

## To Protect and Serve: Houston's "Judge" James A. Elkins Defends the Pure Oil Company, 1931

Nick Malavis

Events during 1930 foreshadowed a deepening crisis in the Texas oil industry. On August 27, 1930, after extensive and controversial hearings, the Texas Railroad Commission's (hereafter TRC)<sup>1</sup> first statewide oil proration<sup>2</sup> order went into effect. Patterned after Oklahoma's proration program, the order limited Texas production to 750,000 barrels per day, an amount estimated to be sufficient to supply a reasonable market demand and thereby

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<sup>1</sup>The Texas Railroad Commission was created under Governor James S. Hogg's administration in 1891 to regulate railroad rates—hence its name. In July 1917, the Texas Legislature assigned the TRC jurisdiction over petroleum pipelines and in 1919 gave it authority to enforce conservation of oil and gas. TRC regulations have made the agency a pivot of national petroleum policy. The TRC acts as a conservation agency by regulating petroleum production to prevent waste; it has been responsible for prorating oil production to market demand (at least until the early 1970s, when demand for oil was high enough to allow most wells to produce up to a capacity that did not damage the reservoir) and has endeavored to protect the correlative rights of producers and royalty owners. In carrying out its legal responsibilities, the TRC has been involved in intense political and legal contests, and TRC decisions have impacted petroleum in both Texas and the rest of the United States. See David Prindle, *Petroleum Politics and the Texas Railroad Commission* (Austin: University of Texas Press, 1981), 1-9; John J. McCloy, *The Chairman: The Making of the American Establishment* (New York: Simon & Schuster, 1992), 626, notes that "For decades, the global price for oil generally mirrored the production quotas set by the Texas Railroad Commission, which was run as an unofficial industry association."

<sup>2</sup>Prorationing is the allocation of petroleum production from a common reservoir or source; specifically, the restriction and allocation of production by a regulatory agency like the Texas Railroad Commission. The TRC prorates production by assigning "allowables"—maximum quantities of oil to be produced—to individual oil fields, and within each field, among individual leases and for each well therein. Cited from Roger M. and Diana Davids Olien, *Wildcallers: Texas Independent Oilmen* (Austin: Texas Monthly Press, 1984), 217.

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prevent physical waste<sup>3</sup> by eliminating overproduction. Each producer was to have access to a pipeline connection and a fair share of the market. Proration had the twofold aim of restoring stability to the oil industry and promoting conservation. The TRC soon discovered, however, that it was easier to formulate a prorationing plan than to enforce it. The mere idea of government regulation to achieve some semblance of rationality and to maintain a sound price structure aroused the suspicion and ire of independent-minded small producers. Small independents viewed proration as nothing more than a conspiracy between government and major companies to drive them out of business and foster monopoly in the oil industry. Their uncooperative attitude cast a dark shadow over the future success of prorationing in the Texas oil patch.<sup>4</sup>

Independent Texas operators<sup>5</sup> attacked proration in the courts. Their

<sup>3</sup>Waste, as the term is used in the petroleum industry, refers to both "physical" and "economic" waste. There are two types of physical waste: aboveground and underground. Aboveground waste includes production of oil in excess of storage capacity, loss through natural evaporation, or natural fire hazards due to unnecessary storage of large quantities of oil. Underground waste is occasioned by premature dissipation of reservoir natural gas pressure and by rapid water encroachment, which materially lessen the amount of oil ultimately recovered. Economic waste means production in excess of market demand that causes the price of oil to fall below a profitable level for producers. It also includes the excessively high costs of production resulting from drilling more wells than necessary to offset drainage by other producers in the same field. Cited from Robert A. Shepherd, Sr., Memorandum on Methods of Proration in the Oil Fields of Texas, August 9, 1931, Pure Oil Company Files, Proration Matters, located in the Vinson & Elkins Archives (hereafter cited as VEA), Houston, Texas, Closed File (hereafter cited as C.F.) 11726, p. 3. See Jacqueline Lang Weaver, *Unitization of Oil and Gas Fields in Texas* (Washington: Resources for the Future, 1986), 40; Stuart Buckley, ed., *Petroleum Conservation* (Dallas: American Institute of Mining and Metallurgical Engineers, 1951), 248-250.

<sup>4</sup>Order of the Railroad Commission of Texas, Oil and Gas Division, "Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas, and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom," Oil and Gas Docket No. 112, August 14, 1930, copy in the Pure Oil Company Files, Proration Matters, VEA, C.F. 11726. See "Texas Maximum Set at 750,000 Barrels," *Oil and Gas Journal* 29 (August 21, 1930): 37, 73; *Houston Post-Dispatch*, August 15, 1930, p. 1; *ibid.*, August 27, 1930, p. 1; Robert E. Hardwicke, Jr., "Legal History of Conservation of Oil in Texas," *Legal History of Conservation of Oil and Gas in Texas* (Chicago: Symposium of the American Bar Association, 1938), 222-223; Henrietta Larson and Kenneth Wiggins Porter, *History of Humble Oil & Refining Company: A Study in Industrial Growth* (New York: Harper & Brothers, 1959), 324.

<sup>5</sup>Independent, as the term is used in the oil industry, is not easily defined. Traditionally, independent has been applied to wildcaters, producers, lease brokers, royalty owners, refiners, retailers, marginal-well operators, and even large companies. According to one oilman, independents were those who "did what they pleased." Since the 1930s, independent has been applied generally to those oil operators and companies who remain after major companies are subtracted from industry ranks. Major oil companies integrate all four basic functions of the industry—production, transportation, refining, and marketing. Majors include some of the

lawyers obtained injunctions which permitted them to produce without restriction, thereby undermining the TRC's prorationing program. The courts became the battleground in confrontations reflecting what historian Morton Keller has identified as a tension between the persistence of nineteenth-century laissez-faire ideology and the growth of a Progressive faith in governmental intervention to maintain a stable economy during the first three decades of the twentieth century. Ensuing legal contests over oil enlisted more traditional-minded individuals, whose ideology was grounded in part on classical economic thought, as combatants on one side. Their adversaries consisted of more progressive-thinking contemporaries in the industry who trusted that state regulation could solve what they believed were counterproductive tendencies (such as overproduction), which businessmen seemed unable to correct themselves. In this context, the crisis in the Texas oil industry in the 1930s offers a vivid portrait of the critical role played by lawyers and the law in a classic confrontation between old and new values.<sup>6</sup>

The legal concerns of the Pure Oil Company, an Illinois-based corporation and one of the larger independent producers and refiners operating in Texas, had long been well-served by "Judge" James A. Elkins, a founder (in 1917) of the Houston law firm Vinson & Elkins. Elkins's skills as a political "fixer"

largest and most profitable oil companies in the world: Exxon, Gulf, Texaco, Mobil, Shell, and Standard Oil of Indiana. Independents, by contrast, are not integrated; they perform only one, two, or three of the four main activities of the industry. The great majority of independents are small producers who share the perspectives of most small businessmen toward regulatory policy. Generally, they do not place great value on economic order and stability. Majors, with established and bureaucratized organizations, and diverse investments and activities, tend to favor order, stability, and predictability in business. However, caution must be exercised against overgeneralization. Majors and independents come in varying sizes, large and small, and sometimes share the same economic and political interests. See Prindle, 12-14; Olien and Olien, 3-8.

