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Sullivan: Conservation of Oil and Gas. A Legal History - 1958

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CONSERVATION OF OIL AND GAS. A LEGAL HISTORY — 1958.[1] Edited by *Robert E. Sullivan*. Chicago: Section of Mineral and Natural Resources Law, American Bar Association, 1960. Pp. xi, 351. $5.00.

"Conservation" in the law of oil and gas is an ambiguous and provocative term. It may describe methods by which economic waste is confined. It

[1] Hereinafter cited as "text."

may describe restrictions placed upon physical waste alone. It may connote governmental control. It may imply voluntary unitization of tracts of land to insure maximum use of subterranean pressures. Whatever its meaning, conservation is a factor upon which the public depends and with which the petroleum industry must reckon.

A shareholder attending an annual meeting in Lawrenceville, New Jersey discovered this fact of economic life last May 25th. The record follows:

> "A Shareholder / What are we going to do about the 600,000,000,000 barrels of potentially recoverable hydrocarbon liquids in Colorado, Wyoming, and Utah, and the 300,000,000,000 barrels in the Athabasca River region in Canada?
>
> "The President / Imperial Oil Company, a Jersey affiliate, has approximately a 30 per cent interest in a group of companies that are doing research and development work in the Athabasca tar sands area. We are following carefully developments in the oil shale area in the western states. Both these areas . . . potentially have tremendous reserves of hydrocarbons. Whether they are developed and how fast they may come to the market is almost entirely a question of economics, but they certainly do represent a potential backlog of hydrocarbon reserves."[2]

Four months after this colloquy, an oil company executive told the National Petroleum Association in Atlantic City that the oil firm had created its own problem of overproduction resulting in economic waste. "Like someone affected with a glandular disorder, it can't stop expanding. . . . Its growth mechanism continues to grind relentlessly on without waiting for demand to catch up. It is anticipating opportunities that were used up yesterday. In the process it has created a tremendous investment in facilities that currently cannot operate at a sufficient high level to generate a satisfactory return, and it has created product surpluses that hang as constant threats over the industry's price structure."[3]

Still, with production at such a peak, the humanly-inspired quest for liquid gold, "in paying quantities," continues. Indeed, the Governor of the State of Georgia recently advised this writer that "Georgia does not have a producing oil well at this time. However, the incentive award of $250,000 remains authorized."[4]

Inherent in this process of exploitation is conflict of interest, purpose and method. Upon these conflicts is superimposed the principle of conservation. This is the legal matter to which *Conservation of Oil and Gas—A Legal History 1958* is directed.

2 Standard Oil Co. of N.J., Report of 1960 Annual Meeting, p. 9.

3 Chicago Daily Tribune, Sept. 15, 1960, § H (Finance) p. 9, col. 5 (account of address of John E. Swearingen, president of Standard Oil Co. of Indiana).

4 Letter from Honorable Ernest Vandiver to Joseph R. Julin, Nov. 3, 1960. "Constitutional amendments in 1950 and 1956 provided an incentive for exploratory activity by authorizing the payment of $100,000, increased to $250,000 for the discovery of the first well in the state that would produce 100 barrels of oil per day." Text at 66.

This book is the logical continuation of a significant service rendered by the Section of Mineral Law of the American Bar Association to the bar and industry which began in 1939 with the publication of *Legal History of Oil and Gas—A Symposium.* In 1948, the Section produced a second volume, *Conservation of Oil and Gas—A Legal History 1948.* Now, the Section has brought us nearly to date. This most recent effort is, in the terms of one reviewing its 1948 predecessor, "well conceived and well executed."[5] Considering the wealth of expert participation in the preparation of this volume, an end product of any less distinction would dumbfound the reader.

Edited by Dean Robert Sullivan of the Montana State University law school, the book consists of four principal parts. The first is written by Robert E. Hardwicke who is described in the foreword by Earl A. Brown, Sr., as "Mr. Conservation." (p. x) It is a brief description of progress in conservation during the decade under review. Here, there is emphasis upon development of new techniques to effect maximum recovery such as the process of nuclear explosion and hydrogasification.

