

# STOCK EXCHANGE PRACTICES

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WEDNESDAY, NOVEMBER 15, 1933

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE  
ON BANKING AND CURRENCY,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to adjournment on yesterday, in the caucus room of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver, David Saperstein, and David Schenker, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Joseph B. Lynch, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern, and also Albert G. Milbank, William Dean Embree and A. Donald MacKinnon, of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation; Martin Conboy, counsel for Albert H. Wiggin; Arthur M. Boal, counsel for Ruloff E. Cutten; G. T. Stanford, general counsel of the Sinclair Consolidated Oil Corporation; R. W. Ragland, counsel for Mr. Harry F. Sinclair; M. T. Moore of Cravath, de Gersdorff, Swaine & Wood, counsel for Mr. Elisha Walker.

The CHAIRMAN. The subcommittee will come to order. I believe Mr. Sinclair desired to make a statement this morning in connection with his testimony of yesterday.

Mr. SINCLAIR. I thank you, very much.

The CHAIRMAN. You may proceed, Mr. Sinclair.

## TESTIMONY OF HARRY F. SINCLAIR—Resumed

Mr. SINCLAIR. There are one or two matters in my testimony of yesterday which I would like to correct. I was asked with what participants other than Mr. Cutten, either original participants or subparticipants, I have had any discussion in reference to the syndicate matter since October 26. In replying I had in mind only original participants or subparticipants and named Mr. Walker and Mr. Marston, both of Blair & Co., Inc., and did not mention Mr. Stanford and Mr. Ragland, who, as the record already showed—

Mr. PECORA (interposing). Mr. Stanford and who else?

Mr. SINCLAIR. Mr. Ragland.

Mr. PECORA. All right.

Mr. SINCLAIR (continuing). Became subparticipants in my participation, and who were present at my apartment Sunday. In addition, at various times, there were present Mr. Fred Wood and Mr. M. T. Moore, of the law firm of Cravath, de Gersdorff, Swaine & Wood, which firm had represented the purchasing syndicate, Mr. Pierce, Mr. Fitzpatrick, and Mr. Ruloff Cutten.

I suggested to Mr. Fitzpatrick that he relate what he had told me at Excelsior Springs in reference to the 2½ percent payment, and although I was not in the room all of the time, I believe he did so to some or all of the persons named. When I was asked yesterday if anything was said about any reason for that payment and replied that there was not, I had in mind anything said about any reason, in the conversations with Messrs. Walker and Marston referred to in the previous question, which was, "Did you confer with both of them at the same time?" If the question was intended to mean, was any reason given by anyone, the answer should be yes; that given by Mr. Fitzpatrick.

Also, I desire to complete the record in reference to a matter that was not fully developed yesterday. The directors to whom I extended a subparticipation in my participation did not know that they were to receive any such subparticipation from me until some time after they voted as directors. I at no time prior to the meeting of the executive committee or the meeting of the board of directors told any director to whom I granted a subparticipation that I would grant him a subparticipation, or directly or indirectly informed him that I intended to extend to him any such subparticipation, or had any discussion referring to the same.

Mr. PECORA. Mr. Sinclair, who is the Mr. Pierce to whom you have referred in the statement which you have just read into the record?

Mr. SINCLAIR. Mr. Pierce is my assistant, Mr. Dan E. Pierce, and his address is 49 Nassau Street.

Mr. PECORA. In this statement that you have just read into the record you have stated as follows:

When I was asked yesterday if anything was said about any reason for that payment—

Referring to the 2½ percent payment to Fitzpatrick—

and replied that there was not, I had in mind anything said about any reason in the conversations with Messrs. Walker and Marston referred to in the previous question, which was: "Did you confer with both of them at the same time?" If the question was intended to mean, was any reason given by anyone, the answer should be yes, that given by Mr. Fitzpatrick.

Well, now, did Mr. Fitzpatrick give any reason, when he was at your apartments in New York City last Sunday afternoon, for his having received that 2½ percent of the profits of that purchasing syndicate?

Mr. SINCLAIR. I think he did. I am quite sure that he gave it to those gentlemen.

Mr. PECORA. Did he give it to you?

Mr. SINCLAIR. I was not there. I was in and out, but I had heard the same story at Excelsior Springs, as I told you.

Mr. PECORA. What makes you think that he discussed that matter with Mr. Marston and with Mr. Walker, and with any of the other

gentlemen you now say were present, the reason that he received that 2½ percent of the profits?

Mr. SINCLAIR. I suggested it to Mr. Fitzpatrick, that he tell those gentlemen. But—

Mr. PECORA (interposing). Well, now—but go ahead. I did not mean to interrupt you.

Mr. SINCLAIR (coughing). I am sorry, but I have a very severe cold.

Mr. PECORA. Have you finished your answer?

Mr. SINCLAIR. Yes.

Mr. PECORA. Was the matter of his receiving this 2½ percent of the profits one that came up in the discussion that you had last Sunday afternoon with your friends?

Mr. SINCLAIR. The discussion I had with Mr. Fitzpatrick originally was at Excelsior Springs, some 2 weeks ago.

Mr. PECORA. Did it come up again in any conversation that took place at your home in New York City last Sunday afternoon?

Mr. SINCLAIR. I am quite sure that it did.

Mr. PECORA. Well, you were present?

Mr. SINCLAIR. A part of the time I was not in the room.

Mr. PECORA. Well, do you know what reason Mr. Fitzpatrick gave to Mr. Walker and Mr. Marston and any of the other gentlemen there present for his having received that money?

Mr. SINCLAIR. The only reason I know is what I endeavored to tell you on yesterday, Mr. Pecora.

Mr. PECORA. And that was the reason that you told us yesterday that Mr. Fitzpatrick gave to you at Excelsior Springs about 2 weeks ago?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Why didn't you wait in the room for Mr. Fitzpatrick last Sunday at your home when he told those gentlemen what the reason was so that you might hear it?

Mr. SINCLAIR. I should have been very happy to do so, but I happened to be not very well and I was in and out of the room. I was lying down quite a bit of the time.

Mr. PECORA. Well, did you reenter the room after that?

Mr. SINCLAIR (coughing). What was that? I beg pardon.

Mr. PECORA. Did you reenter the room after Mr. Fitzpatrick told them the reason?

Mr. SINCLAIR. I, perhaps, entered the room while he was telling it, or after it, or during the time, but I did not listen to his explanation about the thing. I had heard it.

Mr. PECORA. Well, was the subject referred to again at any time after that?

Mr. SINCLAIR. At my house?

Mr. PECORA. At your house; yes.

Mr. SINCLAIR. I don't know. Not to my knowledge. Those gentlemen would know more about that than I do.

Mr. PECORA. Are you merely assuming that the reason which Mr. Fitzpatrick gave to those gentlemen at your home last Sunday was the same one that he had given to you at Excelsior Springs?

Mr. SINCLAIR. I assume so.

Mr. PECORA. Well, the reason, as I recall your testimony given on yesterday, that Mr. Fitzpatrick told you in Excelsior Springs 2 weeks ago for his having obtained that money, was because Blair & Co. wanted to make some money for him, wasn't it?

Mr. SINCLAIR. I think that was my testimony.

Mr. PECORA. That is a fair summarization of your testimony, isn't it?

Mr. SINCLAIR. Whatever the testimony was; yes.

Mr. PECORA. What occasion would there have been for Mr. Fitzpatrick telling Mr. Walker, who in 1929 was president of Blair & Co., what reason there was for his getting that money from Blair & Co., if, as a matter of fact, the reason was as he told you, that Blair & Co. wanted to make some money for him?

Mr. SINCLAIR. I suggested to Mr. Fitzpatrick that he do so, that he tell those gentlemen.

Mr. PECORA. Can you tell us why you made that suggestion to Mr. Fitzpatrick on Sunday last?

Mr. SINCLAIR. Well, it is a rather difficult question to give you a reason for.

Mr. PECORA. I did not hear you, Mr. Sinclair.

Mr. SINCLAIR. I beg pardon, but I have a very severe cold which interferes with my voice. I suppose I made it because I wanted those gentlemen to know, and to hear, what Mr. Fitzpatrick had to say about it.

Mr. PECORA. Was it because you questioned Mr. Fitzpatrick's statement to you made at Excelsior Springs?

Mr. SINCLAIR. It was not.

Mr. PECORA. You accepted that as a truthful statement, didn't you?

Mr. SINCLAIR. Yes.

Mr. PECORA. Well, what reason was there for his telling Mr. Walker, formerly of Blair & Co.?

Mr. SINCLAIR. There were other gentlemen there.

Mr. PECORA. What was that?

Mr. SINCLAIR. There were other gentlemen there, that I did wish he would tell.

Mr. PECORA. The other gentlemen there were Mr. Marston, who was also associated with Blair & Co. in 1928 and 1929, wasn't he?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And Mr. Stanford and Mr. Ragland, who are your attorneys?

Mr. SINCLAIR. What was that? I was coughing and did not hear you.

Mr. PECORA. Also Mr. Stanford and Mr. Ragland, who are your attorneys?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. And Mr. Moore, the attorney for the members of the purchasing syndicate?

Mr. SINCLAIR. That is right.

Mr. PECORA. That included Mr. Walker's firm at that time?

Mr. SINCLAIR. Mr. Moore is not with Mr. Walker's firm. He is with—

Mr. PECORA (interposing). No; but Mr. Walker at that time was associated with Blair & Co., and Blair & Co. were participants in the purchasing syndicate?

Mr. SINCLAIR. That is right.

Mr. PECORA. So that Mr. Moore was the attorney for Blair & Co. and the other participants in that purchasing syndicate back in 1928 and 1929.

Mr. SINCLAIR. Yes. [After talking to Mr. Ragland.] There has been called to my attention—

Mr. PECORA (interposing). I do not hear you, Mr. Sinclair. I am sorry.

Mr. SINCLAIR. I wish I could speak louder, but the very severe cold I am suffering with interferes with my voice. There has been called to my attention by Mr. Ragland at this moment that when I suggested to Mr. Fitzpatrick to tell the story that he had told me in Excelsior Springs, that the lawyers were there; and Mr. Ragland also suggests that Mr. Walker or Mr. Marston was not there at that moment.

Mr. PECORA. Do you mean that Mr. Marston and Mr. Walker were not at your home on last Sunday afternoon?

Mr. SINCLAIR. No; but at that time, I mean, at the moment that he did it.

Mr. PECORA. At the time when Mr. Fitzpatrick told it, do you mean?

Mr. SINCLAIR. At the time when I suggested that Mr. Fitzpatrick tell it. Mr. Walker came along later, and Mr. Marston, I think, came after dinner.

Mr. PECORA. Well, had you sent for Mr. Walker and Mr. Marston to come there Sunday afternoon?

Mr. SINCLAIR. I had not sent for them, but I had asked them to come.

Mr. PECORA. All right. Were you desirous of discussing with them on Sunday the testimony that had been given here in the past week by Mr. Arthur W. Cutten with respect to the operations of the purchasing syndicate and of the trading account?

Mr. SINCLAIR. I don't think that Mr. Cutten's testimony was discussed at the meeting at all.

Mr. PECORA. Well, was the subject of Mr. Cutten's testimony discussed Sunday afternoon at your home?

Mr. SINCLAIR. I don't think so, but it may have been.

Mr. PECORA. Well, what purpose did you have in mind in asking Mr. Walker and Mr. Marston to come to your home last Sunday afternoon, and also Mr. Fitzpatrick to come there?

Mr. SINCLAIR. It was quite natural as those gentlemen were interested in this syndicate, and—

Mr. PECORA (interposing). Well, did you discuss—I beg pardon, but you had paused and I thought you had completed your answer.

Mr. SINCLAIR. No; I was coughing.

Mr. PECORA. I beg pardon. You may proceed to complete your answer.

Mr. SINCLAIR. I was desirous of discussing with them all about the situation. I knew very little about it, anyway; all that I knew about it was what I had read in the newspapers.

Mr. PECORA. Well, did you discuss the testimony with Mr. Cutten on Saturday in Chicago?

Mr. SINCLAIR. I think I testified that what I discussed with Mr. Cutten—well, I testified to that on yesterday, and I will get my testimony if you wish.

Mr. PECORA. No. Don't you recall now, Mr. Sinclair, what you discussed with Mr. Cutten last Saturday in Chicago at Mr. Bartlett's home?

Mr. SINCLAIR. I will get the testimony.

Mr. PECORA. Don't you recall the testimony that you gave on yesterday, Mr. Sinclair?

Mr. SINCLAIR. I will get the testimony.

Mr. PECORA. Mr. Sinclair, I am asking you a question, please: Don't you recall now the testimony that you gave before this subcommittee yesterday with regard to the conversation you had with Mr. Arthur W. Cutten in Chicago last Saturday?

Mr. SINCLAIR. Do you wish me to repeat that testimony?

Mr. PECORA. No. I haven't asked you to repeat it. Do you recall it?

Mr. SINCLAIR. I recall that I gave testimony on it on yesterday; yes.

Mr. PECORA. Do you recall what testimony you gave on that subject?

Mr. SINCLAIR. I could not say that I do.

Mr. PECORA. Is your memory that poor?

Mr. SINCLAIR. Well, I shouldn't say that.

Mr. PECORA. Well, now, on yesterday you gave certain testimony about a conversation you had on last Saturday with Mr. Cutten in Chicago. Have you forgotten the details of the testimony you gave yesterday on that subject?

Mr. SINCLAIR. Well, I can repeat the testimony by referring to it, but I could not repeat it otherwise. If you will ask me a question and let me refresh my mind I will tell you exactly.

Mr. PECORA. Would you have to refer to the stenographic record of your testimony given on yesterday in order to be able to recall what you then said?

Mr. SINCLAIR. In order to repeat what I then said; yes.

Mr. PECORA. Not to repeat it. What do you mean by repeating it; repeating it verbatim?

Mr. SINCLAIR. Yes. That is what I assume you wish, isn't it?

Mr. PECORA. I haven't asked you anything about repeating that testimony. I simply asked you if you recall it.

Mr. SINCLAIR. I recall testifying.

Mr. PECORA. Do you recall what testimony you then gave?

Mr. SINCLAIR. I will repeat it. [Turning to stenographic transcript.]

Mr. PECORA. No; my question is: Can you recall it without refreshing your recollection?

Mr. SINCLAIR. I cannot.

Senator COUZENS. There is no necessity of his reading over what he testified about on yesterday, is there, Mr. Pecora?

Mr. PECORA. No. Now, Mr. Sinclair, what purpose did you have in asking Mr. Walker and Mr. Marston to come to your home in New York City last Sunday afternoon?

Mr. SINCLAIR. I wished to discuss this syndicate situation, in trying to refresh my mind about the details.

Mr. PECORA. Was there any particular phase of it that you wanted to refresh your mind about?

Mr. SINCLAIR. Not any particular thing, but I wanted to refresh my mind about the entire thing.

Mr. PECORA. Did you succeed in refreshing your mind about the entire operations of the syndicates?

Mr. SINCLAIR. I could not say that. I endeavored to refresh my mind as much as possible.

Mr. PECORA. Did you refresh your mind by asking Mr. Walker to tell you why he gave Mr. Fitzpatrick that 2½ percent of the profits?

Mr. SINCLAIR. I did not.

Mr. PECORA. Didn't you think it was necessary to do it?

Mr. SINCLAIR. I suggested to Mr. Fitzpatrick that he repeat, or that he tell Mr. Walker what he had told me in Excelsior Springs.

Mr. PECORA. And when Mr. Fitzpatrick proceeded to do that, or before he proceeded to do that, I mean to do that on your suggestion, you left the room while he did it?

Mr. SINCLAIR. Well, I was in and out of the room.

Mr. PECORA. Do you say you left the room at that particular time?

Mr. SINCLAIR. Perhaps not at that moment.

Mr. PECORA. At any rate, you were not in the room when Mr. Fitzpatrick, acting upon your suggestion, repeated to Mr. Walker the reason that he understood for his having been given that 2½ percent of the profits?

Mr. SINCLAIR. I don't think I was.

Mr. PECORA. Now, you utterly failed to ask Mr. Walker for the reason, didn't you?

Mr. SINCLAIR. I did not ask Mr. Walker for the reason.

Mr. PECORA. And he did not volunteer to give it to you?

Mr. SINCLAIR. He did not.

Mr. PECORA. Have you since had any communication with Mr. Walker?

Mr. SINCLAIR. I have not.

Mr. PECORA. Or with Mr. Marston?

Mr. SINCLAIR. I have not.

Mr. PECORA. Or with Mr. Fitzpatrick?

Mr. SINCLAIR. I have not.

Mr. PECORA. Now, I will ask if Mr. Fitzpatrick is present in the hearing room. [A pause, without response.]

Mr. SINCLAIR. Just a moment. [After consulting with his counsel.] I spoke to Mr. Fitzpatrick last night; yes.

Mr. PECORA. What was that?

Mr. SINCLAIR. I talked to Mr. Fitzpatrick after he came in last night.

Mr. PECORA. At your hotel here in Washington?

Mr. SINCLAIR. At his hotel; yes.

Mr. PECORA. Did these attorneys, namely, Mr. Stanford, Mr. Ragland, and Mr. Moore, come to your home on Sunday afternoon last on their initiative or upon your request?

Mr. SINCLAIR. Upon my request.

Mr. PECORA. And what purpose did you have in asking them to do that?

Mr. SINCLAIR. To discuss this matter.

Mr. PECORA. How long did your discussion with all these gentlemen last on Sunday afternoon?

Mr. SINCLAIR. These gentlemen were at my home, some of them perhaps coming at 5 o'clock and perhaps leaving at 12 o'clock or 1 o'clock, and some of them left and came back, and some of them left and did not come back.

Mr. PECORA. Did any of them say to you, Mr. Sinclair, that you probably would be examined upon your appearance before this committee with respect to the money that was given to Fitzpatrick?

Mr. SINCLAIR. I do not think so.

Mr. PECORA. Was there a copy of the testimony that had previously been given before this committee by other witnesses concerning these two syndicates, the purchasing syndicate and the trading syndicate, at your home last Sunday afternoon?

Mr. SINCLAIR. It was not. I understand Mr. Ragland to say he had one, but I did not.

Mr. PECORA. At your home?

Mr. SINCLAIR. He says so.

Mr. PECORA. Were any references made to it in the course of any conversations that were there held?

Mr. SINCLAIR. Not that I know of.

Mr. PECORA. I will ask that Mr. Fitzpatrick be called to the stand, and I will suspend temporarily with the examination of Mr. Sinclair.

Mr. SINCLAIR. Shall I retire, or shall I stay here?

Mr. PECORA. Just temporarily.

The CHAIRMAN. Just sit anywhere you like.

(The witness was temporarily excused.)

**TESTIMONY OF WILLIAM SAMUEL FITZPATRICK, VICE CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CONSOLIDATED OIL CO.**

The CHAIRMAN. Do you, Mr. Fitzpatrick, solemnly swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FITZPATRICK. I do.

Mr. PECORA. What is your full name, Mr. Fitzpatrick?

Mr. FITZPATRICK. William Samuel Fitzpatrick.

Mr. PECORA. What is your business?

Mr. FITZPATRICK. Well, I have been in the oil business for a good many years.

Mr. PECORA. What is your present business?

Mr. FITZPATRICK. My present position is vice chairman of the executive committee of the Consolidated Oil Co.

Mr. PECORA. When did you become the vice chairman of the executive committee of that company?

Mr. FITZPATRICK. Very soon after the 1st of April 1932.

Mr. PECORA. Was that shortly after there had been a consolidation effected between the Sinclair Consolidated Oil Corporation and the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. At the time of that consolidation and for some time prior thereto were you associated with the Prairie Oil & Gas Co.?



Mr. FITZPATRICK. I came to the Prairie Oil & Gas Co. in 1908, and continued in one capacity or another with the Prairie Oil & Gas Co. down to the time that it was taken over by the Consolidated.

Mr. PECORA. Were you during any part of that period an officer or director of any other corporation engaged in any phase of the oil business?

Mr. FITZPATRICK. None except a few smaller concerns that were largely owned or that the Prairie Oil & Gas Co. had a large interest in.

Mr. PECORA. Was the Prairie Pipe Line Co. one of them?

Mr. FITZPATRICK. No.

Mr. PECORA. Were you connected with that corporation?

Mr. FITZPATRICK. Not officially.

Mr. PECORA. Were you through any community of interest between the corporations that you were connected with in that corporation?

Mr. FITZPATRICK. No; except that the owners of about 60 percent of the stock in one company owned stock in the other; and in one company, I don't know which one it was, it was 65 percent, about.

Senator COUZENS. Were the Rockefellers interested in the Prairie Co.?

Mr. FITZPATRICK. Both companies.

Senator COUZENS. Both the pipe line and the oil company?

Mr. FITZPATRICK. Yes, sir.

Senator COUZENS. Did they have a controlling interest?

Mr. FITZPATRICK. No, sir.

Senator COUZENS. Do you know the percentage of interest which they had?

Mr. FITZPATRICK. Only approximately. I think they had about 22 or 23 percent of the Oil and about 20 percent of the Pipe.

Mr. PECORA. Does not that represent a management control for all practical purposes?

Mr. FITZPATRICK. I do not know what you mean by "practical purposes", Mr. Pecora.

Mr. PECORA. For purposes of operation of the company.

Mr. FITZPATRICK. The stock represented by the Rockefellers and their friends, the trusts and people that had been formerly associated with the old gentleman in years gone by, or their relatives, had, as I remember it, something like 40 or 42 percent.

Senator COUZENS. Who represented the Rockefellers in the management?

Mr. FITZPATRICK. Well, I don't know that anybody represented the Rockefellers exactly. I came as near it, I presume, as anybody.

Senator COUZENS. You were representing them on the board of directors?

Mr. FITZPATRICK. I was always elected on the board of directors with the proxies that they sent in and the others.

Senator COUZENS. So you were always looked upon as a Rockefeller man?

Mr. FITZPATRICK. I could not say how I was looked upon.

Senator COUZENS. I mean, the testimony indicated yesterday that you had been with the Rockefellers very many years.

Mr. FITZPATRICK. I went with the Prairie Oil & Gas Co. in 1908. I was first employed as an attorney in a suit that was pending in Kansas, brought by the attorney general to forfeit the charter of the Prairie Oil & Gas Co. and the Standard Oil Co. of Kansas, and withdraw or cancel the permit of the Standard Oil Co. of Indiana to do business in the State of Kansas under the antitrust laws of that State. After some 6, maybe 9, months in the progress of that case I was invited to devote my entire time to the Prairie Oil & Gas Co. as its general counsel.

Mr. PECORA. In the midst of this litigation that had been instituted by the State?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you prior to that time represented the State?

Mr. FITZPATRICK. No.

Mr. PECORA. Oh. I misunderstood you.

Senator COUZENS. No.

Mr. FITZPATRICK. I had never represented the State in any capacity.

Mr. PECORA. I misunderstood you.

Mr. FITZPATRICK. I was a practicing attorney in a little country town in Kansas. I was invited to take the position as general counsel for the Prairie Oil & Gas Co., and my service began on the 1st day of August 1908. I continued in that capacity for several years. In 1915 when the Prairie Pipe Line Co. was organized out of a part of the assets of the Prairie Oil & Gas Co., and the stock issued in the Prairie Pipe Line Co. was distributed to the different stockholders of the Prairie Oil & Gas Co. as a dividend, I became vice president of the Prairie Oil & Gas Co. and continued as general counsel for a year or two, until I was able to find somebody that I wanted to take my place and turn the legal affairs of the company over to.

From that time on I was entirely devoted to the business of the Prairie Oil Co.; the Prairie Pipe Line Co. having been created out of the assets of the Prairie Oil & Gas Co. due to a decision of the Supreme Court requiring them to engage in the transportation business as a common carrier, which had not been the original plan or practice, and we did not want the two accountings to get mixed up and thought we had better operate the pipe line as a common carrier in accordance with the law by a separate corporation, and that was done. After that time, down to the close of its business, the Prairie Oil & Gas Co. was by far the largest shipper over the Prairie Pipe Line. They rented offices in our building and our contacts were daily. Our relations were cordial and helpful, and if I had any influence or anything to do with the Prairie Pipe Line Co. it was through those relations, not in any official capacity.

