purchase?

Mr. SWEARINGEN. Yes. If we had adequate sales outlets.

Senator HASKELL. Have you ever purchased any crude from the subsidiary of Occidental known as Permian?

Mr. SWEARINGEN. I don't know, but I think we have.

Senator HASKELL. Would it be possible, Mr. Swearingen, for you to ask your people to submit for the record the purchases, if any, for the past 3 years from Permian?

Mr. SWEARINGEN. Yes; we would be happy to.

Senator HASKELL. Thank you. We would appreciate that.

You heard Dr. Hammer say this morning that Occidental was interested in a refinery at Machiasport, Maine. What was the position, if any, of Standard Oil of Indiana vis-a-vis this effort of Occidental's?

Mr. SWEARINGEN. Well, as far as we were concerned, we would have been very happy to see Dr. Hammer build a refinery in Machiasport, Maine, or any other place he wanted to build a refinery. The one thing that we did not want was to see a special case made where he got a subsidy from the Federal Government on the order of $1.50 a barrel for the import of crude from abroad without having to obtain a ticket or a license from the Interior Department.

Senator HASKELL. If the oil quotas at that time had been larger, suf-

ficient oil imports could be made, to make that Machiasport facility viable, then you would have no objection?

Mr. SWEARINGEN. Exactly. If Dr. Hammer wanted to build one now, why that is up to Dr. Hammer.

Senator HASKELL. I think at this time that is all the questions I have. Senator Bartlett.

Senator BARTLETT. Mr. Chairman, thank you.

I am going to ask substantially the same questions I asked Mr. Hammer.

Do you consider Standard Oil of Indiana to be an independent or a major?

Mr. SWEARINGEN. I consider us to be a major company.

Senator BARTLETT. And where would you draw the line between a major and an independent oil company?

Mr. SWEARINGEN. Well, we like to compare ourselves with about 15 other domestic companies and 5 international, a total of about 20.

Senator BARTLETT. How do you believe competition within the oil industry compares to other industries—automobiles, steel, computers, aviation, et cetera?

Mr. SWEARINGEN. I think the oil business is one of the most competitive businesses in the United States.

Senator BARTLETT. Do you favor divestiture of the component divisions production, pipelines, refinery, marketing, by oil companies?

Mr. SWEARINGEN. No.

Senator BARTLETT. Do you favor the divesture by oil companies of different types of energy, such as coal, oil and gas, atomic energy?

Mr. SWEARINGEN. No.

Senator BARTLETT. What do you consider, in laymen's language, the legal test required of a merger of these two oil companies being in conformity with the antitrust laws?

Mr. SWEARINGEN. Well, in answer to that; Senator, I will say first of all that I am not a lawyer. As a businessman, my interpretation of the answer to this question is, the Government should not prohibit any merger or acquisition unless as a result of that merger or acquisition there is substantial lessening of competition.

I believe these are the standards which appear in the Clayton Act and appear in the other antitrust statutes. I think this is a proper criterion.

Senator BARTLETT. Do you believe a group of independent oil companies merging together to become a major domestic oil company of the size you describe would, with a management of average capability, increase, decrease, or not change the competitive aspects of the oil industry?

Mr. SWEARINGEN. I think a merger of a number of small oil companies to create another strong competitor would increase competition in the oil business. The capital requirements in this business are so enormous and are growing so rapidly, that the thing of having an independent wildcatter, such as was common in our business in the teens and the 1920's, is a day that is long gone and is never going to return.

Senator BARTLETT. Do you believe if 2 domestic oil companies in the top 15 in sales merge, that the reduction of 1 major oil company of the top 15 in sales, would increase, decrease, or not change the competition in the oil industry?

Mr. SWEARINGEN. That would depend on which ones you are talking about. If a company with operations on the west coast would merge with a company operating on the east coast where there was no overlap in their refining and marketing activities, I would say I would see no objection to that.

On the other hand, if there were two companies doing business in the same area over a broad spectrum of activities, I would think you would have to examine closely what the effect on competition would be if two such companies were to merge.

Senator BARTLETT. I think you just answered this a minute ago. Do you favor the merger of oil companies of any size?

Mr. SWEARINGEN. Senator, that is an all-embracive question, and covers a multiplicity of situations, and I find it difficult to answer yes or no.

I don't believe I can give an unequivocal yes, that all mergers are favorable, nor do I believe I can give an unequivocal no, that all mergers are unfavorable.

Senator BARTLETT. In the merger of 2 companies in the top 15 in sales, as is the case here, should the test be to increase competition rather than to reduce competition?

Mr. SWEARINGEN. Well, I believe the antitrust laws adequately cover the situation. I have described to you, a minute ago, my interpretation of that—which had to do with whether the competition was lessened or not.

I think one other point I would like to make to you, Senator, is you made reference to the situation we are discussing today, and you used the term "sales" and you talked about oil companies and I think it is worthwhile to examine how those sales originate, how much of it is in the chemical business, how much of it is in the coal business, how much of it is trading crude oil and how much of it is related to actual production of crude oil.

Taking a gross sales figures and saying this is an oil company isn't really a proper characterization.

Senator BARTLETT. How will this merger affect, if at all, the citizens of the United States?

Mr. SWEARINGEN. Well, I tried to address myself to that in the prepared remarks which I made. I believe this would be beneficial to the public of the United States, if the merger in fact, did take place.

I think it could result in acceleration of the development of resources that Occidental now has, and for which I have some concern as to whether they have the financial capability to bring those into being.

Senator BARTLETT. How will this merger affect, if at all, the supplies of domestic energy available to the United States?

Mr. SWEARINGEN. I think if a merger were effected it would increase the supplies of energy in the United States.

Senator BARTLETT. How will the merger affect, if at all, the supplies of foreign energy available to the United States?

Mr. SWEARINGEN. I don't believe—if the merger took place—I don't believe it would have any measurable effect on the oil available to the United States.

Senator BARTLETT. This is a slightly different question than I

asked Dr. Hammer and I think the one I asked him wasn't perhaps very clear.

If the merger takes place, what positions would be offered and made available to the management of the merged companies?

Mr. SWEARINGEN. Would you rephrase that question again, Senator? I am not sure I understand your question.

Senator BARTLETT. The question has to do with what would happen to the management of Occidental. What opportunities would they have with Standard of Indiana?

Mr. SWEARINGEN. In the first place, Senator, if an exchange offer were made to the shareholders of Occidental to exchange their shares for shares in Indiana, it is a certainty that 100 percent of the shares would not be tendered, that there would be some shares remaining that were not tendered as a result of the offering.

As a consequence, there would be minority shareholders and Occidental would have to be continued in operation as a separate and discreet company until such steps were taken, if they ever were, to acquire the balance of the outstanding interest.

That means you have to have a separate management and a separate organization for Occidental and certainly at the outset, we would expect that if our company did take a controlling position in Occidental, we would require the services of most of the employees that now are present in that company.

I cannot make any commitment as to what the long term developments might be, but certainly it would be required to have an adequate staff and we would certainly want to use the services of the competent people in the Occidental organization.

Senator BARTLETT. Mr. Swearingen, I recognize that both companies are made up of operations other than just oil and gas. But in a merger in the oil industry is there an ownership level at which control would be expected to fall with the company owning 25 percent or 30 percent, or some figure? Is there another level at which time consolidation of the operations might take place?

Mr. SWEARINGEN. There is no assurance of having control of any operation unless you own more than 50 percent of the stock. Now, as to whether you go from 51 percent to 100 percent of the stock, that depends on a whole series of circumstances. Our experience with minority interest holders has not been very satisfactory over the years.

Senator BARTLETT. It is the goal, is it not, of your company, if you pursue the acquisition, to acquire a majority interest?

Mr. SWEARINGEN. Yes.

Senator BARTLETT. I understand the discussions involve all of the interests.

Mr. SWEARINGEN. That is correct.

Senator BARTLETT. Mr. Swearingen, it is often said the Government is too large to manage efficiently. Do you think that can apply to major corporations, that they become too large to be managed efficiently?

Mr. SWEARINGEN. Well, I haven't seen one that is too large to be managed efficiently yet. And I think one thing you gentlemen and all of us have to keep in mind is that our measuring stick keeps changing. The dollar today won't buy what the dollar bought 5 years, 10 years, 20 years ago. As a consequence, we often tend to look at great big figures here on sales, assets, earnings, what have you—and say, my

heavens, aren't these big numbers—but in real terms they are not nearly as big as they seem to be.

To come back to your specific question, I would have to share Dr. Hammer's remarks to you, to the effect there can be big companies with bad management and there can be small companies with bad management. And there can be large companies with good management and small companies with good management. Size is no criterion.

Senator BARTLETT. Mr. Swearingen, thank you very much.

Mr. SWEARINGEN. Thank you, sir.

Senator HASKELL. If I may, Mr. Swearingen, I would like to ask you one question I forgot to ask. Am I to assume that Standard bids on Outer Continental Shelf leases?

Mr. SWEARINGEN. Yes.

Senator HASKELL. I assume they bid sometimes in combination with others.

Mr. SWEARINGEN. Yes.

Senator HASKELL. To your knowledge, has Standard ever bid with or against Occidental for Outer Continental Shelf leasing?

Mr. SWEARINGEN. I know we have bid against Occidental on several occasions, and in a lease-sale last year—no, it was this year—after Occidental had acquired some leases, we purchased an interest from them in those leases.

Senator HASKELL. You do know that you bid against them. Do you know whether you bid with them?

Mr. SWEARINGEN. No; I don't, but I can determine that if you wish.

Senator HASKELL. I would appreciate it if you would. My information is in the last 8 months Standard has been involved in a combine bidding with Occidental 3 times and against Occidental 10 times. I would appreciate it if you would either verify or correct that information.

Mr. SWEARINGEN. Very good, sir.

Senator HASKELL. Just one other question. Dr. Hammer, I believe, agreed with the proposition taken by officials of Atlantic that control of gathering lines in the field is basically the control of crude. Do you concur in that proposition?

Mr. SWEARINGEN. No; I do not.

Senator HASKELL. Has Standard of Indiana ever lost any crude supplies from fields where you own the gathering lines?

Mr. SWEARINGEN. Where we own a gathering line system of our own; yes, we have.

Senator HASKELL. Can you supply for the record specific instances of that?

Mr. SWEARINGEN. I am sure we can if it would be of use to the committee.

May I just remark in this connection, Senator, most crude is sold at the leases on what we call division order. Division orders can be cancelled overnight, instantaneously.

In most of the fields in the United States, particularly those in Oklahoma, Texas, and Louisiana, there is almost invariably more than one purchaser and one gathering system. As a consequence, it is quite common for producers to change the connections, as we call it, that they have and go from one purchaser to another.

Senator HASKELL. Perhaps for the record, you could give specific

examples of where Standard owning a gathering system over the past 2 years lost the——

Mr. SWEARINGEN. Yes. You want this over the last 2 years?

Senator HASKELL. Thank you very much. Senator Metzenbaum.

Senator METZENBAUM. Mr. Swearingen, when you first met with Dr. Hammer, there seems to have been some confusion as to who Mr. Greenhill was. Was Mr. Greenhill represented as being a part of Standard of Indiana at that meeting?

Mr. SWEARINGEN. No; he was not.

Senator METZENBAUM. Was he identified at all?

Mr. SWEARINGEN. Yes; he was. May I explain the circumstances?

Senator METZENBAUM. Of course.

Mr. SWEARINGEN. When we arrived at Dr. Hammer's office, Mr. Greenhill accompanied me and we arrived at about 4 o'clock in the afternoon. The first hour we spent talking about the shale business and Occidental's interest in that and general business conditions, and at this point I said to Dr. Hammer there was another matter which I wished to discuss with him, and did he wish to have Dr. Garrett present. It was a confidential matter.

At this point he said there was nothing to be discussed that Dr. Garrett could not hear, and as a consequence I told him I wanted to talk about the possibility of merging his company and ours. At this point Mr. Greenhill gave Dr. Hammer one of his cards identifying himself as a managing partner of Morgan Stanley Co.

Senator METZENBAUM. Mr. Hammer testified that he asked for that card as the meeting was about to break up.

Mr. SWEARINGEN. Well, he is incorrect in his recollection, Senator.

Senator METZENBAUM. You stated in your testimony it was your distinct impression that Mr. Hammer was willing to explore consolidation with Standard. Will you tell us how you gained that impression? What did he say and what did you say?

Mr. SWEARINGEN. Well, he expressed considerable concern about the antitrust aspects of this matter. His first—that was pretty much his first reaction.

We then discussed at great length our business and his business as to where we were in areas that supplemented one another and in areas where a question of antitrust might arise.

Dr. Hammer's view was that he didn't really want to merge his company and thought Occidental could handle their own business the way they had been doing in the past.

He asked me if we had discussed the antitrust question with outside attorneys. I told him that we had. We discussed the possibility of having Mr. Nizer, his attorney, discuss the antitrust questions with the attorneys for Kirkland & Ellis, who had done the work for us.

We talked about when this could be done. Whether Mr. Nizer would contact our people or whether our people would contact his. Dr. Hammer informed me he was planning to make a trip to Europe the following day and that before any further conversations took place, he wanted to explore the antitrust question.

He indicated to me that on his return, it might be possible—I won't say it would be possible, it might be possible—to sit down and explore the matter further.

And, as I testified to you earlier today, at the conclusion of our

meeting which lasted almost 4 hours, when I told Dr. Hammer that our lawyers had advised me that since we were in registration, having called our debentures for conversion, it would be necessary to make a public announcement to the effect that I had had a meeting with Dr. Hammer and, under the SEC rules, that any activity which was of interest to the general investing public had to be promptly disclosed, and that our attorneys, inasmuch as we were under registration, felt obliged to submit an amendment to the registration statement and make a public announcement to the effect that we had had a meeting.

I suggested to Dr. Hammer that we might sit down and try to write out a mutually acceptable release. Dr. Hammer would have no part of this and the meeting broke up at that point, with my saying to Dr. Hammer that I would go back and check with my counsel and see whether they insisted that a release be promptly issued stating that we had had a meeting.

Dr. Hammer said if we did issue a release on our own, that he would promptly come out with a statement and oppose it every way he could, saying that it was against the antitrust laws and other things; but that if we were going to issue a release he couldn't stop us, and he would have to take whatever action he thought was appropriate in the circumstances on behalf of Occidental.

After checking with my counsel and having them reaffirm their position as to the necessity of issuing a release, I called Dr. Hammer and told him this. I told him we were going to issue a release the next morning to the effect that we had had a meeting, and Dr. Hammer said, well, if that is the way it is I will fight you all the way down the line.

Senator METZENBAUM. Mr. Swearingen, I am sure you realize that neither of you men are under oath. Both of you are very respectable and responsible businessmen in the American business community and in the international business community, but there is no question, Mr. Chairman, that we have received absolute divergent stories as to whether there was interest in exploring further the question of the consolidation of these two companies.

Mr. Hammer is saying that he rejected it summarily, that it was not possible under the antitrust laws and Mr. Swearingen is saying that Mr. Hammer indicated he did not think it was possible under antitrust laws but going on to have a full discussion of the possibilities and talking about referring it to respective counsel, for Mr. Nizer, and for counsel of Standard Oil of Indiana, to explore the question as pertains to the antitrust laws.

I find some difficulty with that.

I think I stated the testimony correctly and I think I related Mr. Hammer's testimony correctly. Have I stated your testimony correctly?

Mr. SWEARINGEN. I think so.

Senator METZENBAUM. It concerns me. Mr. Chairman, I raised the question earlier of whether these men had to be under oath; I asked the Chairman, who responded, he didn't think so. But there certainly is divergent testimony here today as to what these two men talked about and concluded as a result of that meeting.

Mr. SWEARINGEN. Senator, may I make one point to you? There were two other gentlemen present, Mr. Greenhill of Morgan Stanley

and Dr. Garrett of Occidental, who were present through the entire meeting.

Senator METZENBAUM. Mr. Swearingen, one of the points you make in your statement, the one that concerns me probably the most in this entire matter, and that is "Consolidation of Standard and Occidental is also consistent with the public interest," which is the heading of your paragraph.

Then you have a preliminary paragraph which indicates Dean McKie will speak to that, but you then offer some brief comments.

The main thrust of that paragraph comes on the last line.

> No matter where you look in the entire economy, it is hard to find a less concentrated major industry than the petroleum industry.
>
> This fact is also demonstrated in the marketplace. There is not a single company in the oil industry which accounts for as much as 10 percent of U.S. crude production, refinery capacity or gasoline sales.

It certainly would suggest to the committee that this is really just a small part of an entire industry and the petroleum industry is not a concentrated industry. That is the point of your statement as I understand it.

Mr. SWEARINGEN. I don't believe I ever said anything about it being a small industry.

Senator METZENBAUM. It is not a concentrated industry.

Mr. SWEARINGEN. It is not a concentrated industry.

Senator METZENBAUM. Let me point out to you a fact I am sure you are aware of. In the first half of this year, the petroleum industry, 14 companies earned in excess of $5.6 billion. You would consider that a rather sizable sum in our total economy, would you not?

Mr. SWEARINGEN. Well, Senator, I would remind you that a large part of that was earned abroad and not earned in our domestic economy and I think you should recognize that fact.

I should also remind you——

Senator METZENBAUM. Mr. Swearingen, may I just point out to you that there is a real question of whether that was earned abroad or not, because the way the FEA has permitted you and other companies who have foreign subsidiaries, to show your profits overseas, to show your losses here for tax purposes, in order to pass on the increased cost of gasoline to the American consumer, it is merely a matter of bookkeeping.

The more you paid over there, the less you made over here, the less you paid on your income taxes, isn't that the fact?

Mr. SWEARINGEN. No, sir.

Senator METZENBAUM. Tell me how it isn't.

Mr. SWEARINGEN. The prices of crude oil abroad today are set primarily by the host producing governments in the countries where the oil is produced.

Senator METZENBAUM. Mr. Swearingen, isn't it a fact that the more the American—let me first preface my statement by saying this committee has had before it the Deputy Administrator of the Federal Energy Administration, and in response to a question from a member of the committee, myself, as to whether it isn't a fact that the more the oil companies paid for imported crude, the more they paid, the greater were their profits in this country.

He agreed. And therefore there was no incentive on the part of the oil companies to drive prices down.

Mr. SWEARINGEN. I would say that is not a statement that is in concurrence with my understanding.

Senator METZENBAUM. Well, let me ask you this question. If you paid $11 a barrel to Saudi Arabia, then your own production in this country can be figured at $11 a barrel under FEA regulations; isn't that so?

Mr. SWEARINGEN. No, sir.

Senator METZENBAUM. What is the rule?

Mr. SWEARINGEN. Our own production in this country, with so-called old oil is priced at——

Senator METZENBAUM. I am talking about new oil.

Mr. SWEARINGEN. I didn't understand your point.

As far as the new oil price is concerned, this is set by the marketplace and not regulated by the Energy Administration.

Senator METZENBAUM. If it is $11 in Saudi Arabia then it is $11 here.

Mr. SWEARINGEN. No, sir. That is not correct. The price on domestic uncontrolled oil in the United States today, on a comparable quality basis, is about $2 a barrel lower than the landed cost of foreign oil of the same type.

Senator METZENBAUM. That is only recently.

Mr. SWEARINGEN. It has been this way ever since the beginning of the price control, ever since last October when the prices took a very great jump.

Senator METZENBAUM. During the embargo? During the embargo the price of domestic oil, new domestic oil was $9 a barrel, is that what you are saying?

