

A Historical Look at the Oil, Gas and Energy Resources Law Section – Perspectives of Some Past Chairs on Their Years in Office

Joe R. Greenhill
Chair, 1957-58

It is probable that the issue of most interest was that of the “new rules” of the oil and gas division of the Railroad Commission. As First Assistant Attorney General, I had represented the Commission. I got to know Chairman Ernest Thompson. He was satisfied with written procedural rules for the transportation division, but he did not want written rules for oil and gas proceedings. He said that lawyers would try the rules, not the merits.

In 1953, I presented a paper to the Mineral Law Section on rules of procedure before the Commission. I remember that it began, “Written procedural rules for oil and gas at the Commission are like snakes in Ireland. There are none.”

In 1961, the Legislature required written rules of administrative bodies. The Commission then adopted a few written rules. These are enlarged. In 1964, Robert C. McGinnis and I took my 1953 paper and made it into a law review article, “Practice and Procedure in Oil and Gas Hearing in Texas.” 19 S.W. L. J 406. The article set out, and explained, the procedural rules for practice before the Commission. The rules were changed to include more sophisticated procedures such as for repressuring depleted fields, field wide unitization and unauthorized drainage and underground trespass growing out of “hot oil” cases. I went to the Supreme Court in 1957, before the end of my 1956-57 chairmanship. The court then had many “hot oil” cases growing out of violations of rules of the Commission, all of which were of interest to the Mineral Law Section.

J.O. Terrell Couch
Chair, 1961-62

At the July 1961 State Bar Convention I succeeded Frank J. Scurlock, a very highly regarded Dallas oil and gas attorney, as Chairman of our Section. The first Section Newsletter was conceived and started during his term. More later. First, a brief description of our Section programs at the end of my year as chairman.

The 1962 State Bar Convention was held in San Antonio and continued in Mexico City. Our Section presented programs at both locations. “Small tract” litigation was rampant, and compulsory pooling legislation was on the horizon in Texas (enacted in 1965). Our San Antonio program included an informative discussion of the New Mexico compulsory pooling law, presented by an impressive panel. Ross L. Malone (Roswell attorney, ABA President, and later General Counsel of General Motors), Richard S. Morris (then General Counsel of the New Mexico Oil Conservation Commission, later President of El Paso Pipeline Company), and Daniel Nutter (Chief Engineer of the NMOCC). They told us how they did it in New Mexico! The program concluded with the annual review of recent oil and gas decisions, well presented by Walter C. Beardsley (prominent West Texas attorney, 1964-65 Section Chairman, recently deceased).

The Mexico City program was headlined by J. Chrys Dougherty (highly regarded Austin attorney and co-founding partner of Graves, Dougherty & Greenhill) who addressed the audience in both Spanish and English. A representative of Petroleos Mexicanos was the other speaker on the program. Ira Butler (excellent Fort Worth oil and gas attorney) was elected Chairman of our

Section at the San Antonio meeting, Ralph B. Shank (Dallas oil and gas attorney of exceptional ability) was chosen Vice Chairman and M.K. Woodward (very highly respected University of Texas law professor) was again retained as secretary-treasurer.

Now, the newsletter history.

Beginning in the early 1950s, digests of selected Texas oil and gas cases were published monthly under the heading "Mineral Law Cases" in the Texas Bar Journal. Joe R. Greenhill, Jr. (another co-founding partner of Graves, Dougherty & Greenhill) had the responsibility for preparing those digests and I was his helper. In 1957 he called me "long distance" and told me I would have to take over the whole job because he was being appointed to the Texas Supreme Court! (As you must know, he later became Chief Justice and served until 1982.)

I provided the oil and gas case digests to the Texas Bar Journal until 1960, when the Board of Directors of the State Bar discontinued the "Mineral Law Decisions" feature. The Section Council protested. The journal started a feature "Recent Important Texas Cases" which included some oil and gas cases. The Section Council decided to publish a monthly newsletter for all Section members, continuing the practice of providing digests of all important oil and gas cases and adding other current information of interest to oil and gas lawyers. M.K. Woodward coordinated the planning and content. The first issue was published in January 1961. The State Bar staff had agreed to make the necessary number of copies and mail the newsletter to all Section members, provided the Section would reimburse the cost. We had 91 members. The \$1.00 per person annual dues remained in effect. A proposal for \$2.50 per person was considered but not adopted. Membership increased to 152 by June 1961 due in large measure to the newsletter. By June 1962 we had 293 members, moving toward 300 by the end of my term in July 1962. The reimbursement to the State Bar was estimated at \$250,

about \$600 was left over. We have come a long way in 40 years!