Mr. PECORA. Mr. Fitzpatrick, it was testified to yesterday by Mr. Sinclair that negotiations for the consolidation of the Sinclair Consolidated Oil Corporation and the Prairie Oil & Gas Co. had been pending, on and off, for a period of about 5 years prior to their consummation in March 1932. Does that accord with your recollection?

Mr. FITZPATRICK. March 1932? My recollection is, and I am quite sure it is correct, that early in 1928 some of the trusts to which

Mr. Rockefeller had given stock in the Prairie Oil and Prairie Pipe were about to be wound up, and Mr. Rockefeller's office force, whoever was looking after it, I don't know, decided that it would not be a proper thing for Mr. Rockefeller to acquire those stocks from those trusts, and they sold or, as I understood, had arranged to sell to Blair & Co. those stocks which amounted to about half of what we called and regarded as the Rockefeller holdings in our company.

Mr. PECORA. Were those trusts designated? What were the names of those trusts?

Mr. FITZPATRICK. Oh, the Rockefeller Foundation for Medical Research—I don't remember the names of them; but there were 3 or 4 or 5 of them. They took about half of the Rockefeller influence out of the stock ownership and passed it to hands that I had no connection with, more than just a passing acquaintance with. I was curious to know what it meant to me and to the boys that had worked with me in building this company, more particularly on my own account, because I was reaching an age under the plan for retirement of officers and employees of the company which was adopted before I became an officer of the company or a director, even.

Mr. PECORA. Did you feel that the disposal of those holdings by the Rockefeller trusts imperiled your tenure as an officer of the company?

Mr. FITZPATRICK. I was concerned, and I took the first opportunity—I don't remember when it was; I think it was in February or March 1928—I took the first opportunity I had to inquire, and was told in Mr. Rockefeller's office in New York that these people would probably make a market or find a market for these shares. They did not suppose, I think was the way he put it, that they were permanently investing in those oil companies, and they had arranged with those people to, as they called it, do something for me.

The CHAIRMAN. What do you mean by "those people"? Blair & Co.?

Mr. FITZPATRICK. I meant Mr. Cutler in Mr. Rockefeller's office.

Mr. PECORA. Who told you that somebody connected with the Rockefellers had arranged to do something for you?

Mr. FITZPATRICK. Mr. Cutler told me.

Mr. PECORA. What was his relationship?

Mr. FITZPATRICK. He told me he had done it.

Mr. PECORA. Did he tell you how?

Mr. FITZPATRICK. No; he did not tell me how or what. They were to give me some sort of an interest or a profit or participation in the profits they made in handling this stock, is what I understood it to be.

Mr. PECORA. Which stock are you referring to?

Mr. FITZPATRICK. I am talking about the Prairie stock, the Prairie Oil and the Prairie Pipe. At that time there was no thought, so far as I knew, of a consolidation with Sinclair.

Mr. PECORA. As you recall it, when, for the first time, was there ever any discussion about consolidation with the Sinclair Co.?

Mr. FITZPATRICK. Some months later.

Mr. PECORA. In 1928?

Mr. FITZPATRICK. In the early part of 1928.

Mr. PECORA. Did the Rockefellers do something for you in the manner that you have indicated Mr. Cutler said they would?

Mr. FITZPATRICK. Later on I was talking to Mr. Marston, of Blair & Co., and I don't know whether he brought the subject up or whether I did, but one or the other of us—the subject was talked of and I said, "What do you mean?" He says, "Carry you; have an interest in the profits we make on whatever distribution we make of this stock." Then I said, "What interest? How do you mean?" I am quite sure I explained to him that I did not want to incur any indebtedness; and he said, "No; carry you for a share of the profits." I said, "What share? How?" He said, "I presume, about 10 percent." Then later on I was told, I think, by Mr. Cutler, that they did not know whether the deal with Blair & Co. would go through or not; that they were kind of wobbling on it. They thought they had an understanding and a price fixed, but there was some misunderstanding about it, and that he told them to take it or not, if they wanted to. Later on I learned that they did take it and at a different figure.

Mr. PECORA. Out of what deal were those profits to be realized of which you would be given a 10 percent share?

Mr. FITZPATRICK. Out of whatever share Blair & Co. got of the stock they purchased from the Rockefeller trusts.

Mr. PECORA. Did you ever receive those profits?

Mr. FITZPATRICK. Yes.

Mr. PECORA. From whom?

Mr. FITZPATRICK. From Blair & Co.

Mr. PECORA. Amounting to how much?

Mr. FITZPATRICK. I think the first payment was \$130,000 and the next was nineteen something, a year or so later.

Mr. PECORA. Were those profits realized out of any transaction involving purchase by a syndicate of 1,130,000 shares of the capital common stock of the Sinclair Consolidated Oil Corporation?

Mr. FITZPATRICK. Not those.

Mr. PECORA. What is that?

Mr. FITZPATRICK. Not that \$130,000.

Mr. PECORA. That was something wholly apart from any profits you received from the operations of a syndicate that was formed to purchase 1,130,000 shares of the Sinclair Co.?

Mr. FITZPATRICK. Apart from the operations of the so-called "Cutten syndicate."

Mr. PECORA. So that the promise made to you by Mr. Cutler some time in 1928, in the early part of that year, in behalf of the Rockefellers, was redeemed when they paid you these profits of around \$130,000 out of some deal involving stock of the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. The \$130,000 was approximately 2½ percent. They had some settlement to make, and finally paid me a little more; but it was approximately 2½ percent of the profits that were made on the shares of Prairie stock that was purchased by Blair & Co. from the Rockefellers, instead of 10 percent. And the other participation in the Cutten syndicate was arranged without suggestion

from me or without any knowledge on my part until I was asked if I would be satisfied with it; if that would suit me. Now, why they did it you will have to ask them. As far as I was concerned, it was something that I thought Rockefellers had arranged for me in view of the more than 20 years' service I had rendered the company in maintaining its charter rights in the State. I had represented it before every committee of Congress and every legislative or official body that it was attacked by—and it was being attacked.

Newspapers were just as good to it then as they are to me now in this thing. The name "Rockefeller" and the name "Standard Oil" were not real good in Kansas and Oklahoma at that time. But I went along with it for over 20 years, and when we quit it was good; and not only was it good, but we had taken the 10½ million dollars originally invested in those two companies and made of it a property that entitled us to 8 million out of the 14 million shares of the Consolidated stock; and in the meantime we had paid to the stockholders over \$225,000,000 in cash dividends. I thought the Rockefellers, knowing that I had helped them all and lived with it day and night for those 20 years and attended to that business and neglected my own to the point that if I were to drop dead my family would not have more than 50 or 60 thousand dollars out of the savings I had made out of my salary at that time, and they wanted to do something for me. That is what they gave me to understand, and that is the way I did understand it and the way I understood it from Blair & Co.

Senator TOWNSEND. Whom do you mean by "they"?

Mr. FITZPATRICK. The Rockefellers—some of them; I do know who. Mr. Cutler was the man I knew.

Mr. PECORA. It is fair to assume that during the 20 years of service you rendered to those oil interests in the Prairie companies that you were compensated for those services currently?

Mr. FITZPATRICK. I was compensated with a salary, sometimes a pretty small salary. When it was disclosed here before some Senate investigation, the salaries that other companies were paying—mine was a mighty small salary compared to those.

Mr. PECORA. How small was it at its highest point?

Mr. FITZPATRICK. \$60,000, finally. It started at \$4,800.

Mr. PECORA. And went up to \$60,000?

Mr. FITZPATRICK. It gradually grew to that, without my ever asking anybody for an advance in salary or a promotion.

Mr. PECORA. Is it also fair to assume that you might have had interests as a stockholder during those 20 years from which you received part of the two hundred and odd millions of dollars that you say was paid out to stockholders?

Mr. FITZPATRICK. Very small. I had a little stock. I didn't own a share of stock until I was elected and went on the board of directors. The company loaned me the money to buy the first two shares that I bought to qualify me as a director.

The CHAIRMAN. What salary do you receive now as vice chairman?

Mr. FITZPATRICK. \$58,000.

The CHAIRMAN. What salary does Mr. Sinclair receive?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Mr. Fitzpatrick, about when were negotiations first commenced, as nearly as you can recall it now, looking toward the consolidation of the Sinclair Co. with the Prairie Co.?

Mr. FITZPATRICK. Some time in the late spring or early summer of 1928. Blair & Co., soon after they got, as I supposed, into it—the stock was not transferred at the time on our records, but my understanding was that they had made arrangements to purchase or had purchased it, but I did not know it. But the question was asked me by either Blair & Co. or Mr. Rockefeller's office, I don't remember which, what I thought of such a consolidation.

Mr. PECORA. Prior to the time when the Rockefeller interests, represented by these trusts, such as the Rockefeller Foundation for Medical Research, disposed of their holdings in the Prairie Oil Co., did Blair & Co. have anything to do with the Prairie Oil & Gas Co. or any of its affiliates?

Mr. FITZPATRICK. No.

Mr. PECORA. Did they have anything to do at that time with the Sinclair Consolidated Oil Corporation; do you know?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Is it your understanding that Blair & Co., either on behalf of themselves or for clients, purchased the holdings of the Rockefeller trusts in the Prairie companies when those trusts disposed of such holdings?

Mr. FITZPATRICK. It is my understanding that they did, but I had no connection with it other than conversations with the interested parties; but it is my understanding that they did buy that stock.

Mr. PECORA. In other words, they bought the Rockefeller interests?

Mr. FITZPATRICK. Yes.

Mr. PECORA. In the Prairie company?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And out of profits which Blair & Co. made through the purchase of that Prairie Oil stock did they pay you this sum of about \$130,000?

Mr. FITZPATRICK. That is my understanding.

Mr. PECORA. How did that operate? How was that any redemption of the promise or assurance that Mr. Cutler had given you in behalf of the Rockefellers that they, the Rockefellers, would do something for you?

Mr. FITZPATRICK. No; it was never suggested that the Rockefellers would do anything for me. It was suggested only that the Rockefellers had asked or suggested or required—I don't know—but had arranged with Blair & Co. to do it.

Mr. PECORA. Did Mr. Cutler tell you that that had been done?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Do you recall anything about the formation of a syndicate some time late in 1928 to purchase 1,130,000 shares of the common stock of the Sinclair Consolidated Oil Corporation?

Mr. FITZPATRICK. I know nothing about it except that I heard these gentlemen talking, that it had been done; that is all.

Mr. PECORA. When did you first learn that it had been done, Mr. Fitzpatrick? For the purpose possibly of enabling you to recall the time, let me say to you that from the evidence before this committee the firm agreement that was entered into between the Sinclair Con-

solidated Oil Corporation and that purchasing syndicate was made on October 24, 1928.

Mr. FITZPATRICK. Well, I know that I had heard about it at that time or about that time. I think I had heard that such a thing was probable, that it was practically arranged some days before it was actually consummated.

Mr. PECORA. At that time, Mr. Fitzpatrick, was the Prairie Oil & Gas Co., of which you were the executive head, as I understand it, a competitor of the Sinclair Co. in the producing field of the oil business?

Mr. FITZPATRICK. We both produced oil and we both sold oil. Sinclair—I don't know whether he ever sold any oil or not, Mr. Pecora, but he had a refinery that used the oil he produced. But we were competitors in the sense of acquiring leases. Our men were out after leases, and, really, I think that after that competition was over there was very little real competition between our companies. There was no community of interest, but Mr. Sinclair did not buy oil from the same properties that we did, same producers, and he did not sell oil or try to sell oil as far as I know to any of the companies that depended on us for supply.

Mr. PECORA. Do you recall in what manner and through what channels you first learned of the negotiations that culminated in the agreement of October 24, 1928, between the Sinclair Co. and this purchasing group?

Mr. FITZPATRICK. As I remember it, Mr. Pecora, at that time we had just begun to talk about our consolidation. We had agreed that we would agree on a yardstick to measure our producing properties, leases, and other properties that we had in the two companies, of the same kind. For instance, the same value on leases in certain localities that the Prairie had; where Sinclair had leases in the same locality, the same yardstick should be used in determining the value of them. The same was true of our producing properties, the production we had; the same basis per barrel or per acre, or if any other basis should be applied. They had refineries and we had none, and we had some gas properties or interests in some gas properties, and they had none. They had ships and we had none. Those things it was agreed should be surveyed and appraised by competent persons employed by mutual consent, and we were to accept their appraisals.

That was as far as it had gotten except to look over the book accounts. I had had my men come to New York, and I think Mr. Sinclair had had his men look at our books, the books of the company, our statement, to see what our book values of our stock were and some information as to how they were arrived at. And this proposition apparently did not affect that at all except there would be \$33,000,000 more in the till to operate the consolidated company with when we got through with the consolidation, and in connection with that and the effect that it might have on our future consolidation Mr. Sinclair told me that he was negotiating and expected to make a sale of the unissued treasury stock of the Sinclair Co. and get this money in lieu of it.

Now, that is all the way I knew about it, and that is how I came to know about it and that is all I know about it.

Mr. PECORA. Then was the source of your information Mr. Sinclair?

Mr. FITZPATRICK. I am quite sure it was Mr. Sinclair.

Mr. PECORA. Were you invited to become a participant in the purchasing syndicate?

Mr. FITZPATRICK. No; nothing of the kind.

Mr. PECORA. Did Mr. Sinclair say to you in words or substance that he would like to see you participate in any of the profits that might be derived by the purchasing group?

Mr. FITZPATRICK. Of the Cutten Syndicate? No; nor the other.

Mr. PECORA. He merely told you in connection with conversations he had with you at that time about a prospective consolidation of your companies, that an amount of working capital, an additional amount of working capital was sought to be obtained about that time by his company through the issuance and sale of unissued treasury stock?

Mr. FITZPATRICK. Yes.

Mr. PECORA. To an amount of about 33 million dollars?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Is that right?

Mr. FITZPATRICK. That is right.

Mr. PECORA. Did he tell you anything at all about the details of the transaction whereby he in behalf of his company was to dispose of those shares of stock?

Mr. FITZPATRICK. No. The fact of the business is I do not think I knew that he had done that until I read it in the newspapers out at Excelsior Springs.

Mr. PECORA. You mean recently?

Mr. FITZPATRICK. Yes.

Mr. PECORA. It developed very recently?

Mr. FITZPATRICK. Yes; as it developed in the testimony.

Mr. PECORA. And did you read it by way of references to testimony which had been presented to this committee?

Mr. FITZPATRICK. I think Mr. Cutten's testimony gave a list of some participants in that syndicate, and it was published in the Kansas City papers or Chicago papers and I read it there, and that is the first I knew that these other people connected with the Sinclair Co. had anything to do with it or who the actual participants in the syndicate were.

The CHAIRMAN. What was your attitude as an officer of the Prairie Co. toward the consolidation or proposed consolidation with the Sinclair Co.?

Mr. FITZPATRICK. I was at all times favorable to the consolidation, and I had what to me was a very good reason. I would be glad to explain it to the committee if they would care to hear it.

Mr. PECORA. Well, I will come to that eventually. When did you first hear that you were to receive any share of profits which were made by that purchasing syndicate that you now know was formed at that time to buy the 1,130,000 shares of the stock of the Sinclair Co.?

Mr. FITZPATRICK. Some 3 or 4 weeks or a month after the sale had been made.

Mr. PECORA. And who first spoke to you on that subject at that time?



Mr. FITZPATRICK. I think it was Mr. Walker and Mr. Tinker.

Mr. PECORA. Mr. Elisha Walker was then the president of Blair & Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And what relation did Mr. Tinker bear to the transaction so far as you can recall?

Mr. FITZPATRICK. I think he was a participant in the syndicate.

Mr. PECORA. Did they tell you at that time that they were participants in the syndicate that had been organized to purchase this Sinclair stock?

Mr. FITZPATRICK. I am quite sure that they did. I don't remember just what language they employed, but I was given in some way to understand that they were participants in that syndicate—yes; and that they—somebody—had arranged that I should have 2½ percent, along with the 2½ percent in the other syndicate, in lieu of the 10 percent that had been talked of between Mr. Marston and me. Now, how they arranged that I never asked. Nobody ever told me. Why they passed that on to the other syndicate I do not know.

Frankly, gentlemen, I regarded the opportunity to share in those profits as a very fine thing for the Rockefellers to do or arrange for me on account of the services I had rendered, and I had no other idea about it, and I did not care whether it was 300,000—I had no idea it would be anything like that amount of money. I never dreamed that it would be anything like that amount of money. And I did not care how much it was or how it was divided or who got the rest of it or anything about it. I was taking it and making very little inquiry about it.

Mr. PECORA. Did you feel at that time that the Rockefeller interests were under some kind of obligation, moral or otherwise, to give you something additional to the salary you had received for your 20 years' service?

Mr. FITZPATRICK. I did not. I knew that Mr. Rockefeller, according to the press, was giving millions of dollars away to this thing and that thing, and I thought it was a very nice and lovely thing for Mr. Rockefeller to remember a faithful employee, as he seemed to be remembering me.

Mr. PECORA. Now, when Mr. Blair and Mr. Tinker first spoke to you about giving you something out of profits which they expected to make as members of a purchasing syndicate to buy stock from the Sinclair Co. did you consider that they were representing the Rockefeller interests?

Mr. FITZPATRICK. No.

Mr. PECORA. Did you consider that they owed you any obligation whatsoever to give you any moneys, any share of moneys that they made by way of profits or otherwise in any business transactions?

Mr. FITZPATRICK. None whatever, and the thought never occurred to me that they were undertaking or had in mind the imposition of any obligation on me.

Mr. PECORA. No; not an imposition of an obligation on you, but a repayment of an obligation that they might have owed you, morally or otherwise.

Mr. FITZPATRICK. They did not owe me anything. That is one reason why I was so careless, if you please, about inquiring into

their business or how they made this money or where it came from or what they did with this stock.

Mr. PECORA. Did you know of any reason whatsoever why Blair & Co. or Mr. Walker and Mr. Tinker, who then were associated as I recall it with Blair & Co., should have given you any participation in any profits of any kind whatsoever that they had made or were going to make?

Mr. FITZPATRICK. None whatever, except that Mr. Cutler and Mr. Rockefeller's office had told me he had requested them to do that, and Mr. Marston and Mr. Walker seemed to have consented to it and were carrying that out.

Mr. PECORA. When did you get the final payment that went to make up this sum of about \$130,000 that you say you received from Blair & Co. out of some profits they made in the purchase of Prairie Oil stock?

Mr. FITZPATRICK. In 1930.

Mr. PECORA. In 1930?

Mr. FITZPATRICK. Yes; the last of 1930.

Mr. PECORA. When did you receive the first payment out of those profits?

Mr. FITZPATRICK. Some time in 1929.

Senator TOWNSEND. What position did Mr. Cutler occupy, Mr. Fitzpatrick?

Mr. FITZPATRICK. Senator, I do not know what it was. If he had any title I do not know what it is, but he is there and it was he who always asked me how much cash we had and how our business was getting along when I saw him.

Senator TOWNSEND. Does he still occupy the same position now?

Mr. FITZPATRICK. So far as I know he does.

Mr. PECORA. When were these profits made by Blair & Co. out of their transactions in Prairie Oil & Gas Co. stock?

Mr. FITZPATRICK. When were they made?

Mr. PECORA. Yes.

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Your first conversation on the subject was sometime early in 1928, as I understood you before?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you did not receive any—

Mr. FITZPATRICK (interposing). They must have been made in '29 or the latter part of '28. I don't know when they were made. I did not get it until early in the summer of 1929, and I know it was early in the summer, because in August of that summer I took a long trip through the western mountains and it was some time before I started on that trip.

Mr. PECORA. Did you consider that the moneys that you then received out of profits from the Prairie Oil stock transactions that Blair & Co. had made were given to you in fulfillment of what Mr. Cutler had told you in the early part of 1928 the Rockefellers would 'do for you?

Mr. FITZPATRICK. I certainly did.

Mr. PECORA. Did you thank the Rockefellers for it?

Mr. FITZPATRICK. I did.

Mr. PECORA. By letter?

Mr. FITZPATRICK. No.

Mr. PECORA. Whom did you thank?

Mr. FITZPATRICK. Mr. Cutler.

Mr. PECORA. And did he accept the thanks in the supposition on your part that he or the Rockefeller interests had paid you those moneys?

Mr. FITZPATRICK. I gathered from the way he accepted my thanks that he was very delighted, very glad that I was pleased with the arrangement and that it was profitable to me.

Mr. PECORA. Now tell us all that you recall concerning what either Mr. Walker or Mr. Marston or Mr. Tinker said to you about giving you a share of profits which they hoped to realize as members of the purchasing syndicate by this large block of stock from the Sinclair Co.

Mr. FITZPATRICK. Well, I don't remember any particular conversation, except that Mr. Walker always seemed to know, take that for granted, seemed to understand that I was to have something out of it. I had only two conversations with Mr. Marston that I have been able to recall since this matter came up here. Once when we were talking about his promising Mr. Cutler to take care of me, as they called it, in which he said—and I asked him what he meant by taking care of me and he said "Carry me for an interest", and I said, "What interest?" and he said "10 percent", as I remember it. I am quite sure I am right about it.

And then I was told that I was to be carried for a 2½ percent interest in both the syndicates, and I met Mr. Marston one day in his office and jokingly asked him how he came to cut it down from 10 to 2½, and he said, "Well, it gives me a better play", and I think he used the word "play", because one syndicate might flop, another syndicate might make some money, and that the 2½ in the whole thing if it all went good was about what my participation in the one would be.

Mr. PECORA. Did you understand from what Marston or Walker or Tinker told you about the purchasing syndicate in the Sinclair stock that the Rockefeller interests had anything to do with that syndicate?

Mr. FITZPATRICK. I understood they did not have anything to do with the Sinclair syndicate.

Mr. PECORA. Then why did you think, or did you think that you were morally or otherwise entitled to receive any share of the profits that accrued to interests other than the Rockefeller interests from the Sinclair purchasing syndicate?

Mr. FITZPATRICK. I did not consider that I was morally or otherwise entitled to participate in the Sinclair syndicate, but I supposed that Blair & Co., in the keeping of their promise to Mr. Rockefeller's representative, had decided to do it that way. There was no moral obligation. There was no expectancy that I could see why I should participate in the Sinclair syndicate, and I did not participate in it except when Blair & Co. handed me the checks or the money for that participation I took the \$200,000 of it and went and paid a note and left \$100,000 of it on deposit with them.

Mr. PECORA. The amount you received was something over \$300,000, was it?

Mr. FITZPATRICK. What is that?

Mr. PECORA. The amount you received out of the profits accruing to the purchasing syndicate in the Sinclair stock was something over \$300,000?

Mr. FITZPATRICK. I think it was.

Mr. PECORA. It was slightly in excess of that?

Mr. FITZPATRICK. I think it was exactly 300. I am not quite sure, but that is my recollection.

Mr. PECORA. Did any of those gentlemen tell you the nature of the syndicate, the purchasing syndicate for the Sinclair stock, or give you any of the details?

Mr. FITZPATRICK. No.

Mr. PECORA. Give you any information at all about it?

Mr. FITZPATRICK. No. I never got any information about the details of it or the contract or anything that was in the contract until several years later.

Mr. PECORA. You knew that the profits were going to be made in transactions dealing with the Sinclair Co. stock?

Mr. FITZPATRICK. I understood that on the part of these people the purpose of the purchase was to make some money.

Mr. PECORA. By trading in the stock of the Sinclair Co.?

Mr. FITZPATRICK. Well, I presumed so. Nobody told me that, but I presumed it. I did not know much about trading. I never had an account, a trading account with a broker, in my life. I never had bought any stock that I did not want my banker to buy through his broker, when I had money enough to pay for it.

Mr. PECORA. You mean to say that nobody told you that this purchasing syndicate was to deal in the stock of the Sinclair Co. when you were first told by anybody that you were to receive a share of the profits therefrom?

Mr. FITZPATRICK. Oh, there was—I don't mean to say nobody told me that. My understanding was that they would, but I cannot say that anybody told me that way.

