JOHN
LAMONT
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The attached transcript contains the remarks made by Mr. John Lamont on October 25, 1973 before the Senate Resources Committee. It is a verbatim transcript of Mr. Lamont's remarks. There is occasionally a word missing or other minor gaps in certain places, which are due to the speaker's testimony being indecipherable at that point. However, it is believed that these occasions are rare and the transcript presents a fair picture of the thoughts expressed by the witness before the committee.

Senator John Sackett
Chairman
Resources Committee

MR. LAMONT'S TESTIMONY

October 25, 1973

Good morning, gentlemen.

The old show business parlance that's not only a heck of an act to follow but it's even harder to compete against. But to begin you have a problem here which in its own way has enormous consequences that will run a very long time in the future. You're trying to _____ enable a pipeline to be built. A pipeline must be built. The country needs the energy source. This you know. It is a matter of _____importance not just to the state of Alaska but to the entire United States, but it is a matter of concern not just to have energy but to have energy under terms and conditions which will aid it to make our economy grow on fair and useful terms. I'm tired and retired Justice Department anti-trust lawyer. I spent many many years in this area working on the scene, as it were, between regulatory agencies and the anti-trust division. My particular specialty for the period from about 1955 until June 30, 1972 when I retired was pipelines. I speak then from the standpoint of someone who has had to consider what is the regulatory jurisdiction, how does it fit with the anti-trust laws which abhor regulation? In pretty much the same kind of way that you gentlemen have to consider the legislation that has been presented you. I might also add that after reviewing the testimony that I am about to give, Mr. Ralph Nader called this morning to say that with respect to my comments as to the ICC jurisdiction and the ICC

competance, he wishes to associate himself enthusiastically. In his terms, ICC is the classic case of regulatory abdication and within ICC pipeline regulation is the absolute quintessence of nonfeasance. What authority they have, they have not exercised. When they saw authority deficiences they did not request legislation. You're here to accept a quick settlement in a form deemed acceptable by the companies involved and the state. You would be very well advised to consider this settlement will create more trouble than it will avoid. For you may remove some of the questions from the Alaska arena and the legislature but you will almost certainly remove those questions that are "settled" to the court where you will find a great deal of difficulty with respect to their ultimate solution. Let's review the main elements of the settlement which are relevant to what I'm about to say. The most important point is this: the state in settling did not have before it involved in the "settlement" all of the possible parties in the interest. It is my purpose to review some of those parties and interests that were left outside the settlement. Let me in doing this preface my remarks with the example of the Interior Department. Very long time ago when the pipeline was first proposed and Prudhoe strike was first made public, Interior accepted a quick and ready settlement from the companies involved as to what it would do by way of impact statement. As you know that has been rather extensively litigated. The lawyers on the environmental side, which include some of my personal friends, nave told me that except for

except for Interior's eagerness to sweep all of the real issues under the rug by this quick settlement, they would never have had six months in court. They would barely have been able to get up the courthouse steps. This settlement, like that one, opens as many avenues of litigation as it closes. In fact, quite probably opens more. For it depends upon its validity entirely on the regulatory capability and competance of the ICC, a very weak reed, indeed. There are many other parties in interest who can litigate the TAPS issues in the anti-trust arena, and in litigating seek and possibly get injunction against the line. On this, I might add to those of you gentlemen who are practicing lawyers, I find myself in an extraordinarily uncomfortably objective position. I cannot represent either plaintiffs or defendants on any anti-trust suit respecting the pipeline. Quite simply, because for a matter of five years I was in charge of the anti-trust division extensive and still continuing investigation of the anti-trust issues that this tremendous combination of economic power represents.

Let me review quickly the possible interests who can seek litigation. Section 4 and 16 of the Clayton Act creates a wide area of private ability to sue for actual or prospective harm involved in violations of the anti-trust laws. Section 4 says in such instance that any person whose interests or property are harmed by a violation may sue to recover his damages trebled and his attorney's fees. Section 16 authorizes such private interests to sue for an injunction. Among the people who are still able, willing, possibly, to undertake

this kind of litigation we must place at the head of the class the federal government. Now I am aware of the fact that the companies here involved hope that by virtue of the emergency conditions of the energy crisis and the general political power which they enjoy that they will be able to stop the Justice Department in the initial phases, before any suit is ever brought. And in the ancient words of the courthouse lawyer to cop a plea that will leave them what they want. On this I would say it is entirely possible. It was my judgment that it was possible in June 1972, and it was the reason I left the Justice Department. Since June 1972 however, there has been quite a number of rather startling events with which you are as familiar as I, which have made the Justice Department rather considerably more independent than it has been for a number of years. Beyond the federal government, with its broad and sweeping powers to litigate to enforce the anti-trust laws, you have the states. Technically the states are private parties within the meaning of the anti-trust laws, although in truth to call a state a private corporation, as at least one of the TAPS members has done in other litigation, seems rather to derogate their standing as a public entity and a part of our federal system. The states, moreover, can sue as damage claimants but they can also sue _____ on behalf of all of their citizens for prospective damage to enjoin it. And so, if the state who has sought so hard to have this line go the MacKenzie Valley route rather than the TAPS route should actually undertake to do so, they may well be able to enjoin the line. Assuming that

the line is still an important part of the overall anti-trust case. You have also private interests who are suffering or anticipating damage. I think the liklihood of private interests suing under either section 4 or 16 is probably fairly remote, because until the line is operative, until the controlled market it involves has become a fact instead of a prospect, they will probably not feel quite so vigorous about the private enforcement. There is also however, a little known section or two little known sections of the Sherman Act which I think may well bode a great deal of trouble. Section 6 of the Sherman Act and Section 11 both passed in the 1890's - Section 6 applying to domestic commerce and Section 11 applying to foreign commerce - says in substance that any property owned under a contract or by any combination or pursuant to any conspiracy, and being the subject thereof, mentioned in Section 1 of this title, and being in the course of transportation from one state to another, or to a foreign country - shall be forfeited to the United States. What is very important here, however, are the further words - "and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law." The only difference between Section 6 and Section 11 lies in the words describing the type, the status of the property involved. Section 11 simply says "imported into and being within the United States." What makes this so terribly important is that the customs laws as they are now on the books, give to the informer a fee for his information and gives him a standing to enforce that fee. I may here tell you that there are a number of risks - environmental groups among others - which are looking

at this particular section very, very intently. And in so doing, they are reading the ancient history of the Sherman Act where it made is clear it was the purpose of these sections to give to the individual who saw a violation, a standing to do something about it on his own if the government did not do so. I have even had several tentative requests to represent such groups in such a suit. For the reasons I have states before, I have turned them down.

This then is quite a roster of the possible people who will have some standing to question these matters on anti-trust grounds.

Let's then turn quickly to something of the anti-trust grounds that exist for a suit here. Understand, that basically anti-trust concerned with pipelines comes because it is a "national monopoly" or very nearly so. There are economies in scale in a pipeline so that any large line that is built to accomodate the existing traffic can always be more easily and cheaply expanded to accomodate new incruments of shipment than it would be to build a competing pipeline. For that reason, it has very much the same characteristics as a railroad. For as you know, there are many railroads in the states which parallel each other - which compete directly for traffic - that are considered within this general framework of national monopoly. Both the Interstate Commerce Act and the Sherman Act originated at much the same set of problems. The unrest over the railroads which hauled only from the elevators that held grain that they owned - that they had bought at favorable prices. And the result of the farmers against this strangle-hold

on their operation. The coal companies had a great deal of dissatisfaction with the roads which hauled only coal which they produced. The Sherman Act is a little more complex, but it was aimed at the same thing - the aggravations of monopoly power whether held by transportation which is the most convenient stranglehold on the market or by other means, could not only themselves control the profits that they made, but could exclude others from wide areas of competition within the economy.

