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Eleanor M. Fox
*New York University School of Law*

Jay Topkis
*Member of the New York Bar*

George A. Hay
*Cornell Law School*, george.hay@cornell.edu

Charles B. Renfrew
*Member of the California Bar*

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## Recommended Citation

Fox, Eleanor M.; Topkis, Jay; Hay, George A.; and Renfrew, Charles B., "Demonstration: Economic Analysis and Expert Testimony—Plaintiff's Conference" (1983). *Cornell Law Faculty Publications.* Paper 1168.
http://scholarship.law.cornell.edu/facpub/1168

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# DEMONSTRATION: ECONOMIC ANALYSIS AND EXPERT TESTIMONY—PLAINTIFF'S CONFERENCE

*Moderator*

ELEANOR M. FOX
*Professor of Law*
*New York University School of Law*

*Plaintiff's Team*

JAY TOPKIS
*Member of the New York Bar*

GEORGE A. HAY
*Professor of Law and Economics*
*Cornell Law School*

CHARLES B. RENFREW
*Member of the California Bar*

## INTRODUCTION

MS. FOX: We now present a demonstration on the use of economic experts. Our demonstration is based loosely on Mobil's attempted takeover of Marathon Oil Company. However, the oil companies involved here are named Major, which is the second largest oil company in the United States, and Olympic, which is the largest supplier to independents.[1] Any resemblance of Major and Olympic to any other firm, entity or person, living or not, is purely coincidental.

The demonstration is divided into two parts. The first part is the conference. We will have a conference of plaintiff's team, followed by a conference of defendant's team.

The plaintiff's team is made up of, first, Jay Topkis, the lawyer for plaintiff Olympic, the takeover target. Jay is a partner in Paul, Weiss,

[1] A summary of relevant facts is provided in Appendix A, *infra* p. 819.



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Rifkind, Wharton & Garrison. He was a clerk to Judge Jerome Frank. He is a Fellow of the American College of Trial Lawyers.

The economist for our takeover target is George Hay, Professor of Law and Economics at Cornell University. He was the first Director of the Economic Policy Office of the Antitrust Division and served in that role from 1973 to 1979. He is well known for his work on predatory pricing and oligopoly behavior, among other things.

The Chief Executive Officer of Olympic is the Honorable Charles Renfrew. Judge Renfrew is Vice President of Standard Oil Company of California. He was formerly a partner in the firm of Pillsbury, Madison & Sutro. He has served as Deputy Attorney General of the United States and as a distinguished United States District Judge for the Northern District of California. He is a past Vice-Chairman of the Antitrust Section, and he is a member of the Board of Governors of the San Francisco Symphony.

The parties were able to retain their distinguished economists on one condition: that we present them in their capacity as role-players. We regret to inform you that any attempt to cross-examine them in real life matters on the basis of their testimony in *Olympic v. Major* is against the rules of the game.

I give you plaintiff's team.

## PLAINTIFF'S CONFERENCE

MR. TOPKIS: George, our job here is finding a market. Let's look around. How about PADs 1, 2 and 3?

MR. HAY: Charlie, you probably have the information on this: Is there much product flow from PADs 4 and 5 into 1, 2 and 3, or the other way?

MR. RENFREW: You just can't move. The transportation cost and geographic distances are just too great.

MR. HAY: It seems to me there's a pretty good case to be made that that's a market, Jay.

MR. TOPKIS: The market shares there are pretty low. Are they large enough for you to make any economic significance out of a change produced by this merger?

MR. HAY: They're pretty well below the Guidelines,[2] Jay. While I'd be the first to admit that there's a certain amount of arbitrariness in the

[2] U.S. DEPARTMENT OF JUSTICE MERGER GUIDELINES (June 14, 1982), *reprinted in* 2 TRADE REG. REP. (CCH) ¶¶ 4500-05.

Guidelines, I think that the Guideline numbers are about right. I just don't feel comfortable saying anything about a merger which is that far below the Guidelines.

MR. TOPKIS: The Guidelines aren't written in gold or anything like that. They're what Bill Baxter dreamed up on a rainy Sunday. How do you, as an economist, feel about it? Is it not worth considering? Should we just forget the whole thing?