Mr. PECORA. Was it your understanding that the profits were to be realized out of transactions in the common stock of the Sinclair Co.?

Mr. FITZPATRICK. Sure. Sure. So far as I knew, that was all that was involved in the deal.

Mr. PECORA. You may or may not know it, but Mr. Sinclair yesterday referred to your receiving that \$300,000 as a "pretty soft thing." You would not dispute him in that respect, would you?

Mr. FITZPATRICK. I certainly would not. [Laughter.] I so regarded it myself.

Mr. PECORA. Have any other "soft things" of that same character come your way?

Mr. FITZPATRICK. Never have.

Mr. PECORA. You accompanied Mr. Sinclair to Excelsior Springs from Chicago some 2 or 3 weeks ago, didn't you?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And you remained with him there for a period of about 2 weeks?

Mr. FITZPATRICK. I remained with him there until he left. We got in there on Saturday and we left Friday, I think.

Mr. PECORA. The following Friday?

Mr. FITZPATRICK. No; week from the following Friday.

Mr. PECORA. During that time did you discuss with him the testimony given by Mr. Arthur W. Cutten before this committee just prior to your going to Excelsior Springs with Mr. Sinclair?

Mr. FITZPATRICK. I think I did. We talked about it. We had the papers there and read about it, and then I think he told me that Mr. Stanford, his attorney, called him up and told him that you folks were raising hell about it. [Prolonged laughter.]

Mr. PECORA. Well now, after Mr. Stanford gave you that interesting bit of information did you get into a huddle with Mr. Sinclair about Mr. Cutten's testimony and our hell-raising?

Mr. FITZPATRICK. No. We did not get into a huddle. Mr. Sinclair was a very sick man when he went there, and from day to day I went to his room and we talked about it. No huddle on it at all. We were there together, and when I learned that somebody was raising hell about me I suggested that I get on the train and come down here and see what it was all about, and Mr. Sinclair was running a temperature at that time, the doctor said it would be very dangerous for him to leave, and he says, "I will go to", and I said, "No, you can't go. You stay here and get well. Get yourself on your feet before you go." And I stayed with him.

Mr. PECORA. Did you indicate to anybody connected with the committee that you would come in here to testify?

Mr. FITZPATRICK. No; I did not indicate to anybody. I arranged to get copy of Mr. Cutten's testimony and thought I would look that over before I made up my mind that there was anything for me to shoot about.

Mr. PECORA. Did Mr. Cutten's testimony enlighten you very much about the transaction?

Mr. FITZPATRICK. I have not read it yet. [Laughter.]

Mr. PECORA. When did you get it?

Mr. FITZPATRICK. Well, it was to have reached my office yesterday, but when I got word to come over here it had not arrived.

Mr. PECORA. Did you discuss or did you tell Mr. Sinclair while you were out at Excelsior Springs with him the circumstances under which you understood you got that \$300,000?

Mr. FITZPATRICK. I think I told Mr. Sinclair just exactly what I told you gentlemen and every bit of it.

Mr. PECORA. About in the same detail as you told us this morning?

Mr. FITZPATRICK. About in the same detail and just about the same amount.

Mr. PECORA. That is all, Mr. Fitzpatrick.

Mr. FITZPATRICK. Now, I am not testifying by advice of counsel, but Mr. Stanford called my attention to something he says is a discrepancy in my testimony. If it is I want to—this note is handed me: "At one place in your testimony you said that Rockefellers were selling their interests in the Prairie Oil & Gas Co., and the Prairie Pipe Line Co." Now, if I said that I meant that they were selling these trusts that—

Mr. PECORA (interposing). I think you made that clear.

Mr. FITZPATRICK. I meant that they were selling the shares that were held by these trusts they were looking after and responsible

for and created. The stock that Mr. Rockefeller held in the Prairie Oil & Gas Co., 254,000 shares at that time, was not disturbed at all, and I was told at their office that they did not intend to dispose of them.

The CHAIRMAN. That afterwards went into the Consolidated arrangement with the Sinclair?

Mr. FITZPATRICK. Yes. That afterwards went into the Consolidated, along with some additional shares. I do not remember how many.

The CHAIRMAN. How much stock do you own in the Consolidated?

Mr. FITZPATRICK. How much stock do I own now in the Consolidated Oil Co.?

The CHAIRMAN. Yes.

Mr. FITZPATRICK. Ten thousand shares.

Mr. PECORA. Mr. Fitzpatrick, when did you first become a stockholder of the Sinclair Consolidated Oil Corporation?

Mr. FITZPATRICK. About 1929. I arranged for some stock in the Consolidated Oil Co. in 1928.

Mr. PECORA. To what extent?

Mr. FITZPATRICK. I think it was about 9,000 shares.

Mr. PECORA. Did you acquire it in 1928?

Mr. FITZPATRICK. I bought it in 1928 from this syndicate.

Mr. PECORA. From which syndicate?

Mr. FITZPATRICK. From Mr. Walker and Mr. Tinker. I understood it was to be some of this syndicate stock.

Mr. PECORA. That is, some of the stock which the purchasing syndicate bought directly from the Sinclair Co. in 1928?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Some of this 1,130,000 share block?

Mr. FITZPATRICK. Yes.

Mr. PECORA. At what price did you acquire those 9,000 shares?

Mr. FITZPATRICK. \$30.

Mr. PECORA. At \$30?

Mr. FITZPATRICK. Yes; and I paid for it with Prairie Oil & Gas Co. stock at \$50.

The CHAIRMAN. That had nothing to do with that \$200,000 note?

Mr. FITZPATRICK. No connection with it at all.

Mr. PECORA. Did you dispose of those 9,000 shares, if that was the number of Sinclair Consolidated Oil Corporation stock, at any time during the following year?

Mr. FITZPATRICK. No. I bought more Sinclair during the following year, and did not dispose of any of it until 1930. I sold 4,000 shares in 1930 because I needed it. My income tax on this \$400,000 was so very much I had to sell something to pay it.

Mr. PECORA. Did you have any controversy or contention with the Internal Revenue department in 1929 concerning this transaction whereby you acquired these 9,000 shares of the Sinclair Corporation?

Mr. FITZPATRICK. I have a case now pending before the Board of Tax Appeals, where they insist that I owe the Government some \$6,000 to \$8,000, because the stock that I arranged to buy in 1928 with Mr. Walker and Mr. Tinker was not actually delivered until 1929, and they claim that the Prairie stock which I traded for it—they know what that cost me. They claim that I made a profit on

the disposition of that Prairie stock because at the date that the banker with whom my shares were deposited as collateral actually accomplished the exchange, the stock was selling for \$39 a share.

Mr. PECORA. That was the Sinclair stock?

Mr. FITZPATRICK. Yes. The Sinclair stock was selling for \$39 a share, and they say that that was the market value of that stock in the transaction dated that date, and it had no relation to the agreement in 1928, when the exchange was agreed on, and that, therefore, I owe the Government some tax, and we are fighting about that.

Mr. PECORA. Was it \$39 a share or \$42 a share that the Internal Revenue Bureau claimed the Sinclair stock was worth?

Mr. FITZPATRICK. \$39.

Mr. PECORA. Was it your contention that that \$39 was not its true value, because that value had been created in the market by manipulation?

Mr. FITZPATRICK. My contention—my suspicion is very largely that way.

Mr. PECORA. Did you so inform the authorities of the Internal Revenue Department?

Mr. FITZPATRICK. I informed the authorities in the Internal Revenue Bureau that it was a firm price that I paid for that stock. I am quite sure Mr. Walker and Mr. Tinker would have sold me this stock at that price.

Mr. PECORA. At \$30?

Mr. FITZPATRICK. At \$30. But I did not have the money to pay for it, and I did trade the Prairie stock for it on that basis, 3 shares of Prairie for 5 shares of Sinclair.

Mr. PECORA. Consolidated?

Mr. FITZPATRICK. Sinclair, it was at that time—Sinclair Consolidated.

Mr. PECORA. How was this price of \$30 a share fixed between you and the gentlemen from whom you bought those 9,000 shares?

Mr. FITZPATRICK. They said that that is what they were paying for it, and they would pass it on to me. I have contended with the Internal Revenue Department that the sale of a block of 1,000,000 shares to a man who had the money and was willing to pay that much for it, \$30 a share for it—a sale made by a corporation and approved by its board of directors, that knew all about the value of its stock, was better evidence as to the value than the up and down fluctuations on the market.

Mr. PECORA. I understood you in the course of your testimony before to say that you did not learn any of the details of the purchase of that block of 1,130,000 shares by the purchasing syndicate until long after.

Mr. FITZPATRICK. My dear sir, I said in the beginning that I did learn that \$30 a share was the price at which that stock was sold, because that entered into the question I was considering, and the only question I was considering, as to how much money would be in the Sinclair till when we got hooked up with them.

Mr. PECORA. Then the following year, 1929, when the exchange was effected by the actual delivery to you of the Sinclair stock, the revenue authorities sought to assess a tax upon you on the theory that you had made a profit upon that exchange of your Prairie Oil stock

for the stock of the Sinclair Co., and that the Sinclair Co.'s stock had a value of \$39 a share instead of \$30.

Mr. FITZPATRICK. That was their contention.

Mr. PECORA. That was their contention?

Mr. FITZPATRICK. Yes.

Mr. PECORA. And your reply, among other things, to that contention was that the \$39 valuation was not a true valuation because it had been established as a result of market manipulation, or words to that effect.

Mr. FITZPATRICK. Of course, Mr. Pecora, I had no idea that this was the trial of my tax case.

Mr. PECORA. But I am asking now what you told the Internal Revenue authorities about the price of \$39 a share being, not the true value, but the result of market manipulation. This is specifically an inquiry into that, among other things.

Mr. FITZPATRICK. I told them that it was wrong. I told them, in the first place, that the price at which I got that stock was fixed just as firmly by the agreement between us as anything could be fixed. The exchange could not be made at that particular day because I do not know whether they had the stock. I do not know whether it had been issued to them by Sinclair or not, but they did not have it with them, and I did not have the stock with me that I was exchanging for it, and I had to go to my banker when I found out where they wanted the exchange accomplished, and I was directed to send my shares to Blair & Co., and they would effect the exchange. I went over across the street to the bank and told my banker what I had done, and that I wanted him to do it. He comes along on the 1st of February, as the record shows, with a letter to Blair & Co. asking them to make the exchange as per my directions, and the exchange was made, I think, on the 28th of February. In the meantime the market was going up and down, and I insisted, and am insisting, and shall insist that the 1,000,000-share transaction, at the time I was making my trade, is better evidence as to the value of that stock than the way they handle things on the New York Stock Exchange.

Mr. PECORA. But didn't you tell the revenue authorities specifically, and in substance, that the market valuation of \$39 a share which they assumed was the value of that Sinclair stock that you received in exchange for your Prairie stock, was not to be accepted, and should not be accepted as the actual value of the stock, because that valuation, that market valuation of \$39 a share, had been established by means of the Cutten pool and its market manipulations?

Mr. FITZPATRICK. If I put that argument forward, it was an argument. I was not under oath.

Mr. PECORA. Did you make that argument?

Mr. FITZPATRICK. I don't know whether I did or not. I think possibly I did.

Mr. PECORA. What prompted you to make that argument? Did you believe that the market price of \$39 a share was out of line with the true value, and represented simply an artificial value created or established by market manipulations?

Mr. FITZPATRICK. I have the impression, as everybody does who knows nothing about it, that stocks are rigged on the New York Stock Exchange, but I do not know anything about it.



Senator COUZENS. Haven't you learned something about it since hearing about Mr. Cutten's testimony?

Mr. FITZPATRICK. I don't believe everything I hear.

Senator COUZENS. Neither do we. Are the Rockefellers interested in the Sinclair Oil?

Mr. FITZPATRICK. It is my understanding that they are, when it came to voting in the stockholders meetings of the Prairie Oil & Gas Co. to approve this consolidation. I voted their shares for the consolidation.

Senator COUZENS. Who votes their shares in the Consolidated Co.?

Mr. FITZPATRICK. Whoever the committee happens to be. They send out proxies, naming them in the proxies they send out.

Senator COUZENS. The Rockefellers send in their proxies to the nominees fixed by the directors?

Mr. FITZPATRICK. They have. I have been there, I think, at one or two meetings.

Mr. PECORA. That is all.

#### TESTIMONY OF ELISHA WALKER, A MEMBER OF THE FIRM OF KUHN, LOEB & CO.

The CHAIRMAN. Mr. Walker, you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God?

Mr. WALKER. I do.

Mr. PECORA. Will you please give us your full name, Mr. Walker?

Mr. WALKER. Elisha Walker.

Mr. PECORA. Your residence and business address?

Mr. WALKER. 52 William Street, New York City, is my business address; 33 East Sixty-ninth Street is my residence.

Mr. PECORA. What is your business, Mr. Walker?

Mr. WALKER. Investment banking.

Mr. PECORA. Are you now a member of any investment banking firm?

Mr. WALKER. I am a member of Kuhn, Loeb & Co. at present.

Mr. PECORA. How long have you been a member of that firm?

Mr. WALKER. Since the first of this year.

Mr. PECORA. Prior to that, were you connected with any other banking firm or corporation?

Mr. WALKER. With Blair & Co. and Blair & Co., Inc.

Mr. PECORA. In the year 1928, were you connected with Blair & Co., Inc.

Mr. WALKER. Yes, sir.

Mr. PECORA. In what capacity?

Mr. WALKER. As president.

Mr. PECORA. They were bankers? That was a banking firm?

Mr. WALKER. Dealers in investment securities.

Mr. PECORA. Were you also in that year a director of a corporation called the Sinclair Consolidated Oil Corporation?

Mr. WALKER. Yes, I believe so.

Mr. PECORA. How long had you been a director of that corporation?

Mr. WALKER. I would say several years.

Mr. PECORA. Were you also in that year a member of the executive committee of the board of directors of that corporation?

Mr. WALKER. Yes.

Mr. PECORA. Do you recall a transaction whereby the Sinclair Consolidated Oil Corporation sold to a purchasing group a block of 1,130,000 shares of its capital common stock for \$30 a share?

Mr. WALKER. Yes.

Mr. PECORA. According to evidence here, the agreement under which that transaction was consummated was entered into on October 24, 1928.

Mr. WALKER. Yes.

Mr. PECORA. Have you a recollection of that?

Mr. WALKER. I have.

Mr. PECORA. How long before that date did you first learn of any negotiations having been instituted looking to the making of that sale?

Mr. WALKER. If you mean preliminary talks, I would say possibly a couple of months. If you mean definite negotiations, I would say a comparatively short time before the final trade was made.

Mr. PECORA. Who undertook the preliminary negotiations?

Mr. WALKER. Mr. Sinclair; H. F. Sinclair.

Mr. PECORA. Were you cognizant of them currently?

Mr. WALKER. I presume I knew in general, as a director of the corporation.

Mr. PECORA. Had the matter been discussed at a meeting of the directors of the corporation at that time?

Mr. WALKER. I presume it was discussed informally at the meetings.

Mr. PECORA. Along what lines? What was the substance of the discussions?

Mr. WALKER. Along the lines of the advisability of raising additional capital for the corporation through the sale of common stock. At that time the company had substantial bond issues, and it was spending a lot of money, and it was thought advisable to raise additional capital to strengthen it.

Mr. PECORA. In those preliminary, or rather informal discussions, was anything said by any of the officers or directors to you, or by you to any of them, concerning the method that should be followed in issuing and selling that stock for the purpose of getting additional working capital?

Mr. WALKER. You mean the method of sale?

Mr. PECORA. Yes.

Mr. WALKER. Oh, yes; that was discussed.

Mr. PECORA. What was said on that?

Mr. WALKER. It was considered—Mr. Sinclair desired to get a price of \$30 for the stock. He was very insistent, as I remember it, that \$30 must be paid. The stock was not selling at \$30. It was selling under 30, and I can remember saying "You are going to have a very hard job finding purchasers for it." He said, "I will find them", and eventually this transaction resulted from that.

Mr. PECORA. Blair & Co., of which you were then the president, proved eventually to be one of the purchasers at \$30 a share?

Mr. WALKER. Yes.

Mr. PECORA. In these informal preliminary discussions among the directors, of which you were one, when Mr. Sinclair insisted that the sale be made for the price of \$30 a share, was it your opinion or feeling that the price of \$30 a share represented the true or intrinsic value of the stock?

Mr. WALKER. When you talk about true or intrinsic value, it depends upon whether you mean the price the public puts upon it, which, after all, in my opinion is the value of a stock—

Mr. PECORA. Any price the public puts on it represents the value of a stock?

Mr. WALKER. In general.

Mr. PECORA. That is your opinion generally about securities values?

Mr. WALKER. In general.

Mr. PECORA. Then you must have felt that if the price of the stock fixed by the public in that manner was under \$30 a share, that Mr. Sinclair's estimate of the value of the stock was excessive.

Mr. WALKER. I did at the start, undoubtedly.

Mr. PECORA. When did you change your opinion about that, if you did change it?

Mr. WALKER. The stock, as you know from the record, gradually advanced over that period of time, and it got up to around \$30 a share, and Mr. Sinclair told me he had Mr. Cutten interested in buying this block of stock, and he was very anxious to sell this block of stock, but frankly, at the time I thought we were taking a very great risk when we went in and bought as one of the participants that 1,130,000 shares of stock.

Mr. PECORA. You mean you thought you were taking a great risk of losing because you were paying too much?

Mr. WALKER. I thought it was a very material risk in that respect; yes.

The CHAIRMAN. You thought you could educate the public somewhat, and get the public estimate a little higher than it was, when they found out you had gone in?

Mr. WALKER. I did not quite catch the first part of it.

The CHAIRMAN. You believed you could educate the public somewhat, did you not?

Mr. WALKER. No; I did not think I could educate the public at all.

Mr. PECORA. Blair & Co., Inc., at that time was a stock corporation, was it not?

Mr. WALKER. Yes; a business corporation.

Mr. PECORA. Feeling that you were taking a great risk in buying that stock at \$30 a share, your corporation, namely, Blair & Co., Inc., nevertheless committed itself to participate to the extent of 25 percent in the purchase of this block of 1,130,000 shares at \$30 a share?

Mr. WALKER. Yes. Blair & Co., Inc., was a private corporation. The owners of Blair & Co., Inc., that is, all of the common stock, were active members of the firm.

Mr. PECORA. Who asked you, or Blair & Co., to become a participant in a purchasing syndicate to buy that stock?

Mr. WALKER. Mr. Sinclair.

Mr. PECORA. You readily agreed to buy it in behalf of Blair & Co.?

Mr. WALKER. I would not say I readily agreed, no. It was with a great deal of hesitation that I agreed to.

Mr. PECORA. Finally you did agree?

Mr. WALKER. Yes.

Mr. PECORA. And how long before October 24, 1928, did you indicate to Mr. Sinclair that Blair & Co. would take 25 percent participation in that purchase?

Mr. WALKER. I was hesitant up until the last day, almost—maybe 2 or 3 days. But that was my feeling in the matter at the time.

Mr. PECORA. Meanwhile, were you watching the public quotations of the stock?

Mr. WALKER. I naturally was watching the market.

Mr. PECORA. And a few days before October 24, the value of the stock, or what you deemed to be the value, namely, the public quotations, exceeded \$30 a share, did it not?

Mr. WALKER. Just about that time. It was somewhere along there. I would say between the 22d and the 24th, as I remember the picture. I have not looked up the quotations lately.

Mr. PECORA. Did you have any conferences or discussions with Mr. Arthur W. Cutten about Blair & Co. becoming a participant in the purchasing syndicate?

Mr. WALKER. Yes.

Mr. PECORA. Did you write anybody to become a participant in that syndicate?

Mr. WALKER. The firm of Blair & Co., Inc., did ask one or two people to come into the original account.

Mr. PECORA. Did they come in?

Mr. WALKER. Yes.

Mr. PECORA. Who were they?

Mr. WALKER. As I remember it, there was Mr. Hill and Mr. Kalman, a joint account. They had a participation.

Mr. PECORA. They had a participation of about one half of 1 percent?

Mr. WALKER. One half of 1 percent. There was 10 percent, as you know, given away. I do not believe we asked the other participants. There were the Continental Co. of Chicago, if I remember rightly, and Mr. Arthur Reynolds, and Mr. Tinker's companies. The only ones we actually asked in ourselves, I am sure, were for one half of 1 percent for Mr. Hill and Mr. Kalman.

Mr. PECORA. Mr. Walker, originally was it proposed that this purchasing group consist of more than the following participants: Blair & Co., with a 25 percent interest; Arthur W. Cutten, 25 percent interest; Harry F. Sinclair, 25 percent interest, and the Chase Securities Corporation, 25 percent interest?

Mr. WALKER. It was not Chase Securities Co. 25 percent. It was Chase Securities Co. one sixth, and the Shermar Corporation one twelfth, with, of course, the provision and the definite understanding that 12 percent, or approximately 12 percent, was to be given away to other participants.

Mr. PECORA. The original purchasing group was to consist of the four corporations and persons that I named, was it not?

Mr. WALKER. As I remember it, the Shermar Corporation made a fifth.

Mr. PECORA. Who invited the Shermar Corporation to come in?

Mr. WALKER. Why, Mr. Callahan represented the Chase interests at those meetings, and, as I remember very distinctly, Mr. Callahan always stated, from the start, that the Chase would take two thirds of that participation and the Shermar Corporation would take the other third of it.

Mr. PECORA. That is, the Chase Securities Corporation would take two thirds of the 25 percent participation?

Mr. WALKER. Yes.

Mr. PECORA. Making 16 $\frac{2}{3}$  percent of the whole?

Mr. WALKER. Yes.

Mr. PECORA. And the Shermar Corporation would take the other one twelfth, making 8 $\frac{1}{3}$  percent?

Mr. WALKER. Yes.

Mr. PECORA. That came through the suggestion of Mr. Callahan, did it?

Mr. WALKER. Yes.

Mr. PECORA. Mr. Callahan then was president of the Chase Securities Corporation, was he not?

Mr. WALKER. I do not believe so. I think Mr. Freeman probably was.

Mr. PECORA. He was an executive officer of the Chase Securities Corporation?

Mr. WALKER. He was an officer; oh, yes.

Mr. PECORA. Is that the way the Shermar Corporation eventually came into the original group?

Mr. WALKER. I would say, instead of coming into the original group, they were part of the original group.

Mr. PECORA. Who invited them to become a part of the original group? Who invited the Shermar Corporation to become a part of the original group?

Mr. WALKER. I presume Mr. Callahan must have.

Mr. PECORA. Who took the lead in organizing this original purchasing group, as far as you know?

Mr. WALKER. Mr. Sinclair.

Mr. PECORA. Did he invite you to come in—that is, Blair & Co.?

Mr. WALKER. Yes.

Mr. PECORA. Do you know that he invited Arthur W. Cutten to come in?

Mr. WALKER. That is my understanding.

Mr. PECORA. And do you know that he invited the Chase Securities Corporation to come in?

Mr. WALKER. Yes.

Mr. PECORA. The agreement of purchase for these 1,130,000 shares at \$30 a share was made by Arthur W. Cutten individually with the Sinclair Consolidated Oil Corporation, was it not?

Mr. WALKER. Yes.

Mr. PECORA. At the time that agreement was made, was there a firm understanding or agreement between Blair & Co., Harry F. Sinclair, Arthur W. Cutten, the Chase Securities Corporation, and the Shermar Corporation that they would be associates of Mr. Cutten in the proportions that you have already mentioned in this purchase?

Mr. WALKER. As I remember it, there was a simultaneous agreement that they were to be interested on the ground-floor terms.

Mr. PECORA. Do you know why the agreement was made by the Sinclair Co. with Mr. Cutten individually and not with all the five members of the original purchasing group, or, as you call it, the "ground-floor group"?

Mr. WALKER. I think the basis was that Mr. Sinclair had induced Mr. Cutten to really head this thing. I frankly doubt very much whether Mr. Sinclair could have arranged the sale of this stock if he had not secured the cooperation of Mr. Cutten for such a large amount, and Mr. Cutten further was to handle the syndicate, the trading syndicate, as it was called, and therefore it was the natural thing for Mr. Cutten to make this transaction with the company.