In all of these however, both from the standpoint of the ICC and from the standpoint of the anti-trust laws consider transportation as the most vital factor in market entry. If you can control the highway to a market, selecting who may or who may not use it, you control that market. Perhaps the best summary of what this means comes from an old case, not so old - 1920, the Redding Case - by coincident ownership of the largest single coal company operating within the Skoykiell Anthracite fields and the railway over which that coal must find its access to interstate markets, the Redding, said the Supreme Court, had the power to increase or decrease the output of coal from very extensive mines, the supply of it in the market, the cost to the consumer, to increase or lower the charge for transporting such coal to market, and to regulate car supply and other shipping conveniences and thereby to help or hinder the operations of independent miners and shippers of coal. In that particular case, Although the railroads were rather at that time regulated by the ICC as they still are, the Sherman Act, Section 2 monopolization provision was applied to Redding and they were compelled to divest themselves of

the coal. To bring this thought of transportation control as market control, in about the same period of time in United States versus Ohio Oil Company otherwise known as "The Pipeline Cases" Justice Homes described the reasoning behind the declaration originally the pipeline could be common carriers and regulated. But it also describes a basis, the basis, on which anti-trust concern exists with pipelines. And the quote is on 234 US 546 at 560 it says - itself of this monopoly as a means of transportation, the Standard Oil Company refused through its subordinate to carry any oil less sold ,to it or to them, and through them to it. on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them, and carried across half the continent a great subject of international commerce coming from many owners but by the durress which Standard Oil Company was master, carrying it all as its own. The situation that then existed has not significantly changed. Despite the fact that a great effort was made in 1906 by amendment of the Interstate Act to declare pipeline to be common carriers. They were made common carriers in name, but not common carriers in fact, and they have not, with very, very few exceptions - they have not functioned in the sense of common carriers as we lawyers would recognize the concept from its meaning in common law.

They are in terms common carriers as defined by the Interstate Commerce Act. The Interstate Commerce Act defines as common carriers a great number of different types of transportation modes. It then applies to each carrier, each type

of common carrier, the kind of regulation that the Congress at that time deemed appropriate for regulating that carrier. It applies to the pipeline carrier almost no regulation at all except that should a line permit you to ship, if in its excess of generosity it will give you a connection, then you may quarrel about the rate, if you do not care what happens to your connection afterward. On the basis of this, Justice Department over many, many years has been concerned with pipeline. The biggest case that was brought in this line after the temporary national economic hearings in the late 30's, the filed the Mother Hubbard case which was a monstrosity. It joined as defendants the Amercian Pretroleum Institute and every integrated company and its pipeline subsidiary. It was an untryable case, it was too large - and it was dropped. It was first postponed because of the war, then it was dropped totally because it was literally untryable. With that, and the fact that anti-trust division is a rather busy outfit with a rather large economy to police, there was no real concern with pipelines as such until the 60's. And we began a series of investigations in connection with the joint venture of pipeline cases. Now understand that when we are dealing with a single company line it is subject to a lot of different considerations under anti-trust than if you are dealing with a number of companies. The Colonial Pipeline Company, which came up in the course of Mr. Hurd's testimony the other day, was such a case. Nine large re-

finers on the gulf coast joined to build a 36 inch pipeline from Houston to Greensboro which was a 34 inch line from Greensboro to Dorsey, Maryland and a 32 inch line into the harbor. It carries a million-and-a-quarter barrels of light products a day and it dominates the Piedmont market of the United States to a dictatorial degree that is almost unimaginable. We began an investigation of that, recommendation was made, suit has never been brought. The reasons why have never been fully explained nor do I propose to explain them now. I will say this. Shortly before I retired in June 1972 the original recommendation to sue had by that time been given to various consultants outside the section in which I worked for an evaluation as to whether or not it represented a valid anti-trust case. The answer we had gotten in 23 separate instances was that it was. The case was still not brought.

We also investigated the Olympic Pipeline and presented recommendations. This is a line which runs from Ferndale, Anacortes, down the Cascade shelf to Portland. Again, the matter is still pending unresolved. They have never decided to go forward with it, they have never decided to drop it. The Explorer Pipeline, too, is still under investigation. There were two cases, however, in which we did have some success at the staff level. One was the Glacier Pipeline Company in which the predecessor of the - I hate to say predecessor, let's say Humble Oil and Refining Company and

Humble Pipe - proposed to join with Continental in a joint venture line covering all, or nearly all, the crude oil in Montana. They were told on Christmas Day in 1968 that if they proceeded with it the government would sue. The proposition was dropped. In the Gateway Product Line in which Humble, again, was a party, they were told that if they proceeded to complete the venture the government would sue. The case was dropped.

Among these pipeline cases that we have examined, however, none are of the undivided interest form that TAPS is constructed to be, or is organized to be. In this, Dr. Witherspoon makes a very serious error in his appraisal. That was not done because the Justice Department believed, or at least that the staff believed, that the undivided interest proposal was any different in its ultimate effect than the corporate proposal. It was just quite simply this: trying to dig the Panama Canal with one hand and clean the Aegean stables with the other, we were quite unable to take on a third variety of monstrosity and to explain to a court exactly what the undivided interest concept amounted to, as you gentlemen know it is a rather slippery concept and as a trial lawyer, the prospect of trying to explain that to a judge who didn't quite know what a pipeline was in the beginning, didn't seem like the most attractive prospect, at least until we had some solid litigation on the books with respect to corporate joint ventures.

This brings us then to the Alaska Pipeline investiga-

tion. I'm going to tell you only my own views as to the law. I do not intend to answer questions or give you information which has been supplied to the department under administrative subpoena or under other conditions of confidence. But let me explain to you in general the theory of violation on which this investigation was proceeding at the time that I left. It may have changed. First, the sheer size of the oil production held by three companies in very close joint venture. I do not just mean that they happen to have individual production within the same field. As was made very clear in litigation in California in 1969 Humble and Arco, Exxon and Arco were very close partners, sharing on a very detailed basis any activity that each took in an area north of the Brooks Range and east of Naval Petroleum Reserve No. 4. The Arctic slope agreement that was attached to the complaint filed in the middle district of California in 1969 is a most instructive document in terms of the closeness of the venture between these companies. The venture between BP and Arco, between BP and Sinclair originally, was acquired by Arco in its acquisition of Sinclair. And so you, therefore, have three companies with the overwhelming bulk of Prudhoe Bay which are involved in partnerships that are of a very, very close nature. The sheer size of the oil production which they will hold is something which anyone familiar in the remotest detail with the anti-trust laws must find of concern. They will have a

quarter of the U. S. proved reserves and presumably a corresponding producability in the years when TAPS is built and that field comes onto production.