**Martin L. Allday
Chair, 1972-73**

My term as Chairman of the Oil, Gas & Mineral Section was in the 1972-73 era. The industry was being confronted with fairly new environmental issues. Gas prices were in trouble due to the so-called "gas bubble" for a time, and then gas became somewhat of a shortage due to pricing of interstate gas by the Federal Power Commission, the forerunner of the Federal Energy Regulatory Commission.

Producers began selling their gas intrastate because they could obtain a better price. It troubled us that the law of the land dictated that once a property was dedicated to an interstate market, it remained dedicated, even after the oil and gas lease involved had terminated. Gas producers were helping fund the drilling of many wells. Area pricing of gas was prescribed by the FPC which sent producers searching for oil instead of gas, especially in Texas. The Mineral Interest Pooling Act had only recently been litigated and amended by the legislature.

My experiences with the section and, in particular, its consideration of gas issues turned out to be very helpful when I was appointed Chairman of the FERC and served during 1989-93 when we unbundled and deregulated gas transportation throughout the United States by issuing Order 636.

**Edward H. Hill
Chair, 1979-80**

In the 1979-1980 bar year, a major focus was the federal price regulation of natural gas. Following the *Phillips v. Wisconsin* decision in 1954, the Federal Power Commission (later FERC) began regulating sales of natural gas produced for resale in interstate commerce. But, in late 1978, President Carter signed the Natural Gas Policy Act which extended federal price regulation to every first sale of natural gas.

The result was immediate and substantial controversy at the Commission and in the courts as to the operation of pricing and rate clauses applicable to regulated sales. In one instance, virtually simultaneous appeals from Commission orders were filed in the D. C. Circuit and the Fifth Circuit. However, the law provided that jurisdiction and venue vested in the circuit court in which the first appeal was filed. The Administrative Law Judge, after making extensive findings as to the incredible procedures each of the parties followed in an attempt to win the race to the courthouse, found that one appellant had failed to synchronize its time pieces with the Commission's time and that as a result its appeal had been prematurely filed before all of the orders under review were officially issued. Accordingly, the other appellants were the first to petition for judicial review since their appeal was filed seven (7) seconds after the Commission officially time-stamped the last order.

In the Texas courts, the 1979-1980 bar year saw a number of Texas courts seeking to refine and apply rules which would determine surface estate versus mineral estate ownership of near surface lignite, coal, iron and uranium.

But, possibly the April 1980 Section Report significantly contributed to Texas oil and gas jurisprudence when it published the following:

ALL PURPOSE CLAUSE FOR GENERAL USE: It has come to the attention of the Section that there is a great need for an all purpose clause for general use and the Section is grateful to Julius LyBrand of Dallas, Secretary-Treasurer of the Section, who has prepared the following clause for all purpose and general use:

“Notwithstanding anything to the contrary set forth either heretofore or hereinafter, and without prejudice to or waiver of any of the rights of any of the parties described in that certain document attached hereto and made a part hereof for all purposes not inconsistent with the provisions hereof or thereof to the extent and only insofar as such affect same, without limitation or

enumeration, but including those expressly set forth therein or incorporated therein by implication or otherwise, without regard to the consequences resulting therefrom.”

**Tom Scott
Chair, 1981-82**

Specialization was a major topic during 1981-82. Some members of the council negatively viewed the specialization movement as a step toward greater commercialization and marketing. Charles Harris was on the affirmative side drawn from his experience in having qualified as a specialist in estate planning and probate. I recall that at one meeting in early 1981 he expressed the opinion that although he did not feel he had ever received any significant business by reason of his specialty it had proved to be a good spur to education and keeping him in contact with areas in the field that he did not meet in his day to day practice.

By the end of the 1981-82 year the sense of the council had moved to the positive. In part, at least, this was driven by the realization that if we didn't back an oil and gas specialty the real estate section would. At a meeting immediately prior to the spring institute in Houston, the council voted to submit the question of specialization to a referendum of the membership. I do not recall the outcome of that referendum but I do know that under the administrations of Dick Brady and Bob Schneider the council moved forward with the appointment of a facilitating committee in 1985. Standards for certification were adopted in January of 1986. The first certification test was given in October of that year.