MR. HAY: I think we all agree that there's a continuum here, that any time you increase concentration you increase the risk of collusion. The problem is you need to draw the line someplace. The Guidelines have drawn the line. I think most economists think that the movement of the Guidelines toward a higher cut-off point was a pretty good idea. The market shares in this case don't even make it under the old Guidelines. I just feel awfully uncomfortable making any sort of a statement.

MR. RENFREW: Why do you have to use the PADs? Why can't we narrow our market definition? We're particularly strong in half-a-dozen of the midwestern states. We've got a very strong marketing position there and a substantial portion of the market. Why can't we limit our focus?

MR. HAY: When you get to the marketing, Charlie, you're talking really about a different segment of the industry, one that I'm not sure I understand as well. Can you tell me a little bit about how the gasoline gets from your refineries to the market?

MR. RENFREW: Essentially, it's through pipelines.

MR. HAY: Where are your refineries, Charlie?

MR. RENFREW: We have one each in Louisiana, Texas, Ohio and Michigan, four total. But essentially we move by pipeline. From our refineries, we have pipelines to our 49 terminals, essentially in the midwestern states. There, we market extensively. We range from 9 to almost 15 percent of the retail sales in those states. We have a substantial market share that will be foreclosed if Major takes us over.

MR. HAY: How does it break down? How do you sell?

MR. RENFREW: Through the terminals. Essentially what we do is we sell at the terminals, we sell to our branded dealers. About 15 percent of our sales are to our own Olympic branded dealers. We've got about 2,500 branded dealers. We sell 25 percent of our sales through a wholly-owned subsidiary, Emco, which brands four different brands, Save-Gas, Consolidated, Bonded and Topco. But we sell the majority of our gas to nonbranded independent rebranders. That's a tremendous market

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out there that we meet, and I think we're the only integrated company to my knowledge that sells to these independent rebranders.

MR. HAY: What prevents any other refiner with a refinery anywhere in the East Coast from selling to the independents in the same markets where you sell?

MR. RENFREW: If they don't have a terminal in that area, it's going to be very hard for them to compete against us because they'll have to bring their product in by truck and trailer, and that's expensive.

MR. HAY: I suppose we get down to a question of what's "expensive." How much would the price have to go up in a market before it would be economical to bring gasoline in from a nearby terminal?

MR. RENFREW: Well, you can use as a rule of thumb approximately one cent a gallon per 20-mile distance on truck and trailer loads.

MR. HAY: About how far away would be the nearest terminal?

MR. RENFREW: When you start getting more than 70 miles away from a terminal, you've got difficulty competing because your margins just aren't great enough.

MR. TOPKIS: That's three-and-a-half cents?

MR. RENFREW: If you're 70 miles away, you may have an additional three or four cents transportation cost, and that's as great as your gross margin will be.

MR. HAY: Let's look at that from the refiner's point of view. Let's suppose, to take a hypothetical, that the people selling gasoline at wholesale out of a particular terminal were to raise their price, all of them together. Suppose they would raise it by two or three cents. I take it they could do that without a lot of other gasoline coming in from nearby terminals. Is that a significant amount, in terms of the profits of the refiner?

MR. RENFREW: It's survival, a tremendous amount, yes.

MR. HAY: It seems to me, Jay, according to the spirit of the Guidelines, even though three or four cents is not 5 percent of the price, this is an industry in which three or four cents is a large amount of money. It seems to me if the spirit of the Guidelines is the question of whether there could be a price increase which would be profitable for sellers in a particular geographic market, this satisfies the test. I think there's something to be said for looking at these terminal areas as relevant markets.

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MR. TOPKIS: Are there any data assembled on terminal areas?

MR. RENFREW: That's a problem. We have, of course, our sales data for each of our 49 terminals, but we don't have our competitors' data. We have data by the states, though.

MR. TOPKIS: You make a pretty good guess as to what your competitors do, don't you?

MR. RENFREW: We have very good observations—not a guess—of their actual pricing. As to the actual volume they move, we don't have as much of a sense.

MR. TOPKIS: What would you go to?