They will have very nearly two-thirds of District 5 alone, which is a valid market within which to judge the impact of such a joint venture. Exxon alone, outside of the Prudhoe and its other joint venture operations in District 5, has long recorded in its stockholders reports a degree of--an amount of--production which corresponds somewhere between six and ten percent of the United States. But in addition to that, Exxon, with Arco, shares in the Wilmington field in Long Beach Harbor, on contract with the city and the state, a field which controls--which produces--150,000 barrels a day. A recent preliminary impact statement has been filed with respect to the Santa Anez unit, a large producing field in the deep water offshore Point Conception, inshore Santa Barbara, on an inshore Anacapa Island; which according to the statement, may be more than a 1 billion barrel field and which according to press rumors that have had some currency recently, may be two to three times that. That means these people in close concert will control a monopoly share of oil in District 5. They will control a share of the total oil production in the United States, which is considerably above any amount that would be permitted if the production were of a commodity other than oil. There is no

exception in the anti-trust laws for oil production.

Section 7 of the Clayton Act prohibits merger; and a joint venture is a merger. Section 1 and Section 2 Sherman prohibit mergers combinations which approach monopoly proportions. And these may well be so held. That was the basic theory of the case, which we were investigating. To this would be added the control of the pipeline. This was an important, but not a critical element in the basic suit. The dominance of these concerns on the North Slope would be greatly enhanced if they controlled the only practicable outlet. If you, as a possible producer, are looking at North Slope drilling, you are not going to go very independently if you can be seriously inconvenienced or excluded from the only practicable method of transportation to get your oil out. You do not produce if you cannot sell, you cannot sell if you cannot move. If you do go north then, you will go as a vassal or as a partner of these companies which control the line. In other words, we on staff, viewed the pipeline as a factor in the overall anti-trust action as an important part of our investigation, exactly to the extent that the producers could control its use by others, by controlling its size, its rate of expansion, its connections, its input and output facilities, its operating cycle and its operating practices.

If, in fact, this line were wholly and effectively controlled by public authority, State or Federal, so that the companies did not have this degree of discretionary jurisdiction, there would still remain an anti-trust case, but it would not involve the

pipeline so deeply or so vitally.

In this examination, as in the other pipeline cases, the staff did not consider that the ICC controls were such an effective control effort, or that they were in fact a control effort at all. These controls do not, repeat not, effectively sway the discretion of the operator to run the line as a closed system. In this, our analysis parallels much of what you're trying to consider here. Just exactly what does the ICC control with respect to a pipeline. They do not control connections; they do not control inter-connections directly with other pipelines. Senator Silides in the earlier committee meeting asked what would happen if I came up to the TransAlaska Pipeline somewhere below Prudhoe Bay and asked to be flanged in, could I compel you to do it. The answer was not quite yes or no as given during Mr. Heard's testimony. Actually, the answer is no, you will not be given a connection unless you say "pretty please." In which case, you may but you will have one devil of a time enforcing a connection. Can the ICC compel the pipeline to build depots for loading tanks as it were--input and output tanks. Understand that in this, we are talking about the only transportation facility in the world which does not provide any conveniences for shippers. And I think this is probably the most significant part of a pipeline as a common carrier. It is as those a railroad said, we will take what you ship to us provided you throw it on the car as it goes by. We will give you no freight depots. There will be no passenger terminals. An airline without landing--without passenger loading

facilities. What in substance is done in virtually every major company-owned pipeline in the United States, you will see reflected in the tariffs, which they publish. The pipeline provides no facilities for shippers for input. Shipments will not be accepted unless shippers have provided adequate facilities for offtake from the line. And that, incidentally, is with respect to those shippers who through one means or another, have managed to gain the consent of the owners to access to the line.

If you have a regulatory system which fills these interstices, if you have an effective public agency control over the operating practices of this pipeline, then you will, to that extent, have eliminated a substantial amount of the problem which others may well soon to enjoy. If this pipeline in fact is publicly controlled as to its operating practices, if it is a common carrier in fact, not a common carrier in name as it would be under the Interstate Commerce Act; then you will have removed the pipeline. I will not say totally removed. You will have seriously mitigated the likelihood that someone may come along and enjoin it. Enjoin its construction, enjoin its operation.

Let's then turn for a moment to what authority do you have to regulate. Either by exercise of direct regulatory powers or by your leasing of public land power, or just in general by your situation as a sovereign state of the United States exercising a very considerable responsibility and power with respect to acts that are committed within the State of Alaska. You've already been bored and confused enough on preemption and concurrent

jurisdiction. Boiling them down, there are two main tests as to what a State may do within the Interstate Commerce clause. Did Congress so exercise its powers in a field as clearly and effectively to preempt it? That is, have they so completely legislated in an area, and deliberately so, that they express a clear intent that you had no power to operate within it? The second one was, if it did leave areas for state action, does the state action impose an undue and discriminatory burden on the free flow of commerce? Not as has been discussed here before, a burden on commerce, but an undue and discriminatory burden. Apply these tests here. As we have said, the Congress in the Interstate Commerce Act has enacted only the most fragmentary legislation. There is even a threshold question here. Is Alyeska subject to the Interstate Commerce Act at all, by the basic language of the law itself? I hate like the very devil to ask that you read carefully section 1. The reason I hesitate is because, as an old friend of mine who has worked Interstate Commerce Commission problems for forty years maintains, the Interstate Commerce Act is the most confusing and poorly written body of law that has existed since the code of Hammurabi. But section 1 says in substance, that (excuse me a moment) -- section 1 which is the critical part as regards pipelines, it says the provisions of this chapter shall apply to common carrier engaged in the transportation of oil or other commodity by pipeline or partly by pipeline and partly by water (I'm leaving out some words) from one state or territory to another or the District of Columbia... In other words, there is at the outset a very sharp difference

made between interstate commerce and interstate transportation. The Interstate Commerce Act relates only to interstate transportation and it calls a pipeline a common carrier if that pipeline is engaged in transportation interstate itself. Now, to accommodate to this definition, to make them squarely and completely within it, the Arco Pipeline Company, for example, which will be the common carrier, theoretically, on Alyeska will have to operate its own water carriage. As of now, neither Arco, nor Exxon, nor BP, operate any common carrier tankers nor are there any that I know of operated anywhere in the world. In fact, they do not operate tankers at all. Their refinery and other affiliates operate tankers. And so Exxon pipeline company is not engaged in the transportation of property by pipeline and by water. The oil will come tearing out at Valdez, drop into the tanks, sit there for awhile and somebody elses tanker, Exxon subsidiary No. 2, will come along and pick it up. But that is not the kind of connective transportation that the Congress spoke of in section 1 of the act. Moreover, to compound the difficulty, the provisions (says section 2), the provisions of this chapter, and again I'll leave out some words, shall also apply to such transportation of passengers and property but shall not apply (a) to the transportation of passengers or property or to the receiving, delivery, storage or handling of property, wholly within one state and not shipped to or from a foreign country, from or to any place in the United States as aforesaid, except as other wise provided in this chapter. There are outstanding on the books, although