Mr. PECORA. Now, at all those times you were a director of the Sinclair Co. and a member of the executive committee?

Mr. WALKER. Yes.

Mr. PECORA. Up to that time, up to October 24, 1928, had there been any formal discussion at any meeting of the board of directors or the executive committee with regard to the issuance and sale by the corporation of this block of 1,130,000 shares?

Mr. WALKER. I do not know how to distinguish between formal and informal. I think you probably would call them informal discussions rather than formal discussions.

Mr. PECORA. Well, when for the first time was there anything of a formal nature with regard to this proposition discussed either by the executive committee or the board of directors?

Mr. WALKER. Well, frankly I do not know just what you mean by "formal." I mean the matter was discussed certainly at executive committee meetings about the sale of stock and how the company was to be financed. Now, whether that got into the records I frankly do not know. I mean the minutes will have to show that.

Mr. PECORA. Well, the minutes do not show that there was any mention made at any time prior to October 24, 1928, so far as I understand. Would that mark the distinction between a formal discussion and an informal discussion—the fact that mention is made in the minutes of the discussion?

Mr. WALKER. I do not know. I would not know how to answer your question. I mean I know that the matter was discussed. Now whether you call it formal or not seems to me is not material so long as it was discussed at the executive committee meetings.

Mr. PECORA. At a meeting of the executive committee that was held on October 24, 1928, it appears in evidence presented to this committee that an offer from Mr. Cutten to purchase from the Sinclair Corporation 1,130,000 shares of its unissued common stock at \$30 per share was presented to the executive committee and approved or accepted. Were you present at that meeting?

Mr. WALKER. I was present at the start of the meeting, and I withdrew while the resolution was being discussed, because I mentioned that I was an interested party or probably an interested party.

Mr. PECORA. Had Mr. Cutten made any formal offer for that stock to the corporation?

Mr. WALKER. I think you had better ask some officer of the corporation as to the formality of it. I understood that, as matters are so often done in business down town, that an agreement was reached

verbally. Now, whether it got into the state of a formal document at that time I could not say.

Mr. PECORA. I will read you from the minutes, or what has been furnished this committee as an excerpt of the minutes of the executive committee meeting held on October 24, 1928 [reading]:

Mr. Walker, at the request of the chairman, stated to the meeting that Arthur W. Cutten and associates had made an offer to purchase, at a price of \$30 per share, all of the corporation's unissued authorized common stock together with 14,481 shares of the same class of stock now held in the treasury of the corporation, a total of 1,130,000 shares, and further advised the meeting that Blair & Co., Inc., Chase Securities Corporation, and Mr. H. F. Sinclair were interested parties to the transaction.

Now according to that extract from the minutes you made that statement to the executive committee at this meeting. Let me ask you: In view of that fact had Mr. Cutten made any formal offer to the corporation to buy at \$30 per share those 1,130,000 shares referred to?

Mr. WALKER. He had said that he would buy them.

Mr. PECORA. Had he made a formal offer which was submitted to the executive committee by you at that time?

Mr. WALKER. He had advised me and had advised Mr. Sinclair, and this group had been formed that would take that block of stock, and this in effect was the announcement of that offer to the executive committee.

Mr. PECORA. You knew as a matter of fact from your own participation in conferences that led to the formation of this purchasing group that the proposition did not originate as an offer from Mr. Cutten, but rather as an offer made to Mr. Cutten by Mr. Sinclair, did you not?

Mr. WALKER. I suppose it could be from the original conversations, if you go back to when they were first discussed with Mr. Cutten—certainly Mr. Sinclair endeavored to interest Mr. Cutten, and undoubtedly Mr. Sinclair tried to get him to pay a price of \$30 for the stock.

Mr. PECORA. You knew all of that?

Mr. WALKER. Oh, yes; I knew that.

Mr. PECORA. Why did you state to the meeting that an offer had been made by Mr. Cutten?

Mr. WALKER. Because he had made an offer. I mean he had agreed to buy that amount of stock.

Mr. PECORA. He had agreed to accept an offer to buy that amount of stock, had he not, which was made to him by Mr. Sinclair on behalf of the corporation?

Mr. WALKER. I do not imagine I was as technical as that at a meeting. I mean I did not attempt to differentiate between saying he had made an offer to buy or that he had made an agreement to accept so much stock. To me it is practically one and the same as a layman but may be not to you as a lawyer.

Mr. PECORA. You think it is one and the same thing?

Mr. WALKER. To all intents and purposes. I mean I did not write those minutes to start with.

Mr. PECORA. Did you then state in behalf of Blair & Co., as its president, to your codirectors and comembers of the executive committee the extent of the interest which Blair & Co., the Chase Se-

curities Corporation, and Mr. H. F. Sinclair had in the proposed transactions?

Mr. WALKER. Do you mean the exact percentages of each one?

Mr. PECORA. The extent of the interest of each one; yes.

Mr. WALKER. I cannot say that definitely from recollection, but I presume we did.

Mr. PECORA. Why do you presume you did?

Mr. WALKER. It is the most natural thing. There were only 4 or 5 people interested who were all told—

Mr. PECORA. Was not that an important enough item to have made you careful to see to it that you did state to your codirectors on the executive committee the precise interest which you or your corporation, Blair & Co., had in this proposed transaction?

Mr. WALKER. I do not place as much emphasis on that as evidently you do, because after all we were investment bankers. We had bought securities before from the Sinclair Co., and, very often, instead of having a 25-percent interest, we had a 50-percent interest.

Mr. PECORA. Do you not think, Mr. Walker, that where you as a director of one corporation entered into a transaction in behalf of that corporation with yourself as a director or officer of another corporation, that all of the detailed facts regarding the transaction should be placed right on the table face up?

Mr. WALKER. Yes; I agree to that.

Mr. PECORA. Did you do it in this instance?

Mr. WALKER. I presume I did. I cannot swear to it because I haven't anything more to swear to it by.

Mr. PECORA. Well, a moment or two ago you did not seem to attach any importance to your doing any such thing.

Mr. WALKER. I do not think I said that.

Mr. PECORA. You said you did not attach as much importance to it as I seemed to.

Mr. WALKER. Yes.

Mr. PECORA. Do you think the importance that I attach to it is an exaggerated one?

Mr. WALKER. Why, not exaggerated; but my point was this, that Blair & Co. were investment bankers. That it was not like any outside interest at all. They were dealing with a corporation. The corporation knows they have a very substantial interest in any transaction. That is my point: As far as whether or not I actually mentioned that we had 25 percent interest or 22½ percent interest, I did not think it was so very material. If we had been an outside interest it might have been more material, but as bankers where we would have 25, 50, 33½, sometimes 100 percent interest in transactions, that was our business. That is why.

Mr. PECORA. Can you point to anything in the records of the Sinclair Corporation that indicates that at any time the corporation had knowledge of the extent of the interest which Blair & Co. had and which Harry F. Sinclair had in this particular transaction?

Mr. WALKER. No.

Mr. PECORA. Now when were these original 25 percent interests among these four participants changed? And the reason I say four participants, Mr. Walker, is because, according to the minutes of the meeting of the executive committee of the Sinclair Corporation, it



appears that you made the statement to the executive committee that associated with Mr. Cutten in the purchase of these 1,130,000 shares were Blair & Co., Chase Securities Corporation, and Mr. H. F. Sinclair. No mention there made of the Shermar Corporation.

Mr. WALKER. It must have been practically simultaneous.

Mr. PECORA. That is, as soon as this offer of Cutten's, so-called, was accepted, there was a shifting of the arrangements for the formation of this purchasing group so that the Shermar Corporation and others were admitted?

Mr. WALKER. Of course, as I remember previous Sinclair transactions, that is transactions with the Sinclair Co., Shermar Corporation did have a part of the transaction. I have not looked this up, but I would be quite sure of it—and I could check it, of course—that whenever we bought bonds from the Sinclair Co. previous to this Shermar had a certain relative interest to Chase Securities.

Mr. PECORA. But when you opened this meeting, or made this statement to the meeting of the executive committee, apparently all you had knowledge of was that the participants in this purchasing syndicate were only four, and they excluded the Shermar Corporation?

Mr. WALKER. Well, frankly in discussions we only referred just to four; to just Sinclair, and so forth. And in practice it was understood that Shermar would probably be interested. Now, that may well be an error on my part at that time not to have mentioned the Shermar Corporation. I mean I cannot see it in any other light, because I must have known—I presume I knew that Shermar would probably, if not actually, be interested in the transaction.

Mr. PECORA. How long after October 24 did Blair & Co. change its participation from a 25 percent interest in this group to something less than that?

Mr. WALKER. Do you mean to the 22½ percent level?

Mr. PECORA. To anything less than the 25 percent originally contemplated and agreed upon.

Mr. WALKER. The original agreement was that we had the right to give off up to 12 percent. Now, that was done almost immediately to the extent of 10 percent.

Mr. PECORA. I show you committee's exhibit no. 114 in evidence, entitled "List of participants in Sinclair purchasing syndicate as finally constituted, with percentages and share of profits received." Will you look at that list and tell us if any of the participants therein named were invited to come in by you or by anyone connected with Blair & Co. to your knowledge?

Mr. WALKER. Well, as I said before, I think the only ones here are L. W. Hill and C. O. Kalman, one half of 1 percent.

Mr. PECORA. Do you know who invited the other participants whose names appear on that exhibit other than the original participants?

Mr. WALKER. Of course, this is remembrance.

Mr. PECORA. Yes.

Mr. WALKER. I think that the Continental National Co. and Arthur Reynolds were asked by the Chase Securities Corporation. I think Mr. Andrews was asked by Mr. H. F. Sinclair. And the Famoth

Corporation and the Traywin Corporation are corporations in which Mr. E. R. Tinker is some way or other interested, and he was a director and requested himself an interest in it.

Mr. PECORA. A director of what?

Mr. WALKER. Of the Sinclair Co. If I remember right.

The CHAIRMAN. What was the idea of giving away some of the interests?

Mr. WALKER. Some of the interests? To reduce one's commitment. It is a regular banking practice to cut your commitments down.

Mr. PECORA. Was it really considered important to reduce somebody's commitment by giving one half of 1 percent to Hill and Kalman?

Mr. WALKER. Well, Hill and Kalman were friends of Blair & Co., Inc., and it may be that Mr. Kalman was in New York at the time and heard of the transaction and requested the interest. I cannot say.

Mr. PECORA. Is it not done ordinarily to enable participants or some of the group to let friends in on the ground floor? I am using the term "ground floor" now because you used that term before. I am not familiar with that terminology. Is it not, Mr. Walker?

Mr. WALKER. If you mean it is human nature to invite one's friends in, yes.

Mr. PECORA. To let them in on the ground floor? Not to reduce commitments, but to pass around a good thing.

Mr. WALKER. Oh, it is to reduce commitments and to consider one's friends, both, when you do reduce commitments.

Mr. PECORA. Yes. Now, you know Mr. Fitzpatrick, do you not, Mr. William Samuel Fitzpatrick?

Mr. WALKER. I do.

Mr. PECORA. Have you known him for many years?

Mr. WALKER. Well, many years now; yes.

Mr. PECORA. You know, do you not, that the original or the purchasing syndicate that was organized to buy this 1,130,000-share block of stock from the Sinclair Co. disposed of that stock by various means and methods at a profit of about 12 million dollars?

Mr. WALKER. Yes.

Mr. PECORA. You know, do you not, that 2½ percent of that profit was paid to Mr. Fitzpatrick?

Mr. WALKER. Yes.

Mr. PECORA. Who brought that about?

Mr. WALKER. I think I had better tell you my recollection of the story. We had been negotiating for the purchase of certain Prairie Oil shares.

Mr. PECORA. When you say "we", do you mean Blair & Co.?

Mr. WALKER. Blair & Co., Inc., yes. Blair & Co., Inc., had been negotiating for the purchase of certain shares of the Prairie Oil & Gas Co. and Prairie Pipe Line Co. from certain of the Rockefeller funds. Those negotiations to the best of my knowledge had started early in 1928, and they were continued along for months. During those negotiations we naturally saw considerable of Mr. Fitzpatrick, because we had to study the company and determine our ideas as to the value of the shares and as to whether in our opinion they could be bought at a price which would enable them to be disposed of at a reasonable profit. In the course of those negotiations the question

evidently came up in discussions between Mr. Marston and Mr. Fitzpatrick, and I presume, Mr. Cutler—

Mr. PECORA (interposing). Was Mr. Marston then connected with Blair & Co.?

Mr. WALKER. Yes; he was.

Mr. PECORA. And who was Mr. Cutler connected with?

Mr. WALKER. The Rockefeller people. What was the last I said [addressing the shorthand reporter]?

(Thereupon the last sentence referred to was read by the shorthand reporter as above recorded, as follows:)

In the course of those negotiations the question evidently came up in discussions between Mr. Marston and Mr. Fitzpatrick, and I presume Mr. Cutler—

Mr. WALKER (continuing). As to taking care of Mr. Fitzpatrick in some form or other if we bought those shares. Mr. Fitzpatrick—I happened to be here when he was testifying—said that he understood that there was some 10 percent understanding. Frankly I do not remember what the percentage was.

Mr. PECORA. Ten percent understanding with whom? And 10 percent of what?

Mr. WALKER. Of the profits of the Prairie Oil & Gas Co. and Prairie Pipe Line Co.—of any profits that might be made on the sale of those stocks to the public.

Mr. PECORA. That might be made by whom?

Mr. WALKER. By Blair & Co.

Mr. PECORA. Well, you as president of Blair & Co. were under no obligations nor was your company to Mr. Fitzpatrick to pay him 10 percent of any profits that your company might make from any such transaction, were you?

Mr. WALKER. We were under absolutely no obligation. But there are always business considerations. If we were going in to buy such an important interest in the Prairie Oil & Gas and Prairie Pipe Line Cos., we considered it important to have the management a satisfied and pleased management. Now, this was nothing unusual. It has been done in other transactions before of a similar nature.

Mr. PECORA. Now, whom did you regard as the management? Mr. Fitzpatrick?

Mr. WALKER. Mr. Fitzpatrick; yes.

Mr. PECORA. He was the executive head?

Mr. WALKER. Yes.

Mr. PECORA. And the servant of the stockholders?

Mr. WALKER. Yes.

Mr. PECORA. Why was it necessary in your opinion as a banker who contemplated buying shares owned by the Rockefeller Foundation in the stock of the Prairie Co. to see to it that the servant of the corporation was satisfied to have you become a stockholder?

Mr. WALKER. Well, just ordinary business of wanting—where you undertake a very important transaction mounting into a great many millions of dollars, that you want to be sure of the good will and the ability to work agreeably in the situation, and this was entirely agreeable to the seller, so there was not any objection so far as I could see so long as both buyer and seller were agreeable to it.

Mr. PECORA. Let me see if I understand you correctly. Your banking firm contemplated buying millions of dollars' worth of the stock of the Prairie Oil & Gas Co., then owned by the Rockefeller Foundation, did you?

Mr. WALKER. Yes.

Mr. PECORA. And had you succeeded in making that purchase your firm would have become a very large stockholder in the Prairie Oil & Gas Co.?

Mr. WALKER. Yes.

Mr. PECORA. Hence your firm would have become one of the masters or employers of Mr. Fitzpatrick, is that right?

Mr. WALKER. Employer in that you are stockholder.

Mr. PECORA. Yes.

Mr. WALKER. But after all we would have been minority stockholders in that picture.

Mr. PECORA. All right. And you wanted to make sure that the servant was satisfied with his master?

Mr. WALKER. Wanted to have the good will for the benefit of the corporation entirely.

Mr. PECORA. Did you not think it was more important for Mr. Fitzpatrick to have the good will of yourself as one of his potential masters?

Mr. WALKER. I think Mr. Fitzpatrick could well afford to be independent at that time.

Mr. PECORA. Well, that being the case, why did you think that on these business considerations, as you have called them, it was necessary or advisable or proper or important for Blair & Co. to have arranged to give Mr. Fitzpatrick some portion—10 percent or any any other percent—of any profits which Blair & Co. expected to make from its purchase of Prairie Oil & Gas Co. stock?

Mr. WALKER. All I can say on that is that it was discussed with the sellers of the stock. That we had made previous purchases of other shares from the same interests. And in each case the same question had arisen where certain privileges were granted to the management to acquire shares.

Mr. PECORA. By "privileges" do you mean perquisites in the way of interests in profits?

Mr. WALKER. Either the right to buy at the original price that the stock was purchased at, or share in profits, or something of that nature.

Mr. PECORA. Did I understand you before to say that that was more or less of a common practice?

Mr. WALKER. In these particular transactions.

Mr. PECORA. Go head and tell us the rest of the circumstances under which this 2½ percent of the profits accruing to the purchasing group in the Sinclair deal was paid to Mr. Fitzpatrick.

Mr. WALKER. The Prairie deals were not concluded, as I have intimated, for several months. Consequently there was no definite, fixed participation arranged with Mr. Fitzpatrick. Then along came this Sinclair transaction, which was completed before the Prairie transactions were completed.

Mr. PECORA. But the Prairie transaction had not been called off?

Mr. WALKER. It had been off and on and off and on.

Mr. PECORA. Well, go ahead.

Mr. WALKER. So that the question was just up for consideration as to whether or not Mr. Fitzpatrick should have a larger interest in one transaction or a smaller interest in two transactions.

Mr. PECORA. Well, now, when that question came up in connection with the Sinclair Oil stock deal, with whom did the question come up?

Mr. WALKER. I naturally discussed it with my partners, I presume.

Mr. PECORA. Did you discuss it then with Mr. Cutler?

Mr. WALKER. No.

Mr. PECORA. He had nothing to do with that transaction, did he?

Mr. WALKER. He had absolutely nothing to do with the Sinclair transaction.

Mr. PECORA. And the Rockefeller interests had nothing to do with it?

Mr. WALKER. The Rockefeller interests had nothing to do with it in any way, shape, or form.

Mr. PECORA. All right. Go ahead.

Mr. WALKER. So then for the same reasons we decided that it would be advisable to give Mr. Fitzpatrick 2½ percent interest in the profits of this Sinclair trade.

Mr. PECORA. Now, who made that decision, Mr. Walker?

Mr. WALKER. In the first instance, do you mean?

Mr. PECORA. Whenever it was made.

Mr. WALKER. It was agreed to of course by all the participants.

Mr. PECORA. When was that decision or agreement made?

Mr. WALKER. Oh, practically at the time of the purchase of the stock; of the 1,130,000 shares.

Mr. PECORA. Did you discuss it with the other participants at that time?

Mr. WALKER. I certainly discussed it with some of them.

Mr. PECORA. With whom?

Mr. WALKER. Well, I probably discussed it with all of them.

Mr. PECORA. That would include Mr. Arthur Cutten, Mr. Harry F. Sinclair, the Shermar Corporation, and the Chase Securities Corporation, would it not?

Mr. WALKER. It certainly includes everybody with the possible exception of Mr. Arthur Cutten, because Mr. Arthur Cutten was only in New York so occasionally, and it may have been talked with him on the telephone. But the others were in New York.

Mr. PECORA. And you say all of the participants agreed upon your suggestion that Mr. Fitzpatrick receive 2½ percent of whatever profits would accrue to that purchasing syndicate?

Mr. WALKER. Yes.

Mr. PECORA. From the Sinclair Oil stock transaction?

Mr. WALKER. Yes.

Mr. PECORA. Did you give those participants the reason why Blair & Co. wanted to take care of Mr. Fitzpatrick in that way?

Mr. WALKER. Why, I must have.

Mr. PECORA. Well, what reason did you give them?

Mr. WALKER. The same as I have stated here. You see, this was the same group that also purchased the Prairie stocks. I mean practically the identical group. So that it affected—

Mr. PECORA. Was Sinclair in that group?

Mr. WALKER. As I remember it.

Mr. PECORA. In the group that purchased the Prairie stock?

Mr. WALKER. As I remember it.

Mr. PECORA. All right. Go ahead.

Mr. WALKER. So that there was, practically, no difference between giving a larger participation in one, and a smaller participation in that and the other.

Mr. PECORA. Well, now, the reason that obtained or that impelled you to recognize the advisability of seeing to it that Mr. Fitzpatrick as the management of the Prairie Oil Co., should be satisfied, was not present in the transactions that involved the purchase of Sinclair Co. stock, was it? In other words, he was not the manager of the Sinclair Co., was he?

Mr. WALKER. No. He was not manager of the Sinclair Co., and had nothing to do with the Sinclair Co.

Mr. PECORA. Well, the reason that impelled you to take care of Mr. Fitzpatrick in the transaction in which Blair & Co. were to acquire Prairie Oil & Gas Co. stock, as I understand your testimony, was that you wanted to keep the management satisfied; is that right?

Mr. WALKER. Well, Mr. Fitzpatrick has stated that he wanted 10 percent in the one thing.

Mr. PECORA. Did he state that to you originally?

Mr. WALKER. I cannot say whether he said 10 percent or any other percentage.

Mr. PECORA. Why, Mr. Fitzpatrick stated here this morning that he never sought this at all; that it was offered to him originally, or was proposed to him by Mr. Cutler, and that Blair & Co. fell in line with the idea for some reason or other. Does that surprise you?

Mr. WALKER. Let me have that question again, please.

Mr. PECORA. The committee reporter will read it to you. [Which was done.]

Mr. WALKER. No; that does not surprise me.

Mr. PECORA. Well, then, do you recognize it to be the truth?

Mr. WALKER. I recognize that the suggestions were discussed at No. 26 Broadway, as to taking care of Mr. Fitzpatrick in some form or other. And I think that is in line with just what I have testified here myself.

Mr. PECORA. I am afraid it is not, or else I cannot see the line that you are looking at. Now, Mr. Walker, you stated that the interest which Blair & Co. had, or the motive which Blair & Co. had in wanting to take care of Mr. Fitzpatrick out of any profits that Blair & Co. would make through their acquisition of Prairie Oil & Gas Co. stock was to keep him as the manager, or to keep the management of the Prairie Oil & Gas Co., satisfied. That was an entree into the ranks of the stockholders of that company, wasn't it?

Mr. WALKER. Yes.

Mr. PECORA. Well, that is one definite motive or reason, isn't it?

Mr. WALKER. Yes.

Mr. PECORA. Now, what part did that motive or reason play in the negotiations or the transactions or the decision in which it was arranged to give Mr. Fitzpatrick 2½ percent of the profits accruing to this purchasing syndicate of Sinclair Consolidated Oil Corporation stock?

Mr. WALKER. It had nothing to do with it directly. But, as I say, Mr. Fitzpatrick was naturally associated with us at that time—

and by "associated" I mean we were seeing one another in connection with this other transaction, and in a study of his company, and the question had been discussed as to what participation, if any, he would take in that transaction.

Mr. PECORA. In which transaction?

Mr. WALKER. In the Prairie transaction. And when this one came along it brought the matter to a head, and it was said: Well, all right, let us give Mr. Fitzpatrick  $2\frac{1}{2}$  percent in this end  $2\frac{1}{2}$  in the other.

Mr. PECORA. Who proposed that originally, you?

Mr. WALKER. I would not be surprised if I did. I cannot say definitely whether I did or whether it was talked over amongst my partners, or how it was done.

Mr. PECORA. And you suggested to the other participants in that Sinclair purchasing group, what?

Mr. WALKER. Yes, as I remember it, that they should give  $2\frac{1}{2}$  percent in both of these accounts.

Mr. PECORA. Well, now, let me see about that. Mr. Wiggin of the Shermar Corporation testified here that he never learned why or how that  $2\frac{1}{2}$  percent was paid to Mr. Fitzpatrick. And let me say further that Mr. Sinclair testified here yesterday afternoon that he did not learn until about 2 weeks ago why Mr. Fitzpatrick received that  $2\frac{1}{2}$  percent. Do you quarrel with their testimony?

Mr. WALKER. I cannot help what anybody else testifies.