<sup>6</sup>Morton Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900-1933* (Cambridge: Harvard University Press, 1990); Herbert Hovenkamp, *Enterprise and American Law, 1836-1937* (Cambridge: Harvard University Press, 1991).

<sup>7</sup>Dana Blankenhorn, "James A. Elkins, Sr.: For half a century 'The Judge' held reins of Houston power," *Houston Business Journal* (March 12, 1979): 1-2, where it is noted that, from 1901 to 1905, Elkins held a succession of public offices in Huntsville, Texas, culminating in a brief stint as Walker County Judge (between late 1904 and early 1905) at the age of 25. From that time on, in the Southern tradition, Elkins continued to be respectfully and affectionately referred to as "Judge." Elkins moved to Houston in 1917 to become a law partner of William A. Vinson. See "James A. Elkins, Sr., dies; prominent banker, attorney," *Houston Post*, May 8, 1972. The practice of assigning titles, like colonel, major, captain, judge, senator, etc., was rooted in the antebellum South. It was not necessary for the titleholder actually to have served in the military or have held public office. Titles were ascribed to a person as a gesture of respect and affection, which no gracious or ambitious gentleman declined to accept. See John Hope Franklin, *The Militant South, 1800-1861* (Cambridge: Harvard University Press, 1956), 190-192.



James A. Elkins, from a 1925 composite picture of the Houston Bench and Bar.

would be of immeasurable value in Pure's quest for a larger slice of production from its holdings in north-central Texas for wholesaling crude oil to refineries. Political concerns influenced decisions, including proration orders, by elected railroad commissioners. During the 1930s, and for many years thereafter, Elkins and his close friend, banker Jesse H. Jones, were politically influential in Texas. Elkins and Jones became the preeminent leaders of the Houston business community by promoting a stable, conservative political climate that fostered economic growth and prosperity. Elkins was a banker as well as a lawyer, offering clients a wide range of skills and services. Politically, financially, or legally, Elkins was always ready and willing to serve clients' needs. This kind of ready service on a client's behalf enabled Pure to win concessions from the TRC that other producers failed to obtain during the initial struggle to implement prorationing in Texas oil fields. Elkins stamped on Vinson & Elkins a devotion aggressively to serve clients' interests that became the firm's legacy and tradition.<sup>8</sup>

The legal battle over prorationing in the state heated up when Joseph Danciger, a North Texas independent producer and refiner, filed suit for an injunction against the TRC's first statewide proration order of August 14, 1930. He maintained that no law could prevent an operator from producing as much oil as could be marketed and that the TRC's proration order bore no reasonable relationship to the prevention of physical waste in petroleum production. To the contrary, Danciger argued, prorationing was aimed at preventing economic waste in order to fix and maintain crude oil prices.

According to this argument, the TRC had directly contradicted and

<sup>8</sup>Joe R. Feagin, *Free Enterprise City: Houston in Political-Economic Perspective* (New Brunswick, N.J.: Rutgers University Press, 1988), 124; Marguerite Johnston, *Houston: The Unknown City, 1836-1946* (College Station: Texas A&M Press, 1991), 198-199, 288, 385-387; Blankenhorn, 1-2; Raybourne Thompson, Sr., Vinson & Elkins Oral History Interview No. 5, September 20, 1982, VEA, PID: 052615-215, p. 26, where Thompson stated, "Elkins wanted good government, he wanted conservative government, and he was as unselfish with the firm's money as he was with his in trying to get good people elected." Thompson added, "He [Elkins] was sort of the ex-officio chairman of the group that got behind the various candidates for public office"; Gertrude Peddy Cornwall, Vinson & Elkins Oral History Interview No. 6, July 26, 1982, VEA, PID: 052615-176, p. 10, where, according to Ms. Cornwall, Elkins was a close personal friend of Texas governor William P. Hobby. Ms. Cornwall was asked about other people in public office who were close friends with Judge Elkins. Her response was, "All of them . . . The Railroad [Commissioners] . . . He had all of them in his pocket . . . Coke Stevenson and Jimmy Allred, and all of them [the governors of Texas from Hobby through Preston Smith]; Lois O'Brien, Vinson & Elkins Oral History Interview No. 4, June 10, 1982, VEA, PID: 052615-179, p. 21, where Ms. O'Brien recalled, "All these political figures came in to see Judge . . . Lyndon Johnson, Senator [John] Tower, and Jimmy Allred."

violated the 1929 state oil conservation act. The act expressly prohibited restriction of production to market demand. Danciger contended that the TRC's proration order deprived him of his private property rights without due process of law in violation of the Fourteenth Amendment to the United States Constitution. His case represented the first direct challenge to the TRC's legal authority to prevent waste in petroleum production in general and to the principle of market demand in particular. The suit was not reached for trial until February 2, 1931. A state district court ruled in favor of the TRC and its decision was upheld on appeal. In the interim, events rapidly unfolded in the Texas oil patch.<sup>9</sup>

Small and large producers vied with each other to obtain as much allowable production as possible under the proration rules. The TRC was besieged with petitions from individual operators requesting exceptions to allow them to increase output. Gulf Coast producers, for example, claimed that reductions mandated under prorationing were damaging their wells, which were already operating at the lowest capacity possible without causing harm. Paul C. Murphy, general manager of the Humphreys Corporation in Houston and chairman of the Gulf Coast operators' committee, explained to the TRC that . . . the 500 barrel feature of the order . . . is an arbitrary figure and is impractical and an uneconomic waste . . . Some operators have endeavored to choke their wells to 500 barrels and killed them by doing so.<sup>10</sup> Small independents C. Andrade, L. B. Pruitt, and Wood W. Graham argued

<sup>9</sup>Joseph Danciger to the presidents, banks of Texas, July 8, 1931, Pure Oil Company Files, Proration Matters—Correspondence, 1931, VEA, C.F. 10605; Hardwicke, 228; Larson and Porter, 324-325. Danciger filed suit in a state district court in Austin (Travis County) to obtain an injunction against enforcement of the TRC's proration order, issued August 14, 1930 (effective August 17), in the Panhandle oil field. State District Judge George Calhoun issued a temporary injunction against enforcement of the TRC's order until a hearing on a permanent injunction could be held. The hearing began in Austin on February 2, 1931, before State District Judge Charles A. Wheeler. Danciger amended his petition to attack the TRC's revised proration order issued on January 23 which limited total statewide oil production in Texas to 644,253 barrels per day. The order reduced daily production in the Panhandle field from 64,616 barrels to 40,000 barrels. Danciger owned and operated 42 oil wells in the Panhandle field with a potential producing capacity of approximately 5,200 barrels daily. He argued that enforcement of the TRC's proration order unreasonably deprived him of his property without due process of law in violation of Article 19 of the Texas Constitution and the Fourteenth Amendment to the United States Constitution. Judge Wheeler disagreed and dissolved the temporary injunction. Danciger appealed to the Third Court of Civil Appeals in Austin. The state appellate court upheld the TRC's order. See *Danciger Oil & Refining Company v. Railroad Commission of Texas*, 42 S.W. 2d 837 (Tex. App.—Austin [3rd Dist.] 1932); "Texas Proration Test Begun Before Court," *Oil and Gas Journal* 29 (February 5, 1931): 119; *New York Times*, February 13, 1931, p. 10, col. 7; *Houston Post-Dispatch*, February 14, 1931, p. 7.