this clause has been in the act since 1906, there are outstanding on the Interstate Commerce Act decisions and the decisions of the federal court, not one single case which holds that a pipeline in this situation is in actual fact, by operation of this clause, subject to the chapter. But they say we will exceed the jurisdiction of the Interstate Commerce Act. And this brings me to the old riddle which I learned as a child -- if you call a tail a leg, does a cow have five legs? And of course the answer is, calling a tail a leg doesn't make it so. And exceeding voluntarily to the jurisdiction of the Interstate Commerce Commission does not mean that they may not later secede voluntarily from the jurisdiction of the Interstate Commerce Commission. Again, then, there is a very considerable problem at the very threshold. Is this under the Interstate Commerce Act? Reference has been made to the pipeline right-of-way bill. The bill which has just now cleared the Congress and which is in the process of possibly approval by the President, although I understand the gossip is that the Bureau of the Budget is trying to get it vetoed because it contains some authority which gives the Federal Trade Commission a better shot at getting information respecting oil transportation. In the pipeline right-of-way bill, the committee print, I do not have the final bill as enacted because it was not out when I left last Thursday. But I understand the text is identical. It proposes that the pipeline which is given a permit by the Secretary of Interior must be a common carrier. It does not say what common carrier means. It does, however,

say that whenever the Secretary, this is on page 16 of the committee print, it's actually section 28.R 5 of the Mineral Leasing Act if it becomes enacted. Sub-section 5 says whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating _____ the number of possibilities for suit against the pipeline. The number of interests of state, the federal government, private individuals, even informers who might have _____ beginning of the line. I have been making the point that in substance the anti-trust vulnerability of the pipeline is almost exactly the same proportion to which the pipeline owners have discretion to run the line as their own, and if that discretion can be demonstrated to be superseded by an effective public control, to that extent the vulnerability of the line to suit diminishes or disappears.

I have just completed, I hope completed, all that I have to say in terms of the general preemption of the field under the Interstate Commerce clause by the enactment of the Interstate Commerce Act. I have made the distinction between interstate transportation and interstate commerce and noted that Congress had here enacted only with respect to interstate transportation. Under section 1 I reviewed the doubts that exist that this line in fact is legally subject to the requirements of the Interstate Commerce Commission, that if that commission should by some enormous upsurge of vigor become an effective control agency, which it has never been, would the pipeline at that time be able to say "sorry, Charlie, we aren't

really an Interstate Commerce Act line after all." There is a very good argument can be made on that. I had just finished pointing out that in the pipeline right-of-way bill that Congress has just enacted there is a recognition, explicit recognition, that the Secretary of the Interior in enforcing the common carrier obligations under that act which are not clearly defined may go before the Interstate Commerce Commission or an appropriate state agency. Again, an explicit recognition in the overall regulatory scheme that Congress contemplated that there would be state action respecting such pipeline. Picking up from there that we have not really shown any evidence of a Congressional intent to oust the state jurisdiction, let's then go to the second leg of the question. Congress has, in part, applied some regulatory powers to interstate pipeline. This becomes basically a _____ question because under a long line of cases which you are as familiar with as I, the question comes whether or not the individual state regulation is one which completes or which contradicts the federal regulation. Even if you assume that Alyeska or the individual pipelines which each operate a share of Alyeska in this confusing undivided interest form, are subject to the Interstate Commerce Act, then you have to examine the degree to which that regulatory scheme applies. In the city of Burbank vs Lockheed Air Terminal decided this May by the Supreme Court the court said in reviewing a similar kind of question that when you look to see what the state may do in this confusing field you must examine "the peculiarities and special features" of

the federal regulatory scheme in question. And you do so in order to see whether or not what you propose to do is contrary to what they are in fact allowed to do. The entire settlement that has been proposed here rests, as I have said before, on the effectiveness and the scope and the vigor of ICC regulation. What are the peculiarities and special features of ICC regulation? You have read the press release I think that has been given by Chairman Stafford saying that the Interstate Commerce Commission will now become extremely vigorous in regulating pipelines within the full extent of its powers. A little over a year ago in June 1972 I believe, before the House Small Business Committee, a subcommittee under the chairmanship of Neil Smith from Iowa, Chairman Stafford accompanied by his principal subordinates from the Commission testified with respect to the anti-competitive impact of oil company ownership of joint product pipelines and he said, considering the size and economic significance of the oil pipeline industry the expenditure of regulatory effort is not large compared to that devoted to other types of carriers regulated by the commission.. This reflects the fact that Congress has determined the nature of the industry is such as to require, for the protection of the public interest, a less comprehensive range of regulatory devices. For example, oil pipelines are not required to obtain certificates of public convenience and necessity for the commission. Additionally the Interstate Commerce Act does not give us jurisdiction over such aspects of pipeline operation as issuance of security, formation of interlocking directorates,

mergers, consolidations, construction and abandonment of line, the granting of credit. Pipelines are not subject to the commodities clause, as are railroads (that's my interjection) prohibiting transportation of the products of their owners. However, oil pipelines are subject to those provisions of the act which forbid unjust discrimination and undue preference that require just and reasonable rates, reasonable facilities for interchange of traffic, compliance with the long haul and short haul clause of section 4, compliance with accounting, reporting and valuation regulations and the procedural provisions of the act with respect to rates and tariffs. They are subject to section 1, sub 4 of the act imposing upon all common carriers the duty to provide and furnish transportation upon reasonable request therefore. There is a footnote on that last statement. The footnote reads, admittedly this section provides a rather cumbersome remedy for the courts have held that it is not a self-enforcing provision, that is, even though the Commission may have made a finding that a carrier has not met its duty to provide service, the complainant must still take some additional legal action to enforce the Commission's order, and in some 67 years in which this has theoretically been available there are no cases in which that unknown type of additional legal action has ever been taken. Under questioning by Congressman _____ Mr. Serra, who had accompanied Mr. Stafford as his deputy general counsel, again going to the question Senator Silides raised awhile ago, it is not necessarily true that an independent shipper, so to speak, cannot ship over that line

because the ICC can be complained to by such an independant requesting that established facilities permit him to ship over that line. We cannot require the owners to build a long extension down to his own oil field but we can require the owners to accept the traffic and ship it. And if that independant happened to have also an independant pipeline in the vicinity of a joint-owners line we would require them to connect and establish through routes and joint rates. I think that's clear under the ICC act. Mr. Finn, counsel to the committee; have you ever done that. Mr. Serra: We have never had an opportunity to do that. We have never had a complaint.

In Mr. Hurd's testimony he referred, incidentally, and his assistant gave a little more detail on the experience of Tenacle and Murphy connecting to the Colonial Pipeline. A great deal of this hearing dealt with precisely that point, and the committee reports, which unfortunately I do not have with me, goes into detail the difficulties those companies had in trying to get the same kind of access to Colonial Pipeline that its owners had, and how they finally gained access only by arranging for a merger-joint relationship with one of the owners of the line as to the creation and operation of a substantial number of terminal facilities. In other words they said, PLEASE - I might also say without going into any of the confidential information which we had with respect with that particular investigation, that there was an incident in which one of Exxon's subsidiaries known as PLANTATION Pipeline sought to get connections with something less than success.

I think that it does point up the specific problems Tenacle and Murphy had, in an appendage to it that was written by the Committee Council.