Mr. PECORA. And let me remind you further that Mr. Arthur W. Cutten testified before this subcommittee that he never knew why that  $2\frac{1}{2}$  percent was paid to Mr. Fitzpatrick. Do you quarrel with Mr. Cutten's testimony?

Mr. WALKER. Some people have poor memories.

Mr. PECORA. Then the situation is this: The whole regiment is out of step but you.

Mr. WALKER. I am trying to give you the best of my memory, which is all that I can give you.

The CHAIRMAN. Mr. Walker, was there ever in your mind any amount of benefits or perquisites that should go to Mr. Fitzpatrick?

Mr. WALKER. How was that?

The CHAIRMAN. Did you have in mind any fixed amount that was to go to him?

Mr. WALKER. Do you mean in dollars?

The CHAIRMAN. Yes.

Mr. WALKER. No. Of course, in this transaction the profits were far, far beyond what anybody ever anticipated.

The CHAIRMAN. Well, you felt that \$149,000 of benefits was not enough?

Mr. WALKER. No. That came subsequently. You see, nobody knew about the possible or probable profits when these transactions were made. The Sinclair transaction was made at the end of October, at a price of \$30. We would have been very happy, speaking quite frankly, if we had made a couple of points on that transaction. I mean that it would have been considered a good business operation. The fact that it ended in something like a gain of 12 points was—well, quite frankly, was amazing, beyond any of our wildest dreams. Now—

Mr. PECORA (interposing). The public were very generous in fixing a value for that stock, then?

Mr. WALKER. Surely they were.

Mr. PECORA. And generous one might say beyond all of your expectations.

Mr. WALKER. And as to other stocks, too.

Mr. PECORA. We know that. And the public was aided in fixing that generous value of Sinclair stock by the operations of a trading syndicate organized at the same time the purchasing syndicate was organized, isn't that so?

Mr. WALKER. I did not run the trading syndicate so I cannot say about it.

Mr. PECORA. But you knew all about it, didn't you?

Mr. WALKER. No.

Mr. PECORA. Well, I will ask you some more in detail about that this afternoon.

Mr. WALKER. Might I finish that answer?

Mr. PECORA. Certainly.

Mr. WALKER. Then the Sinclair syndicate was formed on October 24. The Prairie syndicate was formed about a month later, November 25 or 26, or somewhere along in there. Now, when the Prairie syndicates were formed nobody had any idea what the profits would be in either the Sinclair or the Prairie. Matters happened to work out as they did due to market conditions at the time, in an exceedingly large sum.

The CHAIRMAN. Mr. Walker, as I understand the situation, first Mr. Fitzpatrick was paid \$10,000, and then he was paid \$19,000 in the Prairie syndicate transaction.

Mr. WALKER. Well, that was only out of the profits of that as and when the stocks were sold.

The CHAIRMAN. I understand, but you felt like those items would not be enough benefit to Mr. Fitzpatrick, and therefore you gave him 2½ percent in Sinclair.

Mr. WALKER. No; he got the Sinclair participation first.

The CHAIRMAN. He got that first?

Mr. WALKER. Yes. He got the Sinclair participation on October 24, and he got the Prairie participation November 25 or 26, some time later on.

The CHAIRMAN. And you practically fixed the amounts?

Mr. WALKER. As a result of discussion, undoubtedly.

Mr. PECORA. And the discussion has been completely forgotten by all persons with whom you have claimed to have discussed it, according to you.

Mr. WALKER. Well, I am certain that I discussed it. I am not that bad a business man that I would not tell my associates what I am doing.

Mr. PECORA. Are you that good a business man that you reduced this understanding to writing, about giving Fitzpatrick 2½ percent?

Mr. WALKER. I suppose I am not, if you want to put it in that form.

Mr. PECORA. I was trying to find out how good or how bad a business man you are, Mr. Walker.

Mr. WALKER. Well, that is all right.



Mr. PECORA. Apparently you were not that good a business man, as to reduce to writing the understanding that you claim you arrived at with your associates in this purchasing group, that involved eventually a payment of \$300,000 to somebody else. Is that a fair statement?

Mr. WALKER. I was not the manager of this syndicate.

Mr. PECORA. You were the proposer of this plan to give Mr. Fitzpatrick  $2\frac{1}{2}$  percent, however?

Mr. WALKER. Yes. But I was not the manager of the syndicate, and did not write letters to the syndicate members.

Mr. PECORA. As the proposer of the plan were you a good enough business man to put that in writing and have it subscribed by all of the participants who were to make a contribution toward this  $2\frac{1}{2}$  percent of the profits?

Mr. WALKER. I never put anything in writing on it, I will answer.

Mr. PECORA. Did you have any correspondence with anybody relating to this understanding that you say you arrived at with your coparticipants in the original purchasing group?

Mr. WALKER. No.

Mr. PECORA. Did you dictate or make any memorandum of those conferences?

Mr. WALKER. I am not in the habit of making memoranda.

Mr. PECORA. Now, the purpose of giving  $2\frac{1}{2}$  percent to Mr. Fitzpatrick was to satisfy some idea or notion of Blair & Co., wasn't it?

Mr. WALKER. We were working with Mr. Fitzpatrick in connection with the purchase of those Prairie stocks, and that must have been the reason and is the only reason I can offer.

Mr. PECORA. Well, if Blair & Co. found it expedient, advisable, or necessary to take care of Mr. Fitzpatrick in that fashion, why, in Heaven's name, did not Blair & Co. give Fitzpatrick that \$300,000 out of their own share of the profits and not require all of the other participants to contribute to it?

Mr. WALKER. Because they were equally interested in this purchase. There was no reason why Blair & Co. should have assumed it. We were not the only purchaser of this stock. They had their relative interests the same as we had ours. That was done in everybody's interest.

Mr. PECORA. I can understand the reason you give, although I may not approve of it. I can understand the reason you give for wanting to take care of Mr. Fitzpatrick in a transaction in which you were going to become a stockholder in his company, in the company of which he was the president. In other words, you wanted to stand in with the management. But I cannot understand why you should have thought of Mr. Fitzpatrick in the other way, in a deal that he was in no way connected with, in a company of which Mr. Fitzpatrick was neither president nor manager. Can you enlighten me on that?

Mr. WALKER. We would not, except that the other deal was pending at the time. That was all. The two deals were practically simultaneous.

Mr. PECORA. But they had nothing in common.

Mr. WALKER. Nothing in common; absolutely not.

The CHAIRMAN. You knew there was going to be a profit in the first deal, didn't you?

Mr. WALKER. You never know anything when you go into a deal. Until the stock is sold you never know whether there is to be a profit or a loss. If this had happened to be in the fall of 1929 instead of in the fall of 1928, we would have all taken a serious loss instead of a profit.

Mr. PECORA. Mr. Walker, did you take up this participation, or rather this desire of Blair & Co. to give Mr. Fitzpatrick something out of the profits that would accrue to the purchasing syndicate, with the Continental National Co. of Chicago?

Mr. WALKER. I do not think so.

Mr. PECORA. They were participants? They were permitted to come in on the ground floor after the ground floor was first laid, after the first 4 or 5 participants were in?

Mr. WALKER. I doubt whether any of the other participants were advised, except Mr. Tinker.

Mr. PECORA. Weren't you, in effect, giving away some of their money without consulting them?

Mr. WALKER. That group, as I say, was working in both propositions. They were interested practically simultaneously in both. So that it did not affect them much one way or the other whether Mr. Fitzpatrick got a larger interest in one or a smaller interest in the two transactions.

Mr. PECORA. Were they interested in the Prairie Oil syndicate?

Mr. WALKER. As I remember it; yes. Practically the same group, with 1 or 2 small additions, were in the Prairie syndicate.

Mr. PECORA. Where did any desire of the Rockefeller interests come into this picture, to take care of Mr. Fitzpatrick?

Mr. WALKER. I don't know. I didn't have any conversation with the Rockefeller interests.

The CHAIRMAN. The upshot of the whole matter was that you bought those 1,130,000 shares of Sinclair Consolidated Oil Corporation stock at \$30 a share.

Mr. WALKER. Yes, sir.

The CHAIRMAN. And you sold them at something like 38, and the people who bought them at 38 have lost the difference between 38 and the present price of about 12, which means \$26 a share. That means that 26 million dollars have been lost. That is the upshot of it, isn't it?

Mr. WALKER. I do not think that is a fair way to put it. If this were the only stock that had declined I would answer, yes. But this is not the only stock, as you know, to decline, for the whole market has declined.

The CHAIRMAN. I know that.

Mr. WALKER. I happen to be a considerable stockholder in the Sinclair Co., and have been for years, which stock I have held for years, and I am relatively better off in that than I am in a great many holdings that I have.

The CHAIRMAN. As a matter of fact, the stock is now selling at \$12 a share, and the people who paid \$38 a share for it have lost \$26 a share:

Mr. WALKER. If those same people hold it today, they are out-of-pocket to that extent as a paper proposition. But paper profits and paper losses you cannot count.

The CHAIRMAN. Well, were all the losses in Wall Street paper losses?

Mr. WALKER. No; some of them—

The CHAIRMAN (continuing). Is the depreciation in securities simply a matter shown on paper?

Mr. WALKER. No. And some may come back, or at least we hope they are coming back.

The CHAIRMAN. I suppose the fact that the public is out-of-pocket 26 million dollars on this stock is where the joke comes in. That is, as a result of both transactions. Well, now, the subcommittee will take a recess until 2 o'clock this afternoon.

Mr. PECORA. And you will return then, Mr. Walker?

Mr. WALKER. Yes, sir.

(Thereupon at 1 p.m., Wednesday, Nov. 15, 1933, the subcommittee recessed to meet at 2 o'clock the same day at the same place.)

#### AFTERNOON SESSION

(The hearing was resumed at the expiration of the recess.)

The CHAIRMAN. The committee will come to order. Mr. Walker will resume the stand.

#### TESTIMONY OF ELISHA WALKER, A MEMBER OF THE FIRM OF KUHNS, LOEB & CO.—Resumed

Mr. PECORA. Mr. Walker, of whom did the company called "Blair & Co., Inc." consist in 1928?

Mr. WALKER. The so-called "partners", as we termed them, were Mr. Hunter Marston, Mr. Henry Lockhart, Jr., Mr. J. Cheever Cowdin, Mr. George Armsby, Mr. G. N. Lindsay, Mr. E. F. Hayes, Mr. Harry Bronner, Mr. Graham Youngs, and Mr. Clarence Lewis, and myself.

Senator COUZENS. Was it a partnership?

Mr. WALKER. It was a corporation formed under the business laws of the State of New York, and also a separate partnership.

Senator COUZENS. With limited liability?

Mr. WALKER. The corporation was a limited liability corporation, and the partnership, of course—

Senator COUZENS. Those names you have just mentioned—were they in both the corporation and the limited partnership also?

Mr. WALKER. I think they all were. It was a general partnership, not a limited partnership. The corporation was a limited corporation the same as any other corporation.

Senator COUZENS. But I understood you to say there were two; there was a partnership and a corporation, both?

Mr. WALKER. Yes.

Senator COUZENS. Were the same group you have just mentioned in the corporation organized under the laws of the State of New York and the separate partnership?

Mr. WALKER. Yes.

Senator COUZENS. They were all in the same group?

Mr. WALKER. Yes; they were all in the same group.

The CHAIRMAN. How was the business done with Blair & Co.?  
Was that with the corporation or the partnership?

Mr. WALKER. With the corporation.

Mr. PECORA. Mr. Walker, do you know any reason why the stockholders of the Sinclair Consolidated Oil Corporation were not given the opportunity to purchase this block of 1,130,000 shares?

Mr. WALKER. I think I know the underlying reason. It was the fact that the stock would have had to be offered to stockholders at a price lower than the market, which presumably would have been not over \$25 a share. It would have then been necessary to pay underwriting commissions to insure the success of the offering from the standpoint of the company and that would have netted the company materially less than the \$30 a share.

Mr. PECORA. Why was the trading account formed by the original purchasing syndicate?

Mr. WALKER. In order to stabilize the market, I would say.

Mr. PECORA. This morning you said that the real value of the stock that was listed on the exchange was to be measured by the public quotations which you say are made by the public?

Mr. WALKER. Yes.

Mr. PECORA. Then why did you not let the public make the price without any artificial stabilization by persons who had acquired a very large block of the stock?

Mr. WALKER. I do not think the intent was artificial stabilization. I think the intent was that on certain days there are more sellers than buyers, and on other days there are more buyers than sellers—

Mr. PECORA. And that is what helps fix the price?

Mr. WALKER. This tends to stabilize the market. In other words, if some man came one day to sell 50,000 shares and there had not been a purchasing group, I mean this trading group, the chances are it would have depressed the price maybe unduly; and vice versa, if somebody had come in to buy 50,000 shares on the market and the account was not there to sell the stock, it would have raised it.

Mr. PECORA. Does not that reasoning run counter to the philosophy you gave expression to this morning, that the real value of a security is what the public fixes through market trading?

Mr. WALKER. I do not think necessarily so; no.

Mr. PECORA. Why do you not permit the public, then, to trade in accordance with its own will, and not supply buying power to give support to the market when prices go down?

Mr. WALKER. I think it is a very proper function to try to stabilize markets.

Mr. PECORA. Was it not really done to enable the purchasing syndicate to dispose of its 1,130,000 shares at a profit?

Mr. WALKER. It was done to stabilize the market, I would say.

Mr. PECORA. Was it not done also to enable the purchasing syndicate to dispose of its 1,130,000 shares at a profit?

Mr. WALKER. It was done as a back-log to that situation.

Mr. PECORA. Can you not answer the question without any such qualification?

Mr. WALKER. No, I really cannot, Mr. Pecora. I think it was done in a sincere and honest effort to help and not to harm the market in any way.

Mr. PECORA. To help the market to whose advantage?

Mr. WALKER. To everybody's advantage, to every stockholder's advantage. We all know at times that big blocks of stock—and in this particular case there were certain big blocks of stock—come into the market, and if those blocks had been on the market it would have been very detrimental to the stockholders of the corporation if the market had declined unduly.

Senator COUZENS. Who put those large blocks of stock on the market? You said there were certain large blocks of stock that came on the market. Who put them there?

Mr. WALKER. If I remember rightly, H. P. Whitney sold a substantial block of stock, for one.

Senator COUZENS. And at the same time he was in the syndicate?

Mr. WALKER. At the same time he was in the syndicate.

Senator COUZENS. What other blocks came on the market at that time?

Mr. WALKER. That is the one I was thinking of particularly.

Mr. PECORA. Do you know how large a block he put into the market?

Mr. WALKER. It was very big; I could not state definitely; but if I remember rightly, it was in the hundreds of thousands of shares.

Mr. PECORA. Do you know that about the time of this agreement of October 24, 1928, there were upwards of 500,000 shares of that stock traded in on the New York Stock Exchange?

Mr. WALKER. Pardon me. When was that traded in, you say?

Mr. PECORA. Around October 24, 1928.

Mr. WALKER. I do not remember just what was traded in on any date.

Mr. PECORA. On October 24, 1928, the date when this agreement was made between the Sinclair Co. and Arthur W. Cutten in behalf of the purchasing syndicate, there appear to have been 500,700 shares of the stock traded in on the New York Stock Exchange. Do you know whether that was the occasion when any of these large blocks that you speak of were thrown into the market?

Mr. WALKER. I could not remember the dates at all, but I think Mr. Whitney's sales came later. I am not sure.

Mr. PECORA. Do you know that on that day the price of the stock ranged from a low of 32 to a high of  $35\frac{7}{8}$ , with a closing quotation of  $35\frac{5}{8}$ ?

Mr. WALKER. Well, if you tell me so from the records, it must be so.

Mr. PECORA. And that the following day, October 25, there were 453,200 shares of the stock traded in on the New York Stock Exchange, with low of  $35\frac{1}{2}$  and high of  $37\frac{1}{4}$  and a closing price of  $36\frac{3}{4}$ ?

Mr. WALKER. I haven't any records to show that.

Mr. PECORA. Hadn't there been a steady appreciation in the market price of that stock for some time prior to October 24?

Mr. WALKER. As I remember it, the stock was somewhere in the low twenties earlier in the year and advanced up to around the 28

level—of course, this is trying to remember without checking at all, you understand—and fluctuated around that level until just before this transaction it went through 30.

Mr. PECORA. Can you, as the executive head of Blair & Co., Inc., one of the participants in this original purchasing group, tell us how the purchasing group had arranged to finance this purchase of 1,130,000 shares from the Sinclair Corporation?

Mr. WALKER. As I remember the contract, the group had the right to pay for this stock—

Senator COUZENS (interposing). That appears in the contract.

Mr. WALKER. Yes. The corporation had a right to call payment any time on 30 days' notice.

Mr. PECORA. Any time after 30 days' notice?

Mr. WALKER. Any time after 30 days they had the right to charge 6 percent interest. That is the way I remember it.

Mr. PECORA. What arrangements, if any, had been made by the members of the purchasing group to finance the purchase?

Mr. WALKER. At the start you mean?

Mr. PECORA. Yes.

Mr. WALKER. I don't think any special arrangements had been made. Each one was supposed to take care of his own participation.

Mr. PECORA. Was that actually done eventually, or was a loan negotiated to enable this participating group to finance the purchasing of the stock?

Mr. WALKER. As I understand it, a loan was made for certain members of the group, but Blair & Co., Inc., I believe paid some three million and odd dollars in December for their shares of the stock taken up from the company.

Mr. PECORA. What loan was made to enable any of the members to finance their participation in the purchase?

Mr. WALKER. I heard that the Chase made a loan of \$12,000,000.

Mr. PECORA. To whom?

Mr. WALKER. To the syndicate manager.

Mr. PECORA. To Mr. Cutten, as the manager of this purchasing group, was it not?

Mr. WALKER. I would not be surprised, but I have not checked those papers. Of course, syndicate agreements are made sometimes where each one can finance his own, and then the other syndicate agreements are pledged. In this case, as I remember it, Blair & Co., Inc., actually paid their share at the time.

Mr. PECORA. On December 27, 1928, the first deliveries of the 1,130,000 shares were made by the Oil Corporation to the purchasing syndicate for a consideration of \$15,000,000?

Mr. WALKER. Yes.

Mr. PECORA. Did Blair & Co. pay \$3,000,000 of that \$15,000,000 out of its own resources?

Mr. WALKER. I do not know whether it was 3 millions out of the 15, or 3 millions out of the 18. I think the first 500,000 shares—

Mr. PECORA (interposing). Were delivered on December 27?

Mr. WALKER. And the others were delivered—

Mr. PECORA (interposing). Against a payment of 15 million dollars?

Mr. WALKER. And the others were delivered right after that.

Mr. PECORA. How long after?

MR. WALKER. Two days after, I think, against a payment of 18 million dollars. Which one we took up I cannot say. [After consulting an associate.] We paid three million three hundred and some odd thousand dollars, I remember, and I cannot say whether it was in connection with that 500,000 or whether it was in connection with the six hundred and odd thousand on one of those 2 days. You see, the syndicate had already sold—Mr. Cutten had already sold—part of this stock.

MR. PECORA. Do you know through what medium payment was made in behalf of the purchasing syndicate of that 15 million dollars to the oil corporation?

MR. WALKER. I haven't—

MR. PECORA (interposing). Wasn't it through E. F. Hutton & Co.?

MR. WALKER. Oh, to the oil corporation; yes.

MR. PECORA. Through E. F. Hutton & Co.?

MR. WALKER. Yes; E. F. Hutton & Co.

MR. PECORA. E. F. Hutton & Co. were a firm of stockbrokers who were engaged or employed by both the purchasing syndicate and the trading syndicate of which the purchasing syndicate were members to handle the market tradings in this stock, were they not?

MR. WALKER. They handled it for Mr. Cutten as syndicate manager. I believe that is technically correct.

MR. PECORA. And don't you know that E. F. Hutton & Co., in order to enable them to make that 15-million-dollar payment to the Oil Corporation, borrowed 12 million dollars from the Chase National Bank?

MR. WALKER. Well, I know that they borrowed—at least to the best of my knowledge—they borrowed 12 million dollars of the Chase National Bank, but I know that Blair & Co., Inc., in connection with either that delivery of stock or the delivery on the 31st or whatever it was of December, paid their proportion. I do not believe that Blair were part of that loan at the Chase, because I remember well we did pay money—we did not want to, frankly, pay the rate of interest that banks were charging at that time. We had our own money and we paid our own money.

MR. PECORA. Have you told this committee everything you can recall concerning the reasons for or the circumstances surrounding the payment to Mr. Fitzpatrick of 2½ percent of the profits that accrued to that purchasing syndicate?

MR. WALKER. To the best of my recollection.

MR. PECORA. Is there anything that you can add to what you have already told the committee on that subject without the necessity of your being asked specific questions thereon?

MR. WALKER. I do not think of anything that I could add.

MR. PECORA. You think that your recollection has been completely searched out and exhausted by the questions that you have answered thereon?

MR. WALKER. I think so.

MR. PECORA. You still have a certain recollection of your having discussed at the outset with the associates of Blair & Co. in the original purchasing syndicate the desire of Blair & Co. to give to Mr. Fitzpatrick 2½ percent of the profits?

MR. WALKER. Yes.

Mr. PECORA. You are firm in your recollection as to that?

Mr. WALKER. I am firm in my recollection.

Mr. PECORA. Despite the fact that all the other witnesses who represent participants in that original purchasing group have testified here that they had no such knowledge at any time of the reason why this 2½ percent of the profits was given to Mr. Fitzpatrick?

Mr. WALKER. Notwithstanding their testimony, I still stand by my recollection of it.

Mr. PECORA. And in connection with their testimony let me say to you that the transaction has been referred to in testimony before this committee as a "Santa Claus gift to Mr. Fitzpatrick", and you have been referred to as the person who put the Santa Claus whisksers on other members of the originating purchasing group. That is not true, is it?

Mr. WALKER. I never put anything on any group. I mean they all consented to it. No; I have not put any whisksers on anybody.

Mr. PECORA. Blair & Co., I think you said, were bankers for the Prairie Oil at one time?

Mr. WALKER. No.

Mr. PECORA. Were they bankers for the Sinclair Corporation?

Mr. WALKER. Yes.

Mr. PECORA. As such did you at any time have anything to do with the negotiations that eventuated in the consolidation of the Sinclair Consolidated Oil Corporation with the Prairie Gas & Oil Co.?

Mr. WALKER. I did at subsequent dates to this.

Mr. PECORA. What did Mr. Fitzpatrick have to do with any of those negotiations?

Mr. WALKER. I presume he was consulted by various people in connection with it. I know I consulted him.

Mr. PECORA. And in your consultation with him what attitude did he take with regard to the proposed consolidation?

Mr. WALKER. He always wanted a much higher price than Mr. Sinclair was ready to give on his side of it.

Mr. PECORA. Did he get the higher price?

Mr. WALKER. The negotiations were long dragged out.

Mr. PECORA. But did he get the higher price?

Mr. WALKER. I do not know whether you can say anybody got either a higher or lower price, because conditions were rapidly changing. Market conditions were getting worse. The Ajax Pipe Line had been built, or was in course of being built, which affected the Prairie Pipe Line seriously, and I think it was just purely a matter of negotiation, and I think that the largest factor in the ultimate decision was the Rockefeller interest.

Mr. PECORA. Now, Mr. Walker, you said that Mr. Fitzpatrick always wanted a higher price than Mr. Sinclair was willing to give. Did he get that higher price?

Mr. WALKER. I don't think that question can be answered just with a yes or no, because it was a question of negotiation, and naturally a man always negotiates to get a better price.

Mr. PECORA. As a result of negotiations or anything else, did he get the higher price that you have referred to as being what Fitzpatrick always wanted?



Mr. WALKER. I think he got certainly a higher price than Mr. Sinclair was willing to pay, at the end; yes.

Mr. PECORA. That consolidation was consummated in March 1932 and was effected by an exchange of stock, was it not?

Mr. WALKER. Yes.

Mr. PECORA. And what was the basis of exchange, the ratio of exchange?