<sup>10</sup>P. C. Murphy to Railroad Commission of Texas, November 22, 1930, VEA, C.F. 10605.

that it was unfair for the TRC to allow large producers like the Pure Oil Company "to keep drilling more wells on their tremendous holdings . . . thus cutting down on the allowable production for the independent operators with a few small strips." Andrade complained further that if he had to produce 100, 200, or even 500 barrels of oil per well to recover costs, much less make a profit, then, after all, that was the only reason why he was in the oil business.<sup>11</sup> Danciger spoke for those who believed, as a matter of principle, that the government had no right interfering with their private property rights. Furthermore, as Danciger argued:

These scheming major interests, acting through those who carry on their constant propaganda, have made capital of the independent producers' distress, and, by reason of his distress, seek to fasten a law upon the oil industry which will result in the annihilation of the independent producer and a complete monopoly by these predatory interests, after which the public will be obliged to bear the cross carried so long upon the shoulders of the independent producer.<sup>12</sup>

The viewpoints and attitudes expressed by these independents spelled trouble for the TRC and the success of prorationing in Texas.

The situation was further complicated by the surge of drilling and production activity that followed in the wake of Columbus M. "Dad" Joiner's oil discovery on the Bradford farm near Kilgore in East Texas on October 3, 1930. Joiner had unwittingly opened a Pandora's box. The yellow pine forests of East Texas were quickly transformed into thickets of wooden oil derricks towering above a vast 140,000-acre oil reservoir that stretched some 45 miles from north to south and almost 12 miles from east to west. Estimated to contain approximately 5½ billion barrels of crude oil, the East Texas field was the largest of the world's known petroleum reservoirs at the time and accounted for one-third of the nation's total oil production. This was good news to many local inhabitants who had been hard hit by the onslaught of the Great Depression. Small farmers in East Texas could no longer adequately supplement their income from cotton production by raising and selling poultry, fruit, and truck crops. The discovery of oil under their drought-stricken fields offered hope to these hungry farmers. Now they could pay their debts, keep their land, and perhaps even gain salvation from their economic misery.<sup>13</sup>

<sup>11</sup>C. Andrade to R. D. Parker, Supervisor, Oil & Gas Division, Texas Railroad Commission, August 22, 1930, VEA, C.F. 10605.

<sup>12</sup>Danciger to the presidents, banks of Texas, VEA, C.F. 10605; "Texas Commission Revises Proration," *Oil and Gas Journal* 29 (August 28, 1930): 37, 144.

<sup>13</sup>Carl Coke Rister, *Oil: Titan of the Southwest* (Norman: University of Oklahoma Press, 1949), 306-310; J. Stanley Clark, *The Oil Century: From the Drake Well to the Conservation Era* (Norman:

"I believe this is the biggest oil field I ever saw in the making, and it has not yet been scratched," remarked Harry F. Sinclair, chairman of the board of the Sinclair Consolidated Oil Corporation. Independent operators and major companies came to the same conclusion. The leviathan field in East Texas ignited excitement across the arid countryside. The roaring gush of black gold awakened sleepy rural crossroads towns. A stampede of land agents, petroleum prospectors, speculators, machinery merchants, well drillers, pipeline constructors, and others sought their fortunes in oil. The fresh country air became permeated with foul hydrocarbon odors that nonetheless were more fragrant than Tyler roses to those who could cash in on the boom. People who had never had more than a few dollars were soon purchasing new clothes and paying off mortgages and other debts. Long suffering from overextended credit in the declining cotton market, banks gained a new lease on life. Real estate values skyrocketed, rents doubled and tripled, new hotels and merchandise stores sprung up, and builders scrambled to keep pace with soaring housing demand. By the spring of 1931, God-fearing, hard-shelled East Texas Baptists were inundated by gamblers, prostitutes, and profit-seekers. A local minister gathered his flock to pray for divine favor on an oil well sunk in the church yard. When the well struck oil, the minister once again summoned the devout to thank and praise the Lord, who was beseeched for "oil, more oil!"<sup>14</sup>

Although the East Texas oil boom arrived at an opportune time for local residents, it spelled economic disaster for the petroleum industry. Overproduction was already glutting the market, causing prices to fall and creating waste. Crude oil sold for \$1.10 per barrel in October 1930, but plummeted to 25 cents per barrel in early 1931. Declining prices had a negative impact on oil-producing fields throughout the country. Small farmers, upon whose land oil had been discovered, could not be persuaded to cut back production. Like their late-nineteenth-century agrarian counterparts, small producers could not comprehend and adjust themselves to the paradox of a market economy where a more bountiful harvest often resulted in lower prices and reduced family income. The problem was further complicated by diverse opinions, attitudes, philosophies, and personalities among various interests in the oil business, including independent operators and major companies. These

University of Oklahoma Press, 1958), 134; James A. Clark, *Three Stars for the Colonel* (New York: Random House, 1954), 3-15; *Dallas Morning News*, October 5, 1930, p. 13, col. 3; *ibid.*, October 6, 1930, pt. 1, p. 8, col. 2; *ibid.*, February 4, 1931, p. 4, cols. 4-5; *New York Times*, July 5, 1931, VIII, p. 11; James Presley, *A Saga of Wealth: The Rise of Texas Oilmen* (Austin: Texas Monthly Press, 1983), 136; Prindle, 21.