MR. RENFREW: We have data by the states. The surveys, Lundberg and Ethyl, are all kept by the states. We actually price on the state basis. Our tank wagon prices are on a state-by-state basis. And the states are simply a collection of the terminals within that state, in any event.

MR. HAY: I haven't seen all the market share figures, but I'd like to focus a little bit more closely on these small areas. I suppose we could probably get data on sales out of a metropolitan area. How close is that likely to correspond to your terminal facilities?

MR. RENFREW: Very close. Our terminals are centrally located in order to serve essentially metropolitan areas.

MR. TOPKIS: Is that true of your competitors as well?

MR. RENFREW: Yes.

MR. TOPKIS: So, would it be accurate to say that terminals tend to cluster together in or around metropolitan areas?

MR. RENFREW: Yes.

MR. HAY: It sounds to me like we could use some of the SMSA data. It's obviously not a perfect measure of sales out of a terminal area because they don't always correspond exactly, but it's the best we have.

You talked about pricing on a state-by-state basis. Do you ever price on a more narrow basis? Do the prices ever differ between one metropolitan area and another metropolitan area?

MR. RENFREW: Yes. We watch our prices very carefully because we found in 1980, where we didn't keep a careful, close watch on our terminal prices and our tank wagon prices, we lost a substantial share of the market to our competition. We have to watch those prices very carefully. And they vary within a state.

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MR. TOPKIS: Where was this happening?

MR. RENFREW: This happened throughout the Midwest.

MR. TOPKIS: Why, was somebody making a determined effort to increase market share there?

MR. RENFREW: Yes.

MR. TOPKIS: Who was it?

MR. RENFREW: There were a number of the majors. Shell in particular came down and lowered its price at retail, and we suffered as a result.

MR. TOPKIS: You lost market share?

MR. RENFREW: Yes. We've gotten it back. But it was a very difficult thing for us because we weren't watching as carefully as we should have been and we were not as responsive.

MR. TOPKIS: You mean you didn't move as quickly?

MR. RENFREW: Yes, we didn't move as quickly.

MR. TOPKIS: What technique did you use to recapture your market share?

MR. RENFREW: Simply moving our prices. You have to understand that the majority of our customers are people who sell on the basis of price alone. They price two-to-five cents under the majors, and that price is the determinant of where they are going to get their supply.

MR. TOPKIS: Are they the independents to whom you sell?

MR. RENFREW: Yes, they are the independents.

MR. TOPKIS: Do I understand then that what you did in response to the Shell effort to increase its market share ultimately was that you matched or even exceeded their price cuts?

MR. RENFREW: Yes. We had to.

MR. TOPKIS: Did you do that on a local basis, where they had done it, or was it done throughout the Midwest, or what?

MR. RENFREW: We do it as narrowly as we can in order to meet the competition. So we do it pretty much on a terminal-by-terminal basis, making the judgment at each terminal that it was necessary to do so, because when we lower our prices, of course that affects our margins.

MR. TOPKIS: Is that what Shell had done, had they lowered their prices on a terminal-by-terminal basis?

MR. RENFREW: I don't really know. We saw it on a terminal-by-terminal basis. Whether this was part of a broader pricing scheme, I'm not really sure.

MR. HAY: I think there's enough to go on in order to make out a terminal market concept. Maybe that is true for states as well, but I'm a little less comfortable with states because a state really is just a collection of terminals.

MR. RENFREW: But the data is all on a state basis because your licensing and taxes and everything are done on a state basis. There's a lot of data. We have a lot of data on the states.

MR. HAY: And are there a number of states and SMSAs where your and Major's market shares are significant?

MR. RENFREW: In most of the midwestern states—Illinois, Indiana, Ohio, Michigan—we're the second largest seller. If you add Major's volume, in most of those markets the combined enterprise would be the largest retailer.

MR. HAY: And I suppose there would be areas, specific SMSAs, where you would be very, very large, and others where you would be far less consequential?

MR. RENFREW: That's correct. The concentration would go up over 50 percent in some markets.

MR. TOPKIS: It sounds, George, as though we ought to be able to make something out of that.