Mr. WALKER. As I remember, it was a share for share for Prairie Oil & Gas and a 1.4 shares for Prairie Pipe. In other words, Prairie Pipe—

Mr. PECORA (interposing). 1.4 shares of consolidated for one share of Prairie Pipe?

Mr. WALKER. For one share of Prairie Pipe; yes.

Mr. PECORA. Now, Mr. Fitzpatrick testified that he was permitted to acquire some 9,000 shares of the common stock of the Sinclair Consolidated Oil Corporation from either the original purchasing syndicate or one or more of the members of that original purchasing syndicate at the ground-floor price of \$30 per share. Do you know anything about that?

Mr. WALKER. As I remember, it was exchanged on a basis of 5 shares for 3 shares.

Mr. PECORA. And the Sinclair shares were given a valuation of \$30 per share in effecting that exchange?

Mr. WALKER. I don't know what price he may have put on his books, but the current market prices were approximately 5 to 3. That was done on that basis as far as we were concerned. We were concerned in getting the best prices we could for our shares.

Mr. PECORA. Do you know why he got 5 to 3, whereas the other stockholders eventually received share for share?

Mr. WALKER. It was at the market at the time.

Mr. PECORA. Which participant in the original purchasing group made that exchange with Mr. Fitzpatrick?

Mr. WALKER. I think probably the group as a whole did, but I could not recollect that individual transaction.

Mr. PECORA. Are you sure it did not come out of the share of Blair & Co.?

Mr. WALKER. I do not think so, because you see, Blair & Co., Inc., had no stock as such. They were members of the group, and this trade was made probably through the intermediary of Blair with the group.

Mr. PECORA. Do you know when that exchange was made with Mr. Fitzpatrick?

Mr. WALKER. No.

Mr. PECORA. Was it before the closing of the purchasing syndicate account?

Mr. WALKER. I really could not say.

Mr. PECORA. Who initiated the negotiations for that exchange, Mr. Fitzpatrick or the other parties?

Mr. WALKER. I imagine Mr. Fitzpatrick, but I could not say. There is no reason why we should think of an odd amount like that.

Mr. PECORA. Now, at that time, was the market value of the Sinclair stock about 39?

Mr. WALKER. I would have to know the date and the time of the transaction to look it up. I mean I really could not remember. If you could give me the date, we could look at those records and find out.

Mr. PECORA. I heard of it for the first time when Mr. Fitzpatrick told us this morning. Didn't you hear him give testimony to that effect?

Mr. WALKER. Yes, I heard him give that this morning, but I mean I haven't thought of the thing until I heard of it this morning. It was just really a normal business transaction, practically exchanging at market values. He wanted Sinclair stock instead of Prairie stock.

Senator COUZENS. When this consolidation was arranged what amount did the Prairie Gas & Oil figure they got for their properties?

Mr. WALKER. Well, they got share for share.

Senator COUZENS. I understand, but what was the aggregate value fixed?

Mr. WALKER. I really don't remember.

Mr. PECORA. Do you remember what the book values were respectively of the Sinclair stock and the Prairie Oil stock in March 1932 when the consolidation was effected?

Mr. WALKER. I would have to more or less guess at present, without looking it up, but I have the impression that before Sinclair wrote down certain of their assets, it was around \$44. I may be entirely mistaken.

Mr. PECORA. For which stock?

Mr. WALKER. For the Consolidated Oil stock.

Mr. PECORA. What was the book value of the Prairie Oil stock?

Mr. WALKER. I really cannot remember that. I was not a director of Prairie then. I was a director of Sinclair.

Mr. PECORA. As an officer or director of the Sinclair Co., were you not interested in finding out whether or not an exchange was being effected on a basis that was fair and equitable to the stockholders of both companies, including your own?

Mr. WALKER. Absolutely; but book value has absolutely nothing to do with it. I would not care what the books said. I would want to know what the values were.

Mr. PECORA. How did you determine the values, then, for the purpose of effecting that exchange?

Mr. WALKER. We studied documents and documents and documents, report after report, for months on that thing.

Mr. PECORA. Did you consider market quotations?

Mr. WALKER. No; not seriously. Of course, market quotations, for some reason or other, gradually work around, because markets more or less appraise current situations.

Mr. PECORA. That rather surprises me, Mr. Walker, in view of what you testified to this morning, that in your opinion the thing which controls the value, or gives the value to securities, is the price the public pays for them in the open market.

Mr. WALKER. That is exactly what I thought I was saying now, because I think, for some reason or other, the public have an intuition that appraises relative situations remarkably well. I have had

so many experiences when I have seen the insiders marvel at the way a stock is going down. They don't know why, and they will wake up 6 months later and find the public was right, and the market quotation was right.

Mr. PECORA. Have you found that the public has been right in the market, as against the insiders? Has that been your experience?

Mr. WALKER. I think they have been just as right as the insiders. There is nothing like inside information to break anybody.

Mr. PECORA. From all I have understood, the public has been invariably wrong.

Mr. WALKER. So have the insiders.

Mr. PECORA. Who in the world has been right, then?

Mr. WALKER. The insiders have been just as wrong, Mr. Pecora.

Mr. PECORA. It is getting to be more of a mystery. That is all, Mr. Walker, unless you have something you would like to say to the committee.

Mr. WALKER. There is nothing I can think of. I have tried to give you as clear a remembrance of this situation as I can.

Mr. PECORA. I will say for you that you have remembered things that your associates seem to have been entirely ignorant of.

Mr. WALKER. I cannot help that. Thank you.

Mr. PECORA. Is Mr. Cutler here?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Will you be good enough to take the stand, Mr. Cutler?

#### TESTIMONY OF BERTRAM CUTLER, ROCKEFELLER FINANCIAL ADVISER

The CHAIRMAN. Mr. Cutler, you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God?

Mr. CUTLER. I do.

Mr. PECORA. What is your full name, Mr. Cutler?

Mr. CUTLER. Bertram Cutler.

Mr. PECORA. What is your business or profession?

Mr. CUTLER. I have been associated with the Rockefellers for a good many years, I assume, as financial adviser. I have no title.

Mr. PECORA. For how many years have you been so associated?

Mr. CUTLER. Thirty-two.

Mr. PECORA. You are still associated with them?

Mr. CUTLER. Yes.

Mr. PECORA. As a sort of financial adviser?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Some testimony has been presented to this committee today substantially to the effect that some time in 1928 the Rockefeller interests, so-called, as represented in certain trusts or foundations which had been created by the Rockefellers, sold some large holdings of stock that those foundations owned at that time, of the Prairie Oil & Gas Co. Do you know anything about those sales?

Mr. CUTLER. Yes, sir.

Mr. PECORA. When did they take place?

Mr. CUTLER. I think sometime in November 1928.

Mr. PECORA. What volume or quantity of stock was so disposed of then?

Mr. CUTLER. I think it was the entire amount owned by 3 or 4 of the so-called "Rockefeller charitable funds."

Mr. PECORA. We do not know what amount that is.

Mr. CUTLER. Roughly, it was \$38,000,000 worth, at the prices that have been testified to. I do not know the number of shares.

Mr. PECORA. Several hundred thousand shares?

Mr. CUTLER. Oh, yes.

Mr. PECORA. Do you know to whom those shares were sold?

Mr. CUTLER. To Blair & Co.

Mr. PECORA. Representing themselves, or a syndicate?

Mr. CUTLER. Representing themselves, to my best knowledge.

Mr. PECORA. Did you have anything to do with the negotiations that resulted in that sale?

Mr. CUTLER. I carried them on.

Mr. PECORA. When were they commenced? Having in mind that they terminated in the sale in November 1928, when did the negotiations commence?

Mr. CUTLER. At least 6 months, I would say, ahead of that date. I do not know the date.

Mr. PECORA. At any time during the pendency of those negotiations did you have any conversations with Mr. William S. Fitzpatrick who, according to the evidence here, was at that time the president of the Prairie Oil & Gas Co.?

Mr. CUTLER. I did.

Mr. PECORA. In those conversations did you discuss with him, or he with you, anything relating to the negotiations for the sale of that stock?

Mr. CUTLER. I did.

Mr. PECORA. Was anything said between you in any of those conversations in which you indicated a desire on the part of the Rockefellers to reward, or pay, or give Mr. Fitzpatrick something out of profits that would accrue from the sale?

Mr. CUTLER. I do not think I can answer the question just yes or no.

Mr. PECORA. Answer it in any way you want to.

Mr. CUTLER. I believe the policy of our office has always been that we like to see the management of the different companies substantial stockholders in those companies. When the sale was consummated, or being consummated, or talked about, to the best of my recollection Mr. Fitzpatrick expressed to me a desire that if he had had more time he would like to have bought some of the stock himself, and to the best of my recollection I did say to him that I thought the bankers would take him in the purchase.

Mr. PECORA. What prompted you to say that? Had you discussed it with the bankers?

Mr. CUTLER. I had discussed it with the bankers. Whether before or after that statement I do not know.

Mr. PECORA. When you made that statement to Mr. Fitzpatrick had you had any discussion with the bankers with respect to taking care of Mr. Fitzpatrick?

Mr. CUTLER. The expression "taking care of" him I do not just understand. This was one of a number of other sales that I had made to these same bankers, and I believe in those sales, as I believe Mr. Walker testified, in most instances the management of the company were given a chance to participate in the purchase of a large amount of stocks, not by the Rockefellers, but by the bankers who bought it. As a matter of policy, believing, as I said, that it was a good thing for the corporations and the stockholders both to have the management substantially interested in the stock, we were glad enough to see them do it.

Mr. PECORA. Did Mr. Fitzpatrick come to you, in the course of those negotiations, and indicate to you a desire on his part to be permitted to participate in the purchase of those shares that were held by the Rockefeller trusts?

Mr. CUTLER. I think he did.

Mr. PECORA. Did you refer him, then, to the bankers with whom you were negotiating to sell the shares?

Mr. CUTLER. I think I did.

Mr. PECORA. Did you say to Mr. Fitzpatrick at any time in words, substance, or effect, that the Rockefeller interests would see to it that he, Fitzpatrick, received something out of any profits that would accrue to anybody from the purchase or sale of those shares of the Prairie Oil & Gas Co. stock which the Rockefeller trusts then had?

Mr. CUTLER. No, sir, I don't believe so.

Mr. PECORA. Do you know whether Mr. Fitzpatrick acquired, either through the bankers or through any other sources, or through his own devices, any of the shares that were sold by the Rockefeller trusts to Blair & Co.?

Mr. CUTLER. I do not know. I assume that he did. I do not know.

Mr. PECORA. How many times did you talk with Mr. Fitzpatrick on that subject during the pendency of those negotiations?

Mr. CUTLER. I could not tell.

Mr. PECORA. More than once?

Mr. CUTLER. Oh, yes.

Mr. PECORA. Did you eventually refer him to the bankers?

Mr. CUTLER. I think I referred him to the bankers.

Mr. PECORA. Before you did that, did you yourself discuss with the bankers the matter of permitting Mr. Fitzpatrick, through them, to acquire some of this Prairie Oil stock that the trusts were about to dispose of?

Mr. CUTLER. I doubt if I did it until the actual sale had taken place.

Mr. PECORA. Have you any clear recollection about that, Mr. Cutler?

Mr. CUTLER. I think it is pretty clear; yes.

Mr. PECORA. When the sale took place, did you have any talk with the bankers about permitting Mr. Fitzpatrick to acquire some of the stock?

Mr. CUTLER. Yes, I think I did.

Mr. PECORA. With whom?

Mr. CUTLER. I think it was with Mr. Hunter Marston.

Mr. PECORA. What was the substance of that talk?

Mr. CUTLER. I would say it was that I assumed that as they were becoming large stockholders in the company, if Mr. Fitzpatrick wanted an interest in it, we would be glad if they saw fit to give him one, my idea being that he was going to be allowed to buy the stock on the same basis they were buying, or about the same basis.

Mr. PECORA. Did Mr. Marston indicate that they would give that privilege to Mr. Fitzpatrick?

Mr. CUTLER. I think he said they would be very glad to.

Mr. PECORA. Did you learn at any time since whether Mr. Fitzpatrick was permitted to acquire any of the stock on the original terms of sale to Blair & Co.?

Mr. CUTLER. No, sir. I was practically through with it when that happened.

Mr. PECORA. Did the Rockefeller interests, so far as you know, have any desire, or express to anyone any desire to see Mr. Fitzpatrick receive any share of profits that accrued to the bankers from the purchase by them of this Prairie Oil stock from the Rockefeller trusts?

Mr. CUTLER. Is not that the same question? Will you repeat it? (The reporter read the pending question.)

Mr. CUTLER. I thought I answered that before. My best recollection is that, knowing the attitude of our office, that it was a good thing for the management of a company to be interested in the stock, we hoped, or suggested, perhaps, or I suggested, that if Mr. Fitzpatrick wanted an interest in that stock, he should be allowed to have it. I could not control it. I had nothing to say about it. If they did not want him to, that was the end of it, but we would not object.

Mr. PECORA. Did you have any knowledge, in October or November of 1928, or any time subsequently, of the formation of a purchasing syndicate to buy 1,130,000 shares of the treasury stock from the Sinclair Consolidated Oil Corporation?

Mr. CUTLER. I knew nothing about it at all, except I guess it was a common rumor around the street that there was what you call a syndicate in the stock, but I knew nothing about it.

Mr. PECORA. Did you indicate to anyone at that time that you or the Rockefeller interests would like to see Mr. Fitzpatrick obtain a share of any profits that would accrue to any such syndicate from its purchase and sale of these shares of stock of the Sinclair Co.?

Mr. CUTLER. I did not even know there was a syndicate.

Mr. PECORA. At any time that you had any conversation with Mr. Fitzpatrick in connection with the contemplated sale by the Rockefeller trusts to Blair & Co. of the Prairie Oil Co. stock, was anything said about giving Mr. Fitzpatrick a 10 percent interest in anything?

Mr. CUTLER. I do not recall the 10 percent.

Mr. PECORA. Do you recall any specific amount of interest in profit being discussed between you and Mr. Fitzpatrick?

Mr. CUTLER. I would have nothing to do with the percentage. All I would have to do, as I said, was to tell them that as far as I was concerned I would be glad to see, if he wanted an interest, that he had it. I don't believe I said 10 percent, or 5 percent, or anything. That was for them to decide.

Mr. PECORA. To what did the 10 percent apply, in your mind?

Mr. CUTLER. I do not know about any 10 percent.

Mr. PECORA. Nothing was ever said to you about 10 percent by Blair & Co., or by Mr. Fitzpatrick, or by anybody else?

Mr. CUTLER. To the best of my knowledge no amount was fixed. I did not negotiate anything with them, whether it would be 10 percent, or 5 percent, or any percentage.

Mr. PECORA. Did the Rockefeller interests own any shares of the Sinclair Consolidated Oil Corporation in October 1928?

Mr. CUTLER. The so-called "charitable funds" that you are mentioning did not.

Mr. PECORA. Did any other interests known as the Rockefeller interests, that might properly be so designated, have any such holdings of stock at that time?

Mr. CUTLER. To the best of my knowledge at that time they did not. I would not be sure of that, though.

Mr. PECORA. Do they today hold any such stock?

Mr. CUTLER. A large amount.

Mr. PECORA. How large?

Mr. CUTLER. A very substantial amount. I cannot give you the number. It is the amount Mr. Rockefeller, Jr., might have received for stock of the Prairie Co. that he owned.

Mr. PECORA. At the time of the consolidation in March 1932.

Mr. CUTLER. Yes.

Mr. PECORA. Do you know how much of the Prairie Oil stock he owned then?

Mr. CUTLER. No, but I would roughly guess that the whole thing is 1,000,000 shares, or around there.

Mr. PECORA. That is, at the present time?

Mr. CUTLER. Yes.

Mr. PECORA. One million shares of the Consolidated Corporation?

Mr. CUTLER. I assume so.

Mr. PECORA. Did you represent the Rockefeller interests in any negotiations that led to that consolidation in March 1932?

Mr. CUTLER. I did.

Mr. PECORA. What were those negotiations?

Mr. CUTLER. In 1932?

Mr. PECORA. Or at any time. I am referring to the negotiations that culminated in the consolidation in March 1932. I am not fixing that date as the date of the negotiations, but the date of the happening of the event which marked the culmination of the negotiations.

Mr. CUTLER. I cannot tell you the date that the first talks of the consolidation of the Prairie Oil and the Prairie Pipe with the Sinclair Oil took place, but to the best of my knowledge it was not until nearly early 1932.

Mr. PECORA. Not until when?

Mr. CUTLER. About the first of 1932.

Mr. PECORA. Had you heard of negotiations having been instituted long prior to 1932?

Mr. CUTLER. No, sir.

Mr. PECORA. It has been testified to here that those negotiations progressed off and on over a period of 5 years prior to March 1932.

Mr. CUTLER. But I do not think testified that it was with me.

Mr. PECORA. No; but you first heard of it sometime in the early part of 1932?

Mr. CUTLER. They have all kinds of rumors around Wall Street, but the first time we considered it at all, to the best of my knowledge, would be probably the first of 1932, probably 6 or 8 months, at most, before they were consummated.

Mr. PECORA. With whom did you have any conversations in behalf of Mr. Rockefeller with respect to the proposed consolidation?

Mr. CUTLER. With Mr. Fitzpatrick, with Mr. Hunter Marston, with Mr. Henry Lockhart, with associates of my own office, our private counsel, with oil experts that we might have called in to see if we could figure out what was a fair basis of the merger.

Mr. PECORA. What was the total number of shares outstanding at that time of the Prairie Oil & Gas Co.?

Mr. CUTLER. I am sorry I cannot tell you.

Mr. PECORA. What proportion do you think the Rockefellers owned of the outstanding stock?

Mr. CUTLER. At the time of the merger? I would have to guess. Eleven, twelve, or fourteen percent, just as a guess. I do not know. Maybe less.

Mr. PECORA. In your 30 years or so of experience as financial adviser to the Rockefellers, would you say that that proportion of stock interest gave them a management control?

Mr. CUTLER. I would say that is a very much debated question as to what gives control. Some people say 10 percent does. Some say it takes 55. I do not know.

Mr. PECORA. I assume your opinion on that would be worth more than the average man's, in view of your 30 years' experience as financial adviser to the Rockefellers. Might I ask, then, your opinion about it?

Mr. CUTLER. I would think 10 or 15 percent would have quite a weight in the management of the company, but not control.

Senator COUZENS. It would depend upon who organized the proxies, would it not, as to who had control?

Mr. CUTLER. It would depend on who voted the proxies, I guess.

Senator COUZENS. We have heard of experiences where the solicitors for the proxies usually voted for them. You mean, then, I understand, that if an owner of 14 or 15 percent of the stock attempted to organize control by the solicitation of the proxies, he could probably get proxies; is that correct?

Mr. CUTLER. It would depend upon who the owner of the 14 or 15 percent was.

Senator COUZENS. You testified a while ago that an owner of 14 or 15 percent would be a big factor in the control.

Mr. CUTLER. Yes, sir.

Senator COUZENS. At that time you did not make any discernment as to who owned the stock. Now I understand you qualify your answer by saying it would depend on who owned the stock, as to whether they would be a big factor in getting control. Is that right?

Mr. CUTLER. I would think that the standing of the person who had that much stock, in asking for proxies, would have great weight.

Senator COUZENS. That happened to be true in the case of the Standard Oil Co. of Indiana, did it not?

Mr. CUTLER. That is just about the percentage there, I think.



Mr. PECORA. Mr. Cutler, you learned eventually, did you not, that Mr. Fitzpatrick had received something like \$300,000?

Mr. CUTLER. Yes, sir.

Mr. PECORA. Out of the profits that accrued to this purchasing syndicate in the Sinclair Oil stock deal.

Mr. CUTLER. Yes, sir.

Mr. PECORA. When did you first learn of it?

Mr. CUTLER. Yesterday.

Mr. PECORA. Never heard of it before that?

Mr. CUTLER. Never heard of it before. Yesterday or the day before.

Senator COUZENS. Was it a surprise?

Mr. CUTLER. Very much of a surprise; yes, sir.

Mr. PECORA. Had you learned of it at the time it happened would you, as the financial adviser of interests that owned around 14 per cent of the stock of the company of which Fitzpatrick was president, have approved of it?

Mr. CUTLER. I do not think I could approve of it; no, sir.

Senator COUZENS. Do you know any reason for having kept it secret for all these years?

Mr. CUTLER. I know nothing about it.

Senator COUZENS. Can you conceive of any reason for keeping it secret all this time?

Mr. CUTLER. No. I cannot think of any reason for publishing it, if that will answer the question.

Senator COUZENS. Well, that is a reverse answer. But apparently there was an effort, was there not, to keep the payment secret?

Mr. CUTLER. Well, now you are asking me something which I had nothing to do with whatsoever. I did not even know there was a syndicate. I did not even know there was a payment.

The CHAIRMAN. What would be your objection to his receiving it? You said you would not have approved it, you think. What would be your objection to his receiving this donation?

Mr. CUTLER. I don't know as I would have any objection if somebody wanted to give him \$300,000.

Senator COUZENS. Would it not depend on who the giver was?

Mr. CUTLER. If it was my money that was given it might; yes. If it was not—

Senator COUZENS. If you were interested in a corporation and a competitor came along and gave your management \$300,000 would you not be interested?

Mr. CUTLER. I had not from reading the testimony understood that the corporation gave him \$300,000. I thought some banking group gave it.

Mr. PECORA. Well, a banking group, or a purchasing group, rather, that included the Chase Securities Corporation, one of the officers of which, namely, Mr. Clarkson, was at that time a director of the Sinclair Co.; that included Blair & Co., the president of which at that time was also a director of the Sinclair Oil Corporation; and that included Mr. Harry F. Sinclair, who at that time was chairman of the board of directors of the Sinclair Oil Corporation—with that knowledge would you have approved of it?

Mr. CUTLER. I do not see why I should be asked if I approve of it. I do not know whether I follow your question. I do not see that I am interested in it.

Mr. PECORA. Well, now, in answer to my question you said that had you known at the time that payment was made to Fitzpatrick that it was to be made you would not have approved of it. Following that, Senator Fletcher asked you why you would not have approved of it. I do not believe you have yet answered Senator Fletcher's question.

Mr. CUTLER. The question being why would I not approve of it?

Mr. PECORA. Yes.

Mr. CUTLER. Well, I do not just recall the question before that I did answer. I thought I had—I do not see why I should be asked to approve of it. I do not know just what you mean.

Mr. PECORA. Well, I asked you the question specifically to the effect: Had you known at the time this payment was made to Mr. Fitzpatrick of the making of such payment would you have approved of it, and you answered no.

Mr. CUTLER. Well, had I been in the position of a lot of the people making the payment, I certainly would not have approved of it. But I was not a director of the Consolidated Oil or a member of the Syndicate, or anything.

Mr. PECORA. You were the financial adviser of the owners of about 14 percent of the stock of the Prairie Oil Co., which was the company of which Mr. Fitzpatrick was president at that time?

Mr. CUTLER. Yes.

Mr. PECORA. Now, having in mind that the Prairie Oil Co. at that time was a competitor, to a certain extent, in the producing field of the Sinclair Consolidated Oil Co., would you have approved of the president of your company, meaning the Prairie Co., receiving—

Mr. CUTLER (interposing). Now you are putting it in a different way. No.

Mr. PECORA (continuing). Receiving from interests that included executive officers and directors of the Sinclair Corporation or making of a payment by the latter to Mr. Fitzpatrick of \$300,000, or any sum?

Mr. CUTLER. The answer is, certainly "No", if you put it that way.

Mr. PECORA. For what reason? Now, I will ask Senator Fletcher's question of you. For what reason would you have disapproved of it?

Mr. CUTLER. Why, I would not think the president of my company had a right to take the payment from some other company.

Mr. PECORA. Well, that is an answer.

Senator COUZENS. That is what we expected, and it was a long time getting it.

Mr. CUTLER. Well, Senator, I am sorry, but I did not understand just what you were asking.

Mr. PECORA. I think that is all with Mr. Cutler.

The CHAIRMAN. Mr. Cutler, may I ask you if the interests that you represented felt under any obligation or inclined in any way to obtain or secure for Mr. Fitzpatrick some special reward on account

of his long services and help in connection with the companies in which you were interested?