<sup>14</sup>Rister, 312-314; Clark, 7-9; *New York Times*, July 5, 1931, VIII, p. 11; L. E. Bredberg, "All Roads Seem to Lead to East Texas," *Oil and Gas Journal* 29 (February 5, 1931): 22-23, 111.

divergences hindered voluntary and cooperative efforts. The TRC hoped that prorationing would succeed where voluntary solutions had failed. State government regulation of private property interest in petroleum (unique in the United States) was legitimized as a necessary exercise of the states' police power to protect the public interest in a vital and strategically important natural resource. Small independent producers were unimpressed.<sup>15</sup>

As Danciger's argument suggests, the primary complaint of small Texas producers was that they were unfairly discriminated against under the state's proration program. They charged that, in spite of proration, major oil companies and large producers had been able to increase production while small operators were forced to cut back. Majors and large independents could do this without upsetting the total statewide allowable, small producers alleged, because they had manipulated the TRC into increasing their own production quotas by reducing that of small operators. The situation was akin to that of a professional ball club owner who had to satisfy salary demands of individual athletes while remaining within the prescribed salary cap for the entire team. No one could receive a raise without cutting someone else's share. This often produced more antagonism and disunity than cooperation and goodwill. The TRC faced an analogous problem in enforcing an acceptable oil conservation program for all parties in the industry. As noted, this goal was undermined both by small producers, who resisted proration as a monopolistic conspiracy by government, and by the discovery of oil in East Texas. One small independent cried that Texas oilmen were nothing but "slaves ready to go to the slaughter house," adding, "you have as bold and as blood thirsty a set of pirates running these big oil companies as ever scuttled a ship."<sup>16</sup> An increasingly tense atmosphere prevailed when small operators like Danciger defied the TRC's authority. The volatile situation was not eased by the actions of Pure Oil Company.

Under the TRC's first statewide proration order, issued in August 1930, oil production in the Van field, in north-central Van Zandt County, was limited to 35,000 barrels per day. This amount was prorated among individual

<sup>15</sup>James A. Clark and Michel T. Halbouty, *The Last Boom* (New York: Random House, 1972), 124; Clark, 5; Presley, 147; Prindle, 26; Rister, 317-318. For background and discussion of economic problems of small Texas farmers in the late nineteenth century, see John Stricklin Spratt, *The Road to Spindletop: Economic Change in Texas, 1875-1901* (Austin: University of Texas Press, reprint ed., 1983, originally published by Southern Methodist University Press, 1955), 111-112; Robert C. McMath, Jr., *Populist Vanguard: A History of the Southern Farmers' Alliance* (Chapel Hill: University of North Carolina Press, 1975), 151-157.

<sup>16</sup>Charles E. Kern, "Second Day's Oil Conference Session," *Oil and Gas Journal* 29 (January 22, 1931): 23, 117, quoting Texas independent oilman Tom E. Cranfield.

producers at Van, of whom Pure Oil was the largest (with 92 wells as of August 15), and had to be shared on an equitable basis. Trouble brewed as Pure Oil, a large independent with a substantial capital investment in production, pipeline, and refinery operations, aimed to increase production in order to supply a bigger market share and enhance company profits. The 27,500 barrel per day limit on Pure's 92 wells in the Van field undermined the company's ambitious expansion program. To realize its goals, Pure needed to entice the TRC into increasing its Van field allowable even at the expense of reducing output of smaller producers. The TRC was cognizant of the powder keg it was sitting on. Railroad commissioners had to face the electorate every six years.<sup>17</sup>

Pure's intention to increase production at Van was apparently motivated by factors additional to that of market expansion. The company had been selling 15,000 barrels of crude a day to Humble Oil & Refining Company. Humble had recently completed a 93-mile, 10-inch diameter pipeline from the Van field to the Louisiana border where it connected to the pipeline of Standard Oil Company of Louisiana and then to Standard's large refinery in Baton Rouge. By 1931, Humble's pipeline system reached into all of the oil-producing regions of Texas, enabling the Houston-based company to move large amounts of crude to its loading terminals on the Gulf Coast, at Texas City and Ingleside, and to two large refineries, Humble's own at Baytown and Louisiana Standard's at Baton Rouge. Smaller refineries, some owned by Humble and others by independents, provided additional outlets within Texas. Without an increase in its production allowance at Van, Pure could not honor its contracts to supply Humble (and Standard) and simultaneously expand its own market share. The upshot was that Pure needed the commission to raise the Van field allowable from 27,500 to 50,000 barrels per day. Pure handed the ball to Elkins.<sup>18</sup> Elkins passed it to Ben H. Powell, an Austin lawyer retained by Elkins to handle legal matters in the state capital and to keep an eye on legislative events. Powell petitioned the TRC for an increase in Pure's Van outlet. (A hearing scheduled to take place in Austin on December 10 was postponed until January 10, 1931.) On November 29, 1930, Powell informed Elkins:

The Commission . . . extended the topics for consideration beyond what my petition called for. However, they have a right, on their own motion, to have any kind of hearing they want. I think the matter is

<sup>17</sup>*Thirty-Ninth Annual Report of the Railroad Commission of Texas, Covering Railroad and Express Transportation, for the Year 1930* (Austin: Von Boeckmann-Jones Co., 1931), 7; *Houston Post-Dispatch*, January 23, 1931, p. 4. For the effects of politics on the commission, see Prindle, 145-181.

<sup>18</sup>Larson and Porter, 153.

immaterial. I believe that there will be no opposition and that the matter will go through all right. At the time, I will be glad if Mr. SoRelle<sup>19</sup> will bring the evidence which I outlined in my letter the other day.<sup>20</sup>

Powell did not anticipate significant opposition from other producers, but expected a close contest in persuading the TRC to grant Pure's request for an increased allowable.<sup>21</sup>

The TRC was not Elkins's only problem. Pure and several major oil companies—Humble, Shell, Texaco, and Sun—were partners in a unitization agreement<sup>22</sup> to jointly develop their lease holdings in the Van field. Prorating affected unitization only by requiring TRC approval for the amount of production set by unit members. Division of total allowable among individual unit producers did not concern the TRC. Pure had a contractual obligation to obtain the agreement of other unit members to increase production and to share additional allowances granted by the TRC. Since Humble, Texaco, Shell, and Sun collectively held only one-fifth of the unitized acreage while Pure owned the remaining four-fifths, Pure would receive the lion's share of any production increases granted by the TRC. The other companies had to weigh the relatively meager production gain for themselves against the negative effect of arousing the hostility of small independents and incurring the TRC's wrath. Major oil companies had been concerned about overproduction and were outspoken advocates of proration. It would be hypocritical for them to suddenly change their stance. The Texas Oil Company president, Ralph C. Holmes, warned Henry M. Dawes, the president of Pure Oil:

I am wondering if you are not applying a basis of potential that is extreme and one which we would not want to apply to that pool or any other pool . . . I rather think that we work against our own interests in setting up or estimating potentials so far in excess of what the fields could produce over an extended period. We all know how quickly wells go down when any number of them are opened up in any pool . . . I am only hopeful that such compromises can be worked out one place and another as will make it possible for us to continue working together for improvement and stability in the general situation.<sup>23</sup>

<sup>19</sup>B. S. SoRelle was manager of Pure Oil Company's Texas Producing Division.

<sup>20</sup>Powell to Elkins, November 26, 1930, and November 29, 1930, VEA, C.F. 10605.