Again, to point up - I think probably the most significant foulup under the Interstate Commerce Act - they use the label "common carrier", but they do not give it CONTENT. . Mr. Sarra was asked by Congressman SMITH ,"in effect he is saying that a carrier that is only doing business with it's owners is not a common carrier," Mr. Sarra,"

I'm not saying that all. I think that is clearly spelled out in ~~this~~ the CHAMPLAIN cases. WHEN YOU HAVE ONE PARTICULAR PIPELINE THAT SHIPS ITS OWN GOODS FOR ITS OWN PARTICULAR PURPOSES,

~~I~~ they might be a carrier as defined in the act, they might be required to report full evaluation, to file an annual report, to establish ~~uniformity~~ UNIFORM ACCOUNTS, but we cannot require them to publish rates. We cannot force them to accept goods of others. This refers to the two Champlain CASES which I commend to you in sorrow, as an example of how the Supreme Court can read a very complex bill - very complex law, and arrive at some very contradictory results. There were two cases. In Camplin I, the Interstate Commission told Camplin that it must conform to evaluation of principles of the Interstate Commerce Act, do all the minor things which the ICC requires of pipelines. Camplin resisted. They said we are not a common carrier. The case went to the

IT MUST FILE BOOKS OF ACCOUNT, THAT

Supreme Court, and it said whether you are a common carrier ~~or~~ IN FACT ~~not~~ is irrelevant. You are called a common carrier under the Act, and you are therefor required to file books of account. The matter went back to the Commission and in Camplin II it came back up. This PIPELINE ~~twice~~ had been determined to be a common carrier for the purpose of the Interstate Commerce Act. In the Interstate Commerce Commission, they were then required to file a tariff and Camplin refused, and carried it back again to the Supreme Court. And the Supreme Court in a most complex decision said as I said awhile ago - that calling a leg does not make it a leg. You make call it a leg for purposes of classification as long as it is not meaningful in any kind of burden upon it. Camplin was held in the second case to be a common carrier for the purposes of filing valuations and books of account but it could not be required to be a common carrier for purposes of accepting shipments from others. This then, is something of the tangled, ~~and~~ complicated, vague, uncertain, illusory and almost completely non-existent regulatory powers which you are asked to accept as being the public control which would remove the discretionary power of the pipeline owners to control the market ON THE NORTH SLOPE AND from the North Slope to market to Valdez with North Slope oil. This I would submit, is a very weak reed indeed. If only I were not barred from trying to challenge this particular ~~case~~ WAY - I would love to do it.

Having then said that you have a wide power to flush out the regulatory system by your own control provisions. How ~~to~~ should you proceed to regulate? In giving advise, please understand, I have not had enough opportunity to become familiar with the provisions of the individual proposal so that I can relate them to the whole. It is a confusing package in and of itself. Even to a lawyer who has spent years in trying to understand confusing things. You must, I think, express very clearly - and I think your existing statute does express very clearly, your intent to use whatever base of powers the state has, whether it is the power of eminent domain - the equivalent very similar power to permit use of public lands, your regulatory power, your power in general ~~is~~ TO GIVE economic PROTECTION to the people and the economy of the State, but in doing so, may I call your attention to the fact, violating the rule I just said a moment ago, may I call attention to the fact that in the package of bills there is one part which I noted specifically. In SB 3 the Commissioner is given authority, in the event he deems it necessary, to call this pipeline a common carrier and to apply to it certain power. You will find on page 5 of the print that I have, sub 3 -- there the Commissioner may call it a COMMON carrier, but expressly, it may not require the lessees to accept tenders of crude oil except at points where there are existing pumping stations or other facilities for receipt of crude oil. In other words, if you come from the Coleville River crude, you have to go to the

Prudhoe Bay, INPUT point or there is no acceptance for shipment. Senator Silides thought--could I come at some mid-point between Prudhoe and Valdez and flange up to the line--is expressly denied here, unless Alyeska, OR ALYESKA'S OWNERS in their clear discretion choose to put an intake there for you, but they cannot be compelled under either Federal or State law to do so.

They can still accept or reject tenders of crude oil which are not good merchantable oil due to gravity, viscosity and other characteristics. Possibly this might be ~~true~~ THRU ~~from~~ SOME litigation through some interpretations made more meaningful, but I have in mind some of the complaints that we have received in the Department of Justice years ago concerning the failure to accept tender shipments at appropriate points by pipeline from shippers who had been on those lines. Because for some reason or other, the shippers on the line were also the owners of the line. did not want that particular oil on the line. It was merchantable oil. It had a slightly different asphalt index, and it was refused. There was nothing under the Interstate Commerce Act that the complainant could do. We started an investigation - he got his connection, for that reason. But not because the Interstate Commission or the Interstate Commerce Act gave him a right. But because the exclusion was purely an attempt to monopolize.

Even when an input point has been established. There was one matter which came up in Mr. Stafford's testimony - they were talking about the possibility that a man might have a connection

already established but for some reason or other the owners of the pipeline might decide to discontinue it. Mr. Serra, Deputy General Counsel was asked by Congressman Conti - "So if Colonial wanted to knock out its connection of Fairfax, Virginia, for example, it could do it." Mr. Serra,"Yes. They could do it without permission of ICC." Mr. Conti How about cutting off tanks and pumps." Mr. Serra, samething." In other words, those under S6 and under the Interstate Commerce Act there would be complete discretion in the owners of the line to put the input point where they chose, to drop them when they chose. In your enactment, in your existing law, you have some reasonably clear language. I would suggest in the interest of avoiding litigation, that you carry through with that fairly complete control system there spelled out rather than try to amend it. Rather than try to change it at least as it is proposed here, in one respect particularly. On certification, there has been a great deal of dispute raised. I heard Mr. Furman yesterday - I heard others speak to the same question. I think that it is important that you understand that the legal certification covers a regulatory process by which approval is granted to the total service of a line. The question was raised yesterday whether or not that certification may have been completely superseded by the determination of the congress made in enacting the right-of-way act. It is easy in reading and it will be easy when you have the final text of that act to find what it was what congress said was to be built. Roughly speaking in the

language they have here - they have said our certification in effect, our determination of public convenience and necessity says that there will be a 48" pipeline from Prudhoe Bay to Valdez as described in the final environmental impact statement. Now as I recall that final environmental impact statement it did not trace the precise input point, it did not trace the input tank of the shipping companies, it did not and indeed as yet could not trace the output facilities that are given. In short all it said is - that there will be a trunk line. The certification process for a railroad, a bus line, air carrier or any other kind of a public utility of a public transportation company which is the same thing in substance as a public utility. That the certification process covers not only the trunk line but also the facilities by which access to that line will be given. In short, congress even by that certification has not totally ousted your certification requirements which would go also to the point to the facilities that are established for the input-output of the pipeline at various points along its system at its headend - at its tailend. One other thing which I would urge - as I say I am not that familiar with your clause but I would urge that you insist either by separate enactment or hopefully you have it in existing law on full powers to compel information to be produced for the legislature, if necessary for the regulatory commission where appropriate full information powers.