Mr. SWEARINGEN. I am saying the price of new domestic oil has never exceeded for any appreciable period of time or for any substantial quantities $11 or $12 a barrel.

Senator METZENBAUM. Has never exceeded that?

Mr. SWEARINGEN. Yes, sir.

Senator METZENBAUM. That is the price or was the price in the Arabian nations; isn't that so?

Mr. SWEARINGEN. Yes; didn't I remark to you, sir, the transportation and other costs of handling, to transport the oil from abroad to the United States would add approximately another $2 to that price?

Senator METZENBAUM. That may be so. But the fact is the higher that price was, the higher you were able to charge, the market was that much higher.

Mr. SWEARINGEN. Senator, there is no regulation governing the price of new and released crude oil in the United States.

Senator METZENBAUM. Market conditions only.

Mr. SWEARINGEN. Market conditions only.

Senator METZENBAUM. So therefore you had to pay more for imported oil and the price for domestic oil would be higher?

Mr. SWEARINGEN. No, sir; not necessarily. Because even today the price of domestic oil, new and released oil, is about $2 lower than the equivalent oil that you could bring in from abroad if the domestic supply were not available.

Senator METZENBAUM. But it is still three times what it was about a year and half ago?

Mr. SWEARINGEN. Yes, sir.

Senator METZENBAUM. Now coming back to your statement where

you said it would be hard to find a less concentrated industry than the petroleum industry, I point out to you that the world's 15 largest manufacturing companies, 7 of them are oil companies, 5 of them are based in the United States, the 15 largest manufacturing companies, I point out to you in the last quarter of 1973, 31 domestic petroleum companies made $2½ billion in profits. That was 60 percent of all of the profits that were earned by the remaining 572 major manufacturing companies in the United States.

Wouldn't you say that is a concentrated industry if you make that much money?

Mr. SWEARINGEN. No, sir, I don't think the figures you cited have anything to do with concentration. They don't bear on the concentration factor at all.

The petroleum business is a huge business on a worldwide basis.

Senator METZENBAUM. Thirty-one companies made 60 percent, as much as 572 other major industrial companies in the country and you don't think that is concentration——

Mr. SWEARINGEN. No, sir; I do not. And I would just remind you, Senator, also, that ever since the price of oil went up in the Middle East, the Congress, and I suppose in particular I am speaking of the House Ways and Means Committee, has been debating a new tax bill to apply, and has not yet come forth with a tax bill to apply to the present level of profits. As far as I know the United States is the only major nation, oil producing nation, in the world that has not done something along these lines.

Senator METZENBAUM. Are you saying that we ought to move more rapidly with respect to having a new tax bill?

Mr. SWEARINGEN. I think you should.

Senator METZENBAUM. Do you have any specific suggestions along that line?

Mr. SWEARINGEN. I have made a number of suggestions and they seem to have fallen on deaf ears. [Laughter.]

I think, first of all, Senator, that a provision—first of all—whatever tax system we have in this country should recognize the fact that the price system itself must work. There have been attempts made in the past 12 months to roll back oil prices, which I think is absolutely the wrong direction to go.

We want people to economize on the use of oil, whether it is gasoline or heating oil or industrial oil for plants. They have to understand, it is more valuable than the price they have been paying for it in the past.

I think that the price must be allowed to rise to a level which is competitive with the international price.

Now, at this point in time, I think the political facts of life are such that the U.S. Government should adopt some additional taxation on the oil business. I think the administration proposal, which I believe is incorporated in the House Ways and Means Committee bill, which would call for a so-called windfall-profits tax above a level of $7 a barrel, with an amelioration of the effect of that tax to the extent the money is plowed back in the business, is probably as good a scheme as can be devised under present-day circumstances.

I do not agree with the committee's recommendation that depletion be phased out over 3 years. This is a misnomer, really. What they are talking about is cutting it to 15 percent in the first year and 7 percent

in the second year, and nothing the third, which to me is phasing it out over 2 years. I think depletion allowance is the lifeblood of the independents in this business. It enables them to attract capital from outside the business from people who are investors in other areas.

I think this provision of the Ways and Means Committee bill is unsound.

I think the provision in the bill which governs the changes in taxation of foreign earnings goes farther than I think is appropriate to go. There is still a great deal of debate as to whether foreign taxes should be creditable against taxes that would otherwise be payable in the United States on foreign earnings.

There is a great deal of misinformation circulating on this thing. And let's just turn the question around a minute, so I can put it in context.

It is almost as though we were saying, here is Shell Oil that is owned 63 percent in this country by the Royal Dutch Shell group, and they pay U.S. taxes here. But in Britain and in the Netherlands, they shouldn't give Shell credit for the taxes paid in the United States.

Senator METZENBAUM. Does Shell get credit for the taxes in the Netherlands, for taxes they pay for leases in the United States?

Mr. SWEARINGEN. They pay no taxes for leases that I know of.

Senator METZENBAUM. We give American companies credit for royalties and call them taxes in the OPEC nations.

Mr. SWEARINGEN. Senator, a tax is a tax. If that is what the Government calls it.

Senator METZENBAUM. Is a royalty a royalty, too?

Mr. SWEARINGEN. A royalty is a royalty, too; yes.

Senator METZENBAUM. Therefore, a royalty by any other name in this country is a tax?

Mr. SWEARINGEN. No, sir. Because we pay royalties to a lot of people to whom we don't pay taxes.

Senator METZENBAUM. The fact is that we pay royalties to the Arabian nations, you get credit for them as taxes.

Mr. SWEARINGEN. No, sir. The royalties are excluded from tax. The royalties belong to the government. They are not part of our income.

Senator METZENBAUM. Wasn't there a ruling around 1955 or 1956, I am sure you are more familiar with it than I am, that made it possible for the payments that you made to the Arab nations to be considered tax payments?

Mr. SWEARINGEN. No, sir. Not in those terms. A number of the agreements were restructured and recast at about that time, and this restructuring is still going on.

Senator METZENBAUM. How was that figured?

Mr. SWEARINGEN. I cannot give you an answer to that. I am sure it was figured differently for different companies.

Senator METZENBAUM. There is no question that which was paid to the Arab nations winds up as a foreign tax credit, isn't it so?

Mr. SWEARINGEN. It winds up as a foreign tax credit against earnings in that country. It is not an offset against taxes payable on earnings generated in the United States.

Senator METZENBAUM. If you file a consolidated tax return it is.

Mr. SWEARINGEN. No, sir, it is not. And this has been my whole point. There is so much misinformation on this subject.

A tax credit generated in Saudi Arabia on income earned in Saudi

Arabia cannot be offset agains taxes due on earnings in the United States on business conducted in the United States.

Senator METZENBAUM. If that is incorrect then I am one of them who has been misinformed. I have heard that statement a hundred times. Certainly it shows on the tax return a place of taxes paid to foreign governments as a tax credit.

Mr. SWEARINGEN. Senator, OK, what you do is compute the taxes as though the income were earned in the United States and there is a credit against that for taxes paid in the foreign country. That is the amount you are talking about and my reason for discussing this at such length is because there is a great deal of misinformation. Some of it, I think, deliberate.

Senator METZENBAUM. It winds up, though, that you do save on your American taxes by reason of your foreign tax credit?

Mr. SWEARINGEN. Not on taxes due on income earned in the United States.

Senator METZENBAUM. Maybe I ought to use this for an education period.

I notice Senator Jackson's committee came out with a report this morning the average taxes paid by some of the major oil companies is somewhere between 1.6 percent and 5.6 percent, if my memory serves me correct.

Mr. SWEARINGEN. Yes, sir. Now may I just put this in context, sir?

Senator METZENBAUM. Please do.

Mr. SWEARINGEN. I would expect that the taxes you, Senator, paid were only 1 percent of the income earned by all 100 Senators. Well, I am just making a comparison.

Because Senator Jackson's remark had to do with U.S. taxes paid on worldwide earned income. What I am saying to you is that that is as though I were to say taxes you paid were only 1 percent of the earnings of the Senate.

Senator METZENBAUM. I have difficulty in following the analogy. But if you are satisfied with it.

Mr. SWEARINGEN. I think it is a very good analogy. You are trying to compare apples and oranges here.

Senator METZENBAUM. Let me ask you this. What were your earnings in 1973 and what was the effective tax rate?

Mr. SWEARINGEN. Our earnings in 1973 were $570 million—$511 million. And our effective tax rate was about 39 percent.

Senator METZENBAUM. But that did not take into account that you had $448 million in depreciation, depletion, amortization, and abandonment.

Now certainly a substantial portion of that was the depletion allowance, wasn't it?

You do not break that on your report to your stockholders.

Mr. SWEARINGEN. That caption, depreciation depletion, amortization, and abandonment, are figures that relate to the original cost and book amortization of original costs and have nothing to do with depletion for tax purposes.

Senator METZENBAUM. Does it have to do with the tax rate?

Mr. SWEARINGEN. No, sir. The rules governing the taxes payable on oil production are different from the accounting rules for financial statements.

The depletion that you speak of is permitted in the tax law to be 22 percent of the gross income from production not to exceed 50 percent of net income or cost, whichever is higher. Now what you have in that sheet in front of you is cost depletion. Percentage depletion is limited by the 50 percent net income provision. It is a different number altogether and has no relation to the cost factor.

Senator METZENBAUM. By you using that depletion, depreciation, amortization, and abandonment figure, plus your net income, you were able to have actual cash income of about $1¼ billion on which you paid something like $155 million in taxes.

Mr. SWEARINGEN. Now, Senator, I don't know what you are looking at. I would like to follow—could you tell me what page you are looking at so I can follow you?

Senator METZENBAUM. I am looking at the consolidated statement of changes in financial condition, on page 27.

I recognize that cash flow is not actually profits.

Mr. SWEARINGEN. By no means is it profits.

Senator METZENBAUM. I am fully aware of that. I have no quarrel with you at all about that.

But the fact is that you did have $1¼ billion in income and you paid $155 million, and you actually paid a lesser rate in 1972?

Mr. SWEARINGEN. No, sir. That is not right. We did not have $1¼ billion in income. We had $500 million of income.

Senator METZENBAUM. That is not correct either.

Mr. SWEARINGEN. Well, if you will read the statement, the very first line shows net income, Senator.

Senator METZENBAUM. What are you doing when you say your tax rate is 39 percent? Are you taking your tax rate off of your actual net income after deducting your taxes?

Mr. SWEARINGEN. No, sir.

Senator METZENBAUM. You had $511 million in income. That is on page 25. Do you see it in the middle of the page?

Mr. SWEARINGEN. I am sorry, on page 25?

Senator METZENBAUM. $511 million in 1973. Haven't you deducted $1,402,309,000 in taxes before you got to that figure?

Mr. SWEARINGEN. Yes, sir.

Senator METZENBAUM. Therefore, you have deducted your taxes including your income taxes before you came to your net income figure.

Mr. SWEARINGEN. Yes, sir.

Senator METZENBAUM. So, therefore, your income as any other corporation would compute it, would be $511 million plus the income taxes for that year and would have been about $666 million?

Mr. SWEARINGEN. Where do you get the tax figure, Senator?

Senator METZENBAUM. The tax figures are to be found on page 32. You also will find it on page 27. Page 27 shows you paid $155 million and on page 32 it shows that you had Federal income taxes of $165 million—I am not going to quibble about $10 million.

Mr. SWEARINGEN. May I ask our accountant to come and help us out of this dilemma where we are tossing figures around? Mr. Brown, would you come and join us, please?

Isn't there a computation here that would show how the income tax rate was arrived at?

Mr. BROWN. There isn't contained in the report, John.

Mr. SWEARINGEN. This is Mr. Victor Brown, who is the controller of the Standard Oil Co.

Senator METZENBAUM. Are you the man who gave him the figure of 39 percent?

Mr. BROWN. Yes; I am.

Senator METZENBAUM. Give me the mathematics of that, please.

Mr. BROWN. That 39, I should correct for the record, was 34.4 for 1973.

Senator METZENBAUM. How do you figure that?

Mr. BROWN. That computation is based upon the amount of income taxes and the amount of income taxes are those set forth as you point out, Senator, on page 32, the summation of Federal, foreign, and deferred taxes. Those three numbers added to a sum. That sum is then added to the $511 million.

Senator METZENBAUM. I am not talking about foreign tax. I am talking about what you paid in the United States. How much did you pay in Federal income taxes to this country?

Mr. BROWN. Well, the Federal income taxes currently paid were, as you point out on page 32, $166 million. The point I guess we make relates to the fact that in order to find the effective rate, that perhaps should be applied to the United States taxes, to the United States earned income as compared to worldwide income.

Senator METZENBAUM. This is really an American corporation, isn't it?

Mr. BROWN. Yes.

Senator METZENBAUM. Your total earnings for the year were $511 million?

Mr. BROWN. Correct.

Senator METZENBAUM. Therefore, the question is what did you pay in American taxes on top of that before you got to the $511 million, and then the $166 million?

Mr. BROWN. The amount of current Federal tax expense deducted in arriving at the $511 million is correctly stated at $166 million.

Senator METZENBAUM. So therefore, you paid $677 million against which you paid $166 million?

Mr. BROWN. What we paid—we paid in taxes in total on income, not only taxes domestically but taxes in foreign countries.

Senator METZENBAUM. I am talking about the United States.

Mr. BROWN. Now, of course, a portion of the $511 million was earned outside of the United States and we appropriately paid taxes to foreign governments on the amounts of income earned outside of the United States.

Senator METZENBAUM. And all of that was credited against American taxes?

Mr. BROWN. No, sir.

Senator METZENBAUM. Was any of it?

Mr. BROWN. Yes, sir.

Senator METZENBAUM. How much of it?

Mr. BROWN. I don't have the figure in front of me presently.

Senator METZENBAUM. A substantial portion?

Mr. BROWN. Yes, sir.

Senator METZENBAUM. Mr. Swearingen said foreign taxes paid

are not a credit against your American taxes. Was he correct or incorrect?

Mr. BROWN. If I recall Mr. Swearingen's statement——

Senator METZENBAUM. It is a mistake to say the chairman of the board is ever incorrect.

Mr. BROWN. I guess my understanding of Mr. Swearingen's statement was to the effect that the foreign tax credit is not offset against U.S. earned income, and that is true.

Senator METZENBAUM. Proceed. But——

Mr. BROWN. The foreign tax credit is designed, if my understanding is correct, to avoid double taxation, so that if a company earns an amount of money in another country, and that country happens to have a tax rate which is, let us say, 48 percent, then the amount of taxes paid for that foreign country would be credited against taxes otherwise due to the United States because that 48 percent is the same as the U.S. rate. To the extent that the tax rate payable to a foreign country is in excess of 48-percent rate, for the sake of illustration, then companies do not get the benefit of foreign tax credit.

Senator METZENBAUM. When you file your tax return in this country you show your earnings of this $700 million, figure out what the tax would be, $350 million using the 50-percent rate; and if you paid $200 million in taxes to a foreign government you would deduct the $200 million from the $350 million, would you not?

Mr. BROWN. I am afraid I don't quite follow the full example.

Senator METZENBAUM. $700 million in total earnings for the corporation.

Mr. BROWN. On a worldwide basis?

Senator METZENBAUM. On a worldwide basis.

Mr. BROWN. Right.

Senator METZENBAUM. You would normally compute your taxes, and let's assume that there is a 50-percent rate for purposes of this discussion, so you would owe $350 million if you paid $200 million to the foreign government in taxes or royalties you would deduct as if it were taxes from the $350 million?

Mr. BROWN. Not necessarily, Senator. What you would have to do is determine what proportion of the $700 million was earned outside of the United States. To carry your example one step further, let us suppose that $400 million of the $700 million was earned outside of the United States.

Then the maximum amount of credit that would be allowed against U.S. taxes would be 50 percent of the $400 million or $200 million.

My point being that if the amount of taxes payable to the foreign government in fact exceeded $200 million, then we would not get a credit against U.S. taxes.

Senator METZENBAUM. Now, going back to my original question to Mr. Swearingen, based upon this corporation's total earnings, what was the effective tax rate paid to the U.S. Government? You had $511 million plus $165 million, so you would have had $676 million for which you paid $166 million. You paid less than 25 percent, didn't you?

Mr. BROWN. Well, perhaps going back to the example that you posited before of a hypothetical company with $700 million in earnings——

Senator METZENBAUM. I would like to stay with this company.

Mr. BROWN. OK. I would like to make the analogy, however, if you will permit me, and that is in arriving at the $700 million in your example, you took the total of worldwide earnings before any taxes paid.

In a similar fashion, in our estimation what we should do is to take the $511 million and add back not just the $166 million, because that doesn't produce earnings before any income taxes, but rather the amount of the $166 million plus the amount shown of $87 million, and $11 million, and then of course, the State income taxes payable, which gives a total preincome tax figure——

Senator METZENBAUM. We are not talking about State income taxes.

Mr. BROWN. It is a fairly small number, so let's ignore it. The point being that I think we must add that to the amount of currently paid Federal taxes plus the amount of income taxes paid to foreign governments.

Senator METZENBAUM. When you figure to 34.4 percent what you did is you took the amount of taxes you paid as related to your income after having deducted taxes, isn't that so?

Mr. BROWN. No, sir.

Senator METZENBAUM. How did you figure that? Give me your mathematics.

Mr. BROWN. I don't have the detailed arithmetic, but I can indicate the computation, that would be to take the $511 million, to add back to that figure the $166 million which is U.S. income taxes, the foreign taxes of $87 million and the deferred taxes, and deferred taxes, as you know are every bit as much a tax expense as currently paid taxes because all they are, are taxes which will subsequently become due.

That gave a number. Now, that became the denominator. The numerator of that would be the sum of $166 million, $87 million, and $11 million.

Senator METZENBAUM. The $87 million was not paid to our Government?

Mr. BROWN. That is correct, sir.

Senator METZENBAUM. Therefore, you did not pay 34 percent to our Government?

Mr. BROWN. That is correct. Our effective income tax rate totaled 34.

Senator METZENBAUM. Mr. Swearington, I would like to go to another subject with you and that has to do with the question, one of the main reasons you want to make this acquisition is for the purpose of moving into the coal industry.

Mr. SWEARINGEN. One of the reasons, yes, sir.

Senator METZENBAUM. My question to you is what is the public interest to be served by having the oil companies own the coal resources of this Nation as well—well, just that.

Mr. SWEARINGEN. Well, Senator, I don't believe that any such thing is in prospect—that the oil companies would own the coal reserves of this country.

I would point out to you that the largest owner of coal in the United States is the U.S. Government.

Senator METZENBAUM. Let me point out to you that since you don't think that is a possibility, that since 1963 Gulf acquired Pittsburgh and Midway Coal Mining Co. Since that time six petroleum firms have bought out coal companies accounting for more than 20 percent of the

current coal production. Furthermore, the petroleum has secured its future hold on coal production by securing control over more than 20 percent of the known coal reserves. Companies that now have coal reserves are Gulf Oil, Continental Oil, which is the biggest, they bought Consolidation Coal; Occidental Petroleum has 4.1 percent of the market; Standard Oil of Ohio, Ashland Oil, Eastern Gas & Fuel.

The source of that information is the Small Business Committee of the 92d Congress which made a report on the subject.

Now wouldn't you say that 20 percent of an industry, the prospects of the petroleum industry moving into the coal industry, that is a pretty good indication that they are?

Mr. SWEARINGEN. They are moving in but that does not mean they control it, Senator.

Senator METZENBAUM. I didn't say they controlled it. I asked if you see any prospects of that occurring?

Mr. SWEARINGEN. No, I don't see any prospects of that occurring.