MR. HAY: I think we're in pretty good shape. You may have to spend a little more time developing this state data issue because it doesn't sound like it's economically the ideal market, but it seems to me there's enough to go on. I'd be comfortable testifying with states as a market and with terminal areas as a smaller submarket.

MR. TOPKIS: That's the problem, you have to be comfortable. Major's lawyer, Murray Bring, is going to be shooting questions at you in an attempt to embarrass you and make you feel foolish. What you have to do is pick data that will leave you comfortable under his withering cross.

MR. RENFREW: I can tell you, that's where we compete. That is our area of competition, at those terminals in the areas that are served by our terminals.

MR. HAY: The market shares seem to be so high in some of those areas that I think I'm very comfortable testifying that the merger is likely to have an adverse impact.

MR. TOPKIS: And that's true both as to SMSAs and also even as to the states?

MR. HAY: I think the state data is little more than a proxy for what's going on at all of the individual SMSAs; but I would still testify to an anticompetitive impact in some of the states.

MR. TOPKIS: But if you admitted that right up front, that this isn't precise, that this is just the best we can do, and if we're going to measure this question at all this is the only way to do it—and it's a perfectly satisfactory way to do it?

MR. HAY: Yes. It is a proxy, but I think it's a satisfactory proxy.

MR. TOPKIS: Very good. We'll turn some people loose on digging up the data.

MR. RENFREW: One thing you haven't addressed that causes me concern is, we at Olympic have followed a practice of supplying independent marketers. We're sometimes the only source of supply. Major does not supply, and has made a practice of not supplying, the independent sellers. We compete on a price basis. And if we go out of business, I don't know where they're going to get their supply. I think that's a terribly important thing, that the majority of our sales are to independent sellers who sell under their own private brands and price two-to-five cents below the majors, below what Major sells at its branded stations. That's terribly important.

We felt it was so important, in 1979, during the shortages, we went out on the spot market and bought gasoline anywhere from 12 to 37 cents a gallon above our rack price at our terminal, in order to make 100 percent commitment to our rebrand customers. We're the only integrated oil company that did that. That has to be important. That's a story that we have to tell.

MR. TOPKIS: Where do independents who don't buy from you get their gas? Or are there none?

MR. RENFREW: There are some. They get some from other integrated companies. But Major, in particular, has made a practice of not selling.

MR. TOPKIS: So if this deal went through, you would expect that if Major followed its present policy, all that supply to the independents would be cut off?

MR. RENFREW: That's right. And these are the people that compete on the basis of price.

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MR. TOPKIS: Wait, let's not be unrealistic about this, Charlie. That gas is still going to be coming out of the Olympic refineries. It's got to be sold someplace. If Major decides that it's not going to be sold to the independents because that's Major's policy, what are they going to do, eat it? They've got to do something with it.

MR. RENFREW: I don't know what they'll do with it.

MR. HAY: Jay, this sounds an awful lot like a foreclosure theory. You know how economists feel about foreclosure.

MR. TOPKIS: I just don't see how we can make the argument. If there's a demand out there for the gasoline, if the independents want gasoline, there's plenty of gasoline available. Someone is going to supply it.

MR. RENFREW: There is right now, but in 1979, as I told you, there was a shortage, and there was no real other source than Olympic for many of our customers. We went out and we supplied them, even though it cost us money to do so, because we wanted to continue our relationships with these private branded dealers. In the event of a shortage, they're going to be hurt.

MR. TOPKIS: Is there ever really a shortage in this industry? After all, the crude is going into the refineries and it's coming out of the ground. But, are these shortages that we heard about—we heard about one in 1973 with OPEC, and then you mentioned the one in 1979—are they real? Did they really happen? There was a great dispute, as I remember it.

MR. RENFREW: Anybody who sat in those lines at gasoline stations will tell you there was a real shortage. Now, if you're asking me whether there was enough gas, refined petroleum products, to meet the demand, I think the answer was probably yes. It was a question of getting it at the time people wanted it. There was a great psychological pressure there that created part of that panic. But there was an actual shortage, in that people did have to stay in line and were concerned about the availability of supply. And that psychological shortage is just as real in people's minds and in buying habits as a shortage where there wasn't enough supply.