I listened with a great deal of interest to Mr. Hurd's opening remarks the other day in which he said "we will tell you anything you wish". This runs alittle bit contrary

to the situation in which the joint committee on public domain of the California State Legislature now finds it so. Exxon is a party to a contract covering the operation of the Long Beach unit producing a 150,000 barrels a day. One element of that contract provides that the companies would give to the state a full and complete access to all papers relating to the pricing of the oil. There is a rather considerable dispute before the committee as to whether the pricing of the oil - the price at which these companies have accounted to the state for the oil is a fair price. We have testimony from independant prcduces to the effect that the state oil was worth somewhere between $.50 and $1.27 a barrel more than it was being accounted for to the state. Hearings where held, the prcducers testified, the chairman of the committee invited the purchasers and the contractors to testify - they refused. Exxon declined because it was too minor a factor in the West Coast operation to have anything to testify to. The chairman there upon sent requests to the individuals - in substance leaning on them - would you please come in and testify. They still for the most part refused. We got from one or two of the companies some testimony which was rather misleading and therefore as any organization that is trying to find the facts must do - we went to what subpoena powers we had. Exxon is currently in the Superior

Court in and for the city and county of Los Angeles enjoining the subpoena of the joint committee on public domain, on grounds among other things, that the state in asking about this complex set of relationships is acted only as a oil producer in its preparatory capacity and has no right to the information. It is also saying that most of the records we sougnt are dept outside the state and the state has no authority to compel them to be brought within. I'm sorry to intrude another's states experience on you. I think however it points up the necessity of being absolutely certain as you police the operation of this entire thing make certain that you have access to the information on the basis of which you and your successors will be able to judge whether or not this is an operation in the public interest or not. Finally let me associate myself with Dr. Witherspoon in one thing: I had not met him before we came here; I can associate myself with him gladly, and even with a little bit of modesty, say that I think really he has given you and extraordinarily excellent job of advice. But in closing his testimony he said that if you accept this package of bills that has been offered you you may end up with that horror of horrors a private government--an unregulated monopoly Now understand after a life time in antitrust I believe in free enterprise. I am a disiciple of John Sherman; the gospel of Sherman won I think is the whole basis on which this country's economy rests, on which it should continue to rest.

The one thing that it says in substance is this: You shall have no public interferance with business with the economy except to the extent it is absolutely necessary. You shall not permit private government to control areas of the economy. Monopolies--and Taps will be an monopoly--means the ability to control, the ability to govern; it is private government. If there must be regulation because of the natural monopoly characteristics of this pipeline, if there must be a monopoly, let it be publicly controlled. Do not leave that area of government to private interests for that I think is truly a horror of horrors.

Q by Senator Thomas: ...I understand YOUR POSITION very clearly but in a case like this, of this magnitude, I would certainly hesitate to think the public in COMPLETE control would be anything but just worse than private control.

Mr. Lamant:

I would say Sir, that if you have a government it is better to have a public government than a private one because you have at least some chance that the public interest will be more fully maintained. I do not like state ownership but I do not like private government, and as between the two it seems to me there is no choice but to have public control, not necessarily public ownership. There are a great many things, a great many decisions on the operation of this line where an independent private carrier could hustle a lot of business for the good of

the state. What I'm saying is, this is not an independent private carrier, it must be regulated then by the state government or by the federal government if it is to serve the public interest.

Q from Senator Thomas: What would you say to the arguement though that we've been presented with ...

they just feel that unless they can assure the banking firms that they are going to not be bothered—they can maximize their profits in the legal sense—that they will not get money to build the thing in the first place.

Mr. Lamant:

In one of the markup sessions on the Taps right of way bill, Senator Haskell made a remark that I think (I can't quote him verbatim now) I can give you the substance of it-- he said, "Gentlemen: You have ten billion barrels of oil at this end, you have a hungry market at this end. The transportation business (the moving business) is there. You are giving to these people what amounts to a monopoly franchise. If you will instead give it to me I will gladly resign from the Senate and arrange the financing. In fact," he said, "If my labrador retriever couldn't do, I'd shoot him."

Q from Senator Palmer

Yes, Mr. Lamant, Are you saying then, that in order to have this public government, not public ownership, that ...

or total of our present regulatory bill—present regulatory act of 1972—gives us the kind of protection that we need?

Mr. Lamant:

I think it does.

Q from Senator Palmer:

Are you saying that the certification requirement that we've heard discussed so much is an integral part of that bill that should be retained?

Mr Lamant:

I think it is a most essential part of it and I think it does not create a concept of jurisdiction to the degree that it should be thrown out without some very very careful interpretation. In other words, I think there is no conflict.between the federal certification as done by the congress in the right of way bill and the certification requirements that you have. It supplements what they did. You do not impose an undue or discriminatory burden. You are simply saying that the interstate commerce (not transportation) which will flow over this line will in fact be more effectively unburdened if your certification power remains to require the input and output facilities which alone can make this an effective instrumentality of free interstate commerce.

Q from Senator Palmer: What in truth may be the situation is that the action of the pipeline owners may be more burdened but interstate commerce may be more unburdened. Is that true?

Mr. Lamant: Precisely.

Palmer: As far as land owners rights and abilities to do things because of the property right and contract right, that they may or they may not be able to under regulatory right--this has been one of the main issues here, I believe, in the litigation: The companies saying we're attempting to do by indirect means what we cannot do by direct means. You touched on that,

I'm not sure exactly how you feel about that?

Mr. Lamant: Well, I think that in this area, rather than try to work out all the details, I would go back to what I said in general. You would be making a mistake if you did legislate I don't think that you did, you would be making a mistake if you did legislate or now legislate solely in terms of the leasing powers. I would think that the state of Alaska through its legislature could declare that whatever powers it has as a sovereign state in the commerce field, in the regulatory field in giving them public domain--I mean in the condemnation aspect and in the corresponding aspect reciprocal of allowing access to public lands that if it used all these powers and made it clear that it was using all these powers, it would eliminate a good deal of what rather complex arguements has been raised in that particular case. I've not had an opportunity to examine pleasings there. But this in general is my feeling. If you sought to use only leasing powers and nothing else that might be a valid arguement, it MIGHT be, but this state need not limit itself to using only those powers. Use all the powers which you have, and so declare.

PALMER: On another subject you have heard the discussion going back and forth on the Common Purchaser Provision. Would you comment on that?

LAMONT: Well, it is a little bit ambivalent. If you have absolute free access by any possible shipper to this line, you will have enough purchasers up here buying oil to ship that you will not worry about compelling those companies which are now in the business on the North Slope to be common purchasers. Moreover, if you compel them to be common purchasers, they will have an excuse for acting like monopolists with respect to the entire amount of oil. On the other hand, I was really very much amused to read in the Common Purchaser Bill of the proposed amendment here, that while it declares certain people to be common purchasers, on SB 7, Page 2, the provision about people who take only their own oil except for royalty oil, would mean in substance that your common purchaser enactment would apply only to anybody else and not to the people who will be doing business on the North Slope. It was a very interesting example of legal prestidigitation.

PALMER: I believe it was Mr. Spahr of SOHIO who indicated that any change in this package might result--would result in review by the companies on the agreement and may, possibly obstruct the beginning, and perhaps then a drop out of some of the smaller companies who are now a member of the consortium, and was very fearful that this would have an adverse impact--or could have an adverse impact--on the anti-trust suit or the consortium's

position in that anti-trust suit, and that also the State's excercise of its 20% option could be a factor in this thing that could be adverse to the corsortium. Would you care to comment on this a little?

LAMONT: Well, to the extent of the smaller companies presence in the consortium was intended as an anti-trust defense -- well, it's simply ridiculous. They have very little to say about the line. They have almost no clout within the consortium. Here I must get a little bit cautious. I don't want to go into the underlying documents which would go into that, but I would simply say that in general their presence would not be a signif-icant factor. If, in fact, they had to re-examine the organiza-tion of this line, and hopefuliy from your point of view, reorganize it in terms of a straight, independently owned corporate operation in which there will be a pipeline which accepts tenders -- not an undivided interest pipeline, but a pipeline which in itself is a common carrier, and not a complex bundle of common carriers each illegally sharing a portion of the capacity, I think, to be honest with you, it would sub-stantially lessen the anti-trust problem--not create more, but the mere existance of the minority interest here was never an obstacle.