Senator METZENBAUM. Well, there has been a steady progression since 1963, 1966, 1968, 1968, 1968, and one in 1969, and 1970.

Now, I would say that would seem to indicate the major oil companies, petroleum companies, are moving in that direction.

In your own testimony indicating one of the major reasons you want this acquisition is to move into that area.

I am asking you, what is the public interest to be served by having the petroleum companies own the coal reserves of this Nation?

Mr. SWEARINGEN. Senator, I come back to my original answer to you. The Federal Government is the largest owner of coal properties in the United States.

Senator METZENBAUM. That is tweedledee-tweedledum. That is not important.

Mr. SWEARINGEN. There are other large coal properties in this country that are owned by the railroads and by the steel companies. I don't believe they will ever be available to the oil companies. Furthermore, if we are going to double or treble coal production in this coutnry in the next 10 years, it is going to take a whale of a lot of money in order to bring those new mines into production. I think it is going to take people who have the financial resources and the techonlogy in order to bring—to make that happen.

Senator METZENBAUM. Separating yourself from your position as chairman of the board of one of the majors, do you think it is in the public interest to have the petroleum companies of this country control all of the energy producing resources of our Nation?

Mr. SWEARINGEN. No, sir.

Senator METZENBAUM. The Oil and Gas Journal reports that the oil industry is moving more and more not only into coal but coal and uranium as well. Standard of Indiana, have they moved into the uranium field?

Mr. SWEARINGEN. No, sir.

Senator METZENBAUM. Do you have any intention of doing so?

Mr. SWEARINGEN. Not at the present.

Senator METZENBAUM. Do you have plans to do so in the future?

Mr. SWEARINGEN. No, sir. We have no plans, period.

Senator METZENBAUM. The petroleum companies have moved into the solar energy field. Exxon recently acquired Solar Corp., Shell now controls Solar Energy Systems; and Gulf conducts solar research

through one of its subsidiaries. Again, we have the petroleum companies moving in to control alternate sources of energy?

Don't you think, Mr. Swearingen, that this is contrary to the public interest of this Nation?

Mr. SWEARINGEN. No, sir, I do not. I think the public ought to be absolutely delighted to have anybody spend their money on research and development to bring new methods of energy production into being; no matter who it is.

Senator METZENBAUM. Do you think the petroleum companies should be the only ones to do it?

Mr. SWEARINGEN. No, sir. And there is no reason why anybody else can't move into it that wants to. If IBM chooses to or the railroads or anybody else, they are perfectly at liberty to move into it.

Senator METZENBAUM. But since coal and solar energy and nucelar power are all natural competitors of petroleum, as far as providing the energy resources, I don't think that it is in the public interest to have all of that ownerhsip concentrated in any group of companies because there isn't the incentive to develop solar energy, nuclear power, or use of coal, so that it can be used more effectively for energy purposes.

Mr. SWEARINGEN. Senator, you and I have a great divergence of views on this, I am afraid. In the first place, I think your statement about control or moving toward control of all of these types of energy is absolutely an erroneous statement. I don't believe the oil companies are ever going to control the coal business or the nuclear business or the solar energy business or the geothermal business.

Now, the second thing is, our country—may I finish? I won't take but a minute.

Senator METZENBAUM. Yes, please go ahead.

Mr. SWEARINGEN. This country's energy requirements for the next generation are so huge if we are going to maintain anything like our standard of living as it exists today, it is going to take all of these forms of energy in order to supply our requirements, and the sooner we get about developing them—by anybody who has the capability of doing so—the better off we are going to be. This, I think, is the public interest.

Senator METZENBAUM. You say you don't think they are moving into these industries and that is contrary to your own Journal. It is the Oil and Gas Journal report.

I quote: "The oil and gas industry is moving more and more into coal and uranium." So apparently it is either your word or their word, whether the petroleum industry is, in fact, doing that.

Mr. SWEARINGEN. Well, it is just as though you and I have a difference of opinion; isn't it, Senator?

Senator METZENBAUM. Except they happen to be your journal, and not mine.

Mr. SWEARINGEN. They are not my journal. I don't control them. In fact, I seem to have some difficulty with the press from time to time.

Senator METZENBAUM. Mr. Swearingen, I direct your attention to page 6 of your testimony, you went to great lengths to spell out Standard's steadily increasing capital expenditures and Occidental's lesser capital expenditures, in cutting back on the capital expenditures from 1969 and last year in comparison to Standard's increase in the same period.

Then you made much of the point about the fact Standard was spending much more for capital expenditures than Occidental and Occidental was cutting back.

Are we to understand from that that one of the major reasons why you think this transaction should be approved is that you have the capital to do it and those who control the capital therefore ought to be able to own all of the companies of this Nation? Is that what you are saying?

Mr. SWEARINGEN. No, sir, I am not saying that at all.

Senator METZENBAUM. Tell me what that means then. I am not clear as to why it is important to us or anyone else looking at this picture to know that they cut back on their capital expenditures. I think they did pretty well if they can cut back on their capital expenditures and increase their profits. I would think Mr. Hammer would be applauded by his stockholders.

Mr. SWEARINGEN. I am reciting here, Senator, only some facts as Occidental has reported. I would say to you, however, in answer to your question about availability of capital, it is as if you yourself had $100 that you wanted to invest and here is one person over here who has substantial financial resources and ability to pay you back, and there is another on which you have some question. I think you would find you would be more reluctant to lend to the lesser creditworthy person than to the one who was the better.

Senator METZENBAUM. You think Occidental is in trouble and they need some financial assistance? Is that your point in wanting to make the acquisition?

Mr. SWEARINGEN. I have made this point several times in the course of my statement that I think Occidental's financial resources are limited. They are stretched.

Senator HASKELL. Will the Senator yield for a moment? I have to go to a conference committee report. I would just like to say, Mr. Swearingen, when you check out this so-called data sheet of mine, please bear in mind that Texas Petroleum is a 100-percent subsidiary of Allied Chemical. You said you had no joint ventures with Allied, and also in connection with Monsanto you made the same statement.

My information is that you and Monsanto in the State of Louisiana own leases jointly and that you have other joint interests, so when you check it out bear in mind the subsidiary relationship.

I am going to have to leave now. Senator Metzenbaum will conduct the hearing.

I merely mention that after Mr. Liedquist comes on, we promised Dr. Hammer, Senator Metzenbaum, that he would have a chance to speak.

Thank you.

Mr. SWEARINGEN. Thank you, Senator.

Senator METZENBAUM. I have no further questions of Mr. Swearingen. Thank you very much.

Mr. Robert Liedquist, the Deputy Director of the Bureau of Competition, Federal Trade Commission.

STATEMENT OF ROBERT LIEDQUIST, DEPUTY DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION, ACCOMPANIED BY MICHAEL GLASSMAN, CHIEF, DIVISION OF ECONOMIC EVIDENCE, FEDERAL TRADE COMMISSION

Mr. LIEDQUIST. Mr. Chairman and members of this subcommittee, I am substituting today for James Halverson, Director of the Bureau of Compensation of the Federal Trade Commission.

I am accompanied today by Michael Glassman, who is Chief of the Division of Economic Evidence of the Federal Trade Commission.

Before I proceed, I must preface my remarks with the caveat that the views which I express here today are Mr. Halverson's and my own. They have not been approved by the Commission and do not necessarily represent the views of the Commission or any individual Commissioner.

Senator METZENBAUM. You state it is the position of Mr. Halverson and yourself?

Mr. LIEDQUIST. That is correct.

Senator BARTLETT. How do you divorce yourself from your official position? It is the same as asking Mr. Swearingen how he would act as an individual responding to a certain question. I am a U.S. Senator. I cannot divorce myself from that, or necessarily try to or want to, but I am a Senator until I am no longer a Senator.

You have a position and Mr. Halverson has a position. How does he divorce himself?

Mr. LIEDQUIST. Well, we are members of one of the regulatory bureaus, operational bureaus of the Federal Trade Commission. It is my job and Mr. Halverson's job to make a dispassionatae inquiry into matters such as the matter you are studying here today, to make a recommendation to the Commission, and then the Commission will act upon our recommendation and then you will have an action of the Federal Trade Commission.

Senator BARTLETT. Don't yours and Mr. Halverson's positions with the Federal Trade Commission give this informal presentation from which you divorce yourselves some credibility that you are not attaching to it?

Mr. LIEDQUIST. Well, it gives it the credibility, sir, in that it represents the views of the staff members who are investigating this proposed takeover. That is about all my statement is worth, sir.

Senator BARTLETT. That recalls some information that Mr. Halverson put out that I talked to him about, about natural gas sometime ago and it was inaccurate, and was widely quoted. I found it a real problem, to put out some information and then, you know, say we are really not behind it.

You either speak for the Federal Trade Commission or you can't.

Mr. LIEDQUIST. Well, I prefaced my remarks today, Senator Bartlett, with the fact that I am speaking for myself as a member of the staff of the operating bureau that handles antitrust matters of the Federal Trade Commision.

I am unaware of the situation you have brought up concerning some possibly inaccurate information presented by Mr. Halverson. I will

just guarantee you that everything I say today is accurate, to the best extent of my knowledge.

Senator METZENBAUM. You may proceed.

Mr. LIEDQUIST. The proposed takeover of Occidental Petroleum by Standard Oil of Indiana is an important competitive development in the energy sector of our economy.

It would, if consummated, bring together the Nation's 12th and 32d largest companies, ranked by assets, in a $9.8 billion asset combination which we are now thoroughly analyzing to determine whether there would be anticompetitive consequences in several important lines of commerce in our energy industries, as well as other areas of the economy.

The proposed combination would be, in terms of sheer magnitude, one of the largest, if not the largest acquisition ever attempted.

But more important than the magnitude of the proposed acquisition may be its impact on actual and potential competition in the energy markets for crude oil, natural gas, and coal and on the markets for fertilizers, chemicals, and plastics and, perhaps, other product markets which may surface as problem areas during our investigation.

Thus, the Bureau of Competition shares the concern of this subcommittee that the proposed acquisition be carefully reviewed under the antitrust laws to determine whether or not it may have any damaging effects on competition.

At present, our work in the energy field is consuming more than one-fourth of the total resources of the Bureau of Competition.

A significant portion of this resource commitment is being devoted to an extensive study of competitive conditions in the energy industry.

The Commission's study is mandated by Congress and requires a thoroguh analysis of the structure, conduct, and performance of the several discrete but interrelated industries that extract, process, and market energy-producing materials.

Pursuant to this congressional mandate, the staff has, since January 1974, been gathering and analyzing an enormous volume of information relating to the competitive conditions in each of the major energy sectors.

The energy study data available to us and the expertise of our energy study unit will be fully utilized in our assessment of competition in the energy areas of oil, natural gas, and coal which may be affected by the proposed acquisition.

As the members of the subcommittee know, Standard Oil of Indiana publicly announced on November 15, 1974, that it is considering action to acquire control of Occidental Petroleum.

The Commission staff, upon learning of Standard's interest in Occidental, immediately began an investigation of the competitive consequences of such an acquisition.

Based on the expertise we have developed in connection with our energy study and after a careful examination of available public source materials, we were able to focus quickly on actual and potential competition problem areas which may exist between Standard Oil and Occidental in several lines of commerce.

One important aspect of our investigation will require an indepth analysis of whether and to what extent Occidental and Standard Oil of Indiana engage in the United States and abroad in the exploration,

production, purchasing, transportation, and marketing of crude oil and natural gas.

With respect to crude oil opreations, the possible anticompetitive effects of the merger which we will be exploring may be vertical, as well as horizontal.

Standard Oil of Indiana is one of the largest refiners of crude oil in the United States and purchases substantial amounts of crude oil for its refinery operations.

Although Occidental does not have refineries in the United States, it is engaged in the refining of crude oil abroad and may be a potential entrant into refining in the United States.

The investigation will also focus on markets such as the manufacture and sale of fertilizers, chemicals, and plastics to determine whether there are competitive overlaps which may be adversely affected by the acquisition.

Similarly, in the important coal market, Occidental Petroleum, through its Island Creek Coal Division, is one of the largest coal producers in the United States.

Under these circumstances, we will carefully review all relevant information relating to whether or not Standard Oil may be a potential entrant into this production of coal in the United States and whether it already owns rights to coal reserves as a result of its mineral holdings.

In addition, we will be sifting the evidence to determine whether other product markets may be adversely affected by the proposed acquisition.

In summary, we will be reviewing all horizontal, vertical, and potential competition aspects of the proposed acquisition at all levels of the energy markets in oil, natural gas, and coal, as well as in other lines of commerce I have mentioned.

I have, in view of the importance of this matter, assigned it to the Deputy Director of the Bureau, Robert E. Liedquist, who will supervise a staff of lawyers, economists, and paralegals during the investigation.

I wish to assure the subcommittee that this inquiry is a matter of the highest priority within the Bureau and we will, should the need arise, be prepared to respond effectively to any new developments between Standard Oil and Occidental which may occur.

At the present time, our objectives are to gain access to evidentiary materials we will need to evaluate the legality of the proposed merger while at the same time, preserving all of the enforcement options available to us, including the possibility of seeking an injunction in district court if warranted by the evidence.

I should not emphasize that we have not, at this time, reached any judgment concerning the legality of the proposed acquisition. We are still in the process of compiling and analyzing the data relating to all of the complex issues considered in a merger evaluation process.

In this respect, I am pleased to report that the staff has met several times with counsel for Standard Oil and counsel for Occidental Petroleum and we have thus far found both companies cooperating with our investigation.

Both companies have agreed to submit voluntarily the information we have requested and Standard Oil has, in addition, assured us that

it will provide the staff 30 days advance notice before a tender offer is made.

This, in my judgment, should allow the staff adequate time to make appropriate recommendations to the Commission concerning the legality of the acquisition and, if a law violation is indicated by the evidence, to prepare recommendations in respect to the Commission's law enforcement alternatives.

Because this is a law enforcement investigation, I believe it would, at this time, be inappropriate for me to discuss further the details of our inquiry.

We are pleased, however, to have had an opportunity to advise this subcommittee of the steps we are taking to assess the likely competitive impact of a merger between Standard Oil of Indiana and Occidental Petroleum and to point out the ways in which the Commission's energy study has enabled us to focus our resources efficiently on the important competition problem areas relating to this acquisition proposal.

Thank you.

Senator METZENBAUM. Thank you, Mr. Liedquist.

I have just a couple of questions.

You indicate that both companies are cooperating. If both companies were to decide, at some point, this merger were in their interest and both, then, refused further cooperation with the investigation, what would you be able to do to protect the public interest?

Mr. LIEDQUIST. I would proceed to obtain the information I need and the staff needs through the use of compulsory process. I have been authorized by the Commission to issue compulsory process with respect to this acquisition.

Senator METZENBAUM. Under what circumstances can the FTC go into court in order to obtain an injunction?

Mr. LIEDQUIST. Suppose we use this particular matter as an example. If the Commission staff, on the basis of its investigation, believes there is a violation of section 7, it would make a recommendation to the Commission challenging the acquisition and perhaps seek an injunction and perhaps seek an injunction in a district court, at which time the Commission's staff would be under the burden of showing that, weighing the equities and considering the Commission's likelihood of ultimate success on the merits, that the injunction would be in the public interest.

Senator METZENBAUM. You indicate, in your statement, that Standard of Indiana has assured you that, if they intend to make you a tender offer, they would give you at least 30 days' advance notice.

Mr. LIEDQUIST. That is correct.

Senator METZENBAUM. Do you have any assurance from both parties if there is an agreement to merge that you would receive the same 30 days?

Mr. LIEDQUIST. I do not have that assurance.

Senator METZENBAUM. Do you think there is a likelihood for that?

Mr. LIEDQUIST. I will certainly think about it.

Senator METZENBAUM. Does the FTC, in the inquiry it is making with respect to the whole question of energy—and you indicated, I think, something like 25 percent of the total staff is assigned to that study——

Mr. LIEDQUIST. The staff of the Bureau of Competition; yes.

Senator METZENBAUM. What are the resources of the Bureau of Competition? How many people?

Mr. LIEDQUIST. Approximately 170 lawyers.

Senator METZENBAUM. 170 lawyers?

Mr. LIEDQUIST. That is right.

Senator METZENBAUM. Have you arrived at the conclusion—inquired into the matter of oil companies moving into the coal field, solar energy, geothermal energy?

Mr. LIEDQUIST. No; we have not. We have that under study right now at the Bureau of Competition.

Senator METZENBAUM. Do you have any idea of when you will have results of that study?

Mr. LIEDQUIST. We expect to report to the Congress sometime next year, sir.

Senator METZENBAUM. That is a long period of time, from January to December. Do you mean close to the beginning of the year or close to the end of the year?

Mr. LIEDQUIST. I cannot give you a definite time. I will try to within a few days.

There are so many aspects of our energy study, that it is pretty hard for me to recall what the time frame is for reporting on that aspect.

For example, we are looking into matters involving the structure, conduct, and performance of the oil industry in the Western States. We have a study concerning the policy governing the exploitation of energy resources located on or under Government land or water.

We have a study concerning the interlocking relationships among energy companies and financial institutions.

It is pretty hard to pinpoint the time we will be delivering each and every one of them.

Senator METZENBAUM. I believe Senators Abourezk and Metcalf addressed themselves to this area of the oil companies moving into other fields. I would appreciate it if you would advise me in the next couple of days what the approximate time would be when you expect the report on that subject.

Mr. LIEDQUIST. I will do that.

Senator METZENBAUM. I have no further questions.

Senator Bartlett.

Senator BARTLETT. Thank you, Mr. Chairman.

Mr. Liedquist, I compliment you on the presentation made. I think it adequately covers the subject of mergers and antitrust violations. It does not give any opinions about this particular matter which is under advisement and under consideration by the Federal Trade Commission and I wish to compliment Mr. Halverson on that.

I know, when a committee such as this asks you to testify, there may be some pressures brought to bear to make opinions. This is where I differ with past opinions made by Mr. Halverson so I compliment you and thank you very much for your presentation.

Mr. LIEDQUIST. Thank you, Senator.

Senator BARTLETT. I understand the chairman wanted to call Mr. Baldwin next.

Do you have a statement?

Mr. Chairman, this is Mr. Baldwin of Morgan Stanley.

STATEMENTS OF ROBERT H. B. BALDWIN AND ROBERT F. GREENHILL, PRESIDENT AND MANAGING DIRECTOR, MORGAN STANLEY & CO., INC.

Mr. BALDWIN. My name is Robert H. B. Baldwin. I am a general partner of Morgan Stanley & Co. I am also a managing director and president of Morgan Stanley & Co., Inc.

With me is Robert F. Greenhill who is also a general partner of Morgan Stanley & Co. and a managing partner of Morgan Stanley Co., Inc.

We appear here at the request of the committee and will answer your questions to the best of our ability.

When I refer to Morgan Stanley, I mean to include both the partnership and the corporation which conduct separate aspects of our business. The corporation conducts underwriting and brokerage activities. The partnership now is involved principally in private placements of securities and in giving financial advice.

Morgan Stanley provides a full range of investment banking services to corporations, institutions, and governments. These services include raising debt and equity capital in the domestic and foreign markets, financial advisory services, securities trading, real estate financing, and brokerage services for institutions and corporations.

Morgan Stanley also has specialized expertise in the area of mergers and acquisitions. I should point out that, in this area of our professional services, as in others, our advice represents the collective judgment of numerous of our partners and staff.