MR. TOPKIS: Would you be comfortable, George, in talking about a psychological shortage?

MR. HAY: I guess I don't mind talking about it, but it seems to me the problem is we have a second order of smalls here. We're saying "if there's a shortage" and "if Major doesn't supply." And I don't think I'm going to be able to reach a judgment that overall this looks like an anticom-

petitive effect. If we're going to use this at all, I think we're going to have to very carefully structure a series of hypotheticals. If you want to ask me to assume that there's a shortage and assume that Major follows its policy, then maybe we can make something out of that. But you're then going to have to bear the burden of whether the merger is going to be struck down on that kind of "if if then" effect.

MR. TOPKIS: Let's remember, though, that we're going in on a preliminary injunction application. If there is some doubt about whether there really was a shortage in 1973 and 1979, I think the judge who sat in one of those gas lines that Charlie was talking about is going to believe that there was a shortage, enough to get us past a preliminary injunction showing. Let Bring start arguing the question of whether there was a shortage in 1973; he'll have a dandy time. And after an hour or two, the judge will get fed up with him.

So, I think we can safely proceed on the accepted fact. Let them argue that there wasn't really a shortage. I think the judge will accept the fact. So we won't have to ask him to assume that; we'll just have to ask him to remember it. And then, let's assume that there is some uncertainty about what Major would do in the event of a shortage. Could you draw any inferences or conclusions from that?

MR. HAY: I don't want to get myself in trouble here. I want to be very clear what's going to be asked. You're going to say "if there's a shortage?"

MR. TOPKIS: No. I'm going to ask you something like, "You remember the shortage of 1973 when we all sat in gas lines, right, Doctor?" And you'll say yes. The judge is going to remember. You remember—he remembers—that time, Doctor, there was a shortage. Now, what I want to ask you is: "Let us suppose that OPEC again shut off the world in 1984. What would be the consequence in the United States, in the Midwest specifically, if Major, having taken over Olympic, were to shut off the supply to these independents that Charlie's supplying right now?"

MR. HAY: I think then the question we have to face is: So what? Suppose the independents don't have any gasoline. The majors have it instead. Is there any difference depending on who sells the gasoline, be it the majors or the independents?

MR. RENFREW: There certainly is to the motoring public because they are able to buy their gasoline from the independents at prices two-to-five cents below that sold at the major branded stations.

MR. HAY: I can see the way the questioning is going to go, because the argument will be that, even though there is this price difference, the

gasoline sold by the majors is a pretty good substitute for the gasoline sold by the independents. You pay a higher price, but you get clean washrooms and you get your windshield washed, and all that sort of thing. The argument is somehow going to have to be made that it's really important for consumers to have this choice, and if there is a shortage and that choice is foreclosed then there is a real competitive problem.

I'd like to think about it for awhile, but I think I'd be comfortable making that argument, as long as I don't have to be the one that predicts there's going to be a shortage.

MR. TOPKIS: No. I think we can rely on history for that. For your purposes, I think you can take it as a given. What we could make of that would be that Major, by reason of denying this product to the independents in a time of shortage, would be making a bonanza. Isn't that right? As you say, that gasoline has to be used, people are going to have to buy it, and every Major gas station, in a time of shortage, is going to have all the gas that it could possibly want because it's not going to Olympic's customers.

MR. HAY: Yes. How much time do I have to think about this problem?

MR. TOPKIS: We're going to be in court tomorrow morning.

Charlie, what else can we find here?

MR. RENFREW: Those are the major concerns that we have. Of course, what we need desperately right now is time because it's pretty clear to us that if it's not Major it's going to be somebody else, and we've got to find somebody we're more compatible with who we think is going to be fair to our existing customers in trade relations. We need time.

MR. TOPKIS: Surely, being fair to your customers in existing relations isn't your only problem.

MR. RENFREW: No. We're also thinking about ourselves too.

MR. TOPKIS: What do you think would happen if this deal went through?

MR. RENFREW: We're all out of work. It's the end of Findlay, Ohio.

