# House to Probe Killing Of Oil Antitrust Suit

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A House subcommittee opens hearings Tuesday on whether the government's booming business in the sale of federal offshore oil and gas leases gives big oil companies and joint ventures an unfair advantage over small and independent firms.

One phase of the inquiry will deal with the death in the Justice Department in 1970 of a proposed lawsuit attacking joint bidding ventures off the California coast as violations of the antitrust laws.

Implicitly, the proposed suit posed a threat to the intricate web of interrelationships that binds major oil companies together in the United States and abroad.

The department has agreed to tell the House Select Small Business regulatory subcommittee "why we did not choose to bring an action at that time" and to discuss the policy issues at stake, Keith I. Clearwaters, deputy assistant attorney general in the Antitrust Division, told a reporter.

The lawsuit proposal grew out of a hitherto undisclosed 20-month investigation of leases in California's Santa Barbara Channel that the Interior Department had auctioned for $602.7 million in February, 1968.

The principal buyers included five joint ventures—the same kind that oil and gas companies form whenever leases on federal offshore lands are put up for sale. Between 1970 and 1972, Standard Oil of California (SoCal) and Mobil submitted 25 joint bids for such leases, SoCal and Gulf submitted seven, Gulf and Mobil submitted 17, and Shell and Standard of Indiana submitted 14.

But common as such joint bids are, the implications of the proposed suit ranged far beyond them to other joint arrangements, such as pipelines for petroleum products that mostly are owned by a relative handful of the major oil companies.

The investigation — the first and only one of its kind —was made by a lawyer and an economist in the Los Angeles field office of the Antitrust Division.

Two subcommittee staff members, William F. Demarest Jr. and Peter D.H. Stockton, obtained a 257-page "fact memorandum" on the investigation from the division on condition that it be used only for "background" purposes and that the names of the investigators be kept confidential.

The staff members, with the document before them, told a reporter that the antitrust investigators concluded that the Santa Barbara Channel joint bidding ventures were "inherently anticompetitive."

Clearwaters, confirming that the Los Angeles office had recommended that a civil suit be filed to prevent formation of more such joint ventures, made what he termed "a very superficial review" of the case file.

He said it appears that the recommendation was studied for 10 months in the division's Office of Operations and Office of Policy Planning and was killed—by someone he did not name at that level. The case apparently never reached "the front office," meaning then-Assistant Attorney General for Antitrust Richard W. McLaren and his then-deputy, Walker B. Comegys, Clearwaters said. He said he could not go into "the pros and cons" of the decision which was reached in October, 1970.

Some division staff members, it was learned, felt the proposed suit had an overwhelming chance of success. Had it been filed, they were said to have believed,

REP. JOHN DINGELL
. . . hits 'rigged' leasing

some of the firms involved would have capitulated rather than face legal discovery and trial. These staff members also were reported to have believed that filing the suit would have compelled the Interior Department to ban joint bidding.

Demarest and Stockton said that one of the antitrust investigators' complaints was that Interior sometines offers for bid larger tracts than necessary. In turn, this makes the capital requirements prohibitively large for all but large companies or joint ventures, the subcommittee staff said.

Even the unidentified antitrust official who blocked the proposed suit—with a claim that the evidence would not prove a violation of the Sherman Antitrust Act—wanted the evidence given to the Interior Department for a re-evaluation of its policies on joint bidding, sources said. The Justice Department never gave the evidence to Interior, Stockton and Demarest said.

The Interior Department's leasing policies "appear to be deliberately rigged" in favor of giant oil companies, subcommittee chairman John D. Dingell (D-Mich.) charged in announcing the hearings.

President Nixon recently directed the Interior Department to increase the annual rate of offshore leasing from less than 1 million acres in 1973 to 10 million acres in 1975. But a preliminary subcommittee staff investigation of the department's "ability to protect

the public interest" indicates that the proposed tenfold expansion in leasing "could result in 'The Great Rape' of the public's land and resources by major oil companies," Dingell said.

He disclosed that in a lease sale last Dec. 20, Interior estimated the value of one tract at $38,822, but that the high bid was $32,232,000. The department's estimate of another tract in the same sale was $200 million less than the top bid, he said.

Such findings by Dingell's staff suggest that the department could be giving away billions of dollars worth of oil and gas deposits on the Outer Continental Shelf because it doesn't know what they are worth, Dingell said.

Although Antitrust Division officials, for reasons yet to be explained, avoided a court test of the investigators' contention that the Santa Barbara joint ventures were anti-competitive, essentially the same contention is currently being used by the Federal Trade Commission staff in its pending anti-monopoly complaint against the eight largest oil companies.

These firms—all but one of them among the joint venturers at Santa Barbara —are "interdependent to such an extent that, in virtually every facet of their operation, they have common rather than competitive interests," the FTC's Bureau of Competition said in a prediscovery statement on Feb. 24.

Just as the antitrust investigators had done earlier, the FTC staff found that through joint leasing ventures on federal offshore lands, the major oil companies restrain actual and potential competition, disadvantage small producers and enhance concentration.

Dingell said the subcommittee staff's preliminary inquiry supports these charges with an analysis showing that, of the leases sold by the Interior Department on Sept. 12, 1972, four companies got 85 per cent and eight firms got 96 per cent. Mobil alone got 42 per cent.

At Santa Barbara, the two principal joint ventures were the HAS Group, composed of Humble (Exxon), Atlantic Richfield and SoCal, and GUMT, composed of Gulf, Union, Mobil and Texaco.

Arguing that such ventures increase and perpetuate concentration, the Antitrust Division investigators pointed out that the HAS Group got 69 per cent of the tracts and GUMT 23.9 per cent, for a total of 92.9 per cent, the subcommittee staff said.

Such ventures tend to develop a cumulative or reinforcing effect, the investigators said. They cited one at Long Beach, Calif., called THUMS, composed of Texaco, Humble, Union, Mobile and Shell. THUMS produces so much oil for the West Coast market that the price it sets for crude determines everyone else's. In addition, there is evidence that THUMS determines the price even in distant Alaska, the investigators said.

They also were said to have emphasized that the mere act of forming a joint venture automatically eliminates competition among its participating companies.

Under one set of self-imposed rules, the investigators said, companies meeting to form a joint venture must each disclose the bid it believes should be made and agree that the highest announced bid will prevail. But each firm also binds itself not to try alone later to top that bid unless it allows the other companies to participate should its individual bid succeed.

Under another set of rules, prospective venturers can agree to make a joint bid lower than the highest proposed by one of them — but the highest bidder is then bound not to make its offer individually. If the prospective venturers fail to agree on a bid, each nonetheless is bound not to try independently to top the highest price unsuccessfully proposed by the other firms. In either case, the investigators said, there can be a "chilling" effect on unfettered bidding.

Two of the lesser ventures at Santa Barbara each had a participating company entirely or mainly owned by Stanrad Oil of Indiana, This was a conflict of interest, the antitrust investigators reportedly said in the memo.

The document listed half-dozen justifications given by the companies for joint ventures. These justifications were later echoed by the Interior Department in a memo to the White House which has been obtained by the subcommittee, staff members said.

The staff findings raise the possibility "of possible collusion between major oil companies and the government," in addition to "incompetence" in the Interior Department and possible antitrust violations, Dingell charged.