<sup>21</sup>Powell to Elkins, December 10, 1930, VEA, C.F. 10605; Elkins to Powell, November 29, 1930, VEA, C.F. 10605.

<sup>22</sup>Weaver, 309-310, where unitization is defined as the control and management of all leases in an oil field as if they were a single lease. It enables a petroleum reservoir to be more efficiently developed. For analysis of economic efficiency derived from unitization, see Stephen L. McDonald, *Petroleum Conservation in the United States: An Economic Analysis* (Baltimore: Johns Hopkins University Press, 1971), 59-110.

<sup>23</sup>R. C. Holmes to Henry M. Dawes, December 8, 1930, VEA, C.F. 10605.

Dawes responded, "The Pure Oil Company has left nothing undone to protect the industry and have subjected themselves to every conceivable form of harassment and . . . will receive support not simply because we deserve it, but because it is in the best interests of industry."<sup>24</sup>

The president of Sun Oil Company, J. Edgar Pew, disagreed. Pew informed Dawes that he opposed any production increases at Van. He believed that current market demand was insufficient to justify additional production, adding, "If the industry is to escape utter demoralization it must adhere to a program of some kind, and the larger producing companies must make such sacrifices as are necessary to accomplish this." Pew feared that if Pure was granted an increased production allowance, the entire oil conservation effort would be upset by other operators who would, justifiably, ask for like consideration from the TRC. As Pew explained to Pure vice-president R. W. McIlvain:

I do not agree with you that there is any injustice being done to Van over other similar fields of the same age . . . I do not think the royalty interests at Van are being discriminated against, but on the other hand I believe if you were to open this thing wide they would be very much the losers because of the less amount they would get for their oil . . . we are not going to get an exception and we cannot do anything there without disturbing the whole situation. I am in hope that you will reconsider your determination to apply for this . . . Don't do it now.<sup>25</sup>

Pew conveyed his opinion to other members of the Van unitization agreement.

Dawes sought Elkins's advice as to whether Pure should persist in trying to obtain an increase in its Van output and offered to publish the following policy statement:

Our lawyers seem to feel that if the Commission did not grant us our application, which was for an initial 35,000 barrels [to be increased at the rate of 5,000 barrels every two weeks until 50,000 were reached], we could enjoin them to do so . . . after consulting with our attorneys, we have no option but to go through with the application on the tenth of January.<sup>26</sup>

Elkins recommended that Pure maintain a firm position and be prepared, in the event the TRC declined its application, "to obtain our rights by necessary

<sup>24</sup>Larson and Porter, 316, where it is noted that the Van unitization agreement covered 5,800 acres. The agreement, in which Pure Oil Company held more than four-fifths of the acreage and Humble, Sun, Texas, and Shell oil companies held the remainder, was drawn up by Humble attorney Hines H. Baker and Robert A. Shepherd, Sr., of Vinson & Elkins; Dawes to Holmes, December 12, 1930, VEA, C.F. 10605.

<sup>25</sup>J. Edgar Pew to R. W. McIlvain, December 10, 1930, VEA, C.F. 10605.

<sup>26</sup>Dawes to Elkins, December 11, 1930, VEA, C.F. 10605.

court proceedings [since] no one denies that we have a right under the law to obtain this relief."<sup>27</sup> Pleased by Elkins's reassurance, Dawes offered to "hand J. Edgar Pew to you [Elkins] and Mack [McIlvain] with my compliments."<sup>28</sup>

On December 27, Dawes solicited Elkins's reaction to a letter he sent to Pew, adding, "I consider J. Edgar as hopeless . . ."<sup>29</sup> Dawes told Pew:

I am sorry that we cannot modify our course . . . to meet your views . . . The proration movement cannot be sustained solely on the basis of emotional appeal . . . After giving the most careful study to both the physical facts . . . the legal considerations, and the desirability of protecting the general proration movement, to say nothing of the rights of individuals, there is no other course left open to us than to pursue the present application to its ultimate logical conclusion . . . It seems to me that the best interests of the general situation would be better served if the operating companies were to give us their support . . . We ask for nothing in return for the sacrifices we have already made . . . but we do believe that the industry will be better served by reasonable cooperation with us on the part of those with whom we are not only associated in this field but with whom we have cooperated to the limit of our abilities in the general interests of the industry.<sup>30</sup>

Elkins thought that Dawes had presented the matter to Pew fairly and concisely and that none of the unit operators, except Sun, could, in good conscience, protest. If they did, Elkins believed that legal action was Pure's only recourse, but warned Dawes, "I do tremble sometimes when I think about the [Pure Oil] Company taking the responsibility of breaking up and destroying proration," adding, "I do not think the Company should do so except where the Company's demands are such as to absolutely require this action."<sup>31</sup>

Pure received support from Standard Oil Company Of New Jersey. Standard had been purchasing some 15,000 barrels of Van crude daily from Pure to feed its refinery at Baton Rouge. E. J. Sadler, Standard's vice-president for production, told Dawes, "I think it is entirely reasonable to accord the [Van] field such an outlet as it will now receive through the Pure Oil Company line and the [Humble] line just completed to Shreveport," adding, "Any other view . . . to me sounds entirely unsound."<sup>32</sup> Small independent operators disagreed. They refused to cut back production for the sake of conservation when majors and large independents, like Pure, were permitted to increase

<sup>27</sup>Elkins to Dawes, December 11, 1930, VEA, C.F. 10605.

<sup>28</sup>Dawes to Elkins, December 12, 1930, VEA, C.F. 10605.

<sup>29</sup>Dawes to Elkins, December 27, 1930, VEA, C.F. 10605.

<sup>30</sup>Dawes to Pew, December 27, 1930, VEA, C.F. 10605.

<sup>31</sup>Elkins to Dawes, January 3, 1931, VEA, C.F. 10605.

<sup>32</sup>E. J. Sadler to H. M. Dawes, December 30, VEA, C.F. 10605.

output. Elkins discounted such claims and assured Pure officials that he could not "conceive of a place where a small increase would be less disturbing . . . except sentimentally [and] it will never be noticed . . . When it comes to sentiment, there is a very strong feeling that reasonable equity must be observed as between producers." Since fairness had been their battle cry, small independents had to agree with Elkins that "reasonable equity must be observed."<sup>33</sup>

Although not openly hostile, Shell Oil Company refused to back Pure's plan. Shell's chief executive, U. de B. Daly, reminded Dawes that production at Van was already on par with that in other oil fields of equivalent acreage and productive potential. If the TRC allowed Pure to increase production at Van, Daly predicted that other producers would demand additional allowances. Prorationing would then fail and the oil industry would continue to be plagued by overproduction. Daly reminded Dawes that excessive production would prematurely dissipate the reservoir's natural gas pressure and induce excessive water intrusion. From a conservation and economic standpoint, Daly believed it more prudent to maintain the existing production level at Van. Viewing the long-term prospects, he advised delaying production increases until the oil industry got "on its legs again" and greater financial profits would be derived from higher oil prices. Daly informed Dawes that Shell would not support Pure's request to increase production because, from an operational standpoint, the Van field was better off at its present production.<sup>34</sup>

Of Pure's four major oil company unit partners, Sun and Shell had opposed Pure's proposal to increase production at Van, the Texas Company was leery of the idea, while Standard supported the plan. This contradicted the virtual unanimity among majors in support of prorationing. Standard encouraged Pure to increase production at a time when major companies were trying to persuade the oil industry to reduce output in order to avoid waste and maintain a reasonable price structure.