At this point, I would like to depart from my statement to bring up the matter that was brought up by Dr. Hammer this morning. We were rather astonished to hear the comment that Morgan Stanley may have been retained by Occidental and we had been paid a fee over the year 1974.

We, at Morgan Stanley, pride ourselves on having the highest ethical standards in the industry. We go to great lengths to assure that we do not have conflicts of interest and to maintain those high standards.

I would like to bring out certain facts that relate to a relationship with an affiliate of ours, Brooks Harvey and Company which is a real estate mortgage company and counseling company had with Occidental and I would relate the following statement.

Throughout our relationship, it was clear to Occidental and to us that our role was limited to real estate brokerage for Brooks Harvey and did not involve investment banking advice or an investment banking relationship with Morgan Stanley.

The possible transaction before us was generated internally by Standard and would not have involved any inside information, even if Morgan Stanley had any.

At the time we were approached by Standard in connection with this transaction and since that time we have no nonpublic information concerning Occidental and, in advising Standard, we did not use any nonpublic information.

Senator METZENBAUM. Let me interrupt at that point.

Did your subsidiary, the real estate company, have access to financial information from Occidental as indicated by Mr. Hammer?

Mr. BALDWIN. No, sir.

There was a conversion last December with one of the principal officers of Occidental about potential financing in the future. All of that has since become public.

We have used none of that. In fact, I did not know of it until we checked on the telephone to make sure we had no possible conflict. We did not know that.

Senator METZENBAUM. Just a minute. Do not go so rapidly.

Did you have access to financial information, whether or not it subsequently became public?

Mr. BALDWIN. We did not.

The only information we had was that an officer came in, I think it was last December, and said he was considering doing some financing in the future.

Senator METZENBAUM. Was your subsidiary retained at $25,000?

Mr. BALDWIN. I want to go on about that, if I may.

As soon as it became clear that Occidental would oppose Standard—and we did not know that until Thursday evening—in order to avoid even an appearance of a conflict, we resigned from the real estate transaction by telephone and followed it by letter and waived any fee in the year 1974.

Senator METZENBAUM. Mr. Baldwin, let me ask you this question: Do you think Mr. Hammer or Occidental was entitled to be advised of the fact that you were representing a company, whether or not they might approve the transaction or not, prior to the time of the meeting?

Mr. BALDWIN. I think that will be referred to in the notes.

As soon as we went out there—just so you know, Mr. Chairman—as I recall, the meeting of the board of directors of Indiana was on Wednesday evening.

Immediately after that meeting, as Mr. Swearingen has testified, we called Dr. Hammer. Until that time, we did not know that Indiana was going to go ahead.

The next morning, Mr. Greenhill went out there with Mr. Swearingen and he relayed, from his notes, exactly what was said to Dr. Hammer at the time.

We brought it competely out at that time.

Senator METZENBAUM. But that was after the fact, was it not? Was Mr. Hammer not entitled to be advised that somebody who had represented him——

Mr. BALDWIN. We did not represent him. Brooks Harvey, a real estate affiliate, was representing him in a real estate transaction.

Senator METZENBAUM. Is that a 100-percent subsidiary? What do you mean by an affiliate?

Mr. BALDWIN. We own 80 percent of the voting stock and slightly over 50 percent of the earning power of that company.

Senator METZENBAUM. If you own 80 percent of the voting stock, that is effective control.

Mr. BALDWIN. It is effective control.

Senator METZENBAUM. It would be difficult to say that is not a subsidiary.

Mr. BALDWIN. We refer to it as an affiliate.

Senator METZENBAUM. So, therefore, it becomes rather sticky to say a real estate affiliate is something distinguishable from a subsidiary.

Mr. BALDWIN. Let me say, we were very conscious of this and we are very conscious of conflict of interest. We called lawyers in to check just what our responsibilities were and we revealed this immediately to them and waived fees so there would not be the slightest hint that we would have conflict of interest.

Senator METZENBAUM. You did not resign until after the contact with Mr. Hammer.

Mr. BALDWIN. It was Wednesday night when they decided to go ahead. Until that time, if we had called Dr. Hammer—Indiana had not made its decision to go ahead.

Do you follow me? That was a Wednesday night.

Senator METZENBAUM. When Mr. Greenhill walked into the meeting and he said he was from Morgan Stanley, did Dr. Hammer have a right to wonder whether he was on his side or the opposite side?

Mr. BALDWIN. Mr. Greenhill will answer that.

Mr. GREENHILL. I think it might be appropriate, at this point, since there have been a number of references to the meeting with Dr. Hammer—I prepared contemporaneous notes of the meeting which are brief and I think it might be very useful to, very quickly, run through some of the points.

Senator METZENBAUM. Define "contemporaneous notes" for me.

Mr. GREENHILL. Within 10 minutes, we returned to the Beverly Hills Hotel. We sat down. (This will become clear as we go through the events.) We prepared notes of exactly what happened at that time.

If I could cover a couple of points, it would be helpful to the discussion.

Senator METZENBAUM. Do you have verbatim notes in front of you?

Mr. GREENHILL. I have, in front of me, a typed version of those which, with your permission, I think would be helpful.

Senator METZENBAUM. Do you have the original of those notes?

Mr. GREENHILL. I have the original of those notes.

Senator METZENBAUM. Have they been edited in any respect?

Mr. GREENHILL. I have the original version prepared that evening and the version prepared flying back the next morning by myself.

Senator METZENBAUM. Would you make available to a staff member of the committee, at this point, the original notes?

Mr. GREENHILL. I would be happy to.

Senator METZENBAUM. Could we have them?

Mr. GREENHILL. We have them right here.

If I could cover very quickly these notes, the meeting began at 4:25 p.m. For the approximate first 1½ hours, Dr. Hammer took the initiative and spoke at length about the recent deals he had concluded with the Russians and Don Garrett and Dr. Hammer discussed, at length, the in situ shale oil process.

John Swearingen then said to Dr. Hammer he had another subject of a confidential nature to discuss. Dr. Hammer said Don Garrett was an officer of the parent company and fully within his confidence and, in any event, since there were two of us, he wished Don Garrett to stay.

At the beginning of this phase of the discussion, I identified myself specifically as a partner of Morgan Stanley. John Swearingen said he wished to explore the possible merger or combination of the two companies

He pointed out that the trip was accelerated in time——

Senator METZENBAUM. Just a moment.

I am looking at your notes to see at what point you indicated——

Mr. GREENHILL. Look at the fourth page of the notes; it's item 18 of a series of items taken down immediately after the meeting. I do not have the precise number in front of me. You have my copy.

John Swearingen then said we wish to explore the possible merger or combination of the two companies. We pointed out that the trip was accelerated in time due to the pattern of unusual activity in the Occidental Petroleum stock.

John Swearingen said, to put Dr. Hammer's mind at rest, Standard Oil of Indiana had purchased no shares of Occidental Petroleum stock.

Dr. Hammer acknowledged he was concerned about Occidental stock activities, that the stock had been trading in the area of $8 a share, and that it suddenly began to move up in large volume so that Occidental had analyzed the trade in the stock day and day and asked the Kidder, Peabody & Blythe, Eastern Dillon people—and at this point I might insert in this that he specifically identified Kidder, Peabody's partner Al Gorden as his investment banker in the conversation—to analyze the trading volume but they could detect no single source for the activity.

Dr. Hammer pointed out that one of the important considerations was that Standard Oil Company of Indiana was too big and would swallow Occidental and that he had pride in his position as founder of the company.

Dr. Hammer said it would be all right if Occidental were to buy Standard of Indiana and be the surviving company.

Dr. Hammer said his first reaction would be that it would be impossible for the transaction to be approved by Justice. John Swearingen said this was an important concern to Standard and great study had been given to the transaction from the viewpoint of the antitrust laws.

Kirkland Ellis, Standard Oil of Indiana's outside counsel, had carefully evaluated the matter and advised the transaction would not violate any antitrust laws. In this connection, I pointed out that Occidental had filed a number of recent registration statements. The information available to Kirkland Ellis was quite extensive and, in their judgment, nearly complete.

John Swearingen and Dr. Hammer then discussed the business of the two companies. John Swearingen pointed out that Standard was not in the coal business and was in a different part of the chemical business. Further, Occidental's principal petroleum production and reserves were abroad.

In response to Dr. Hammer's questions about Permian, John Swearingen pointed out, if that presented any problem, it could be solved. Dan Garrett agreed that the small value represented in Permian, relative to the accurate value of Occidental, meant that such divestiture did not seem to present a problem.

As the discussion progressed, it became apparent to Don Garrett that the "overlap" in the two companies did not exist. After discussing the U.S. oil, coal, and chemical business of Occidental, Don Garrett said: "gee, it does not appear there is any overlap."

Dr. Hammer pointed out that the matter seemed to be sufficiently feasible so it should be carefully studied. He would like to have

Louis Nizer, his counsel, discuss the matter with Standard Oil's counsel.

John Swearingen said he would like to have Kirkland Ellis get in touch with Nizer on Monday. Dr. Hammer said, no, he would like to talk to Nizer and get back on how to proceed.

We then broke the discussion to watch a movie on Occidental's shale oil process.

Reconvening, Dr. Hammer raised the problem of possible overlap in the ammonia business. After discussions between Don Garrett and John Swearingen, Don Garrett said Occidental's ammonia investment in business was not large and he agreed that the values involved in the overlap appeared to be not material.

John Swearingen provided, at Dr. Hammer's request, public information on Standard Oil of Indiana.

I then pointed out that the form of the transaction we were considering would involve a voluntary exchange offer in which each shareholder of Occidental could decide for himself whether or not to accept the offer.

John Swearingen stated that the transaction would involve an exchange of common stock so Occidental shareholders would have an opportunity to participate in the future of both companies.

Dr. Hammer said he was traveling to Paris the next morning and that, except for possible discussion with Nizer, nothing should be done.

I pointed out that Standard has disclosure duty as a result of being in regulation, relating to the call of its debentures and based on the advice of its counsel, would require some announcement of these preliminary discussions.

Dr. Hammer announced great reluctance to make any public disclosure, even that involving preliminary discussion between the companies. He said he had had many discussions with companies. He did not report these discusions to his shareholders or, often, even his directors and he, alone, made such decisions.

He said he had been approached by a large, credible company quite recently. This company offered to purchase new Occidental preferred stock for $100 million in cash. He said, as a result of these negotiations, he believes he could increase such purchase to $200 million and he never reported such discussions to his board or his shareholders.

In spite of Dr. Hammer's comments, John Swearingen and I indicated, based on discussions with Standard's counsel, that we would still be required to make some public disclosure; particularly because our interest was sufficiently serious and we had explored the matter, in principle, with Standard's directors.

He responded that he saw no need for an announcement.

Dr. Hammer offered to simply return the financial material and act as though the meeting had not taken place and we could then resume discussions after we were out of registration.

John Swearingen and I demurred and said counsel had advised we had disclosure duty. Dr. Hammer appeared quite excited and he said any such disclosure would be "dynamite." He said it would foreclose the two companies getting together.

He said if we could agree on a friendly transaction, there might be a chance to get the combination through Justice, but if we went ahead

without Dr. Hammer's support, he would "promote" a congressional investigation, bring in the Justice Department, Federal Trade Commission, congressional committees, et cetera.

He said he had many political connections. He mentioned ex-Senator Gore was on his board. He emphasized again that he has well-financed legal counsel in a position to oppose any transaction he did not support.

On the other hand, he repeated, if we could work together and not make an announcement, the matter would have a much better chance of getting approved at Justice.

John Swearingen said he was very sorry that Dr. Hammer appeared to be unwilling to consider any transaction with Standard but that he would like to review the disclosure issue with his counsel and call back later that night.

As we stood up to leave, Dr. Hammer said, Don, take notes on this. We have had no exploratory discussion with Standard. I have no interest in this matter.

At no time during the conversation did Dr. Hammer ask us for the proposed terms of the Standard offer.

We then returned to our hotel room. We arrived at approximately 8:15 p.m.

At 8:30 p.m., I made notes of details of the conversation as John Swearingen and I described our conversation to counsel. John Swearingen called with me present on the telephone.

He said, "Armand, I appreciate the time you took at the meeting today, but Robert Greenhill is also on the telephone with me and I am disappointed at the way our conversation ended.

"I take it you are not interested in discussing a combination of Standard and Occidental Petroleum Companies, irrespective of the mutual benefits to our shareholders or the price?"

Dr. Hammer responded, "Yes. That is right. We will certainly oppose this."

John Swearingen said, "This being so, we will have to pursue our own course. We will announce tomorrow morning our recommendations. I intend to recommend to the board of directors an offer for Occidental stock."

Dr. Hammer said, "You can do what you like. I have no interest whatsoever."

John Swearingen gave Dr. Hammer his hotel location in case Dr. Hammer wanted to locate him. Dr. Hammer said, "I will not be here. I will be in Europe."

At the end of the conversation, Dr. Hammer said, apparently to his secretary, "Have you got this?" And a female voice responded, "Yes, Dr. Hammer."

And that completes the notes that I prepared of the conversation, Senator.

Senator METZENBAUM. Mr. Greenhill, when did you type up that statement?

Mr. GREENHILL. I do not have it here. I can give you the more detailed notes I made on the plane the next morning.

What I have given you now are the notes prepared in the hotel room that evening. I think you can appreciate the timing events from the events I have described. I left the next morning on a plane for the east coast and on the plane I wrote out, in longhand, essentially what I read to you.

I will be happy to submit it to you, tomorrow if you like, the handwritten version but it is essentially very similar.

Senator METZENBAUM. I look at these notes and they do not seem to tie in with the statement you made in a number of respects.

For one thing, I do not see any reference here of referring it to our lawyers and exploring the antitrust aspects with respect to Mr. Nizer. I see no evidence of that in these notes at all.

Mr. Hammer did not testify to that effect. The first we heard of that was from Mr. Swearingen. When you read these notes, you see such statements as the following: "I have fleets of lawyers and they are all well financed. They can mount opposition."

That hardly sounds like a statement that would lead Mr. Swearingen to the "distinct impression he was willing to explore consolidation with Standard."

There is another place where he says, "Don, take notes. We have had no exploratory discussions. I have no interest in this matter." That hardly sounds like one who is leading a person to be impressed with the fact that they were moving toward a consolidation with Standard.

There are other places—excuse me, there is one place where Nizer is mentioned. "A few of my directors—I will talk to Nizer." I guess it says, "if they react" or something. I do not know what it says.

Mr. GREENHILL. I would be happy to read that into the record, Senator, if you like. I think it might be useful to read the whole document into the record. I think my handwriting is not the best.

Senator METZENBAUM. There are some variations.

Mr. GREENHILL. The document I wrote on the plane the next morning going back, which is a fuller setting forth of the meeting—I think you will find it corresponds very closely to these notes.

Obviously, this is in handwriting moving across the page so you have in front of you the exact document.

The heading at the top is "8:30." Below that it says "Notes." "1.' It says "12/11 Meeting." It has "Don Garrett" at the righthand side. It says, "1. Shale business—building Occidental."

"2. 2 of you ought to be 2 of us." I think you can follow in sequence when I point this out later where they would fit in.

"3. We arrived earlier than we intended to arrive. Heavy turnover and runup in stock. Someone else making a move. We have no shares.

"4. Reestablishing old dividend rate."

Senator METZENBAUM. There is a note on the lefthand side.

Mr. GREENHILL. "No mention of value to be offered." In other words, Standard made no mention of the value to be offered. Dr. Hammer did not ask us what value was to be offered.

"4. Reestablished old dividend rate.

"5. 'Pride in his position' implying he would not 'give up the reins'.

"6. H"—H stands for Hammer—"first reaction—no way through Justice, especially if we—" and a word is left out—oppose.

"In different kinds of chemical business, 'Don Garrett' "—

Senator METZENBAUM. What is that first word, there?

Mr. GREENHILL. If I could read my own handwriting, we would be in great shape. I think that says, "Listing in different kinds of chemicals." If I recollect that better, I will try to do so, Senator.

" 'Don Garrett—Gee there doesn't appear to be overlap' not in coal business.

"7. 'Look at how we could work out Permian.'

"8. 'Runup in the stock from 8'—unusual trading activity.

"9. 'Man came in to see me—$100 million in preferred stock—responsible officer of a credible company—in fact, he would give to $200 million'—'I don't take these things to my board'—'I decide these things for the shareholders'."

Then comes the "Shale—Film." That is the movie.

Next is, "11. Exchange of SO stock for Oxy stock. No payoff—" to the shareholders. "Giving Indiana stock a ride on a combined business."

Senator METZENBAUM. I think you skipped something.

Mr. GREENHILL. "Giving Indiana stock a ride on our combined business." In other words, we were talking about stock exchange so both groups of shareholders could participate in the future.

"12. Don Garrett—'ammonia plant and business small'."

Then there is, "13. Discussions of the Russian deal." The items are not contemporaneous and they are items that took place during the discussions.

This is Hammer talking now: "I will keep our talk very confidential. Obviously if word got out it would be dynamite. Press release required. I'll give material back to you then. You can say we are not in discussions and I will give you material back."

There was discussion on the earnings' increase in both companies and this is what this item 14 relates to.

"14. Earnings of SOI—up from $114 million in 1958—earning at rate of $100 million per month."

I think it is safe to say that both chairmen considered their companies great investments.

John Swearingen: "OK to have our lawyer take initiative?" Meant to call Nizer. Dr. Hammer: "Let me get a hold of a few of my directors, I'll talk to Nizer." I cannot read my next word here; "recently," or something like that—"react."

"If they react." What they meant was, if they react favorably, we will get back in touch. At this point, the tone and climate of the conversation changed and that may be one of the reasons why it is difficult to understand how we could have all of this conversation and yet end up with opposition.

It was at this point in the conversation when we indicated a release would be necessary that the reaction on the part of Dr. Hammer became quite different.

We said: "16. We must make a release." "No"—that is Dr. Hammer's comment. "Wait till you are out of registration." We suggested, "maybe have bland announcement." Dr. Hammer, next: "If you say that, I'll say we have no interest."

Next comment: "If friendly—maybe we could cross the antitrust hurdle—but if we are adversaries we would 'promote' congressional and Justice opposition.

"17. Don take notes, 'we have had no exploratory discussions'—I have no interest in this matter.

"18. I identified myself as, at the beginning of the conversation, dealing with the merger—"

Senator METZENBAUM. That is not exactly what it means.

Mr. GREENHILL. "I identified myself . . . at the beginning of the

conversation" . . . I identified myself as of Morgan Stanley at the beginning of the conversation.

Senator METZENBAUM. Excuse me. I am going to have to recess this hearing. There is a rollcall. We will reconvene in 10 or 15 minutes.

[Whereupon, the hearing stood in recess from 4:10 to 4:35 p.m.]

Senator METZENBAUM. I think Mr. Greenhill is almost completed and, as I look at the statement of the gentlemen from Morgan Stanley, most of this relates to your evaluation of the transaction.

I do not know whether that is relative at the moment or whether we cannot accept that in written form. If you would care to give us a very abbreviated statement, we would be glad to accept it but since the members of the committee have other commitments and I think we ought to adjourn by 5 o'clock, I think, in view of the development of the testimony, I think it only fair that we give Mr. Hammer the opportunity to respond to some of the statements made by Mr. Greenhill and Mr. Swearingen.

Proceed.

Mr. GREENHILL. If I could complete.

Senator METZENBAUM. I think you were almost finished and I had to run. Sorry.

Mr. GREENHILL. When we broke, sir, I think we were on point 19 which is another comment: "I have fleets of lawyers and they are well financed—they can mount opposition."