PALMER: On this 20% option, if I may and this will be the last one, our Attorney General says that even if the State exercises its option and became a 20% owner, or a partial owner of the pipeline, this would not give them access to the Board table,

he, as Attorney General representing the State, would not be able to sit down with the other members and discuss policy, etc. Would you comment on that?

LAMONT: Well, you have a most complex corporate setup here. You have a operating company, Alyeska, which is a joint-venture company--this is public information--you have the pipeline itself/in undivided interest by individual pipeline companies, owned each of whom will set their own tariffs, operating practices, input and output points, assuming for example that they are left as interstate commerce act line. I do not know precisely to which your option referred. Was it an option to buy an interest in the line? An option to buy an interest in the company? An option to buy an interest in the companies which are actually operating the common carrier line? I think it probably is related only to the pipeline itself--the undivided interest in the line--the physical property, and possibly, an undivided interest in Alyeska, but since all Alyeska is is an operating agency obedient to the orders of it's owner, the states presence on the board of Alyeska would not be a terribly/factor, important in determining the operating practices of Exxon Pipeline Company. Which will be the Exxon, Arco, BP will be the actual operators, the actual parties shipping on the line.

Senator Thomas: I just wanted to ask mr. Lamont, what you think the odds are that there will be a suit against TAPS and what this could do in terms of further dealy?

Lamont: I really have no way of knowing - I opted out, of the discussion. I think there is a good likelihood that there will be a federal case on the entire proposition. Under the terms and

conditions that I have indicated, it may or may not include the pipeline. The federal government will almost certainly, unless they have changed the course that we set the investigation in 1968, the federal government will almost certainly not ask to enjoin the pipeline. As to whether private interests may or may not, it depends, there is a tremendous lure of trouble damages when this line becomes operative. And then I think there might be a considerable possibility that there would be suits. As to whether the environmentalists and some of the consumer organizations, I think not the consumerists, if the environmentalists, some of the native groups, some fisheries, if these people really

END OF TAPE I

Again, you have to go before a Federal Court, before a Federal Judge and say that the creation of this pipeline on these terms is of such likelihood of damage, such likelihood of anti-competitive damage that it ought not to be built on these terms. The court might then grant a preliminary injunction, it might well not. Anybody in the anti-trust field who trys to guess what different federal courts will do on preliminary injunctions, is really a gambler.

Q. One of our main concerns here are the best interests for the State of Alaska. Where we should go from here. I recognize that __ ___ (tape inaudible) ___ ___ ___the laws have been challenged in the courts ___ ___ ___ _____ and the recommendation of the administration. From the standpoint any interest of Alaska, I recognize your comments and appreciate your comments on ___ ___ ___ ___ __ this line. What do you suggest to be out best course of action.

A. At the moment, I would say inaction. In other words, you have a statute on the books. You know its been challeneged. The people who are challenging it, incidentally, are the ones who have the most at stake in getting the line built. The companies who have this enormous deposit of oil and this enormous investment in drilling that they have made are rather anxious to begin realizing on it, particularly now, in the world crisis, with the prices of crude oil skyrocketing. If their litigation alone stands in the way of completing this pipeline, I do not think that litigation will stand long.

Q. From the standpoint of the best interests of Alaska it has been suggested that additional delays will result from inaction. I would appreciate it if you would look only from the standpoint of Alaska; would you still suggest then that even though there were delays from inaction that we persist in inaction.

A. If, in fact, there would be significant delays, its difficult for me to put myself in your position as a legislator. Thank God I don't have to think as far in the future. All I have to do is think about just a couple of more years and then I can put my feet up on the hob in front of the fire and say to heck with it. What I mean by inaction is this: You have a good regulatory framework set up. It is complex, it needed to be so. It was created after a long consideration--long and arduous deliberation. It may need some refinement here and there. I do not mean total inaction. But I'm saying simply do not exchange to the degree to which you are asked to change it, for the reasons that you were asked to change it. Because the changes proposed will risk more litigation and more delay than they will end--most of the changes proposed. The basic, the core ones. You may be able to refine it in some sense to further mitigate those chances, and I wish you well in your responsibility and thank God it isn't mine.

Q. Are you in any position to tell us, in any way, whether the Justice Department currently has an anti-trust claim against the owners of Alyeska (rest of question inaudible)

A. That I can answer and I can answer it very bluntly. They have had, by both voluntary production and civil investigative demand, a rather considerable body of documentation. As of the time I left, the case was still proceeding. About a month ago they called me in to talk with the new staff that had been assigned since that time. They are still proceeding. They will intend to proceed, I'm certain. If they don't, to be perfectly honest with you, I think I will do an awful lot of yelling. But what they are proceeding with respect to is not to stop the pipeline, but to stop a rather monopolistic control organization. Did you think, did you ever stop to think, that you have within three companies hands, operating in a very close joint venture, a greater degree of total control over the crude oil markets of the West Coast and indeed of the entire United States, than the State of Texas had in the years in which Texas held the umbrella over the industry and virtually controlled prices and supplies.

Q. Are you in a position to disclose, in any way. whether that proceeding would be on the basis that this was a joint venture pipeline, or is it from the monopolistic standpoint?

A. As I told you, earlier in the testimony, I said in substance that we viewed the pipeline as merely one supplementary aspect of the overall case. That this joint venture nature did give to the basic dominance of the companies of the North Slope a very considerable amount of additional combilatory power. But that existed only to the extent that their discretion to accept shipments or reject them was not controlled by public authority; and that if

there were an effective public authority control, that would almost certainly become an extremely minor element of the case.

Q. Does the Justice Department, from a standpoint of Alaska, I assume that we're entitled to rely on the Justice Department's ability to prosecute and pursue these things. . .

A. In Boston about three weeks ago, I was on the rostrum with Bruce Wilson, who is the Deputy Assistant Attorney General. We played a rather peculiar Alphonse and Gaston act--he was my old boss. He is a very fine fellow and an extraordinarily active anti-truster. But we both made the same point--Anti-trust division has about, I've forgotten now, about a twelve--less than a twelve million dollars budget to police an economy which is rather considerably larger than that. The problem of allocation of staff becomes an extreme problem. When I was still in the Department, we were handling four pipeline cases, those which you have named with a total staff of four people. Like I said, its roughly like trying to clean Aegean stables with your left hand and dig the Panama Canal with your right. These are complicated matters and to do them justice they need more staff but Justice does not have more staff. You can rely on Justice to do what it sets out to do but you cannot rely on Justice to be able to police the entire economy. There will be a great deal that it cannot do and that which you can do for yourself, you should do.

Q. Is there any other way to finance a 4.5 billion dollar project than by joint venture of this type?

A. It is a very big project. There are a great many rather large companies which have been in the transportation business. One thing that has not come up for comment here is that you do have a number of independent pipeline carriers who are in the business of learning pipelines as a transportation business for the profit thats in it. Southern Pacific Railroad, for example--Union Pacific, Great Northern. These are transportation companies. Pennsylvania Railroad operates a buckeye company--the old Buckeye Pipeline which is a large and active system in areas in the East. Williams Brothers Pipeline Company runs a products pipeline that covers almost the entire mid-West. In other words, before you conclude that the size of this is so great that it couldn't otherwise be financed, look at it in terms of the size of the transportation business that exists so that a reasonable profit can be made on an independent basis by an independent company. I think the best of all possible worlds here, for you, as in the United States generally, would be if these carriers were in fact independent transportation companies in the business of hauling oil for profit for anybody who chose to bring it to them. And I might add, there are bills which, if enacted, would apply the commodities clause to pipelines, which are going to be undergoing active hearing before the Congress rather shortly. I think the Congress's interest in this area is extremely healthy because quite simply, I would just as soon General Motors didn't own the Pennsylvania Railroad or vice versa. I think my cars would be

shipped cheaper and there would be more competition in automobile shipment as long as the automobile companies have a choice of independent carriers and they are making their profit off automobiles, not off transportation. And they are making their profit in competition with other people by making automobiles, not by controlling the means of shipment.