Mr. CUTLER. I cannot say what they might have felt. I do not ever remember it being expressed to me.

The CHAIRMAN. That question did not come up at all?

Mr. CUTLER. No.

Mr. PECORA. I have no further questions of Mr. Cutler.

The CHAIRMAN. That is all, Mr. Cutler.

(Thereupon Mr. Cutler left the witness stand.)

**TESTIMONY OF WILLIAM SAMUEL FITZPATRICK, VICE CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CONSOLIDATED OIL CO.—Resumed**

Mr. PECORA. Mr. Fitzpatrick, I see you rising to your feet as Mr. Cutler leaves the stand.

Mr. FITZPATRICK. Yes.

Mr. PECORA. You wish to say something to the committee?

Mr. FITZPATRICK. I think I have a better recollection of some things than Mr. Cutler seems to have.

Mr. PECORA. I have not heard what you said, but perhaps if you take the witness stand again we may hear you.

The CHAIRMAN. Do you care to make any further statement, Mr. Fitzpatrick?

Mr. FITZPATRICK. Mr. Cutler is mistaken if he says he never heard of the consolidation until 1932 with Sinclair. I talked to him myself about it.

Mr. PECORA. When for the first time?

Mr. FITZPATRICK. Oh, when it first came up.

Mr. PECORA. Back in 1928?

Mr. FITZPATRICK. In 1928. Mr. Cutler's memory fails him if he says he never heard of my participation in the profits of the Blair syndicate.

Mr. PECORA. Do you mean by the Blair syndicate the original purchasing syndicate of the Sinclair stock?

Mr. FITZPATRICK. Blair. Because I remember distinctly telling Mr. Cutler that these people had been very nice to me and I appreciated it—that they had managed to pay me more out of this than my combined salary the twenty-some years I had been working with the company.

Senator COUZENS. What did Mr. Cutler say when he found that you had taken \$300,000 from a competing organization?

Mr. FITZPATRICK. I did not take it from a competing organization. I took it from the bankers, and I thought, and I believe, and I know that the suggestion that I get something—not 10 percent, not \$300,000—I do not believe anybody thought there was \$300,000 in it, or anything like the amount of profit there was in it—but I know that I got the idea from Mr. Cutler that I should have something out of it, or that they would give me something out of it. I know that when I talked to Mr. Marston that Mr. Marston had talked to Mr. Cutler about it or Mr. Cutler had talked to Mr. Marston about it. I know that I would not have done that or anything else and I did not do anything else in connection with this consolidation until it was approved by Mr. Cutler.

Senator COUZENS. And yet Mr. Cutler testifies—

Mr. FITZPATRICK (interposing). I do not care what Mr. Cutler testifies about. I say I know Mr. Cutler's memory is not good.

Mr. PECORA. Mr. Fitzpatrick, according to your recollection when did you tell Mr. Cutler for the first time that you had received this \$300,000 from that purchasing syndicate?

Mr. FITZPATRICK. Probably the first time I saw him after I had received it.

Mr. PECORA. That was shortly after April 1929?

Mr. FITZPATRICK. No. I went West, as I say, shortly after I received it, and was gone several weeks, and the first time I got back to New York I went in to see Mr. Cutler.

Mr. PECORA. Well, within a month or two after you had received it?

Mr. FITZPATRICK. A few months after I received it. Some few months afterwards.

Mr. PECORA. It would appear, Mr. Fitzpatrick, from the facts that have been developed here that the Rockefeller interests had nothing to do with the organization of that purchasing syndicate.

Mr. FITZPATRICK. I understand that is so.

Mr. PECORA. Do you know why Mr. Cutler then should have had any part in any conversations that led to your receiving a share of the profits of that syndicate?

Mr. FITZPATRICK. At that time and up to that time everything that had been said to me by Mr. Cutler or anybody else in Mr. Rockefeller's office, or by Mr. Rockefeller himself, indicated that they were very friendly to me, and that everything I had done in connection with the management of the Prairie Co. had their approval. Down to this day there has only been one criticism, and I think that was removed. Now, I believe, as I said this morning, that they were very friendly to me. And I believe that they—I knew that they knew something of my financial condition. And I believed that they wanted these people to do something for my benefit. I wondered then and have ever since why if they felt that way they asked somebody else to do it instead of doing it themselves.

Mr. PECORA. You have not found an answer to that?

Mr. FITZPATRICK. I have not found an answer to it.

Senator COUZENS. You did not get an answer today, either, did you?

Mr. FITZPATRICK. I did not get an answer today. And I am astonished more than you gentlemen are.

Now, another proposition. It has been intimated by this committee that this participation of mine was kept secret. It was not kept secret. It figured in my income taxes the year I received it. It was talked over with my associates in the Prairie Oil & Gas Co. and approved by them. They understood it then, they understand it now, and at all times have understood it.

Senator COUZENS. How do you account for this conflicting testimony then?

Mr. FITZPATRICK. I am not able to account for it. If I could account for it I would not be here disputing it.

Mr. PECORA. Mr. Fitzpatrick, how do you account for Mr. Arthur W. Cutten, Mr. Harry F. Sinclair, and Mr. Albert H. Wiggin having apparently been ignorant of the reason why you received this \$300,000 from the purchasing syndicate of which they were members?

Mr. FITZPATRICK. I do not account for it. I never had any conversation with any of them about it, and I know nothing about it. It was fixed up by Blair & Co., and I supposed everything was fixed up right and that everybody knew it and that it was satisfactory all around. I got the money from them. I did not ask them how much it was. I never asked for an accounting. I never asked for a statement as to the operations of the syndicate. I never asked for anything. And I got it. And I got into this thing here at the suggestion of Mr. Cutler and Mr. Marston, and whatever you gentlemen see fit to believe, whatever the public may believe, if it is to my detriment it is too bad. But I am going to see that the truth is laid before you.

Mr. PECORA. That is all we want.

Mr. FITZPATRICK. I do not care who disputes it. Mr. Cutler is an important man. Mr. Cutler represents perhaps the most powerful influence in this country—possibly in the world. I served them for twenty-some years, and I have never heard anything fall from the lips of anybody connected with the Rockefeller organization, until I heard this testimony, that impaired my respect for or confidence in them.

Now when I told Mr. Cutler that these people have been very good to me and I appreciated it—in fact they had carried me in this matter and made me more money than my combined salary, or approximately the amount of my combined salary for the years that I have been with the Prairie Oil & Gas Co., I don't remember why it was, but he said "I would not say anything about that." That is the first intimation I ever had or the first time it ever occurred to me that anybody might think there was anything wrong about my taking that money from Blair & Co.

Mr. PECORA. Who said to you you shouldn't say anything about it?

Mr. FITZPATRICK. Mr. Cutler.

Mr. PECORA. That was when you first told him that you had received that money?

Mr. FITZPATRICK. Yes, sir. When I told him how much it was.

Mr. PECORA. Now, when you were out in Excelsior Springs some 2 weeks ago with Mr. Sinclair were you surprised to know that he was ignorant of the reasons why you got that \$300,000 out of that purchasing syndicate's profits?

Mr. FITZPATRICK. I naturally was. Naturally was surprised.

Mr. PECORA. His ignorance of the fact seemed genuine to you, did it?

Mr. FITZPATRICK. It did. It did. It did. Because I thought I could understand how he might not have known all about it. He said he did not. He asked me and I told him the story about Mr. Cutler and my conversation with Mr. Cutler and Mr. Marston.

Mr. PECORA. Now, Mr. Fitzpatrick, you exchanged your shares of Prairie Oil & Gas Co. for shares of the Sinclair Co.—

Mr. FITZPATRICK. Yes.

Mr. PECORA (continuing). Some time in 1929?

Mr. FITZPATRICK. 1928 we made the arrangement.

Mr. PECORA. And it was consummated in February 1929?

Mr. FITZPATRICK. Yes, sir.

Mr. PECORA. Did you at that time in your transaction part with all your holdings of Prairie Oil?

Mr. FITZPATRICK. No.

Mr. PECORA. A substantial part of them?

Mr. FITZPATRICK. A substantial part of them, yes.

Mr. PECORA. And you exchanged them for shares of the common stock of the Sinclair Co.?

Mr. FITZPATRICK. Yes.

Mr. PECORA. Which then was more or less of a competing company?

Mr. FITZPATRICK. Well, in a measure. But the general discussion that was going on indicated that the Sinclair contemplated a dividend of \$3 a share. I knew that that was all that the Prairie Oil could pay, if they could pay that much. I knew that I would receive, pending the further negotiations for the consolidation, dividends on 5 shares at \$3 a share instead of on 3 shares of Prairie at \$3 a share. I wanted those additional dividends. I got them. And I paid my income tax on that additional income.

Senator COUZENS. Did Mr. Rockefeller know that you exchanged the stock in a corporation in which he had a big interest for stock in a competing company?

Mr. FITZPATRICK. I am quite sure Mr. Rockefeller did not know it.

Senator COUZENS. Did Mr. Cutler know it?

Mr. FITZPATRICK. I am quite sure that Mr. Cutler did not know it. I did not tell either one of them. It never occurred to me that it was any of their business.

Mr. PECORA. Did you tell any of the directors of the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Oh, yes. I told the directors of the Prairie Oil & Gas Co., and several of the boys in both companies made the same exchange, at the same time and in the same way.

Mr. PECORA. Were the Rockefeller interests represented on the board of directors of the Prairie Oil & Gas Co. at that time?

Mr. FITZPATRICK. Well, they were represented; yes. I represented the Rockefellers more thoroughly than I did anybody else, because there was no question of policy that I remember ever having come up that I did not try to find out whether they approved it or not. Now, we had those negotiations with Mr. Sinclair and his people all through 1929, and finally we broke up. In 1930 we were unable to get together. And there were other complications. Mr. Sinclair was about to sell or get rid of his interest in another pipe line. We waited for that. He did it. After he did it and about the time he did it we began to hear rumors of the building of the Ajax Pipe Line, and the Ajax Pipe Line took away from us—and this acquisition of full ownership of the pipe line by the Indiana company, took away from us about 70,000 to 75,000 barrels a day of business. The building of the Ajax Pipe Line took away about 20,000 barrels a day of the New Jersey company. And at the same time it took away about 6,000 barrels as I remember it of the Pure Oil Co., that went into the Ajax Pipe Line. And it took away about 40,000 barrels a day that was going to the Standard Oil Co. of Ohio—

Senator COUZENS (interposing). After you had made your exchange or purchase—

Mr. FITZPATRICK (continuing). That made a difference in the setup, in the division or value of the property.

Mr. PECORA. At the time you effected that exchange of your holdings of Prairie Oil for shares of the Sinclair Company, on the basis

of 5 shares of Sinclair stock for 3 shares of Prairie Oil stock, negotiations had already been in progress looking to a general consolidation of the two companies, had there not?

Mr. FITZPATRICK. They were in the preliminary stages.

Mr. PECORA. Yes. Now, at any time in those preliminary stages, or particularly at the time when you effected the exchange of your shares of Prairie Oil on the basis of 5 to 3 for shares of Sinclair Oil, did the Sinclair people indicate that they would be willing to make the same kind of exchange with the other stockholders of the Prairie Oil?

Mr. FITZPATRICK. Yes, with the other officers.

Mr. PECORA. Oh. Only with the officers, and not with the general body of the stockholders?

Mr. FITZPATRICK. No; and that was limited to 20,000 shares.

Mr. PECORA. And that offer was held out only to the officers of the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. Yes, sir.

Mr. PECORA. Did other officers beside yourself avail themselves of the offer?

Mr. FITZPATRICK. Yes; they did.

Mr. PECORA. All of them?

Mr. FITZPATRICK. Not all of them.

Mr. PECORA. Which of them did so?

Mr. FITZPATRICK. Mr. Moody, Mr. Kelsey, and I think Mr. Wilhelm. I am not sure whether Mr. Wilhelm did or not, but there were several that did.

Mr. PECORA. Was the fact of such exchanges, made known by you or any other officers of the Prairie Oil & Gas Co. to the stockholders at the time that the negotiations were finally concluded on a share-for-share basis?

Mr. FITZPATRICK. We didn't send out any letter to the stockholders; no.

Mr. PECORA. Well, did you indicate the fact to the stockholders of the company in any form?

Mr. FITZPATRICK. But there was no effort on anybody's part so far as I know to conceal it.

Mr. PECORA. But was the information given to the stockholders?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. Was there anything affirmatively done, in other words?

Mr. FITZPATRICK. I don't know.

Mr. PECORA. I mean to inform the stockholders of the deal that the officers had obtained for themselves.

Mr. FITZPATRICK. I don't know.

Mr. PECORA. What was that answer?

Mr. FITZPATRICK. I don't know.

Senator COUZENS. Doesn't it appear to you, Mr. Fitzpatrick, that while doing this you were really scuttling your ship with the Prairie Oil & Gas Co.?

Mr. FITZPATRICK. It did not.

Senator COUZENS. It would seem to me that if I owned 15 percent of a company and my officers were exchanging their stock for stock of a competing company I would consider that my ship was being scuttled.

Mr. FITZPATRICK. It was not being scuttled. No, it was not being scuttled, and I am sorry that you gentlemen want to try a lawsuit that is pending out in Kansas. But if you do we will just have to try it here.

Senator COUZENS. I did not know there was a lawsuit pending out there.

Mr. FITZPATRICK. Well, there is a lawsuit pending in Kansas.

Senator COUZENS. About what?

Mr. FITZPATRICK. A very few stockholders, something like 1 percent or 1½ percent of the stockholders, are complaining that they did not get as much as they should have gotten in this deal. Now—

The CHAIRMAN (interposing). Where does the Ajax pipe line run?

Mr. FITZPATRICK. It runs from about the Cushing field—

The CHAIRMAN (interposing). Where is that field?

Mr. FITZPATRICK. In Oklahoma, south and west of Tulsa some fifty miles, to a point on the Mississippi River near Alton, Ill.

The CHAIRMAN. Who were the people behind the Ajax pipe line, I mean the principal people in it?

Mr. FITZPATRICK. Who are the people?

The CHAIRMAN. Yes.

Mr. FITZPATRICK. My understanding is, and it is only a general understanding, that the Standard Oil Co. of New Jersey—

The CHAIRMAN (interposing). What is that?

Mr. FITZPATRICK. The Standard Oil Co. of New Jersey, the Standard Oil Co. of Ohio, and the Pure Oil Co. are the people.

The CHAIRMAN. Those companies are not antagonistic to the Rockefeller interests, are they?

Mr. FITZPATRICK. I never suspected it, or thought of any antagonism.

Senator COUZENS. Are you through with Mr. Fitzpatrick now, Mr. Pecora?

Mr. PECORA. Yes, sir.

The CHAIRMAN. That is all, Mr. Fitzpatrick.

(Thereupon the witness, Fitzpatrick, left the committee table.)

The CHAIRMAN. Who will you have next, Mr. Pecora?

Mr. PECORA. Mr. Sinclair, I wish to ask you just 2 or 3 questions.

#### TESTIMONY OF HARRY F. SINCLAIR—Resumed

Mr. PECORA. Mr. Sinclair, if my recollection of the evidence here serves me right, there is some proof that in connection with the formation of this purchasing syndicate relating to the 1,130,000 shares of the Sinclair Consolidated Oil Corporation stock, you agreed to take down 130,000 shares of that block, is that correct?

Mr. SINCLAIR. That is correct.

Mr. PECORA. And did you take that block down?

Mr. SINCLAIR. I did.

Mr. PECORA. At \$30 a share?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Did that go to reduce, or was that on account of your original participating interest in the syndicate?

Mr. SINCLAIR. I think not.



Mr. PECORA. Then virtually the interest of the participants in that syndicate was an interest in the purchase of 1,000,000 shares rather than in the purchase of 1,130,000 shares of stock?

Mr. SINCLAIR. I cannot say. Is that correct [addressing his attorney, Mr. Ragland]? Mr. Pecora, it was a part of the interest on the whole, but I bought back or had the right to buy back 130,000 shares.

Mr. PECORA. Then that left an original interest of the participants undiminished?

Mr. SINCLAIR. I would say their percentage of what was left was the same.

Mr. PECORA. You say their percentage of what was left was the same?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. But what was left was simply 1,000,000 shares?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. Why was that done?

Mr. SINCLAIR. I asked the privilege of purchasing it.

Mr. PECORA. Well, for what reason?

Mr. SINCLAIR. For what reason?

Mr. PECORA. Yes. There must have been some special purpose in your mind.

Mr. SINCLAIR. I wanted the shares.

Mr. PECORA. For what reason? And did you hold them?

Mr. SINCLAIR. I sold a part of them, and I held a part of them.

Mr. PECORA. To whom did you sell a part of them?

Mr. SINCLAIR (after consulting Mr. Ragland). I sold 75,000 of those shares to a company of my own, the Hyva Corporation.

The CHAIRMAN. At what price?

Mr. SINCLAIR. At the same price, \$30 a share.

Senator COUZENS. Is that your private holding company?

Mr. SINCLAIR. Yes, sir.

Mr. PECORA. I have no other questions to ask Mr. Sinclair.

Mr. SINCLAIR. Shall I remain here, Mr. Pecora?

The CHAIRMAN. Then you gave away quite a few of those shares to different friends and associates?

Mr. SINCLAIR. What was that question, Mr. Chairman?

The CHAIRMAN. You distributed quite a few of those shares to others.

Mr. SINCLAIR. I did not give them away, but I gave some participations, for quite a number of the shares, I think about half or something of that sort.

Shall I remain here tomorrow?

Mr. PECORA. No.

The CHAIRMAN. That is all, then, Mr. Sinclair.

(Thereupon the witness, Sinclair, left the committee table.)

Mr. PECORA. Mr. Chairman, I do not think that we need Mr. Cuten in further attendance here, or the other witnesses on this phase. I think this concludes the investigation of the so-called "Sinclair Consolidated Oil Corporation syndicate."

The CHAIRMAN. All right. Who will you have next, Mr. Pecora?

Mr. PECORA. Is Mr. S. R. Burns here?

Mr. BURNS. Yes, sir.

The CHAIRMAN. Mr. Burns, please stand, hold up your right hand, and be sworn: You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee, so help you God.

Mr. BURNS. I do.

**TESTIMONY OF SAMUEL R. BURNS, JERSEY CITY, N.J., PRESIDENT  
OF THE INTERNATIONAL PROJECTOR CORPORATION**

Mr. PECORA. Mr. Burns, what is your full name?

Mr. BURNS. Samuel R. Burns.

Mr. PECORA. Talk a little louder.

Mr. BURNS. Samuel R. Burns.

Mr. PECORA. And what is your office or home address?

Mr. BURNS. Jersey City, N.J.; 100 Glenwood Avenue.

Mr. PECORA. Talk a little louder, please.

Mr. BURNS. I will try. I have quite a severe cold.

Mr. PECORA. What is your business or occupation?

Mr. BURNS. I am president of the International Projector Corporation.

Mr. PECORA. When did you become the president of that corporation?

Mr. BURNS. Some time in March of 1932.

Mr. PECORA. At whose suggestion did you become its president?

Mr. BURNS. Well, I don't know at whose suggestion it was, but it was by a vote of the board of directors.

Mr. PECORA. Who first spoke to you about becoming the president of that corporation?

Mr. BURNS. I do not believe anybody spoke to me about it.

Mr. PECORA. Had you been an officer of the corporation before that time?

Mr. BURNS. Yes, sir.

Mr. PECORA. What office did you hold in it?

Mr. BURNS. Vice president and secretary.

Mr. PECORA. Were you a stockholder of it?

Mr. BURNS. No, sir. The General Theaters Equipment Corporation is the owner of virtually 100 percent of the stock.

Mr. PECORA. You know Mr. Harley Clarke, don't you?

Mr. BURNS. Yes, sir.

Mr. PECORA. How long have you known him?

Mr. BURNS. For over 10 years.

Mr. PECORA. Do you recall that sometime in 1925 the International Projector Corporation, through moneys that it realized from the issuance and sale of its securities, acquired the assets of a projector company called "Nicholas Power Co., Inc.", for the sum of \$690,777.78?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you have anything to do with that transaction, Mr. Burns?

Mr. BURNS. Well, I was the nominee of the clearing house for that transaction.

Mr. PECORA. At whose request did you become such nominee?

Mr. BURNS. I haven't the slightest idea.

Mr. PECORA. What was your business or occupation at that time?

Mr. BURNS. I was president of the Nicholas Power Co., Inc.

Mr. PECORA. You were then the president of the Nicholas Power Co., Inc.?

Mr. BURNS. Yes, sir.

Mr. PECORA. Do you know at whose instance you became its president?

Mr. BURNS. Well, I was made its president by virtue of the action of the board of directors.

Mr. PECORA. We know that. I mean, you do not have to tell us that. That is the legal effect of the thing. But who asked you, or who was instrumental in having you made its president?

Mr. BURNS. The largest stockholders.

Mr. PECORA. And who were they?

Mr. BURNS. Well, one was Mrs. Frank H. Richardson. She was probably the largest stockholder.

Mr. PECORA. Yes; and who else?

Mr. BURNS. Mrs. Stuart.

Mr. PECORA. Did you say Mrs. Stuart?

Mr. BURNS. Yes; Mrs. S-t-u-a-r-t.

Mr. PECORA. Yes. Now, what other stockholders do you recall?

Mr. BURNS. There were two others, two maiden ladies named Griffith, G-r-i-f-f-i-t-h.

Mr. PECORA. And what was the name of the other maiden lady?

Mr. BURNS. They were both maiden ladies.

Mr. PECORA. But what was the name of the other one?

Mr. BURNS. They were sisters.

Mr. PECORA. Oh, they were sisters.

Mr. BURNS. Yes, sir.

Mr. PECORA. Were there any other stockholders in this Nicholas Power Co., Inc.?

Mr. BURNS. Yes; Mrs. Rose Power, the widow of Nicholas Power.

Mr. PECORA. And do you recall any other stockholders?

Mr. BURNS. No—yes; there was one other that I recall, Mr. Richard T. Greene.

Mr. PECORA. Oh, that is a relief. How long had you been connected with the Nicholas Power Co., Inc., in any capacity whatsoever prior to the acquisition of its assets by the International Projector Corporation?

Mr. BURNS. Approximately 10 years.

Mr. PECORA. Now, how long had you been its president prior to the sale of its assets to the International Projector Corporation?

Mr. BURNS. Perhaps a year and a half.

Mr. PECORA. What was that?

Mr. BURNS. Perhaps a year and a half.

Mr. PECORA. Were you ever a stockholder of it?

Mr. BURNS. Yes.

Mr. PECORA. Did you have anything more than the number of shares necessary to qualify you?

Mr. BURNS. Yes.

Mr. PECORA. How many shares did you have?

Mr. BURNS. Fifty shares.

Mr. PECORA. Out of a total outstanding issue of how many?

Mr. BURNS. Oh, 3,200 shares.

Mr. PECORA. When did you first meet Mr. Harley Clarke?

Mr. BURNS. I cannot recall exactly, but somewhere between 1921 and 1923.

Mr. PECORA. That is, sometime prior to the time you became president of the Nicholas Power Co.?

Mr. BURNS. Yes.

Mr. PECORA. As president of the Nicholas Power Co. at the time of the sale of its assets to the International Projection Corporation, did you enter into the negotiations that led to that sale?

Mr. BURNS. No, sir.

Mr. PECORA. Who conducted them in behalf of the Nicholas Power Co.?

Mr. BURNS. Well, it was not a question of negotiations with the company; it was negotiations with the stockholders.

Mr. PECORA. Who conducted the negotiations?

Mr. BURNS. That I do not know either.

Mr. PECORA. You were president of the company that was selling its assets?

Mr. BURNS. Yes.

Mr. PECORA. Don't you know anything about the sale or the negotiations that led to the sale?

Mr. BURNS. Very little, except that there was a desire on the part of a certain number of stockholders who had sufficient stock—who owned sufficient stock—to control the company, to sell it.

Mr. PECORA. Who were those stockholders?

Mr. BURNS. I named them a few minutes ago.