I might say, in the recess, I have looked again at my handwriting and the words on page 1 are "listing in different kind of chemicals." That is under item 6, 4th line, page 1 of the notes, sir.

I will make only one other comment which might clear up the time sequence. Again, the Standard Oil board met Wednesday evening. Immediately after that meeting, we flew to the west coast.

I discussed this with our counsel, and we also advised our counsel and financial people of the real estate brokerage job we had undertaken for Occidental. Our counsel advised us to do nothing until it was determined the transaction was going to be a friendly agreed transaction or would be opposed.

On Thursday evening, I called New York to advise it looked as if it were going to be opposed and Occidental should be informed the next morning and that should be done.

Senator METZENBAUM. I think you interrupted yourself in interpreting your notes, did you not, Mr. Greenhill?

Mr. GREENHILL. Possibly.

Senator METZENBAUM. There is one note you did not read. That is the very last one—"we will certainly oppose this."

Mr. GREENHILL. Excuse me; sir. Let me continue. I have 2 more pages.

We broke at this point and then we called back and the telephone conversation—first, Swearingen said, "1. Appreciate time—etc." "2. We hoped we could explore mutually beneficial and cooperative programs."

Swearingen said, "3. I am disappointed in end of conversation. I take it you are not interested in discussions irrespective of mutual benefits or price. That being so, I have talked to our people. We will have to pursue our own course.

"4. We will announce tomorrow a.m. unless something chgs, our intention to recommend to our board an offer for Oxy stock."

The next two are in John Swearingen's handwriting: "I hope that our action and your reaction will not preclude constructive conversations in future."

In the right-hand margin, it says, "H. will oppose."

"I will be at the Beverly Hills Hotel, room 184, until 9:30 a.m. tomorrow. Will not be available in Chicago until 6 p.m. Sunday at home and all next week in the Chicago office."

There are two additional notes on the Beverly Hill Hotel stationery which were taken. I was standing beside the telephone in the bedroom. These are Dr. Hammer's comments: "We will certainly oppose this. I won't be back to you. I'll be—Europe. You can do what you like. I have no interest whatsoever" and that concludes the notes, sir.

Senator METZENBAUM. On the basis of that, Mr. Greenhill, Mr. Swearingen testified it was his distinct impression that Hammer was willing to explore consolidation with Standard.

Did you have that distinct impression?

Mr. GREENHILL. Absolutely.

We had the distinct impression Dr. Hammer was willing to engage in exploratory discussions up to the point in the conversation—and the conversation, as you appreciate from the times I have indicated went on for quite a while—up to the point in the conversation where we indicated a public announcement would be required; at that point, the climate got very frigid.

Senator METZENBAUM. The distinction you make is that the discussion proceeded satisfactorily until there was a press release discussion and then the whole tone changed.

Mr. GREENHILL. He offered to return the material to us, pretend the conversation had not taken place, and reconvene the conversation after we were out of registration.

Senator METZENBAUM. I do not think I have any further questions at this time.

Senator BARTLETT. Mr. Chairman, I have no questions.

Senator METZENBAUM. Mr. Baldwin, do you want to make a brief statement?

Mr. BALDWIN. Yes. I want to finish out my statement.

Senator METZENBAUM. I do not want you to read your entire statement. That would preclude Mr. Hammer from making a statement.

Mr. BALDWIN. We can leave the statement for you. I can just say this.

Morgan Stanley's role in this kind of transaction is to render advice as to the terms and other aspects of the proposed combination from a financial point of view.

It would also act as dealer-manager in connection with a proposed exchange offer which would be utilized as an initial step in such combination.

I emphasize that we advise with respect to the financial aspects and do not purport to render advice as to the operating aspects of the companies.

Mr. Greenhill who, as I have pointed out, has been most intimately involved in this transaction, will now discuss our preliminary conclusions in connection with this transaction.

Senator METZENBAUM. Morgan Stanley is investment banker for a number of the major oil companies; is he not?

Mr. BALDWIN. Yes, sir.

Senator METZENBAUM. Do you find any conflict of interest in being the investment banker for Exxon, for Sohio, Amoco, Shell and others?

Mr. BALDWIN. Mr. Chairman, from time to time, for instance, we will be asked to do something by one company and we are already connected with another company on this particular thing.

We will say stop, we cannot advise you, when this has happened on a number of occasions but, otherwise, we have not run into conflicts of interest.

In fact, our deep knowledge of the oil industry has helped us many times in bringing to fruition difficult transactions.

Senator METZENBAUM. Who, besides you, at Morgan Stanley and Mr. Greenhill knew of Standard of Indiana's interest in Occidental?

Mr. GREENHILL. In typical fashion, a number of the corporate finance partners and officers would know of the transaction. The way we would conduct our business, typically, Senator, in providing advice of this sort, as to the proper basis for exchange, we have a meeting of a number of the partners of the firm and a number of the officers of the firm.

Senator METZENBAUM. How many would that be?

Mr. GREENHILL. It depends, meeting to meeting, but, in this case, we might have 12 people there:

In response to a stock exchange inquiry as to the trading of Indiana stock we have conducted an analysis of the full firm as to who was aware of the transaction.

Senator METZENBAUM. How long have you been working on this matter?

Mr. GREENHILL. I believe the date when I was called; I was actually on vacation at the time, when Bob called me at home on the 22d, and I went out to see the executive vice-president of Indiana on the 23d of October.

Senator METZENBAUM. From October 23 to the date when Mr. Swearingen met with Mr. Hammer, what happened to the stock price of Occidental?

Mr. GREENHILL. The stock price of Occidental moved up since October 9, even before Indiana talked to us.

Senator METZENBAUM. Do you have a record with you?

Mr. GREENHILL. Yes. I do have a record with me.

Senator METZENBAUM. Tell us what it was on October 9?

Mr. GREENHILL. On October 8, it was 8½; on October 9, it was 9¼—let me read quickly to speed up the procedure here, if I may, sir.

Here is 8⅞, 9¾, 10, 9⅞; it stays in the 9 area, then moves up to 10⅜ on the 21st. On the 22d, it is 10½. It stays around 10 on the 24th and 25th. It moves up to 11 on the 29th, back down again on the 5th of November.

It is 11⅛. On the 7th, it is 12⅜. On the 8th, it is 13¾. And on the 13th, it is 13⅜. Then, on the 15th, the announcement date, it goes up to 14⅛.

Mr. BALDWIN. I might add something here, Mr. Chairman.

We, with Dr. Hammer, analyzed these figures. If you look at the volume figures from the 9th on, there was a clear pattern. Someone accumulated the stock because the volume jumped up where it had been down around the 21,000, 24,000 on the 9th, it jumped to 29,000 and, by the 22d, it was 127,000. By the 29th, it was 130,000. It was 218,000 on the 8th of November. It was 561,000.

We knew there had been a very favorable report put out by Kidder, Peabody who are investment bankers to Occidental and how much accumulation was because of that memorandum, what was somebody else accumulating as stock, and that kind of thing——

Senator METZENBAUM. Mr. Greenhill, during the same period, from October 8—when did this meeting take place with Mr. Swearingen?

Mr. GREENHILL. On the 14th, on the evening of the 14th. The meeting with Dr. Hammer took place on November 14, sir.

Senator METZENBAUM. Between October 8 and November 14—my recollection is not clear but did the Dow not actually fall substantially during that period?

Mr. GREENHILL. We happen to have the Dow-Jones here. Let's see. No.

Mr. BALDWIN. It is up from the 9th.

Mr. GREENHILL. We have an index of 100 on the 8th and, on the 14th, we have an index of 109.

Senator METZENBAUM. So it was up a slight amount.

Meanwhile, Occidental went up about 50 percent.

Mr. GREENHILL. Yes, sir; and I would also point out another factor. That very afternoon of our visit with Dr. Hammer, Dr. Hammer's board met and resumed resumption of the dividend which had been suspended for many years.

Senator METZENBAUM. What concerns me is that when twelve corporate partners and, presumably, secretaries and others who are privy to the information—whether or not they had leaked information that Standard was contemplating a tender offer to Occidental.

Mr. BALDWIN. I would like to take that one on, Mr. Chairman. That is always a point of concern in any firm.

We have many corporate secrets we know about. There have been cases where we have known of leaks in the past; some that we have been aware of, some that have been outside.

It is always a course we are very worried about. We made our employees bring all of their brokerage accounts into the office. We have a restricted list we keep up in our trading room, that people cannot trade in certain stocks.

As soon as this knowledge was had, both stocks would be put on the restricted list. I, personally, have sent out any number of memoranda to people advising that we have inside information and we do everything in our power and believe and hope and pray that we do not have any kinds of leaks but it would not only be just this transaction.

We had one just recently in North American Phillips Magnavox. We had one in International Nickel; in E. & R. Electric Storage Battery. There are all sorts of opportunities to take advantage of and we believe if we found anybody, we would fire them right then and there.

Senator METZENBAUM. You will agree a sudden rise of this stock at or about the time Morgan Stanley got into the picture with Standard Oil of Indiana does, at least, raise some questions.

Mr. BALDWIN. The timing is wrong.

Mr. GREENHILL. The timing is wrong. If I could add, Senator; the clear rise in the stock began several weeks before we were involved in the transaction, just to correct the timing.

Senator METZENBAUM. I think it started about 5 days. It seemed to me you said October 8.

Mr. GREENHILL. October 23 is the date when I went out to Chicago and first learned of the transaction.

Senator METZENBAUM. What happened on October 8? You used that date.

Mr. GREENHILL. You asked us a question analyzing the activity of the stock. Starting on the 8th, the stock was in the area of 8½. On the 9th, it jumps to 9¼. The volume began to jump up, shortly. We did not hear about the transaction until several weeks later.

Senator METZENBAUM. Between the 8th and the 21st.

Mr. GREENHILL. The 23d.

Senator METZENBAUM. I am talking about the 21st; between the 8th and the 21st, I do not think it moved much more than a point or a point and a quarter.

Mr. GREENHILL. It moved to 10⅜ by the 21st which is an increase in the stock price of 25 percent, sir.

Senator METZENBAUM. What was it on the 20th?

Mr. GREENHILL. The 20th was a Sunday.

Mr. BALDWIN. We did not hear about it—I got a call, Senator, on October 23d from the financial vice president of Indiana. Up until then I did not know nor did anybody in our firm know they were considering it.

Senator METZENBAUM. What was it selling for then?

Mr. GREENHILL. On the 23d, it was selling for 10⅛.

Senator METZENBAUM. So it had gone up a point and five-eighths.

Mr. BALDWIN. If you look at the volume—that is what you have to look at and I would guess, at that stage when Mr. Greenhill went out—he went out Thursday or Friday——

Mr. GREENHILL. I went out the next day.

Senator METZENBAUM. The volume between the 8th and the 23d was what?

Mr. GREENHILL. You had several big days in there. Let me read some volume figures, sir.

The volume on the 8th, the typical volume, was about 25,000 shares. That night it suddenly moved up to 91,000 shares at the stock price of 9¼. The next day, it was 84,000, 99,000, 116,000, 65,000, 26,000, 39,000, 40,000, 74,000, 127,000, and then, on the 23d, it was 68,000 so you had a prolonged period of heavy volume.

Senator METZENBAUM. Will you repeat those for me. I was given some figures for the wrong months.

Mr. GREENHILL. We will be happy to show this to your staff.

Senator METZENBAUM. Do you have a copy there?

Mr. GREENHILL. Absolutely. I will give you this when I finish with it.

On the 8th, it was 25,000 which has been kind of typical trading for the stock. This is October, sir. It was 91,000 on the 9th, 84,000 on the 10th, 99,000 on the 11th, 116,000 on the 14th, 65,000, 26,000, 40,000, 44,000, 74,000, 128,000; then, on the 23d, it was 68,000.

Senator METZENBAUM. Then what happened?

Mr. GREENHILL. It was in the area of 57,000, 41,000, 77,000, 198,000, 218,000, 93,000, 55,000, 54,000, 74,000. Then, on the 6th of November, it jumped up to 286,000, 224,000, 561,000 311,000, 219,000, 303,000, and 335,000 on the 14th, the evening we met with Dr. Hammer.

As I said, another factor—we do not know what the factors are that caused this; we still do not—but another factor was the dividend

meeting which was the very afternoon that we met with Dr. Hammer that evening.

Senator METZENBAUM. If we assume that somebody who was privy to this information either was passing that information out to other investment bankers and that you find a sudden upsurge around the 23d, then some falling off and, just before the meeting takes place, we find a tremendous volume of stock being traded.

Now, if you assume somebody was privy to the information during the period Morgan Stanley was making an analysis and then the week before that decided this looks like a pretty attractive deal and you were prepared to recommend it to Standard of Indiana and that looks like an advantageous transaction, then the figures would become rather suspicious, would they not?

Mr. BALDWIN. Mr. Chairman, we were—as I repeat again, we are involved in transactions day in and day out, year in and year out.

Senator METZENBAUM. I do not know about the other transactions.

Mr. BALDWIN. I am telling you. This transaction would be typical of it.

If somebody in our organization wanted to take inside information or leak information, somebody would make a profit from it but we make every effort. We believe there are no leaks from our office on this thing.

We can document, time after time, where events are in our office and nothing comes out and the stock does not change.

Our assumption—and we believe it is true—is that there was an accumulation. Again, because this was a Kidder, Peabody memo or from what Dr. Hammer surmised—it might have been Arab buying or foreign buying, it would be out inclination that there was somebody on the outside out there buying it.

We tried to speculate with the company whether there was some other company accumulating prior to taking it over. Indiana stayed away from something like this because they felt it was the ethical thing to do at this time.

Senator METZENBAUM. Because you do have this possible conflict of interest, do you also act as investment counselors?

Mr. BALDWIN. No.

We have research—I will give you an example on that. We have one of the finest oil analysts in the business; a man named Barry Good. He knew nothing of this transaction.

We erect a series of things to erect a Chinese Wall to prevent things like that.

Senator METZENBAUM. Any particular nation who wanted to retain your services could not do so in a matter of this kind?

Mr. BALDWIN. We do not manage money. We do not do that. We have a small amount that were carried over from our partner but we, thus far, have made the determination not to do——

Senator METZENBAUM. Do you run an investment advisory service?

Mr. BALDWIN. No. We do not. We give research to institutions as soon as something comes like this. For example, if somebody wants to write an article on a company we are working on, the head of our research, the partner in charge of it will go to our corporate finance man, go to our merger and acquisition, and say, we are proposing to write an article on such and such a company.

If we are doing something, we say no. He does not ask why. We do not tell him why.

Senator METZENBAUM. Immediately after the transaction was terminated and Mr. Hammer rejected it, what happened in the trading volume, thereafter?

Mr. GREENHILL. This is on the 14th? The volume was 335,000. The announcement came out before the opening of the market the next morning. The next day it traded at 137,000 shares.

The Monday following was 257,000, 172,000, 61,000, 155,000, 202,000, 77,000, 114,000, 116,000, 27,500. There seems to be a falling off in volume.

Mr. BALDWIN. Peak volume was the next day after the announcement of the transaction.

When the stock stayed, it hit a peak on the 14th and it bounced around between 12⅝ and 13¾. We just got it through the 29th, here. It has been about the same thing.

Senator METZENBAUM. Down around that volume since the 29th?

Mr. GREENHILL. It has been in big volume, 100,000. It is trading a big volume every day.

Senator METZENBAUM. Certainly a little less than before the 14th.

Mr. GREENHILL. That is not so.

Senator METZENBAUM. It is so. You had 224,000, 311,000, 219,000, 303,000, 335,000. Then you have, the day after the announcement comes out, a volume of 637,000. Then you have 257,000; then down to 172, down to 61, back up to 155 but that still is not as big as any of the 6 or 7 days before the 23d.

Then you have 202,000, 77,000, 114,000, 116,000, and so on.

Mr. BALDWIN. Let's try to go back.

What we are saying to you, from the point of view of watching markets, except for the week in November of the 11th to the 15th, the week after was probably the biggest week that had been included in the whole activity period.

Senator METZENBAUM. Was there not a price mentioned in the meeting?

Mr. GREENHILL. No.

Dr. Hammer never asked us for the offer we were prepared to make to the shareholders during the meeting.

Senator METZENBAUM. Where did I pick up the figure $17?

Mr. GREENHILL. The next morning, in our press release, the $17 figure was mentioned, sir.

Senator METZENBAUM. If somebody knew Standard of Indiana was going to make an offer of $17, they would have been able to make a lot of money if the transaction went through and they bought 6 days before the transaction, would they not?

Mr. GREENHILL. I think it might be helpful, Senator, if we talk about the timing of events. I think as Bob said if people have inside information in our business they can always make a lot of money but let's talk about the timing of events.

John Swearingen returned to the country on Monday, having been away. We met with him the Monday of that week.

Senator METZENBAUM. What date was that? The 11th?

Mr. GREENHILL. I believe it was the 11th, sir; we met with him that Monday and the meeting continued into the afternoon of Monday and

this was the first time we gave John Swearingen, who had been out of the country, our views and recommendations.

He discussed it with his management group and, the next afternoon, he told us he was going to call a board of directors meeting to discuss the matter further.

Senator METZENBAUM. Did you recommend to him a figure of $17 or a higher figure?

Mr. GREENHILL. We told John Swearingen, in our judgment, $17; the statement as set forth in the press release would represent a fair basis for an exchange offer and one which we believed would receive the acceptance of the majority of the Occidental stockholders.

Senator METZENBAUM. Did you indicate there was some leeway if he had to negotiate? He could go up to a higher figure?

Mr. GREENHILL. We said to him—we did not comment to him as to whether that was the top or the bottom. We said that was our judgment.

Senator METZENBAUM. You told him at that point he would get good leverage.

Mr. GREENHILL. No; we told him specifically, at that point, the figure was fair and it would receive acceptance, favorable acceptance by the majority of the Occidental stockholders.

Senator METZENBAUM. Did you point out to him the PE ratio of Standard was higher than the PE ratio of Occidental?

Mr. GREENHILL. The ratio of Standard is 6½ and the PE ratio of Occidental is 3 and it is true; one is higher than the other but, in the industry, it is a question of what people will pay for your stock.

Mr. BALDWIN. We prefer it—you can look at the price earnings of the two. We looked into it in extensive detail in preparing these things. I would like to point out to you so you will understand the dynamics of this: If you had bought the stock on November 11, the first day of that week, at the close, it would have been 13⅜. If you had sold the stock on the 29th of November, you would have gotten 13¾ so you are not going to get rich on that.

Senator METZENBAUM. Mr. Baldwin, wait just a minute now. That was by the time the deal was killed. Why use that figure? That was at the time Hammer had already rejected the offer.

Mr. BALDWIN. Mr. Chairman, I got a call Tuesday night in Canada. I was prepared to come back to New York. I was asked by the Indiana company to fly to Chicago because they were going to consider it and would like me to be there.

They had not made up their mind whether they were going to proceed, what price they were willing to pay or anything; therefore, I am saying to you there was no knowledge they were even going to make an offer.

They did not know whether they were going to. They said they were going to have a long meeting on the board's determination of what they were going to do.

The price in any offer like this where there are so many undetermined factors, where you have a price of $17, nobody will go in and arbitrate the deal and close the gap between the two; therefore, it is 13¾ until there is more definite determination that the deal is going ahead.

I am saying to you, the action back before that we suspect was from people not knowing about the deal, but from Kidder, Peabody or somebody who was accumulating stock because they wanted to own a block of stock.