Q. We would have to wait for federal law to pass before we could proceed on that theory, if I understand you correctly.

A. If the companies say that applying your fair regulatory system means that they will have to rethink the project, perhaps, God willing, they might rethink it in terms of an independent carrier. In the course of the hearings which you read on Colonial, you will recall Congressman Contes extreme interest in the fact that this risk was so great and the investment was to great that the companies had to restrict ownership to themselves and had to say that--had to agree--that if any one of them wished to transfer it that ownership, they had to offer it to the others. And Congressman Contes scratched his head and got a little bit bewildered and said, you mean to say that because of the risk involved you're not willing to share it with anybody else?

Q. (question by Sen. Silides completely inaudible)

A. I'm sorry sir, but I'm both not quite as familiar as I should be with the tax provisions and unfortunately I can remember rather distinctly some calculations that were made by some of the carriers here as to exactly what would happen there, and I would rather not comment on it.

Q. You think this would have an adverse affect.

A. Yes.

Q. Could you state who your first contact was in regard to coming to Alaska to testify.

A. I was called in California by Senator Croft to ask whether or not I would be available. I was then called in Washington by Mr. Elliott if I could come.

Q. Your comments on the pipeline and the ownership reminds me of the language of Senate Bill 3 on page 7 where we're talking about the 20% ownership; and the new language agreed to by the companies would afford the state an opportunity to negotiate

__ __ __ __ __ __ __ __ __ __ __ __ __ interest

in the pipeline, except for sales or transfer of interest in the pipeline among the owners of the pipeline. Is that reminiscent of the case you're talking about?

A. Yes, exactly. In the Colonial pipeline case, as is set out in the hearings that Congressman Smith held, it was a stockholders agreement. It said in substance, it set out precisely the shares of the owners in Colonial. It said before any owner can transfer any part of its share other than by reorganization or merger, it must offer it, it must say who's the buyer, what is the price and it must give the other owners a chance to buy that share or that interest proportionately. If, after a period of time, I think 90 days, all of the shares have not been opted for in a proportionate basis by the companies who have--the other owners of the company;

then there is a second round, in which it is again offered proportionately to each of the owners, dropping out the one who hadn't taken any shares the first time. If, at the end of that round, there were shares still left untaken, then they had to be offered to any one of the other owners who wished to take it. Only then, could that be sold to any outsider. I would presume, including the state, if this is that kind of an agreement. And I might add I have seen many of those agreements with respect to many pipelines.

Q. We have formed a bill dealing with the 480 acres, I believe, of onshore line in Valdez, along with the special offshore line and acreage for construction of the terminal facilities and loading facilities. The question is whether to sell this land in fee simple to the consortium or whether it would be in the State's interests to lease it. Would you comment on this as far as protection of the State's interests?

A. This gets a little bit into the complications of your reliance on the leasing power as well as the regulatory powers in the enactment in the 72 Legislation. I think it is, in fact, a tip off that the companies wish to buy this land in fee in order to have the tanks and loading terminals outside your jurisdiction if they can. Those tanks are an integral part of any kind of transportation system. The availability of common warehouse facilities at the end of the line would be an absolute essential if you were actually going to have a transportation business accepting shipments from outsiders for transport along the line. Because there will be some purchasers who, while they may wish to take oil in the field and ship it over the line on a regular basis, may not wish to make the multi-million dollar investment in tanks

and facilities to accept that shipment at the terminal point. For example, those Williams Brothers and Pennsylvania Railroad, as well as Southern Pacific, offer common warehouse facilities, common terminals. I think the companies will not do that, and I think the fact they wish the land in fee simple is an attempt to get outside what they think is your principle regulatory effort in order to do so. I would say under the circumstances I would be very very wary of the problem.

Q. You've testified rather extensively on the anti-trust laws, but isn't it true that anti-trust laws dealing with joint ventures are really very Fuzzy ___ _, isn't that . . .

A. No, sir it is not. Panollen pointed out that although in that particular situation there was not a violation of Section 7 that a joint venture was in effect a merger under Section 7. Here, however, you are dealing with something which in terms of size goes into Section 1 and Section 2 combinations. A joint venture is a combination beyond any plain adventure.

Q. When you and Mr. Wilson testified before the house committee, he made the statement, I believe, that finance was one area of the anti-trust law which is __ ___ _____ ___ ___ __ in the area of joint ventures.

A. Mr. Wilson is entitled to his opinion. What I think he was speaking of there and that was one of the answers he --we had not previously discussed before we went to the testimony. I think he was speaking there of joint venture pipelines, but you see, he was talking in terms of a line, which though it is large and though it involves a substantial number of refiners and markers,

does not come anywhere close to the proportion of market which you are dealing with here. And Mr. Wilson and no one else will tell you that there is any lack of clarity about a joint venture as a combination when it approaches Section 2 size.

Q. Was there any success in litigation on the basis of a joint venture pipeline?

A. There has not been. There have been at least four private cases that were based on our Gateway Glacier theories that were bought. All four of them were settled at the courthouse steps with some rather substantial payments. I think if I were to hazard a reason, I would say on the one hand Justic Department was not able to bring this litigation forth because of the application of massive political clout. The private individual who sues is apt to find a very nice settlement because the oil industry the larger integrated companies very much do not want a precedent on the books which will invite a multitude of treble damage suits, because their liabilities will be enormous.

Q. Do you know how many states have their own anti-trust laws?

A. I can't give you the exact number sir, but most.

Q. Unless I'm mistaken, Alaska does not have such. . .

A. Professor Witherspoon was talking to me about that last nigh ; I was not aware of the fact I think it is a very significant lack. There is a uniform anti-trust act, it is a good one, there is a great deal of effort been given to it. There is a wide area of intra-state commerce to which an anti-trust law could apply and it should.

Q. That fact that we don't have these laws, wouldn't that tend to make this strong regulatory commission all the more important?

A. Yes. I'm sorry I should have made the question before, because I think that is exactly the case.

Q. Do I gather that possibly Ralph Nader is considering an anti-trust suit in this case?

A. I do not think so. When I talked to him this morning, and again last night, the conversation was in terms of for the love of God, do not let the State of Alaska rely on the Interstate Commerce Commission as such. Now, I do not know, and I think I would know if Nader was considering a suit, because we have worked a time or two rather closely in the area of both legislation and other matters respecting anti-trust laws in oil.

Q. Would you think, then, if we were to change our laws, that Mr. Nader might rethink his position.

A. Mr. Nader might rethink it, but to be honest with you, you have a rather bewildering variety of environmentalists concerns who have probably more funds for this purpose than Mr. Nader does. He might think of it, I don't know. It certainly is an obvious possibility. But more obvious, are your arious environmentalists concerns who have made it very very clear that they don't want no pipeline nohow.

MR. CHAIRMAN: If there are no further question--then thank you very much for coming.