The situation seems less paradoxical when viewed from Standard's perspective. Standard had expended considerable capital constructing a huge new refinery at Baton Rouge to process high volumes of crude oil. To realize an adequate return on its capital outlay, Standard had to ensure a steady flow of oil to the refinery. Standard and its subsidiary, Humble, built pipelines connecting the Baton Rouge refinery to the Van field. The negative effect of additional production on crude oil prices was not an immediate concern of

<sup>33</sup>Elkins to McIlvain, January 2, 1931, VEA, C.F. 10605.

<sup>34</sup>U. de B. Daly to Dawes, January 2, 1931, VEA, C.F. 10605.

Standard's since most of its capital was tied up in petroleum transportation and refining. Jersey Standard had been chronically fearful of a crude oil shortage. An adequate supply of cheap crude was far more crucial to Standard's fortunes than scarce and high-priced oil. In this context, Standard's support of Pure's position was not surprising.<sup>35</sup>

The odds of Pure winning an increased allowance at Van were also affected by Texas's Common Purchaser Act of 1930. In part, it attempted to assure every oil producer in the state access to a fair share of the market by prohibiting crude oil purchasers who also owned a pipeline from discriminating against producers without transportation capabilities. Companies like Pure and Humble, which produced oil and transported it through their own pipelines, were to purchase and ship a ratable share<sup>36</sup> of oil from smaller operators, like those at Van. Small independents argued that Pure lacked adequate pipeline capacity to transport additional production of its oil without discriminating against them. Elkins advised company officials:

[The] Act provides that a purchaser in a field has to take ratably from all the producers in that field and that if such company is a common purchaser throughout the State it has to take ratably from all the fields. This latter provision, of course, does not apply to the Pure Oil Company for the reason that it takes only from one field. Relative to the matter of taking from all producers, we are taking ratably from all the producers in Van and, therefore, are complying with the provisions of this Act.<sup>37</sup>

Elkins was confident that Pure could "conclusively demonstrate" that increased production at Van would not result in waste and he saw no reason why the TRC would deny the request.<sup>38</sup>

As the TRC's scheduled hearing date neared, Powell kept Elkins apprised of related events in the state capital such as the details of his recent meeting with the supervisor of the TRC's Oil & Gas Division, R. D. Parker. Parker opposed Pure's application for an increased allowance at a time when so many other Texas producers were being forced to cut back. He suggested that Pure

<sup>35</sup>Larson and Porter, 153; Sadler to Dawes, December 30, 1930, VEA, C.F. 10605.

<sup>36</sup>Ratable share means that each operator in a field produces only a stipulated proportion of the oil which his/her wells are capable of producing. In some cases, individual wells are allowed to produce a straight percentage of their full productive capacity. In other instances, production rates are determined by the amount of acreage drained by each well. A third method takes into consideration acreage, reservoir pressure, and other factors in addition to productive capacity of each well. As applied to pipeline operators, ratable taking refers to the percentage of total oil production purchased from each producer in a given field. See Max W. Ball, *This Fascinating Oil Business* (New York: Bobbs-Merrill, 1940), 147.

<sup>37</sup>Elkins to A. C. Harvey, January 5, 1931, VEA, C.F. 10605.

<sup>38</sup>*Ibid.*



obtain additional oil by purchasing it from marginal producers<sup>39</sup> to rescue the latter from certain ruin. Parker alleged that Pure was disguising the fact that the crude oil it sold to Humble was destined for Standard's refinery in Louisiana. If Pure quit this practice, Parker predicted, Standard would be forced to purchase more oil from small marginal producers. Powell told Parker that he was unaware of what happened to the crude after Pure sold it to Humble and that the TRC lacked jurisdiction over the oil after it left the state. He advised Elkins to come to Austin to influence Parker to see things the Pure way. Powell reminded Elkins to be prepared: to prove that Pure could take 50,000 barrels per day from Van without underground or aboveground waste, to procure a geologist to testify about the danger of Pure losing wells held to a daily production of less than 100 barrels, to show that Pure had not purchased oil anywhere else in Texas except at Van, and to demonstrate, as a matter of equity, that even with an increased allowance, Pure would still be producing much less of its potential at Van compared to production in other fields. Powell concluded, "I want us to insist on this allowance, even if we have to go to court . . . we can get the relief in court and it might be a very good thing to teach these people a lesson."<sup>40</sup>

Dawes responded to Parker's concerns about Pure's dealings with Standard. If the TRC attempted to stop shipments of Pure oil to Standard's Baton Rouge refinery, Dawes warned, "it would simply be robbing the State of Texas of [an] outlet for that oil without in any way affecting conditions in the West." Denial of Pure's application for an increased allowance, Dawes added, would discriminate against Texans and "simply [penalize] Texas for the benefit of other producing areas." Without additional production, Dawes predicted that Pure could not supply its own refineries without purchasing oil outside of Texas. The company would then be forced to shut down its refinery at Smith's Bluff on the Texas Gulf Coast. Dawes did not understand how the TRC could "put itself in the indefensible position of robbing its own people of markets in favor of any indefinite ideas they may have of remedying world conditions."<sup>41</sup>

Land and royalty owners added another dimension to Pure's problems as they swung into action to protect their interests. They held a mass meeting in Tyler to discuss proration and selected state senator Tom Pollard as legal counsel to procure increased production allowances for their holdings in the

<sup>39</sup>Olien and Olien, 218. A marginal producer is one with wells (known as marginal or "stripper" wells) that produce less than 10 barrels per day each or whose output is less than in paying quantities.

<sup>40</sup>Powell to Elkins, January 6, 1931, VEA, C.F. 10605.

<sup>41</sup>Dawes to Elkins, January 7, 1931, VEA, C.F. 10605.