Senator METZENBAUM. It may have been that or it may have been somebody privy to the information Morgan Stanley was putting together for Standard of Indiana and neither of us know the answer to that, do we?

Mr. BALDWIN. That is correct, sir.

Senator BARTLETT. I would like to ask Mr. Baldwin concerning the list of clients.

The list of clients the chairman mentioned for whom Morgan Stanley provides investment banking services—would you not consider this list to be indicative of some success in the investment banking field and also some indication of their confidence in Morgan Stanley as not being involved in a conflict of interest?

Mr. BALDWIN. We are very proud of our list of clients. We work very hard at it. We try to keep our ethical standards at the highest and we try very hard to avoid conflicts of interest.

I think we succeed.

As I say, nobody can come out and pound the table and say this because somebody can make a darn fool mistake and take advantage of inside information but, as far as we are concerned, we have never had anybody betray the trust we have put in them in our office and I hope we can continue to say that.

Senator BARTLETT. Do you think, if one or more clients were of the opinion that you were guilty of conflicts of interest in handling services for customers, that they would be inclined not to continue in the future?

Mr. BALDWIN. Nothing makes you lose clients faster.

Senator BARTLETT. Thank you.

Senator METZENBAUM. I do not mean to suggest that Morgan Stanley does not have a good reputation but I do say the stock transaction leaves a question for both of us and neither of us knows the answer.

Mr. BALDWIN. That is correct.

Mr. GREENHILL. Before we leave the subject and we close, if that is your wish, sir, I think I should say because I think it is important for your committee to know, that we have conducted a specific investigation of the knowledge of people inside Morgan Stanley.

We have done this with our counsel at the request of the stock exchange and we can say to you today——

Senator METZENBAUM. Did you say with your counsel at the request of the stock exchange?

Mr. GREENHILL. Yes; and we can say to this committee today, to our knowledge, nobody at Morgan Stanley has taken advantage of any inside information concerning this transaction.

Senator METZNBAUM. I do not think I would even imply or suggest that anybody has done that. I think it is always possible.

There are 12 people or more who knows about the information. There are leaks. This is one of the problems, I think, in having that many people know that when it was supposedly a secret.

Thank you very much for coming. I appreciate your testimony.

Mr. Hammer, would you care to respond rather briefly?

ADDITIONAL STATEMENT OF ARMAND HAMMER, CHAIRMAN OF THE BOARD, OCCIDENTAL PETROLEUM CORPORATION; ACCOMPANIED BY JOSEPH E. BAIRD, PRESIDENT, OCCIDENTAL PETROLEUM CORPORATION

Mr. HAMMER. I would like to introduce Mr. Baird, our President.

We discussed with Mr. Swearingen our argument which, as I understand it, was that Standard of Indiana was better equipped to finance and develop the resources of Occidental than Occidental itself.

There is some testimony, also, by Morgan Stanley, to the effect and would indicate that Occidental might not be in a position to finance the development of its projects and its resources and I would like Mr. Baird, who is an investment banker by profession, and the president of Occidental to answer that part in the rebuttal.

I would like to answer the question raised or the matter raised about what took place on the evening of November 14, since there seems to be such a wide difference of opinion as to what happened.

First of all, Mr. Greenhill stated he had introduced himself in the second phase of the conversation—I wonder why Mr. Greenhill did not introduce himself immediately. I think that is a pertinent question that should be asked.

I thought he was an associate of Mr. Swearingen until he gave me his card and Dr. Garrett and I—he gave both of us his card—recollect distinctly he gave us his card at the close of the meeting and not at the second phase.

But it is strange, even with his own testimony, he would wait until halfway through the conference before he would identify himself; particularly bearing in mind that Morgan Stanley did have a contractual relationship with Occidental. They had a written contract. That contract had a year to run.

They must have had a guilty conscience when they sent us notice 2 months before the expiration of the contract, canceling it.

It is also strange that they did not return the $25,000 they got. We also feel they had no right to cancel the contract before it expired.

Senator METZENBAUM. I thought they said they did return the money.

Mr. HAMMER. They did not.

Senator METZENBAUM. Either they did or they did not.

Mr. GREENHILL. If I could answer that very specifically: In December of 1973—and I might say I was so astounded this morning by Dr. Hammer's comment I called my partner in New York, at Brooks Harvey, to discuss with him, to review with him, and to make sure my understanding was correct that, in December 1973, was received, from the real estate subsidiary, $25,000 for 1974.

We waived that payment when we notified Dr. Hammer we withdrew from any further real estate brokerage activities.

Senator METZENBAUM. Did not one of you testify the $25,000 was refunded?

Mr. GREENHILL. We waived the $25,000 for the work we performed for 1974. We have a letter we will be happy to submit into the record, if you like.

Mr. HAMMER. They had no right, Mr. Chairman, to unilaterally cancel a contract which had to run until the end of the year but, in any event, they did not return the $25,000, as I testified.

Now, after the preliminary conversations which took considerable time about shale oil and about Russia; when these gentlemen, when Mr. Swearingen announced the real purpose of his visit and they asked that Dr. Garrett leave the room, I was immediately alerted to the fact that they were there to raid our company.

They said their lawyers had done extensive work and they were convinced there was no violation of antitrust. I thought to myself I would try to draw them out and get as much information as I could because I knew then what the real purpose of their visit was which had been hidden from me up until that time.

When I suggested—when they said Kirkland and Ellis had given them this opinon, I said, well, Mr. Nizer might have a different opinion. Why don't you have them get in touch with Mr. Nizer?

When they, later on, said they wanted to put out an announcement that there had been talks and negotiations, I saw it was time to make it perfectly clear there was no talks or negotiations. I had been listening to them and I think you committee members should ask yourselves; if I was really interested, as they say, in there were negotiations, do you think for one moment I would not have asked them what price they were offering for the stock?

Is that not a reasonable assumption?

Now, they testified, themselves, there never was any such discussion so if you have to weigh a question of credibility here, mine or Mr. Greenhill's, I think you gentlemen should take all of those factors into consideration.

First, he hid his identity until, by his own admission, the first day of the meeting was over and, second, they did not return the $25,000 and they canceled the contract unilaterally and, finally, I think you must bear in mind that they themselves admit there was never any discussion about terms or price of stock.

What they wanted to do, in my opinion, was to trap me, was to get an announcement out to fool the public into thinking I was agreeable and there were negotiations going on. That was their purpose and I saw through it immediately and that is when I said to Dr. Garrett, make a note of this. There have been no negotiations.

The rest of this I would like Mr. Baird to answer.

You gentlemen have been very patient.

Senator METZENBAUM. Let me say, I do not know about Senator Bartlett but I have not been very much impressed with the inability of Occidental to finance its own business. That argument has not been very persuasive on my ears; therefore, you need not convince me it seems Occidental has been able to do those things they want to do.

If Senator Bartlett wants to query you at length on this subject, I will be happy to hear from him but I think Occidental proved their ability to finance their own affairs. I think there are other considerations involved of interest to the committee, rather than question who has the money in order to make Occidental grow.

Mr. HAMMER. Mr. Chairman, I might add that Mr. Baird was the executive they mentioned who had the conversations with Morgan Stanley. I think that, in itself, is important.

He can tell you of his conversations. He drew the contract with Morgan Stanley or with Brooks Harvey. He insisted, in the contract, that Morgan Stanley's partner should be the man with whom he had contact.

He will tell you about his talks with Morgan Stanley which they have made light of in order to hide their conflict of interest.

Senator METZENBAUM. Mr. Baird, if you wish to proceed, I would ask you to be rather brief. I do not want to cut you off but the hour is running late.

Senator BARTLETT. Mr. Chairman, I think you asked me for an expression of opinion regarding Mr. Baird's testimony. I know Mr. Hammer wanted Mr. Baird to make a statement and, as far as I am concerned, I am willing to hear anything and everything you have to say.

I would like you to be completely free to say what you like. We came to hear the witnesses and I am here to listen.

Mr. BAIRD. I was fascinated to see that Morgan Stanley assumed we would not be able to raise very much money. Over the course of this year, we have, in fact, as I think we have detailed in the separate testimony, raised, in new money and in renewal of existing facilities which encompasses the same purpose, close to $800 million. I wonder how many clients of Morgan Stanley, corporate or otherwise, have raised that much this year.

Of course, Morgan Stanley is more used to raising money for AAA credits. We have aspirations in that direction, although we have not gotten there, yet.

Morgan Stanley was employed by us. I am interested in the fine distinction they make. They point out our bankers are Kidder, Peabody. That is true. They are our chief investment bankers, but we have also employed other investment bankers.

Many companies use different firms for different purposes. If it is Brooks Harvey, somehow it is not Morgan Stanley and I wonder if you people would be persuaded, if we made an acquisition that was clearly an antitrust violation, for example if, in order to acquire Exxon we used Permian Corp., of which we only owned 80 percent, I wonder if you would feel that shielded us from the antitrust laws?

In fact, we had Morgan Stanley employed by us for more than a year to effect one of two possible transactions. One was the disposition of a very important part of our assets, our real estate involving assets that were in our books over that period in amounts ranging from $107 to $150 million; a very significant portion of our equity and net worth.

Morgan Stanley was also considering the possibility of raising $75 million in financing against these assets involving the use of the Occidental parent credit.

Therefore, the credt of Occidental was pertinent. Detail can be provided as to the types of information that were supplied to Morgan Stanley.

Therefore, the credit of Occidental was pertinent. Detail can be provided as to the types of information that were supplied to Morgan Stanley.

I do not mean to allege Morgan Stanley made any misuse of this information. I have always had the very highest respect for Morgan Stanley as a firm.

It would be unthinkable to me that the top management of Morgan Stanley would intentionally get into any situation involving a conflict and, therefore, I was tremendously astounded to learn of this

particular situation and that Morgan Stanley was involved in the transaction.

Mr. HAMMER. Any questions?

Senator METZENBAUM. I have no questions.

Senator BARTLETT. I have one question to either one of you.

The integrity of Morgan Stanley and whether or not he is guilty of a conflict of interest has been a major portion of the comments and testimony.

I wonder what that does or has to do with the merits of the merger?

Mr. BAIRD. We did not have any intention of making this a primary or, indeed, a secondary issue and we think the case involving Standard of Indiana will be decided on antitrust grounds.

It was not our intention to go after Morgan Stanley in any way, shape, or form.

We think Morgan Stanley is an absolutely outstanding investment banking firm and we wished them well. We wish they would concentrate on attacking someone else.

Senator BARTLETT. These comments, then, have nothing to do with the merits of the merger?

Mr. BAIRD. That is correct.

Senator BARTLETT. I would like to thank you very much. I have enjoyed the hearing, and Mr. Chairman, thank you.

Senator METZENBAUM. The committee stands adjourned.

Thanks to all of you for participating. I think you have provided the committee with a good deal of information that would otherwise not have been available.

[Whereupon at 5:22 p.m. the hearing was adjourned.]

APPENDIXES

Appendix I

Material Submitted for the Record by Occidental Petroleum Corporation

OCCIDENTAL PETROLEUM CORP.,
Los Angeles, Calif., December 11, 1974.

SENATOR FLOYD HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: During Dr. Armand Hammer's testimony before your Subcommittee on December 3, 1974, you inquired whether Occidental Petroleum Corporation (through its subsidiary, The Permian Corporation) ever offered to purchase crude oil at a price higher than the price being paid by established purchasers in the field. Dr. Hammer agreed to provide information on this subject.

Occidental does not have information as to the actual price paid by its competitors for crude oil production. However, we can confirm that Occidental frequently purchases crude oil production exempt from price control at prices in excess of the price posted by major companies in the particular geographical area. It is the policy of Occidental to compete vigorously for the purchase of any available crude oil.

Following is an illustrative list of leases purchased by Occidental recently at a price higher than the highest known posted price for exempt oil by a major oil company in the area. It should be understood that in some instances the major companies increase their posted prices retroactively, sometimes as much as six to eight weeks. We also assume that some major companies offer prices at well head in excess of their posted prices.

Operator, parish/county, and State	Lease name	Occidental price paid f.o.b. well head	Highest known posted price f.o.b. well head
Ferguson Oil Co., Vermilion, La	Jewett Hewlin	$11.40	$10.75
Norris Oil Co., Desoto, La	Rogers Estate	11.38	10.52
Florida Gas Exploration Co., Victoria, Tex	Charley Jacobs No. 1	11.22	11.15
Shenandoah Oil Corp., Converse, Wyo	Baughn	11.43	11.38
Texas O. & G. Corp., Derby, Okla	McGinnis	11.75	11.15
Superior Oil Co., Lea, N. Mex	Government "K"	11.26	11.16
American Trading & Prod. Co., Liberty, Tex	Kirby No. 1	11.50	11.20

Numerous additional examples could be given, but since information as to actual price is considered highly confidential for business reasons we are supplying the foregoing merely as illustrations.

Sincerely yours,

RONALD P. KLEIN.

OCCIDENTAL PETROLEUM CORP.,
Los Angeles, Calif., December 12, 1974.

Senator FLOYD HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: While we do not wish to belabor the point unduly, Occidental Petroleum Corporation is of the opinion that Mr. Robert H. B. Baldwin, General Partner of Morgan Stanley & Co., in his testimony before your Subcommittee on December 3, 1974, has left an unwarranted impression on the record. His testimony inaccurately indicates that only Brooks, Harvey & Co., an affiliate of Morgan Stanley & Co., was engaged in the performance of services on behalf of Occidental at the time Mr. Swearingen and Mr. Greenhill, representing Morgan Stanley & Co., made the Standard takeover proposal to Dr. Hammer, and that Morgan Stanley & Co. itself was not involved in the performance of such services for Occidental.

Specifically, Mr. Baldwin, in his testimony, attempted to limit the situation to "certain facts that relate to a relationship which an affiliate of ours, Brooks, Harvey & Company, which is a real estate mortgage company and counseling company, had with Occidental."

In reply to a direct question from Senator Metzenbaum "Was Dr. Hammer not entitled to be advised that somebody who had represented him. . . .?", Mr. Baldwin interrupted and replied, "We did not represent him. Brooks, Harvey, a real estate affiliate, was representing him in a real estate transaction."

In fact, Brooks, Harvey *is* Morgan Stanley for all practical purposes, and the

"real estate transaction" involved more than $100,000,000 of Occidental assets. More importantly, to illustrate the unreasonable and, indeed, misleading nature of Mr. Baldwin's effort to disassociate Morgan Stanley & Co. from the major assignment undertaken by his organization on behalf of Occidental at the very time they were assisting Standard in preparing its effort to takeover Occidental, we are adding to your Subcommittee's record a letter dated December 21, 1973 from Joseph E. Baird, President of Occidental, to Nils A. Lundberg, President of Brooks, Harvey & Co. This makes exceedingly plain on page 3 that Morgan Stanley was expected to play a direct and significant role in the Occidental project.

Sincerely yours,

RONALD P. KLEIN.

OCCIDENTAL PETROLEUM CORP.,
Los Angeles, Calif., December 21, 1973.

Mr. NILS A. LUNDBERG,
President, Brooks, Harvey & Co., Inc.,
New York, N.Y.

DEAR NILS: It was a great pleasure to have lunch with you and Buzz McCoy at the Morgan Stanley offices last week, and Bob Caverly and I greatly appreciated the chance to talk with both of you as well as the other representatives of Morgan Stanley about our desire to arrange a major sale or financing transaction for our subsidiary OPLAD.

I have reviewed your letter of December 18 and am delighted that Brooks, Harvey & Co. has agreed to undertake this assignment on behalf of Occidental Petroleum Corporation.

Generally, the terms outlined in your letter of December 18 are acceptable; however, I think there are several points which should be clarified:

A. We agreed that any major sale transaction which may be worked out, by you as our representatives, will require our approval, particularly where the major credit terms may be involved. We would pay you the commission relating to the credit portion of the transaction as well as to the cash portion. If, however, subsequent events would indicate difficulty in collection against the credit terms, we would expect all possible counsel and assistance from Brooks, Harvey in resolving these problems.

B. With respect to sub para. 4, para. 3 of your letter, I think you should bear in mind there are presently a substantial number of negotiations for sale or other transactions relating to real estate in the OPLAD inventory. In addition, I think we will continue to receive inquiries and should, in the ordinary course of business, enter into negotiations with the hope of consummating additional transactions. It seems to me that if you expect to receive a 1% commission on any sales relating to these types of transactions, it would be necessary for you to station a Brooks, Harvey representative full time at the OPLAD headquarters in Newport Beach, California in order that your firm could handle all these negotiations and take all steps a real estate broker would normally be expected to take to qualify for the commission you have requested.

Many of these transactions will be relatively small and probably would not merit a full time Brooks, Harvey representative at the OPLAD office. On the other hand, if you did not have a full time representative there I think we would run into unnecessary delays and complications in trying to pursue the transaction. Consequently, you may wish to designate a "cut-off" amount below which you would not expect to participate in the 1% commission and we would, therefore, pursue negotiations and consummation of transaction below this amount in the same manner we are now conducting the business of OPLAD. All transactions above this amount would be referred to you, provided Brooks, Harvey can assure us they would pursue their broker responsibilities for these transactions in an expeditious manner and you would qualify for the 1% commission upon consummation of such transaction.

We fully appreciate the great amount of effort which would go into the assignment you are undertaking, and are pleased to note the identification of the team you will organize for this effort. I would like to have a firm understanding that in addition to this team effort you, representing Brooks, Harvey and Buzz, representing Morgan Stanley, will devote an important amount of time to this work including personal negotiations with prospective U.S. and foreign investors and purchasers in such locations as would best serve these efforts.

Enclosed herewith is our check in the amount of $25,000 as retainer for this assignment. Your acceptance of this check will indicate that you have started the assignment immediately.

Please get in touch with Bob Caverly for any arrangements you may need regarding meetings with Occidental Petroleum or OPLAD personnel as well as information from our files. I would like to ask that you provide us with a report at the end of each month outlining your activities on this assignment, including details of major progress towards the objective that you feel has been made and the representatives of Brooks, Harvey and Morgan Stanley who have been involved in these activities.

Sincerely,

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OCCIDENTAL INTERNATIONAL CORP.,
Washington, D.C., December 13, 1974.

Hon. FLOYD K. HASKELL,
Chairman, Special Subcommittee on Integrated Oil Operations, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At the hearings of the Subcommittee on Integrated Oil Operations on December 3, John Swearingen submitted a statement for the record by James McKie on behalf of Standard Oil of Indiana.

Because Mr. McKie did not actually give the testimony, Occidental was unable to respond to his statement. We have, therefore, asked Mr. Richard Barber, an economic consultant to Occidental, to prepare a response to the McKie statement which we would like to submit as part of the record at this time.

Thank you for your consideration of this request.

Sincerely,

ROBERT M. MCGEE.

STATEMENT BY RICHARD J. BARBER, PRESIDENT,
RICHARD J. BARBER ASSOCIATES, INC.

In conjunction with its appearance before the Subcommittee on December 3, 1974, Standard of Indiana submitted a statement by Professor James W. McKie to support its contention that acquisition through takeover of Occidental Petroleum would not lessen competition under the antitrust laws. Although confronting the single largest industrial acquisition in U.S. history, with its massive potential for injury to competition and disturbing public policy implications, Professor McKie, by his own admission, did not do "a full study of Occidental operations." Instead he served up a hurried opinion that, while agreeable to his client, is incomplete, misleading, and often simply incorrect.