MR. TOPKIS: There were all those statements that Major made about how they proposed to keep the superb management of Olympic.

MR. RENFREW: Yes, I read them.

MR. TOPKIS: I'll tell you what. We won't take up George's time with this, but let's see if we can't do something like a Board meeting some time later in the afternoon to see if we can't take some protective measures there.

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MR. RENFREW: We've got to "steel" ourselves to the possibility of another possible marriage partner.

MR. TOPKIS: I knew you'd do it once, I just wasn't sure when.

Is there any possibility of any other effect here? How about pipelines? What role do pipelines play in this business?

MR. RENFREW: Pipelines are essential to move both your crude and your refined products. A major basis of getting our material delivered to our terminals is through our pipelines. We have an extensive pipeline organization. We're not as large, of course, as Major. But the combined pipelines of Major's with ours would be the largest pipeline network in the country.

MR. HAY: Pipelines, though, are public utilities, aren't they?

MR. RENFREW: They're regulated, yes, they are.

MR. HAY: Are they really regulated? What really happens?

MR. RENFREW: They're really regulated. You have to make them available to someone who's willing to pay the tariff for shipping the oil or the refined product. The problem is, of course, the carrying capacity. If you're at the level of maximum capacity, you can't take anybody else on.

MR. TOPKIS: As a matter of fact, are your pipelines usually at the level of maximum capacity?

MR. RENFREW: As a matter of practical fact, we're all operating under capacity, both in refining and in our pipelines.

MR. TOPKIS: So that putting together these two pipeline systems wouldn't have any foreclosing effect on anybody?

MR. RENFREW: I don't think any significant foreclosing effect, no.

MR. TOPKIS: What else can we look for, George?

MR. HAY: I can't think of anything else.

MR. TOPKIS: How about tank wagon fleets? Are there things like that?

MR. RENFREW: There are, but again there is really an over-capacity. There is unused capacity at the jobber and distribution levels. That doesn't present anything.

MR. TOPKIS: One thing was bothering me before. You said that you sell something over 50 percent of your gasoline to independents and you sold another percentage to your off-brand wholly-owned subsidiary.

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MR. RENFREW: Yes, wholly-owned.

MR. TOPKIS: Right. Is that gasoline sold at a discount price?

MR. RENFREW: The gasoline we sell through our wholly-owned subsidiary, under the four different brands—not our Olympic brand, but our four other brands—we do sell at a price several cents below our regular Olympic brand.

MR. TOPKIS: Right. And do you sell that gasoline on a par with what other discounters are selling at, with what the independents sell at?

MR. RENFREW: Yes.

MR. TOPKIS: What policy does Major have about selling its own off-brand gasoline?

MR. RENFREW: I'm not sure of any announced policy that it has with respect to this. The vast majority of its gasoline goes to its branded dealers, whether they're salaried or independent. They have made an announced statement that they will not sell to independent rebranders.

MR. TOPKIS: Okay. But does it have any wholly-owned rebranders?

MR. RENFREW: I don't know of any.

MR. TOPKIS: Is there any practice in the industry of the really big integrated companies dealing with rebranders?

MR. RENFREW: Most of the major integrated companies, because of the excess capacity, are looking for every possible outlet they can for their product, and they go to rebranders or anybody else they can. But Major does not.

MR. TOPKIS: I like this matter of foreclosure of the independents' supply. It has a consumer-oriented aspect to it that I think the judge may very well respond to. I understand George's reservations about it, but the judge is not an economist, for better or worse. Are we to understand, going back to the question, if those independents can't get product from Major-Olympic, are there some areas where there will be no alternative source available to them?

MR. RENFREW: I really can't say that because there are a number of companies that would be very willing, at some price, to sell to them.

MR. TOPKIS: I was thinking of your 1979 experience that you mentioned. You said that, then, you were so interested in keeping your independents supplied, you went into the spot market and bought gas at 30 or 40 cents above the price at which you then resold it to the independents.

MR. RENFREW: No. Above our rack price at our terminals.

MR. TOPKIS: Okay, above the rack price at which you would resell it to those independents.

MR. RENFREW: Right.