Van field. Land and royalty owners in the Fort Worth area retained the law firm of Trammel, Sizzum & Price to advise them in protecting their interests. The TRC postponed the scheduled January 10, 1931, hearing until January 22 to give all interested parties a fair opportunity to present their cases. Land and royalty owners were upset because Pure had not increased oil production on their properties at Van. Elkins informed Dawes that land and royalty owners believed that they had been cheated out of higher financial returns because Pure had not produced as much oil at Van as producers had extracted from other fields. Unless Pure increased production at Van, Elkins warned, the company would be confronted with "undesirable litigation" which would have "far reaching effects" on the future of prorationing in Texas. If land and royalty owners sued, Elkins advised, Pure should take the position that it had attempted to obtain an increase which the TRC arbitrarily refused to grant.<sup>42</sup>

Dawes tried to use the threat of a lawsuit in a last ditch effort to persuade Pew to support Pure's application for an increased allowance at Van. He told Pew that Pure merely wanted to put Van in a position of "measurable equality" with other oil fields in Texas, adding, "You know what we have to combat in this effort." Dawes reminded Pew:

. . . If the people in this field, through the indifference or weaknesses of the operators, feel that they are being discriminated against, they will take the matter in their own hands. I know of five different persons or corporations who are prepared to bring suit in case application for increase at Van is denied. It is the Pure Oil Company who, so far, have prevented this and kept the situation in hand, but I am obliged to say to you, as one of our associates in the unit, that we have come to the end of our string.<sup>43</sup>

Dawes asked Pew to support Pure's position in the unit's interests as well as that of proration.<sup>44</sup>

Storm clouds gathered as the January 22 hearing date approached, forecasting rough weather for Pure. On January 21, George Peddy, an attorney with Vinson & Elkins who scouted the battleground in Austin,

<sup>42</sup>Elkins to Dawes, January 8, 1931, VEA, C.F. 10605.

<sup>43</sup>Dawes to Pew, January 15, 1931, VEA, C.F. 10605.

<sup>44</sup>*Ibid.*; Dawes to Elkins, January 20, 1931, VEA, C.F. 10605, where Dawes told Elkins that Pew had agreed to support Pure's application for an increase in Van of 2,500 barrels per day up to March 1, an amount which Pew claimed Elkins advised would be satisfactory. Pew indicated that he would support a further increase of 1,000 barrels per day if so desired. According to Dawes's correspondence with Elkins, Pew had apparently misunderstood Elkins. Dawes politely thanked Pew for the gesture of support, but insisted that Pure was going to adhere to its request for an initial increase of daily production to 35,000 barrels until February 1 and thereafter for monthly increases of 5,000 barrels until a total of 50,000 barrels per day production was achieved at the Van field.

reported to Elkins, "I do not feel that we can get the increase with the influence which has been and is now being exerted upon those in authority against granting [the] same."<sup>45</sup> Peddy's dispatch cast a shadow over the Pure camp, for the company faced a more formidable foe than anticipated. In desperation, SoRelle, McIlvain, and the rest of Pure's top brass leaned on their ace strategist to outmaneuver the enemy.

Based on Peddy's discouraging scouting report, Elkins now held Pure Oil's fate in his hands. Since Pure was one of Vinson & Elkins's larger and more important clients at the time, the outcome of the pending confrontation with the TRC could significantly affect the still-young (founded in 1917) Houston law firm's reputation and future success. A loss of prestige would undermine Elkins's ambition to transform Vinson & Elkins into a regional legal powerhouse. Nothing short of Elkins's reputed dynamic and domineering personality could possibly salvage what shaped up to be a lost cause for Pure.<sup>46</sup>

Without a viable alternative, Elkins assumed personal command of Pure's forces. He sped to the Austin battlefield on January 22, then reported to Pure headquarters that "conditions [had] crystallized against any increase whatever until this morning when the [central proration] committee [headed by Dallas oilman R. R. Penn] found out that the royalty owners had employed former Governor Dan Moody to represent them in this hearing."<sup>47</sup> Elkins forged a last-minute alliance with the central proration committee to reinforce Pure's position in the pending showdown against formidable forces led by a former state governor. As the opposing forces lined up for battle, Penn offered to lead the new alliance of majors and independents into combat. Back at company headquarters, Pure's lieutenants anxiously awaited the results.<sup>48</sup>

As chairman of the central proration committee, representing an allied group of independents and majors, Penn testified before the TRC praising the success of the state's proration program as an "achievement of pride." Penn asked the TRC to clamp down on the operators of the Big Lake field where the University of Texas owned substantial acreage. He claimed that the university was losing thousands of dollars weekly due to wasteful production practices. Penn urged the TRC to reduce oil production at Big Lake and in the newly discovered East Texas field. He recommended also that daily

<sup>45</sup>George Peddy to McIlvain, January 21, 1931, VEA, C.F. 10923.

<sup>46</sup>For a brief profile of Elkins's background and personality, see Blankenhorn, 1-2.

<sup>47</sup>Elkins to McIlvain, January 22, VEA, C.F. 10605.

<sup>48</sup>Raybourne Thompson, Sr., interview, p. 15, where Thompson claims that during the 1930s at least 80 percent of Vinson & Elkins's practice was oil and gas oriented. On page 20, Thompson recalled that Pure Oil Company was one of the firm's major oil and gas clients.

production at Van be increased by 5,000 barrels per month until total output reached 50,000 barrels per day. As a measure of justice and equity, Penn advised the TRC to continue the increase beyond the April 1, 1931, expiration date to handle an expected rise in gasoline demand in April with the opening of the tourist season and farm work.<sup>49</sup>

The climax came when Elkins himself testified on behalf of Vinson & Elkins's client, Pure Oil. Elkins demanded that Pure be permitted to produce 50,000 barrels of oil at once, since the company had a market for additional oil which would not be wasted or needlessly stored. He reminded the TRC that Pure had 92 wells at Van when proration started with an allowable of 27,500 barrels daily. The maximum potential of those wells on August 15 was 1,000,000 barrels per day. As of November 1, 1930, Pure had 194 wells at Van with a daily potential output of 2,775,000 barrels. Elkins pointed out that the same 27,500-barrel daily allowable divided among 194 wells reduced the ratio of output per well at Van to less than one-third that of any other field ratio. "It is not right when there is an open market," Elkins complained. He added, "We refused to pinch down some of the smaller fellows because it would ruin their wells." Elkins predicted that by April 1 there would be a total of 233 wells at Van creating a daily potential increase without a barrel of additional allowable. "It is wrong," Elkins concluded. "The average of 110 barrels a well is unsound and unjust." He continued:

We are producing with tubing and choke on all wells. There is so much back pressure on these wells that the gas escapage is large. It cannot be helped under present conditions. The Commission should make a personal inspection and hold hearings on the ground to get the facts. We will pay their expenses in a visit to the field to learn the facts and I hope you will come.<sup>50</sup>

Penn assured the TRC that his committee had no objection to the 50,000 daily allowable for the Van field. In general acquiescence to Elkins's argument, the TRC accordingly issued a revised statewide proration order which reduced total statewide allowable production from 680,258 barrels to 644,253 barrels, effective January 23 and expiring April 1. The new order reduced the output of most Texas oil fields, while the Van field was permitted to increase its daily production by 5,000 barrels each month until a 50,000 barrel per day limit was reached. Under the new order, the TRC was expected to hold a special hearing regarding production in Rusk and Gregg counties in East

<sup>49</sup>"Allowable Production in Texas Reduced by New State Order," *Oil and Gas Journal* 29 (January 29, 1931): 169-170; *Houston Post-Dispatch*, January 23, 1931, p. 4.