So superficial is the McKie document that no attempt need be made here to examine the full range of competitive implications stemming from Standard's threatened seizure of Occidental, an acquisition that would create the country's eighth largest industrial corporation (judged by sales figures for the first nine months of 1974).* The Occidental Complaint filed December 3 in the United States District Court for the Central District of California (a copy of which has been supplied for the record in these hearings) extensively details the specific antitrust violations. In this submission, prepared by me at the request of Occidental, my objective is to highlight a number of the flaws in the McKie statement and to identify major areas in which the acquisition would impair competition.

Professor McKie's conclusionary submission largely ignores the many ways in which Standard's takeover of Occidental will impair competition.

It gives no meaningful attention to lines of commerce in which Standard and Occidental actively compete—in gas, oil, technology, and chemicals;

It omits any reference to the substantial competition that exists between the two companies in the sale and supply of chemicals and inputs used in the manufacture of chemicals and fertilizers;

It is silent about the effects engendered by the two firms' overlapping vertical integration;

It gives grossly inadequate consideration to the substantial competition that exists between the two companies in the search for innovative technology in oil shale development, coal gasification, and energy conversion;

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*According to Business Week (November 9, 1974) the two companies' combined sales in the first three quarters of 1974 were in excess of $11 billion.

It ignores the extensive mutual interdependence among Standard and the other major integrated international petroleum companies as well as Occidental's valuable role as an aggressive independent competitor; and

It fails to pay heed to the consequences of the elimination of potential competition, in petroleum refining, coal, and chemicals, that would result from the acquisition.

McKie concludes that while Standard and Occidental rank, respectively, numbers 6 and 16 among the largest companies in "energy" production (number 3 if consolidated),[1] their combined size is too small to "adversely affect the existing competitive environment in the domestic energy industries." This is absurd. Indeed the United States Supreme Court has held unlawful an acquisition in which one manufacturer with 4 percent of a defined market acquired another with 0.5 percent (total 4.5 percent, which is less than that represented by Standard-Occidental's share of McKie's "energy" market).[2]

In an effort to justify his conclusion McKie employs a conception of "energy" which treats all fuels as essentially identical. It is as if to say that automobiles could burn coal as easily as gasoline or that homes or commercial establishments could instantly switch from one fuel to another. This is nonsense, of course, for it is at odds with commercial and technological reality.[3] A rational analysis of competition calls for a pragmatic delineation of markets. As the Supreme Court said in the Brown Shoe case, suitable market definition calls for an examination of "practical indicia."[4] Judged by such criteria an effort to portray all energy sources as fungible masks the down-to-earth market conditions that determine the prospective competitive impact of any acquisition and certainly one as massive as Occidental's takeover by Standard.

COMPETITIVE EFFECTS IN OIL AND GAS

Occidental directly competes domestically with Standard in exploration and in the purchase and supply of crude oil and natural gas. Occidental is an aggressive bidder for offshore leases, where, often in association with smaller companies, it vies actively with Standard of Indiana. Occidental similarly competes with Standard (and others) for the purchase of crude from independent producers. As well, through its successful search for oil abroad—as in Libya, the North Sea, and Peru—Occidental contests with Standard on the world oil market, where competition helps shape domestic prices. In natural gas Occidental sells to interstate pipelines which also are supplied by Standard. Prospectively, as a result of its aggressive search for oil and gas and through its planned importation of gas (and gas products) from the Soviet Union, Occidental will become an even more important competitive factor. Professor McKie fails to note the competitive significance of these facts and does not even mention many of them.

He also fails to recognize that Occidental is the country's largest non-integrated supplier of crude oil to independent refiners.[5] The latter, at the marketing (retail) level, compete with Standard of Indiana and, absent their access to Occidental, would be forced to rely on the major oil companies—their competitors—for crude supplies. Professor McKie seems to minimize this crucial point by saying that Standard will make no change in existing arrangements with independent crude oil sellers or buyers. Yet the practical consequence is that those sellers or buyers would be placed in a position of dependence on firms of vastly greater size, with which they compete. It is hardly a sure source of competition to have small firms dependent on their larger market rivals for the raw material that is the key to their survival.

The McKie statement seeks to avoid these facts—with all that they mean for the preservation of competition—by attempting to portray petroleum as an "unconcentrated" industry. In doing so he is forced to disregard the considerable body of evidence which reveals that petroleum, through its web of interdependence among the vertically integrated majors (including Standard), is peculiarly

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[1] FTC, *Concentration Levels and Trends in the Energy Sector of the U.S. Economy*, March 1974, Table I–8 at p. 476.

[2] *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962). Also see *United States* v. *Pabst Brewing Co.*, 384 U.S. 546 (1966).

[3] Standard Board Chairman John E. Swearingen testified at the hearings, "I would not try to run my automobile on coal."

[4] 370 U.S. 294, 325 (1962).

[5] McKie states, erroneously, that Permian, Occidental's crude purchasing and supplying subsidiary, is "essentially a transporter and broker of crude oil." Actually Permian purchases oil as a principal and sells as such to refiners.

insusceptible to routine statistical categorization.[6] With a handful of integrated major oil companies occupying a dominant position at every level of the industry, from the purchase of crude through its sale at retail, it is naive, if not deceptive, to seek to portray this industry as competitive. Indeed it is this which underlies the FTC complaint against the Major Eight companies (including Standard).[7] Professor McKie is well aware of this. Writing in an academic journal he once took care to point out the distinction between concentration in crude exploration and at other industry levels. The former, he concluded, may be competitive but "refining and transportation are dominated by the large integrated oil companies," leaving "only a secondary role for the independent oil company." [8] Since Professor McKie wrote about the subject the situation, if anything, has deteriorated, with the FTC discerning a trend to higher concentration at the refining stage.[9]

Focusing specifically on refining (where, by Professor McKie's present standards, concentration would be low even though he once concluded that refining is "dominated by the large integrated oil companies") the FTC has alleged in its Complaint that Standard of Indiana and seven other oil companies have "maintained and reinforced" a "noncompetitive market structure in the refining of crude oil" through a variety of restrictive practices. Among other things the FTC has alleged that Standard and its seven co-respondents have violated the antitrust laws by:

(a) Pursuing a common course of action to abuse and exploit the ownership and control of the means of gathering and transporting crude oil to refineries;

(b) Pursuing a common course of action in participating in restrictive or exclusionary transfers of ownership of crude oil among themselves and with other petroleum companies;

(c) Pursuing a common course of action of adhering to a system of posted prices leading to the maintenance of an artificial level for the price of crude oil;

(d) Entering into numerous processing arrangements with independent refiners thereby expanding their control over refining capacity and limiting the availability of refined petroleum products to independent marketers, and potential entrants into marketing;

(e) Pursuing a common course of action of accommodating the needs and goals of each other in the production, supply and transportation of crude oil to the exclusion or detriment of independent refiners and potential entrants into refining;

(f) Pursuing a common course of action of using their vertical integration to keep profits at the crude level artificially high and profits at the refining level artificially low thereby raising entry barriers to refining;

(g) Pursuing a common course of action to abuse and exploit the ownership and control of the means of transporting refined petroleum products from refineries; and

(h) Pursuing a common course of action of accommodating the needs and goals of each other in the transportation and marketing of refined petroleum products to the exclusion or detriment of independent marketers and potential entrants into marketing.

The result, according to the Commission, is that Standard of Indiana (et al.) has "exercised monopoly power in the refining of petroleum products" by:

(a) Pursuing a common course of action in refusing to sell gasoline and other refined petroleum products to independent marketers;

(b) Pursuing a common course of action in participating in restrictive or exclusionary exchanges and sales of gasoline and other refined petroleum products among themselves and with other petroleum companies;

(c) Pursuing a common course of action in their marketing practices thereby avoiding price competition in the marketing of refined petroleum products.

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[6] Although selective quotation from the FTC Report McKie has sought to convey a different impression, the Commission staff—noting patterns of interdependence in the industry and high levels of concentration in refining, transportation, and marketing—has stressed that competition in the oil industry is "far less" than would be implied by mere statistical measures. See FTC Energy Sector Report, supra note 1, at p. 75.

[7] FTC Docket No. 8934.

[8] McKie, *Market Structure in Oil and Gas Exploration*, Quarterly Journal of Economics, November 1960, p. 543.

[9] *Preliminary FTC Staff Report on Its Investigation of the Petroleum Industry* (1973), pp. 17–18.

Occidental's role as an aggressive, well-financed, and independent competitive factor in an industry that is, by any practical test, highly concentrated assumes even greater importance as we look to the future. If the United States is to reduce its dependence on petroleum resources from uncertain foreign sources the search for oil (and gas) from the continental shelf must be intensified, since this is assumed to be the key domestic source of supply in coming years. The Government's November 1974 Project Independence Report stressed the importance of accelerated offshore exploration but, in doing so, also warned that leasing practices may jeopardize a fair return to the public. "This threat," said the Project Independence Report, "can be reduced by taking steps to maintain competition in lease sales" and to "stimulate competitive bidding."[10] In this context Occidental's place as a major independent competitive bidder for offshore leases acquires accentuated significance. Acquisition of Occidental by Standard would manifestly end Occidental's role in this area of crucial energy consequence, just as it would also extinguish Occidental as a competitor generally in the search for and in the purchase and supply of oil and gas for the U.S. market.

COMPETITIVE EFFECTS IN CHEMICALS AND FERTILIZERS

Professor McKie artificially confined his "assessment" of Standard's threatened takeover to the energy sector. As a consequence he avoided giving any attention to the wide-ranging competitive reverberations in the area of chemicals and fertilizers. In plain truth, however, the two firms are substantial factors in chemicals, with their combined 1973 chemical sales amounting to almost $1.6 billion (an amount which would have ranked them the nation's fifth biggest chemical concern). In a number of areas Occidental and Standard are in substantial effective competition. In the sulfur market, one which Professor McKie concedes is highly concentrated, Occidental and Standard are significant competitors and Occidental's acquisition by Standard would create the fourth-ranked producer in the United States, with its market position further accentuated by significant Canadian sulfur operations. Occidental and Standard are also substantial competitors in the production of anhydrous ammonia for the American market and in the sale of finished fertilizers. Standard's plans for increased ammonia production capacity together with Occidental's contemplated importation of Russian ammonia would give the resulting company a dominant position in the U.S. ammonia market. In markets for industrial chemicals and processes Occidental and Standard compete for similar commercial purposes and uses.

As users and suppliers of chemical and fertilizer inputs Occidental and Standard occupy strategic positions. Products required by the two companies are often supplied by the other and acquisition would restrict competitive access in furnishing their needs and narrow the access of competitors to products supplied by the two companies. Today, for example, Occidental is a major producer of superphosphoric acid and Standard is a large purchaser. Similarly, Standard is a substantial purchaser of finished phosphates (and may be the single biggest buyer) while Occidental is a principal supplier of phosphate. Such relationships in chemicals and fertilizers present a serious risk of adverse competitive effect, just as they do in petroleum. Professor McKie is totally silent as to this major prospective competitive problem.

LESSENING OF POTENTIAL COMPETITION

In applying the antitrust laws (specifically, Section 7 of the Clayton Act as amended) to mergers and acquisitions the Supreme Court has held unlawful the acquisition by a company not competing in a market but so situated, by intention and financial capability, as to be a potential competitor.[11] By this test, as well, the threatened takeover of Occidential by Standard of Indiana runs afoul of the antitrust laws. Standard has unambiguously declared its intention to enter the coal market, saying in its 1973 Annual Report "we plan to acquire coal and oil shale reserves as economic opportunities permit."[12] It now proposes to do so—not by de novo entry or through purchase of a small coal producer but by

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[10] Federal Energy Administration, *Project Independence Report*, November 1974, p. 73.

[11] See, e.g., United States v. Falstaff Brewing Corp., 410 U.S. 526 (1973); FTC v. Procter & Gamble Co., 386 U.S. 568 (1967); United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964).

[12] More recently, in a presentation to the Investment Analysts Society of Chicago on April 4, 1974, Standard Chairman John E. Swearingen reiterated the company's intentions, declaring "we have an interest in coal . . . and at the present time we are engaged in looking forward to acquiring coal reserves."

acquiring the country's third largest coal mining company, with 1973 output in excess of 22 million tons and with coal reserves of 3.5 billion tons (or which a third is one per cent or less in sulfur). Standard's effort to establish a dominant position in coal through acquisition of Occidental, thereby complementing its highly-ranked position in natural gas and oil, presents essentially the same facts as led the FTC to condemn Kennecott's purchase of Peabody Coal.[13] Viewed in context of current conditions in the coal industry Standards takeover of Occidental eliminates whatever value Standard might possess as a potential entrant through new entry into this increasingly important energy sector.

Just as Standard is a potential entrant into coal, so also is Occidental a potential entrant into petroleum refining. Refining, "the pivotal point in the petroleum industry" according to the FTC,[14] exhibits high and rising levels of concentration among the large, vertically integrated major oil companies (including Standard). With its substantial crude reserves and its aggressive bidding for U.S. offshore leases Occidental is an unmistakable potential entrant into refining. Its unsuccessful effort to establish a new refinery at Machiasport, Maine—opposed by major oil companies—is evidence of both its intentions and the firmness of its commitment to gain entry into refining. Indeed, of those companies in the oil industry that are not now engaged in domestic refining Occidental is probably the most likely and the most substantial potential entrant. Takeover by Standard would eliminate its value as a potential entrant.

COMPETITIVE EFFECTS ON TECHNOLOGICAL INNOVATION

As large and well-financed corporations Occidental and Standard have pursued independent paths in their approaches to technological innovation in the energy, chemicals, and natural resource sectors. Oil shale is one illustration. Standard has conducted extensive research on certain approaches to shale. Occidental has pursued other avenues and has been notably successful in its development of a new technique for extracting oil from shale. Its *in situ* process holds the promise of reducing costs, increasing output, and minimizing adverse environmental consequences. Occidental has indicated its willingness to license this new technology, but its discovery underscores once again the virtues of maximizing the number and insuring the independence of research undertakings. Competition in the world of ideas is every bit as important as competition in the production and sale of tangibles, but this valuable rivalry would be extinguished by the proposed acquisition. Moreover, by combining its vast shale holdings with those of Occidental and exploiting them with Occidental's innovative technology, Standard's position in petroleum would be further enhanced.

Occidental and Standard are also competing in other areas of technology. Occidental, for example, has been conducting extensive research on processes to convert coal to oil and gas. (This would, of course, intensify its competition in both such energy areas). This work, believed to be unique, is now at the demonstration and engineering stage. On its part Standard is a participant in a pilot plant located in Scotland to test a version of the Lurgi process to gasify coal (Occidental has not been involved in this program, preferring to go its own independent way). Standard has also performed studies for the Government involving coal gasification and liquification. The distinctive approaches which have been pursued by both companies—encompassing, as they do, the values of independence in technological research—would be obliterated as a result of the Standard acquisition.

CONCLUSION

In creating what would be the country's eighth largest industrial corporation, Standard of Indiana's proposed seizure of Occidental is replete with anti-competitive consequences. It would eliminate substantial horizontal competition in vital energy sectors and in chemicals (as well as in other areas, like exploration for copper and zinc), curtail vertical competition in the purchase and sale of major products, eradicate material potential competition, and end the valuable technological competition that now exists between the two companies. Professor McKie may be prepared to place his blessing on this takeover but sound considerations of antitrust and public policy dictate that Standard's threatened acquisition be blocked, leaving Occidental as a vibrant, independent competitor.

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[13] In the Matter of Kennecott Copper Corp., 78 F.T.C. 744 (1971), aff'd. 467 F.2d 67 (10th Cir. 1972), cert. den. 42 U.S.L.W. 3555 (April 1, 1974).

[14] FTC Report, supra note 9, at p. 17.

Biographical Information of Richard J. Barber

Richard J. Barber is an economist and President of Richard J. Barber Associates, Inc., economic counsel, Washington, D.C. He is a graduate of and holds advanced degrees from Wayne State University, the University of Michigan, and Yale University. From 1959 to 1965 he was a professor at Rutgers, Southern Methodist University, and Yale, where he specialized in courses dealing with antitrust, regulation, marketing, and corporate finance. While on faculty leave of absence in 1961 and 1962 Barber served as a member of the staff of the Joint Congressional Economic Committee. From 1965 to 1967 he was on the staff of the Senate Antitrust Subcommittee. Barber is the author of two books and a number of articles for scholarly and professional publications. A consultant to Congressional Committees, a former Government official, and previously with the National Academy of Sciences, Barber is a member of the American Economics Association and the National Association of Business Economists.

Richard J. Barber Associates, Inc., provides economic advice and counsel for business and government. The firm has or is conducting special studies involving all areas of energy as well as other economic sectors. The firm has been awarded contracts for diverse projects by the Atomic Energy Commission, the Environmental Protection Agency, the Department of Defense, and the World Bank, among other public agencies.

Appendix II

Additional Material Supplied by Standard Oil Company (Indiana)

STATEMENT OF JAMES W. MCKIE, DEAN, COLLEGE OF SOCIAL AND BEHAVIORAL SCIENCES, UNIVERSITY OF TEXAS

I am James W. McKie, Dean of the College of Social and Behavioral Sciences at The University of Texas. As an economist, I have been studying the petroleum industry and related fields for many years in such positions as Chief Economist to the Cabinet Task Force on Oil Imports Controls, Consultant to the U.S. Office of Emergency Preparedness and member of the National Sciences Foundation Advisory Committee for Environmental Sciences. I have also specialized in the study of industrial structure—monopoly and competition—and of antitrust policy and economics. In 1968 I was a member of the White House Task Force on Antitrust Policy (the Neal Task Force).[1]

About a year ago, I was first contacted by Standard Oil Company of Indiana to give my views concerning the petroleum industry's competitive structure and performance. More recently, while Standard has been considering making an exchange offer for the stock of Occidental Petroleum Corporation, I was asked to assess such an acquisition from an economist's point of view.

While I have not undertaken a full study of Occidental's operations, my review to date, along with my knowledge of the petroleum industry as a whole, leads me to the conclusion that the acquisition now being considered by Standard would be unlikely to have any measurable anticompetitive effects. On the contrary, considering the nation's pressing need for efficient, effective and expeditious energy development, I see several things in the acquisition which would be likely to promote this goal.

Turning first to the implications of the acquisition for the petroleum industry itself, I believe it is important to recognize at the outset that the production of crude oil and natural gas in this country is a highly competitive business. Notwithstanding some uninformed comments in the press, I think nearly every responsible economist would agree that there is no danger of monopoly, or anything close to monopoly. To the contrary, compared with other major United States industries, the production of oil and gas is characterized by a relatively low level of concentration.

For example, statistics published by the Federal Trade Commission in its January, 1974 staff report on concentration levels in the energy sector of the U.S. economy showed that in 1970 (the most recent year for which data were reported), the four largest crude oil producers accounted for 27.1% of domestic production.[2] The 4-company concentration ratio for natural gas production was reported by the FTC to be 24.4% in 1970.[3]

I am not completely familiar with the method the FTC used to put together these statistics, but even if we accept its approach, the Commission itself pointed out that "crude oil production appears to be relatively unconcentrated" and that the "concentration figures [for natural gas production] are still quite low relative to many other industries."[4] For example, the FTC noted that the 4-firm weighted concentration ratio for all manufacturing industries was 40.1%.[5] The Commission also observed that, "More relevantly," the concentration ratios in oil and gas production, "may be compared to other mineral extraction industries such as lead and zinc mining, iron ore mining, copper mining, sulfur mining, and gold mining. These industries have substantially higher concentration ratios ranging from 47.0 to 79.9."[6]

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[1] A more complete list of my academic and professional background, including my activities and publications in the petroleum and energy fields has been made available to the subcommittee.