The second part, consisting of thirty-eight chapters, is the product of Dean Sullivan. Each of these chapters is devoted to a single state and consists of a historical resume, a review of legislative and administrative action and a summary of judicial decisions. The material for each state was submitted to an adviser in that state for review. The result—a readable, comprehensive summary of ten years' conservation law, jurisdiction by jurisdiction.

Part III is authored by Earl Foster, formerly executive secretary and now general counsel of the Interstate Oil Compact Commission. This is a purely descriptive section indicating the purposes and organizational table of this "most powerful powerless organization in the world."

Northcutt Ely of Washington, D. C. is responsible for the final part entitled "The National Government and the Conservation of Oil and Gas." Mr. Ely's history (pp. 295-346) touches not only upon domestic developments involving the federal government but the manner in which foreign crises have been weathered. One might suggest that these chapters run the gamut from California (Standard Oil Co. of California v. United States,[6] p. 312) to Suez (p. 337). Whether all that is described is progress depends, of course, on one's point of view. Whether all comes within the sphere of conservation is likewise doubtful. That these several chapters aid in an understanding of a decade of development of the oil and gas industry is, however, beyond question.

Few doubt that ultimate conservation can be best effected by unitization. This engineering fact makes consideration of developments in the antitrust

[5] See Green, Book Review, 27 TEXAS L. REV. 874, 875 (1949).
[6] 337 U.S. 293 (1949).

field relevant to a historical evaluation. Mr. Ely does just this in Chapter 42.[7]

Although the antitrust decisional process often moves slowly, current developments in this area already call for a chapter supplement. For example, controversies arising out of the Submerged Lands Act pending at the time of publication have been settled by decision.[8] Likewise, seven-year-old *United States v. Standard Oil Co. of New Jersey*,[9] "a major antitrust case concerning foreign production of petroleum and marketing . . . against five major oil companies . . . charged with conspiring since 1928 to secure and maintain control over foreign production and supplies of petroleum, to maintain prices at agreed levels throughout the world, and to divide producing and marketing territories . . . " (p. 312), awaiting trial at the time of publication has now been ended by entry of a consent decree.[10]

In a final chapter, the author uses statistics effectively to disabuse his readers of the notion that the federal government's impact on conservation results solely from trade regulation or from its concern with national defense and foreign powers. He reports the somewhat startling fact that "The number of leases on public domain lands increased astronomically from 13,400 leases covering 10,703,000 acres on June 30, 1948 to 119,017 leases aggregating 93,106,468 acres by June 30, 1958." (p. 296)

Professor Maurice Merrill, "Mr. Implied Covenants," has recently obobserved that "The character of the public's concern with the fuel minerals changes with the times. . . . The older problems still are in the background but upon wise solution of the group problems depends the welfare of the individual members of society. We all must be concerned that judges, legislators, and the moulders of public opinion realize this, as they approach these questions."[11]

Conservation of Oil and Gas 1958 describes in historical relief the public's concern with the preservation of natural resources and the prevention of waste, however defined. The bench, bar and the several legislatures now have a third excellent history on conservation.

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[7] Mr. Ely states at p. 311 that ". . . the threat of prosecution under these [antitrust] statutes is believed to have served in the past as a deterrent to voluntary unitization agreements." It has been suggested that such an appraisal is somewhat unrealistic. "In some instances the fear may be simulated, and the operator may be merely playing poker." HARDWICKE, ANTITRUST LAWS ET AL. V. UNIT OPERATION OF OIL OR GAS POOLS 154 (1948).

[8] United States v. Louisiana, 80 S. Ct. 961. (1960).

[9] Civil No. 86-27, S.D.N.Y., June 8, 1953.

[10] The New York Times, Nov. 15, 1960, p. 1, col. 7.

[11] MERRILL, THE PUBLIC'S CONCERN WITH FUEL MINERALS 104-105 (1960).