MR. TOPKIS: Well, if those independents had no place else to go, why would you resell to them at your rack price and take a 30-or 40-cent licking?

MR. RENFREW: Because we wanted to build up a reputation as a source of supply, a consistent, steady, responsible, reliable source of supply. The only way we could do that was in time of shortage.

MR. TOPKIS: But you're telling me they had no alternative except to deal with you.

MR. RENFREW: We had an alternative not to deal with them.

MR. TOPKIS: Right. Can we talk a little bit about profit margins again? I want to make sure I understand what you were saying before. What's the significance here of a one or two cent change in the price of gasoline at the wholesale level, at your tank wagon level?

MR. RENFREW: At the wholesale level, that's the difference between profit and loss for us.

MR. TOPKIS: Your margin is one or two cents on the gasoline that you sell at the rack price?

MR. RENFREW: That's right.

MR. TOPKIS: Which is it, one cent or two cents?

MR. RENFREW: It varies. But the difference between one or two cents is the difference between whether we make money or lose money.

MR. HAY: It seems to me that's where we want to go, Jay, because we're talking about a one, two or three cent increase in price. Under our Guidelines test, that's an awfully big increase in profits.

MR. RENFREW: I'm talking about net. I'm not talking about the gross. I'm talking about net, actual take-home, the after-tax bottom line.

MR. TOPKIS: Right. And you sell at different prices to independents and to branded dealers?

MR. RENFREW: Depending upon the functional level they perform in the market. We sell at the rack price at our terminal and we sell at a

jobber price and a distributor price and then at a tank wagon price, which are all successively higher than the rack price.

MR. TOPKIS: Which price do these independents buy at?

MR. RENFREW: If they come in and buy at the terminal, they pay the tank wagon price, which may be five or seven cents a gallon above our rack price.

MR. TOPKIS: Who pays the rack price?

MR. RENFREW: The independent organizations, if they have a regular organization—the wholesale customer who goes out and in turn sells to dealers.

MR. TOPKIS: And at what price do you sell to your retail dealers?

MR. RENFREW: If a station comes in, we sell to them at the tank wagon price.

MR. TOPKIS: So your dealer is coming in and buying at the tank wagon price.

MR. RENFREW: We also have jobbers too. We have branded jobbers that we sell to at the jobber price.

MR. TOPKIS: Let's hold that for just a second, please. Your branded dealer comes in and buys at the rack price of, let's say, $1.25 a gallon for example's sake. If an independent comes in, does he have to pay five or six cents more than that?

MR. RENFREW: No. If an independent dealer who sells under our brand comes in to one of our terminals, we sell to him at a tank wagon price.

MR. TOPKIS: Which is?

MR. RENFREW: Which is the highest price at which we sell.

MR. TOPKIS: How much above your rack price is this independent paying?

MR. RENFREW: He may pay seven cents.

MR. TOPKIS: He's paying seven cents more per gallon for gasoline?

MR. RENFREW: Then we will sell to somebody who goes out and performs a wholesale function of collecting and distributing the gas.

MR. TOPKIS: How about just your retail dealer who doesn't perform that function, but he shows up at your rack? What price does he pay?

MR. RENFREW: Tank wagon.

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MR. TOPKIS: And how much under the price that the independent pays is that?

MR. RENFREW: They'll both pay the same price.

MR. TOPKIS: They'll both pay the same price, and the independent will sell the gasoline at three-to-five cents under the branded dealer?

MR. RENFREW: That's correct, under the major branded dealer. The way we distribute, however, our dealers don't come into the terminal. We work through branded jobbers.

MR. TOPKIS: With the exception of those fine products marketed by Standard Oil of California, is gasoline a standard product?

MR. RENFREW: Each of us feels that we've got special additives that meet particular motoring needs. But, in truth, there's a pretty fungible quality to the gasoline, given the categories of unleaded or premium or regular. They meet standard specifications.

MR. TOPKIS: How about the stuff that you're selling to an independent and to a branded dealer? Is it the same stuff?

MR. RENFREW: Same stuff.

MR. TOPKIS: I think that's not a fruitful avenue for us to explore.

*(End of scene)*

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