[2] *Staff Report to the Federal Trade Commission on Concentration Levels and Trends in the Energy Sector of the U.S. Economy*, January, 1974 (herein "FTC Energy Report"), p. 62. See also, Table B–4 at p. 333.

[3] FTC *Energy Report*, p. 104.

[4] FTC *Energy Report*, pp. 69, 108.

[5] FTC *Energy Report*, p. 69.

[6] FTC *Energy Report*, p. 69. Table VII–23, at p. 243 of the *Report*, lists the following 4-firm concentration ratio data for various mineral extraction industries in 1970:

Industry:	*Four-firm concentration ratio* (*Percent*)
Gold mining	79.9
Copper mining	74.8
Sulfur mining	72.0
Iron ore mining	63.6
Lead and zinc mining	47.0
Crude oil	31.0
Natural gas	24.4
Coal	30.7
Uranium	55.3

Not only is there a comparatively low level of concentration, coupled with a concomitantly large number of small and medium-sized oil and gas producers,[7] but there is also relative ease of entry into the producing end of the business. While the cost of drilling and equipping a well varies greatly, depending on location and depth, the required investment is often only a few thousand dollars. Moreover, since most wells are drilled by contract drilling companies, it is not necessary to invest in drilling equipment or have any knowledge of drilling techniques and problems. Likewise, once oil or gas is found, there are a variety of oil field service organizations with specialized know-how and equipment prepared to service the wells on a contract basis.

Even offshore, where larger investments and technological skills are required, an examination of recent bidding data shows that there is extensive participation by so-called "independents." In 1973 the Office of the Energy Advisor, then Undersecretary of the Treasury, William Simon, made an analysis of the most recent Outer Continental Shelf lease sales and concluded "[T]he results show very active competition. . . . Independent oil companies were successful, either jointly or alone, in obtaining positions in about 68% of the tracts offered during the last three sales. Individually, the successful independent oil companies bid approximately $315 million more than the successful major oil companies."[8] In short, the production of oil and gas has been, is presently and is likely to continue to remain highly competitive.

From the published facts regarding Occidental's position in oil and gas production, I do not believe that a consolidation with Standard would be likely to change existing competitive conditions. According to my calculations, Occidental's 1973 net domestic production of crude oil averaged approximately 10,500 B/D, or approximately 0.11% of total U.S. production. Occidental's 1973 domestic production of natural gas represented exactly the same share of U.S. production. While I understand that Occidental has increased its production somewhat during 1974, the published information leads me to believe that its share of crude oil and natural gas production would still be less than two tenths of one percent of the U.S. total. These are *de minimis* by any standard.

The same conclusion is warranted by an examination of Occidentals share of domestic crude oil and natural gas reserves. Notwithstanding Occidental's exploration efforts in recent years, its share of U.S. crude oil reserves at year-end 1973 were even less than its share of crude oil production, only about 0.04%. Occidental's share of estimated natural gas reserves was of the same order of magnitude, namely about 0.07%.

The acquisition of Occidental's modest production and reserves should give Standard no competitive advantage vis-a-vis other refiners. In 1973, Standard's U.S. production represented slightly less than half of its domestic refinery needs. Based on analysis of the crude oil production as a percent of crude runs to stills of other domestic refiners, this figure is not only below the average of most large refinining companies, but is even below the "self-sufficiency" ratios of many so-called "independents."

My conclusions with regard to the lack of any significant impact on the domestic petroleum industry are not affected by expanding the horizon to take into account Occidental's foreign operations. In 1973, Occidental's reported foreign production was limited to Libya and Canada. The former production was precluded from export to the U.S. by the Libyan government's embargo; in fact, my understanding is that Occidental's position in Libya generally is somewhat precarious.

Insofar as Occidental's Canadian production of crude oil is concerned, it represented only about 0.03% of Canadian production in 1973. I am not sure what proportion of Occidental's production was exported to the United States, but even if all of it were exported, it would have no measurable impact. In fact, considering the large and increasing proportion of the United States supply

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[7] The FTC *Energy Report* at p. 62, n. 1 states:

". . . [I]n 1963 there were 16,339 operating companies classified in the oil and gas extraction major industry group (SEC 13); and 9,384 operating companies classified in the crude petroleum sub-industry of the crude petroleum and natural gas industry (SEC 1311). U.S. Department of Commerce, Bureau of the Census, *Census of Mineral Industries*, 1963, Vol. II, Area Statistics, (Washington: U.S. Government Printing Office, 1967), table 2, p. 30."

[8] *Staff Analysis of Office of the Energy Advisor, Department of Treasury on the Federal Trade Commission's July 2, 1973 "Preliminary Federal Trade Commission Staff Report on Investigation of the Petroleum Industry,"* August, 1973, pp. 18–19.

derived from imports, Occidental's share of the available domestic supply is even smaller than its share of U.S. production.

There is also no reason to believe that Occidental's other foreign activities will have any appreciable competitive impact on the U.S. market. At present, Occidental's activities outside Libya and Canada are largely in the developmental stage, with many of the economic, technological and political ramifications still unknown. The only properties for which Occidental has estimated reserves are in the North Sea and those represented only about 0.04% of estimated Free World crude oil reserves at year-end 1973.

In the preceding discussion I have not touched on the operations of Occidental's wholly-owned subsidiary, The Permian Corporation, which is reported to be essentially a transporter and broker of crude oil. The oil brokerage business, of course, is open to competition by many parties at any time, and so is the physical transportation of oil by truck. The pipelines operated by Permian, to the extent that they carry oil for others, are subject to Federal and state regulation as common carriers.

While we do not have all of the facts about Permian's operations, Occidental reports that Permian purchases oil under arrangements which are generally cancellable by either party at any time, and that one-half of its purchases were from and two-thirds of its sales were to, large integrated oil companies. Standard itself also sells crude oil to and buys it from others including both independents and large integrated oil companies, I am informed by Standard's management that if it acquires Permian, they will make no change in its existing arrangements with independent crude oil sellers or buyers. Moreover, as long as the current shortage of crude lasts, we can be confident that allocation controls (imposed by the FEA or others under Congressional mandate) will prevent diversion of essential supplies of crude from independent refiners.

In reaching the conclusion that any competitive effects from an acquisition would probably be *de minimis* based on the data I have reviewed to date, I have considered the acquisition's possible broader implications for the nation's energy supplies. In this regard, I cannot see how the acquisition would impair the development of new oil shale extraction technology. Standard is already committed to an extensive effort in this regard in Colorado, and I am informed that its efforts will continue unabated. While Occidental has reportedly been working on an *in situ* process my understanding is that there are a number of other companies looking at similar processes. There is no reason to believe that the acquisition would reduce the incentive to develop such an *in situ* process. If anything, the added financial and management resources available to a consolidated Standard-Occidental firm would appear to increase the likelihood that a successful commercial process would be developed in the foreseeable future.

It is my view that the diversification of Standard's operations into the coal industry through the acquisition of Occidental's Island Creek coal properties should also have no adverse competitive effects. While some concern has been expressed about the expansion of oil companies into coal, it should be noted that the present acquisition represents the substitution of one oil company owner for another. Moreover, even if crude oil, natural gas, coal and nuclear fuels were treated for purposes of argument as a single energy "market", the shares of Occidental and Standard in that market are quite small.

The FTC has reported that, based on 1970 production in British thermal units, Standard and Occidental's market shares in the "energy market" were 3.4% and 1.2%, respectively.[9] The FTC has also reported that concentration in the "energy market" is comparatively quite low, with a 4-firm concentration ratio in 1970 of only 19.0% as compared with 41.0% for all manufacturing industries.[10] Notably, the FTC's investigation of the "energy market" concluded: "The impact on production concentration due to coal and uranium acquisitions by petroleum companies appears to have been very small. . . ."[11] Indeed, the FTC found that the hypothetical concentration ratios which it computed by excluding the effects of such acquisitions were "only insignificantly lower" than actual concentration ratios in the "energy market."[12]

In sum, there seems no likelihood that any acquesition of Occidental by Standard would adversely affect the existing competitive environment in the domestic energy industries.

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[9] FTC *Energy Report*, pp. 476–477 (Table I–8).
[10] FTC *Energy Report*, p. 233, pp. 476–477 (Table I–8).
[11] FTC *Energy Report*, p. 236.
[12] FTC *Energy Report*, pp. 234–237.

STANDARD OIL CO.,
Chicago, Ill., December 17, 1974.

HON. FLOYD K. HASKELL,
U.S. Senate, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HASKELL: I am enclosing the following information which you requested during the course of Mr. J. E. Swearingen's testimony in connection with the December 3, 1974 hearing of the Senate Special Subcommittee on Integrated Oil Operations.

1. Corrections to your News Release with Respect to Information Concerning Standard Oil Company (Indiana)
2. Purchases of Standard Oil Company (Indiana) from the Permian Corporation
3. Information Concerning Standard Oil Company of Indiana's Outer Continental Shelf Bids with and against Occidental Petroleum Corporation
4. Losses of Supply from "Independent" Producers to which Amoco's Gathering Pipelines Extend

I am enclosing in a separate envelope marked "Confidential" the memoranda that have been presented to our Board of Directors in connection with our evaluation of Occidental Petroleum. These memoranda are being delivered to you in line with the assurances given during Mr. Swearingen's testimony that they will be held in confidence by members of the Special Subcommittee and its Staff and will not be disclosed to others.

If you have any questions concerning any of this information, please do not hesitate to contact us.

Sincerely,

L. B. LEA.

Enclosures.

CORRECTIONS TO SENATOR HASKELL'S NEWS RELEASE WITH RESPECT TO INFORMATION CONCERNING STANDARD OIL COMPANY (INDIANA)

DATA REPORTED FOR STANDARD IN THE RELEASE	CORRECTED INFORMATION OR COMMENTS
1. Standard's total 1973 sales were 3.45 billion dollars.	Should be 6.38 billion dollars.
2. Under heading "Chemicals" it is stated that Standard is involved in joint ventures with Monsanto and Allied Chemical.	Neither Standard or any of its subsidiaries has any joint venture in chemicals with either company or their respective subsidiaries. A Standard subsidiary, Amoco Production, has interests in some oil and gas fields in which Monsanto and a subsidiary of Allied Chemical (as well as other companies) also have an interest.
3. Standard owns 84.2% of its gross oil reserves jointly with Sohio.	Less than 1% of Standard's gross reserves are owned jointly with Sohio.
4. In 1973, 67.4% of Sohio's production was joint with Standard.	Standard does not maintain its records in such a way as to make this information readily available. However, we estimate that less than 15% of Sohio's production in 1973 was joint with Standard.
5. Standard's total 1973 natural gas production was 3.5 billion cubic ft./day.	Should be 3.9 billion cubic ft./day.
6. Standard's proved reserves at the end of 1973 were 2.9 billion barrels.	The reserves indicated are applicable to U.S. and Canada only.

PURCHASES OF STANDARD OIL CO. (INDIANA) FROM THE PERMIAN CORP.
[In thousands]

	Crude oil					
	1971		1972		1973	
	Barrels	Value	Barrels	Value	Barrels	Value
Permian Corp.	11,187	$40,333	11,336	$41,061	8,063	$34,885
Other Occidental subsidiaries	None	None	1,285	3,622	1,376	4,579

Standard made no purchases of natural gas liquids or natural gas during 1971, 1972 or 1973 from Permian Corporation or any other subsidiary of Occidental Petroleum.

INFORMATION CONCERNING STANDARD OIL CO. OF INDIANA'S OUTER CONTINENTAL SHELF BIDS WITH AND AGAINST OCCIDENTAL PETROLEUM CORP.

STANDARD'S BIDS AGAINST OCCIDENTAL

	Occidental Petroleum		Standard Oil Co. (Indiana)		
Date of sale: Tract No.	Percent participation in bid	Rank of bid	Percent participation in bid	Rank of bid	Number of bidders
Dec. 20, 1973:					
32076	100	5	33	6	10
32078	100	3	33	1	5
Oct. 16, 1974:					
36092	34	3	36	1	4
36118	34	5	33	1	6
36142	34	1	100	4	4
Mar. 28, 1974:					
33036	25	3	33	2	9
33037	33	7	33	1	8
33099	50	2	33	1	10
33102	34	2	33	8	8
33103	40	1	33	3	9
33151	50	1	33	3	7

STANDARD'S BIDS IN SAME COMBINE WITH OCCIDENTAL

	Occidental Petroleum		Standard Oil Co. (Indiana)		
Date of sale: Tract No.	Percent participation in bid	Rank of bid	Percent participation in bid	Rank of bid	Number of bidders
Mar. 28, 1974: 33035	[1] 7 [2] 1	1	12	1	1
May 29, 1974:					
34121	[1] 7 [2] 1	[3] 1	12	[1] 1	1
34198	[1] 9 [2] 1	1	15	1	1
34205	[1] 7 [2] 1	1	12	1	1

[1] Can. oxy.
[2] Oxy.
[3] Rejected.

LOSSES OF SUPPLY FROM INDEPENDENT PRODUCERS TO WHICH AMOCO'S GATHERING PIPELINES EXTEND

Producer	Date	Field and State	Estimated barrels per day
Lone Star	Jan. 1, 1973	Sacroc—Texas	1,330
ISO Services	Apr. 25, 1973	Quitman—Texas	190
Yates Petroleum	June 14, 1973	Empire Abo—New Mexico	1,500
Apache Petroleum	Jul. 1, 1973	1 Lease—New Mexico	65
Union Oil of Texas	Aug. 1, 1973	Wellman—Texas	2,660
Imperial Production Co	do	Cogdell—Texas	140
ISO Services	Oct. 1, 1973	Manziel—Texas	140
Coquina	Oct. 20, 1973	Spraberry—Texas	100
Depco	Nov. 1, 1973	Empire Abo—New Mexico	1,000
Edwin L. Cox	Feb. 1, 1974	PHD—Texas	10
Texas International	Mar. 1, 1974	Cogdell—Texas	40
Group 27 Agent	do	Lake Creek—Texas	5
Lobo Oil Corp	Apr. 1, 1974	Kent County—Texas (6 leases)	475
W. A. Moncrief	May 1, 1974	Masten Plant—Texas	210
Anschutz Corp	June 26, 1974	Burke Ranch—Wyoming	250
Thunderbird Oil Corp	July 1, 1974	North Caprock—New Mexico	25
Total			8,140

Appendix III

Letter From James T. Halverson of the Federal Trade Commission

JANUARY 14, 1975.

FLOYD K. HASKELL,

Chairman, Special Subcommittee on Integrated Oil Operations, U.S. Senate, Committee on Interior and Insular Affairs, Washington, D.C.

DEAR SENATOR HASKELL: This is in response to your letter of December 27, 1974, to Mr. Robert E. Liedquist requesting advice in respect to a hypothetical fact situation relating to the Commission's ability to stop the consummation of a proposed merger which is under investigation. Because Mr. Liedquist was appearing before your Subcommittee on my behalf in connection with the recent hearings on the proposed takeover of Occidental Petroleum by Standard Oil Co. of Indiana, he has referred your letter to me for response.

As your letter correctly points out, the hypothetical fact situation you have asked me to address goes beyond the specific fact situation of any case presently under investigation by the Bureau of Competition. More to the point, our investigation of the proposed take-over of Occidental Petroleum Corporation by Standard Oil of Indiana has, as I indicated in my statement to the Subcommittee, been aided by the cooperation of both companies; and, I might add, their cooperation continues to be forthcoming. I am, for this reason, confident that we will be prepared to make recommendations to the Commission concerning the legality of the proposed merger in time to take effective action should the need arise in the future. You should, therefore, understand that my response to your questions does not relate to this matter or to any other matter presently pending in the Bureau.

You have asked me to assume a number of facts which I will repeat here for your reference:

Assume that a very complex merger is proposed and that the legality of the merger cannot be evaluated without a substantial amount of data which is not available from public sources. Also assume that both firms are eager for the merger and are unwilling to provide any voluntary assistance to the FTC's investigation. If these firms move quickly to consummate the merger, what are the chances of the FTC being able to stop it? Can the Commission's compulsory process powers be used quickly enough to get the required information for an injunction if the firms are determined to resist?

Under the fact situation you have posed, it is doubtful that either the FTC or, for that matter, the Department of Justice would be able to obtain quickly from the companies information needed to evaluate the merger or to take action to stop its consummation unless the agency already had in its possession enough information to prosecute the case.

The capacity to respond quickly to potentially anticompetitive developments in the marketplace is a problem which is, of course, not unique to the processes of administrative law. In a special report on the acquisition of Signal Oil and Gas Company by the Burmah Oil Co., your Subcommittee noted that:

. . . When the Burmah-Signal merger announcement was finally made, there was insufficient time (approximately 35 days) for the Justice Department to review the proposal and take affirmative action to block the merger. Instead the Department was forced to allow the merger to go through and to take the matter under study . . . Special Report, The Burmah-Signal Merger, Special Subcommittee on Integrated Oil Operations, of the Committee on Interior and Insular Affairs, Senate, 93d Cong., 2d Sess., October 10, 1974.

In the Burmah-Signal matter, events were moving so rapidly that the Department was unable to obtain the evidence it needed in time to seek a preliminary injunction. In addition to the time limitations imposed by the situation, the Department's civil subpoenas can be directed to parties under investigation, but not third parties who may have relevant information. Moreover, the Department's subpoena powers are limited to the production of documents; thus it cannot compel the testimony of witnesses in advance of a complaint.

The Commission's subpoena processes, in contrast, are not restricted in these respects. *See*, Section 9 of the Federal Trade Commission Act and *FTC* v. *Tuttle*, 244 F.2d 605 (2d Cir. 1957), *cert. denied*, 354 U.S. 925 (1959). However, under circumstances such as these which occurred in the Burmah matter, and which are similar in many respects to the hypothetical fact situation you have presented to me, there is still no guarantee of timely enforcement action if cooperation of the parties under process is not forthcoming. Under the severe time constraints of an investigation into a merger proposal, like that which the Department of Justice encountered in its consideration of the Signal acquisition, any foot-dragging by a subpoenaed party might require, in accordance with constitutional due process constraints on the government's ability to require the production of information, an enforcement proceeding in district court, with the

possibility of appeals being taken to a court of appeals and the Supreme Court; and this could lead to substantial delays in the progress of the investigation.

In addition, although the Pipeline Amendment to the Federal Trade Commission Act conferred upon the Commission express authority to seek preliminary injunctions in district court and, thus, substantially increased its enforcement power, there might, nevertheless, under the circumstances which you pose, be insufficient time to gather the evidence upon which to move. At a minimum, the Commission must, pursuant to Section 13(b)(2) of the FTC Act, as amended by the Pipeline Act, demonstrate to a court in an injunction proceeding that in weighing the equities and considering the Commission's likelihood of ultimate success, an injunction would be in the public interest. This, of course, requires a finding based upon an evidentiary record, which presumably might not exist in your hypothetical. Moreover, the Commission too must have reason to believe, based upon an evidentiary file, that the merger would violate Section 7 of the Clayton Act, as amended, or Section 5 of the FTC Act before it issues an administrative complaint. In view of these evidentiary requirements, it would, I think, be extremely difficult to stop a proposed merger under the circumstances which you pose, unless, as I have mentioned, a case could be made on the basis of information provided by sources other than the two hypothetical companies described in your letter.

I trust the above is fully responsive to your inquiry; and if I may be of any further assistance to you, please do not hesitate to contact me.

Sincerely,

JAMES T. HALVERSON,
Director, Bureau of Competition.

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