Mr. PECORA. The six that you named?

Mr. BURNS. Yes.

Mr. PECORA. Did they among them own practically all of the outstanding stock?

Mr. BURNS. No, sir; more than sufficient to control the company.

Mr. PECORA. Does that mean that they owned more than a majority of the outstanding stock?

Mr. BURNS. Yes.

The CHAIRMAN. What was the business of the Nicholas Power Co.?

Mr. BURNS. The manufacture of motion picture projection machines and accessories.

Mr. PECORA. That was the same business that the International Projector Corporation was engaged in at that time, was it not?

Mr. BURNS. The International Projector Corporation at that time had not been formed.

Mr. PECORA. The International Projector Corporation was formed at the time that the Nicholas Power Co. sold its assets to it, was it not?

Mr. BURNS. Yes.

Mr. PECORA. And who received from the International Projector Corporation the six hundred and ninety thousand odd dollars that the corporation paid for the assets of the Nicholas Power Co.?

Mr. BURNS. A check for that amount was given to me.

Mr. PECORA. Was it made to your order?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you disburse the amount of the check or the sum represented by that check?

Mr. BURNS. I drew several checks—just how many I do not recall—for the exact amount of that check.

Senator COUZENS. To whom?

Mr. BURNS. I do not remember to whom.

Mr. PECORA. You do not remember to whom?

Mr. BURNS. No, sir.

Mr. PECORA. Do you have any records that would refresh your recollection?

Mr. BURNS. No, I have not; but at the suggestion—

Mr. PECORA. What has become of the records?

Mr. BURNS. At the suggestion of your associate, Mr. Silver, I believe, I telephoned the bank in New York for a transcript of the record of that period.

Mr. PECORA. What transcript can the bank give you of the record?

Mr. BURNS. I do not know.

Mr. PECORA. Other than a transcript of the deposit account?

Mr. BURNS. It will also give you the charges against that deposit, will it not?

Senator TOWNSEND. Were those seven checks drawn to the stockholders?

Mr. BURNS. I did not say seven; I said several. I do not know how many there were.

Mr. PECORA. Where are the records of the Nicholas Power Co.?

Mr. BURNS. I do not know.

Mr. PECORA. What happened to them?

Mr. BURNS. I have not the slightest idea what has become of them. It is over 8 years ago.

Mr. PECORA. When did they last pass out of your knowledge as to their whereabouts?

Mr. BURNS. I do not remember having seen them for probably 8 years since the closing of that transaction.

Mr. PECORA. What did the records consist of? Did they consist of a stock certificate book, among other things, or books of account?

Mr. BURNS. Yes.

Mr. PECORA. Do you know what became of them?

Mr. BURNS. No, sir.

Mr. PECORA. Do you know who on behalf of the stockholders of the Nicholas Power Co. negotiated the transaction which resulted in the sale of the assets of that company to the International Projector Corporation for six hundred and ninety-odd thousand dollars?

Mr. BURNS. No, sir; I do not.

Mr. PECORA. You as president of the company knew nothing about it and know nothing about it today?

Mr. BURNS. No, sir.

Mr. PECORA. Other than the fact that a sale was effected?

Mr. BURNS. That is all.

Mr. PECORA. Do you know why the check for six hundred and ninety-odd thousand dollars was made to your order?

Mr. BURNS. No, sir; I have not the slightest idea, except that they had to use somebody, I suppose.

Mr. PECORA. From whom did you get any instructions or guidance of any kind that caused you to receive that check and to disburse the amount that it represented?

Mr. BURNS. Well, I was there at the closing, and other officers of the company were there also.

Mr. PECORA. From whom did you get your instructions that prompted you to receive a check for nearly \$700,000 that you knew represented the amount paid to your corporation for its assets?

Mr. BURNS. I cannot say from whom I received any instructions; I do not recall.

The CHAIRMAN. Somebody did not just walk into your office and hand you a check for \$690,000?

Mr. BURNS. No, sir.

The CHAIRMAN. You ought to know something about how it was brought about.

Senator TOWNSEND. Did not your stockholders have certificates showing what they owned in the company?

Mr. BURNS. Yes; naturally.

Senator TOWNSEND. Did you have a board of directors?

Mr. BURNS. Yes, sir.

Mr. PECORA. Were you on the board of directors?

Mr. BURNS. Yes, sir.

Mr. PECORA. Was the matter of the sale of the assets taken up by the board of directors?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you participate in any discussion that affected the consideration of that matter?

Mr. BURNS. Yes, sir.

Mr. PECORA. Then what do you recall having learned from any such discussions concerning the sale?

Mr. BURNS. Well, I only know that a proposition had been made to purchase the assets.

Mr. PECORA. To whom had the proposition been made?

Mr. BURNS. To the board of directors of the company.

Mr. PECORA. By whom?

Mr. BURNS. I do not recall by whom.

Mr. PECORA. Were you the active president of the Nicholas Power Co.?

Mr. BURNS. Yes, sir.

Mr. PECORA. It was a fairly substantial company, was it not?

Mr. BURNS. Yes.

Mr. PECORA. If its assets sold for nearly \$700,000 it was not a mere babe in swaddling clothes, was it?

Mr. BURNS. No, sir.

Mr. PECORA. Did it have an earning power?

Mr. BURNS. Yes.

Mr. PECORA. Of substantially how much?

Mr. BURNS. I should say it was earning at that time probably at least 50 percent or over on its capital.

Mr. PECORA. How much was that?

Mr. BURNS. \$125,000.

Mr. PECORA. Fifty percent a year?

Mr. BURNS. Yes; that particular year.

Senator TOWNSEND. On what amount of capital stock?

Mr. BURNS. \$350,000.

Mr. PECORA. When the proposition was submitted, by some one whose identity you do not recall, to purchase the entire assets of the company of which you were president, it received, I assume, mature consideration at the hands of the members of the board, including yourself?

Mr. BURNS. Yes.

Mr. PECORA. Who represented the party making that offer?

Mr. BURNS. It may have been Mr. Clarke.

Mr. PECORA. You knew Mr. Harley Clarke before that time did you not?

Mr. BURNS. Yes, sir.

Mr. PECORA. When you say it may have been, is there any doubt in your mind now that it was Mr. Clarke?

Mr. BURNS. Yes and no.

Mr. PECORA. I wish you would tell me which it is. I can't believe it is both yes and no.

Mr. BURNS. It may have been Mr. Clarke.

Mr. PECORA. Can you think of its having been anyone else?

Mr. BURNS. Well, I am inclined to think there was a group interested.

Mr. PECORA. Who was the group?

Mr. BURNS. I do not know who they were.

Mr. PECORA. Did the persons making this offer go behind your back to these stockholders in negotiating for the purchase?

Mr. BURNS. Yes.

Mr. PECORA. Did you resent that?

Mr. BURNS. Well, I did not like it.

Mr. PECORA. Did you go to your friend Harley Clarke and tell him so?

Mr. BURNS. No, sir.

Mr. PECORA. What salary were you receiving then as president of the Nicholas Power Co.?

Mr. BURNS. \$10,000.

Mr. PECORA. A year?

Mr. BURNS. Yes, sir.

Mr. PECORA. Did you give your assent as a director to the transaction?

Mr. BURNS. Yes, sir.

Mr. PECORA. What consideration was given to the value of the assets which were sold for six hundred and ninety-odd thousand dollars?

Mr. BURNS. Just what do you mean by "consideration given to the value"?

Mr. PECORA. How did you arrive—how did you, as one of the directors of the company in voting to accept the offer, arrive at the conclusion that that offer was a fair and reasonable offer for the company's assets? That is to say, for your company's assets, the company of which you were the president.

Mr. BURNS. By a competent appraisal.

Mr. PECORA. Do you recall the name of the appraiser?

Mr. BURNS. No, sir.

Mr. PECORA. Was the appraiser one who had been connected with the business of manufacturing and selling projectors in the moving-picture business?

Mr. BURNS. I think not.

Mr. PECORA. What kind of an appraiser was he?

Mr. BURNS. He was an engineer.

Senator COUZENS. What was his name?

Mr. BURNS. I do not know his name.

Mr. PECORA. Who called him in to make the appraisal?

Mr. BURNS. Those who were interested in purchasing the company.

Mr. PECORA. Did you take the appraisal that was made by the purchasers in determining what would be a fair selling price?

Mr. BURNS. No.

Mr. PECORA. What?

Mr. BURNS. I did not understand that other question.

(The reporter read the question referred to as above recorded.)

Mr. BURNS. No.

Mr. PECORA. I asked you what consideration was given in fixing the selling price to the question of the value of the company's assets, and you said an appraiser was employed.

Mr. BURNS. Yes; that is correct.

Mr. PECORA. Now it turns out that the appraiser that was employed was an appraiser employed by the purchaser.

Mr. BURNS. No, it was not. I did not understand your question.

Mr. PECORA. Then I did not understand your answer. What is the fact?

Mr. BURNS. The company employed the appraiser.

Mr. PECORA. What company?

Mr. BURNS. The Nicholas Power Co.

Mr. PECORA. What did you mean when you said before that the appraiser was employed by the purchaser?

Mr. BURNS. I told you that I did not understand your question.

Mr. PECORA. What question did you think I asked you when you made that answer?

Mr. BURNS. I did not understand your question.

Mr. PECORA. What question did you think I asked you when you made that answer to it?

Mr. BURNS. I do not know what question was asked.

Mr. PECORA. Why did you make an answer to a question that you did not understand? You made a pretty definite answer, did you not?

Mr. BURNS. Yes.

Mr. PECORA. Why was not the check that was given in payment for those assets made out to the corporation, to the Nicholas Power Co.?

Mr. BURNS. I could not tell you.

Mr. PECORA. Who handled the details of the sale in behalf of the Nicholas Power Co.? Did you?

Mr. BURNS. No.

Mr. PECORA. Who did?

Senator COUZENS. Was it Mr. Harley Clarke?

Mr. BURNS. Mr. Clarke was interested in it.

Mr. PECORA. Did he handle the details for the Nicholas Power Co.?



Mr. BURNS. Some of them; yes.

Senator TOWNSEND. Was he a stockholder?

Mr. BURNS. Not to my knowledge; no.

Mr. PECORA. What relationship did he bear to the Nicholas Power Co. that caused you, as president of the company, to permit him to handle the details of the closing for your company?

Mr. BURNS. I believe he was acting for others who controlled or who had the controlling stock interest.

Mr. PECORA. In the Nicholas Power Co.?

Mr. BURNS. Acting for others who had the controlling interest.

Mr. PECORA. Who were those others?

Mr. BURNS. I do not know who they were.

Mr. PECORA. Were they the persons whose names you have given us already as stockholders?

Mr. BURNS. No.

Mr. PECORA. There were others?

Mr. BURNS. There were others, successors to those.

Mr. PECORA, Oh, I see. Then at the time of this sale these stockholders had passed out as stockholders?

Mr. BURNS. Yes.

Mr. PECORA. Who were their successors?

Mr. BURNS. I do not know.

Mr. PECORA. Were they persons whom Mr. Harley Clarke eventually represented at the closing of the sale?

Mr. BURNS. Yes.

Mr. PECORA. Do you not know who they were?

Mr. BURNS. No, sir; I do not.

Mr. PECORA. How long before the sale was consummated did the stockholders, whose names you have given us, sell or part with their stock holdings to the persons that Mr. Clarke represented?

Mr. BURNS. I do not know exactly. It was some time prior to the—

Mr. PECORA. Was it any appreciable length of time prior?

Mr. BURNS. Probably several months.

Mr. PECORA. Were those women whose names you have given us as majority stockholders in the aggregate women who held that stock for their own benefit and right and interest?

Mr. BURNS. Yes.

Mr. PECORA. Do you know how much they got for their stock when they sold to those whom Mr. Clarke represented at the closing?

Mr. BURNS. Will you ask that question again?

Mr. PECORA. The reporter will read it.

(The question referred to was read by the reporter as above recorded.)

Mr. BURNS. I do not know of my own knowledge, but I understood that they had received \$150 a share for their stock.

Mr. PECORA. \$150 a share; and the total number of shares outstanding was 3,200, did you say?

Mr. BURNS. I think so; yes. I am pretty certain.

Mr. PECORA. And they owned a majority of it, did they?

Mr. BURNS. Yes, sir.

Mr. PECORA. As president of the company did you not sign the certificates that were issued to the new stockholders who bought from these stockholders whose names you have given us?

Mr. BURNS. I do not believe there were any certificates issued to replace those. I do not recall any having been issued.

Mr. PECORA. How did you know that a sale of the stock had taken place in behalf of these stockholders whose names you have given us?

Mr. BURNS. Because I had been informed by Mrs. Richardson to that effect.

Mr. PECORA. Did she inform you simply as to her own stock holdings having been sold?

Mr. BURNS. Yes.

Mr. PECORA. How did you know that Mrs. Stuart's stock was sold?

Mr. BURNS. Because I knew that sufficient stock had been sold to give the purchasers a majority interest.

Mr. PECORA. By "the purchasers" you mean those represented by Mr. Harley Clarke eventually, do you not?

Mr. BURNS. Yes.

Mr. PECORA. So that by the time this sale was effected there had been a change in the identity of the stockholders of your company of a character that made Mr. Harley Clarke the representative of the majority stockholders at the time of the sale; is that right?

Mr. BURNS. I believe so.

Mr. PECORA. Was it Mr. Harley Clarke who gave you whatever instructions you received that enabled you to disburse among the stockholders this six hundred and ninety odd thousand dollars that was paid for the assets of the Nicholas Power Co.?

Mr. BURNS. I won't be certain of it, but it may have been.

Mr. PECORA. Do you recall in what proportions you distributed any of that six hundred and ninety odd thousand dollars?

Mr. BURNS. I have a recollection of having drawn one check for a substantial portion of it to some bank. I think it was the National City Bank.

Mr. PECORA. What was the amount of the check?

Mr. BURNS. Three hundred and some odd thousand dollars.

Mr. PECORA. That is very nearly one half, if not more than one half?

Mr. BURNS. Yes; pretty nearly a half.

Mr. PECORA. Don't you recall the stockholder to whom you made that check payable?

Mr. BURNS. No. I say it was probably drawn to the National City Bank, not to any stockholder. It may have been to take up a loan. I really do not know.

Mr. PECORA. Who had the loan there?

Mr. BURNS. I do not know. I do not know that there was a loan. I am only assuming that there was.

Mr. PECORA. Who gave you the instructions that prompted you to draw a check for that large amount?

Mr. BURNS. I don't recall who it was. It may have been Mr. Clarke, as I said before.

Mr. PECORA. Do you recall that anyone other than Mr. Clarke was in possession of sufficient facts to enable you to properly disburse the amount received in payment for the assets of your company?

Mr. BURNS. No.

Mr. PECORA. Have you any doubt that it was Mr. Clarke from whom you received your instructions at that time?

Mr. BURNS. No. No; I don't think so.

Mr. PECORA. You mean that you have no doubt that it was Mr. Clarke?

Mr. BURNS. I am inclined to think that it was he. I am not certain.

Mr. PECORA. In view of the change that had been made in the stockholders, the majority stockholders of your company, had there been a corresponding change made in the board of directors of the company?

Mr. BURNS. Yes, sir.

Mr. PECORA. Who were the directors that represented the interests that purchased that stock and who in the transaction were represented by Harley Clarke?

Mr. BURNS. You are speaking now of the Nicholas Power Co.?

Mr. PECORA. Yes, sir.

Mr. BURNS. I cannot recall a single name of an individual who succeeded any of those—as a matter of fact, we had only five directors, as I recall it.

Mr. PECORA. Who were they?

Mr. BURNS. I don't know.

(At this point Mr. Harley Clarke started to take a seat next to Mr. Burns.)

Mr. PECORA. Mr. Clarke, would you kindly sit away from the witness, please?

(The request was complied with.)

Mr. PECORA. Go ahead. Tell us.

Mr. BURNS. I don't recall who the new directors were, and I am not certain that new ones were elected, but I think that they were.

Mr. PECORA. You say you are now the president of the International Projector Corporation?

Mr. BURNS. Yes.

Mr. PECORA. What salary do you receive?

(The witness calculated on a pad.)

Mr. PECORA. Do you have to stop and figure that out?

Mr. BURNS. Yes, sir. [After a pause.] \$11,250.

Mr. PECORA. What is that?

Mr. BURNS. \$11,250.

Mr. PECORA. Do you receive any other form of compensation than salary?

Mr. BURNS. No, sir.

Mr. PECORA. Do you know who the board of directors are of your International Projector Corporation today?

Mr. BURNS. Yes, sir.

Mr. PECORA. Could you name all of them if I asked you to?

Mr. BURNS. I think so. Let's see [writing on pad]: Mr. Harley L. Clarke, and Daniel O. Hastings, P. J. Haller, and S. R. Burns, and there is one other that I am in doubt about.

Senator COUZENS. When did they meet last?

Mr. BURNS. More than 6 months ago.

Senator COUZENS. More than 6 months ago?

Mr. BURNS. I think so.

Mr. PECORA. It took you about 2 minutes to think of 4 of the 5 names of the present board?

Mr. BURNS. Yes, sir.

Mr. PECORA. Is your memory usually that slow?

Mr. BURNS. No; no, sir.

Mr. PECORA. Can't you think of the fifth director's name?

Mr. BURNS. Not at the moment; no.

The CHAIRMAN. You are not a director?

Mr. BURNS. Yes, sir; I am a director; I mentioned my name.

Mr. PECORA. When the assets of the Nicholas Power Co. were purchased by the corporation of which you are now the president didn't that corporation take over the books of account and other records of the Nicholas Power Co., including its stock book?

Mr. BURNS. No, sir. It purchased only the physical assets of the company.

Senator TOWNSEND. Did you value the goodwill?

Mr. BURNS. Approximately; yes.

Senator TOWNSEND. What did they appraise the goodwill at?

Mr. BURNS. I don't recall that.

Mr. PECORA. There was some arrangement made for the valuation of the goodwill, was there not?

Mr. BURNS. There probably was.

Mr. PECORA. You don't recall what it was?

Mr. BURNS. No, sir.

Mr. PECORA. Weren't you, as president of the company at that time, interested in seeing that your stockholders got a fair and reasonable purchase price for the assets of the company?

Mr. BURNS. I believe they did.

Mr. PECORA. Well, so far as you had anything to do with the negotiations that led to their getting what you now believe was a fair and reasonable price, you had nothing to do with those negotiations, did you?

Mr. BURNS. Very little.

Senator COUZENS. When were those directors elected whose names you have just called off?

Mr. BURNS. Within the past year.

Senator COUZENS. Within the past year?

Mr. BURNS. Yes.

Mr. PECORA. Do you know whether \$150 a share was paid, actually paid, to these women who were the majority stockholders before the sale, some time before the sale of the Nicholas Power Co.'s assets?

Mr. BURNS. No, sir.

Mr. PECORA. How do you know that \$150 a share was paid to any of them?

Mr. BURNS. I don't know it.

Mr. PECORA. Why did you tell us that that was the price?

Mr. BURNS. I say I understood that that was the price. I believe that that was the price that had been paid for it.

Mr. PECORA. From what sources did you derive that understanding or information?

Mr. BURNS. From my contact with some of these stockholders.

Mr. PECORA. Several months after these stockholders parted with their holdings for the price of what you think was \$150 a share the corporation's entire assets represented by 3,200 shares of stock were

purchased by the International Projector for six hundred ninety thousand and odd dollars?

Mr. BURNS. Yes, sir.

Mr. PECORA. Which is considerably more than \$150 per share; is that right?

Mr. BURNS. Yes, sir.

Mr. PECORA. And that price of considerably more than \$150 a share, then, went to the persons who were the stockholders of the Nicholas Power Company at the time of the sale?

Mr. BURNS. Yes, sir.

Mr. PECORA. You believe that those were persons represented by Mr. Harley Clarke?

Mr. BURNS. Yes, sir.

Mr. PECORA. You don't know who those persons are?

Mr. BURNS. No, sir.

Mr. PECORA. Did the Nicholas Power Co. have regular meetings of its stockholders when you were its president?

Mr. BURNS. Yes, sir.

Mr. PECORA. Do you know what became of the minute books?

Mr. BURNS. No, sir.

Mr. PECORA. Were they taken over by the International?

Mr. BURNS. No, sir.

Mr. PECORA. How long have you been president of the International?

Mr. BURNS. Year and a half.

Mr. PECORA. Before that had you had any other connection with the International Projector Corporation?

Mr. BURNS. Yes, sir.

Mr. PECORA. Vice president?

Mr. BURNS. Yes, sir.

Mr. PECORA. Isn't it a fact, Mr. Burns, that you originally became connected with the Nicholas Power Co. through the good offices of Mr. Clarke?

Mr. BURNS. No, sir.

Mr. PECORA. Well, through his influence or intervention or suggestion did you go into the Nicholas Power Co. originally?

Mr. BURNS. Through Edward Earl, who was the former president of the Nicholas Power Co.

Mr. PECORA. Were you at one time in the jewelry business?

Mr. BURNS. Yes, sir.

Mr. PECORA. Were you in the jewelry business just prior to the time that you transferred your business to the moving-picture industry?

Mr. BURNS. No, sir.

Mr. PECORA. Well, did you go into some other business in between?

Mr. BURNS. I have been in this business since 1914 or 1915.

Mr. PECORA. In which business?

Mr. BURNS. The moving-picture projector business.

Mr. PECORA. And prior to your becoming connected with the Nicholas Power Co. were you affiliated with Mr. Clarke in any respect whatever?

Mr. BURNS. No, sir; never knew him. I didn't know him then. I didn't know him before my connection with the projector company.

Senator COUZENS. What business were you in just prior to going into the projector business?

Mr. BURNS. Brick business.

Senator COUZENS. Manufacturing?

Mr. BURNS. Brick; yes.

Mr. PECORA. Are the minute books of the Nicholas Power Co. in existence at this time, to your knowledge?

Mr. BURNS. I haven't the slightest idea. I don't know where they are.

Mr. PECORA. When did you last see them?

Mr. BURNS. Probably 8 years ago.

Mr. PECORA. Prior to this sale to the International?

Mr. BURNS. Oh, no. Since the International. Since the formation of the International.

Mr. PECORA. But I mean did you last see those minute books prior to the sale to the International of the assets of the Nicholas Power Co.?

Mr. BURNS. Yes, sir; just prior to the sale of the assets to the International.

Mr. PECORA. Have you got here the minute books of the International Projector Corporation?

Mr. BURNS. Yes, sir.

Mr. PECORA. Here in Washington?

Mr. BURNS. Yes, sir.

Mr. PECORA. Are they in the room now?

Mr. BURNS. Yes, sir.

Mr. PECORA. Won't you consult them and see if you can tell us the names of all the members of the board of directors?

Mr. BURNS. Yes, sir.

(Thereupon Mr. Burns went to another part of the room and then returned to the witness chair with two minute books.)

Mr. BURNS. Now, what is the question?

Mr. PECORA. The names of all the members of the board of directors at the present time of the International Projector Corporation.

Mr. BURNS. D. O. Hastings, S. R. Burns, P. J. Haller, A. E. Koegel, and H. L. Clarke.

Mr. PECORA. Now did you know of a corporation called the Precision Machine Co., Incorporated?

Mr. BURNS. Yes, sir.

Mr. PECORA. Were you connected with that corporation?

Mr. BURNS. Yes, sir.

Mr. PECORA. At the time of the acquisition of the assets of the Nicholas Power Co. by the International do you know that the International Co. also acquired the assets of the Precision Machine Co.?

Mr. BURNS. Yes, sir.

Mr. PECORA. Hadn't you ever heard of that Precision Machine Co. prior to that time?

Mr. BURNS. Certainly.

Mr. PECORA. Were they a competitor of the Nicholas Power Co.?

Mr. BURNS. Yes, sir.

The CHAIRMAN. The committee will take a recess until 10 o'clock tomorrow morning.

Mr. PECORA. You will be back, Mr. Burns, at that time.

(Whereupon, at 4:27 o'clock p.m., the subcommittee took a recess until 10 o'clock a.m. of the following day.)