<sup>50</sup>"Allowable Production in Texas Reduced by New State Order," 169-170; *Houston Post-Dispatch*, January 23, 1931, p. 4.

Texas. Elkins conveyed the news of victory to Pure headquarters.<sup>51</sup>

Pure Oil officials greeted the victory with enthusiasm. McIlvain elatedly thanked Elkins for "the most welcome and . . . best news we have had in many a day," adding, "this had gotten to be so serious, and the strain, both inside and out, was so great that we are all very glad it is over . . . hope you take a weeks vacation."<sup>52</sup> McIlvain attributed the success of Pure's mission "almost entirely to the speech he [Elkins] made for it forestalled completely any inquiries into our basic facts supporting our claimed potential."<sup>53</sup> Dawes also complimented Elkins:

I presume the consciousness of accomplishment is more valuable than kind words. Nevertheless, I think you would take some satisfaction in knowing how grateful we all are to you. You had to fight a lone battle and had nothing on your side except a just cause and your own natural abilities . . . it was a vital matter to the Company, and it is a great relief to have it definitely out of the way. I congratulate you most sincerely.<sup>54</sup>

Elkins received many more congratulatory messages, acknowledging that he had personally saved the day for his corporate client.

Pure's confrontation with the TRC over proration mirrored the various interests and legal issues that became enmeshed in the struggle to implement a practical oil conservation program. A melange of small independent operators, large independent producers, major integrated oil companies, small integrated concerns, lease and royalty owners, lawyers, politicians, bankers, and local "fire-eaters" all engaged in a legal brouhaha that covered a wide range of issues. The tensions that Morton Keller found to persist from the late-nineteenth through the early-twentieth-century American polity—between equality and liberty, between the desire for freedom and the need for social order, between dependence on government and hostility to the state, between localism and nationalism—all existed in the oil proration battles in Texas in the 1930s. The legal contest over oil epitomized what Keller identified as a period of intense conflict between old values and the pressures generated by massive socioeconomic changes. Scientific and technological advances during the 1930s were transforming the oil industry into a more highly organized and efficient business dominated increasingly by professionals. Tensions were strained between an older generation of independent operators clinging to a classical economic ideology and a younger generation

<sup>51</sup>"Allowable Production in Texas Reduced by New State Order," 169-170; *Houston Post-Dispatch*, January 23, 1931, p. 4; Elkins to McIlvain, January 22, 1931, VEA, C.F. 10605.

<sup>52</sup>McIlvain to Elkins, January 22, 1931, VEA, C.F. 10605.

<sup>53</sup>McIlvain to Elkins, January 23, 1931, VEA, C.F. 10605.

<sup>54</sup>Dawes to Elkins, January 23, 1931, VEA, C.F. 10605.

of innovative professionals who sought to take advantage of the latest knowledge and technology to improve efficiency. The opposing factions resolved their differences in the courts allowing the law and lawyers to influence the future direction of the petroleum industry.<sup>55</sup>

With the courts as a forum for combat and the law as the weapon of choice, lawyers acted as gladiators for warring factions in a duel over oil. Pure Oil Company found a suitable champion in the co-founder of Vinson & Elkins. By the 1930s, Elkins's influence as a leader of the Houston business establishment with close ties to influential patrons like Jesse Jones was unsurpassed. Pure retained Elkins as its strong man to do everything possible to ensure that the company got what it wanted. His performance before the TRC hearings in January 1931 illustrated Elkins's ability to influence politicians and businessmen alike. In a single day, Elkins had journeyed from Houston to Austin and back and turned impending defeat into victory for his client. His power derived largely from his magnetic personality, his endless political connections, and the legal agility he and other Vinson & Elkins lawyers exhibited.<sup>56</sup>

Elkins possessed a charisma and charm that left others spellbound. He drew upon his inherent talents to forge an alliance with Penn and thereby gained for his client the support of the powerful central proration committee. Elkins then used shrewd arguments and his compelling manner to sway the

<sup>55</sup>Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Harvard University Press, 1977), vii. For early twentieth century, see Keller, *Regulating a New Economy*. In Alfred D. Chandler, Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Harvard University Press, 1977), the author argues that modern business enterprise replaced market mechanisms in coordinating the activities of the economy and allocating resources. In many sectors of the American economy, Chandler maintains, the "visible hand" of management replaced what Adam Smith called the "invisible hand" of market forces. Chandler deals with problems and issues that were relevant to the petroleum industry such as structural innovation, integration, monopoly, and antitrust problems.

<sup>56</sup>Gertrude Peddy Cornwall interview, pp. 10-11, where Ms. Cornwall claims that Elkins told her that the governors never made an important appointment, such as the railroad commissioners and judges, without first checking with him. Ms. Cornwall, then Ms. Erwin, had been a secretary in the offices of Governor Hobby during the time she attended the University of Texas from 1916 to 1921. In 1921, she married George Peddy, a future Vinson & Elkins attorney, who unsuccessfully campaigned for the United States Senate in 1922 and 1948. Following his death in 1951, she married Barry Cornwall. Ms. Cornwall came to Vinson & Elkins in 1924, when William A. Vinson hired her. She soon became Elkins's personal secretary. See Raybourne Thompson, Sr., interview, p. 8, where Thompson attributes the firm's acquisition of Pure Oil Company as a client and most of the firm's business to Elkins. On p. 13, Thompson recalls that Elkins devoted all his time to handling Pure Oil's proration interests. At pp. 26-27, Thompson remembers how Elkins "was very instrumental in providing Mr. Holcombe [Houston mayor] with an awful lot of financial help in his elections . . . [and] . . . Judge and Jesse Jones were very close . . . along with Governor Hobby. Judge was Governor Hobby's campaign manager."

TRC members into agreement. The impact that Elkins's alliance with Penn's committee and his personal testimony before the TRC had on the outcome of Pure's petition can be gauged by the bleakness of Pure's situation until Elkins appeared in Austin, where he turned impending defeat into victory. Measured by a client's expectations of his/her lawyer, to obtain the desired result, Elkins was a smashing success. He obtained for Pure all that it had wanted. In this context, Elkins fulfilled what he believed to be a lawyer's ethical obligation to serve a client's needs to the client's satisfaction. However, his service to his client had a substantial effect on broader issues of oil depletion and public regulation of the oil industry in the region. The role that Elkins and his law firm played on behalf of clients like Pure provides a vivid and colorful insight into the impact of Texas lawyers on petroleum law and politics in early-twentieth-century America.

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