In 1981 the first cracks began to appear in the price rise that had occurred in 1979 and 1980. By 1982 the price of oil had fallen and the industry was cautious. Nevertheless interest in the Section was high and increasing. The first advanced oil and gas course sponsored by the Section and the State Bar was held in the fall of 1981 with good attendance.

The membership increased from 1758 to 3318. In part this was a result of the State Bar going back to an earlier practice of billing for section dues in the same statement with the annual mandatory dues; however, the low section dues, good newsletter, and interest in the field were a strong draw.

The major topics of interest were gas price regulation, the law of surface minerals and royalty litigation. *Exxon v. Middleton* and *The First National Bank of Weatherford* cases came out during 1981. Pre-*Moser* disputes were numerous between lignite and oil interests. The complexities of the Natural Gas Policy Act of 1978 were burgeoning.

The Bar met in Austin to mark the centennial of an organized bar association.

**Richard T. Brady
Chair, 1984-85**

I succeeded Julius L. LyBrand as Chairman of the Oil, Gas & Mineral Law Section. Julius was a retired Sun Oil attorney who died in 1992. The offices and council of the Oil, Gas & Mineral Section on my watch were:

J.R. Schneider	(Chairman-Elect)
Ernest E. Smith, III	(Vice-Chairman)
R. Steve Simms	(Secretary)
Skipper Lay	(Treasurer)
Robert C. Bledsoe	
Maston C. Courtney	
Wayne Cummings	
Douglas B. Glass	
Robert C. Grable	
Stuart C. Hollimon	
Charles Keeble	
H. Philip Whitworth, Jr.	

Seven of the members on my watch later served as Chairman of the Section.

The thing I remember most about the year 1984-1985 was a plan to have a meeting outside of a city in which most of the events of the day were of concern. We chose South Padre Island as a benchmark for this endeavor and the council, all that were

available, met on South Padre. South Padre was not too expensive, but it surely was not a place that was best for a meeting.

Cases of the day which intrigued us all were the opinions on rehearing of *Manges v. Guerra*, 673 S.W.2d 180 and *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99.

The case *Texas Oil & Gas Corp. v. Hagen*, 683 S.W. 2d 24 came about this time and it was also of interest.

At the 11th Annual Oil, Gas & Mineral Law Institute held in Houston, two papers delivered were outstanding (other than the usual Recent Developments in Texas Case Law and Legislation delivered by Ernest Smith). One was a paper delivered by Brian R. Sullivan regarding practical engineering for lawyers, and the second one was a paper by Stuart C. Hollimon regarding surface use obligations.

All-in-all the Section meetings were of interest and the dialogue was good.

**J. R. "Bob" Schneider
Chair, 1985-86**

Due to the downturn in the oil and gas industry in the 1980's, economics remained a vital concern for the industry during my term as Chair. I recall a speaker at a seminar held in the early 1980's, as an introduction to his remarks, stating that the concern of the industry was to "stay alive 'til '85." As we all recall, 1985 came and went, and many of the problems remained. The cry then became, for some, "Chapter 11 in '87." Most of us survived the downturn, and I believe the industry is stronger as a result of the lessons learned during this difficult period.

During my term as Chair, *Gavenda v. Strata Energy, Inc.*, 705 S.W.2d 690 (Tex. 1986) was decided by the Supreme Court. *Gavenda* involved the effect of a division order that credited an interest owner with less interest than he actually owned. Without going into the Court's holding, suffice it to say that *Gavenda* has the distinction of making Bob Bledsoe's and

John Scott's list of the *Ten Most Regrettable Oil and Gas Decisions Ever Issued by the Texas Supreme Court*. (See Advanced Oil, Gas and Mineral Law Course, September 1990).

One of the significant, and I believe lasting, accomplishments of the Council was the introduction of the research grant program. Under this program scholarly works were solicited from the academic community, and selected members of the bar, on subjects of timely interest to oil, gas and mineral law practitioners, and to the industry. In 1986, Professor John S. Lowe became the first recipient of the grant for his work *Anatomy of a Farmout Agreement*. In the years following, numerous excellent in-depth articles have been authored and, as a result of this program, a valuable resource has been made available to Section members.

My service as a member of the Council is one of the most rewarding experiences that I have enjoyed during my career, and I continue to appreciate the many fine lawyers who give so freely of their time and talent to the work of the Section.

Ernest E. Smith, III
Chair, 1986-87

No sector of the oil and gas industry and no area of oil and gas practice escaped the effects of collapsing oil prices and the ongoing deregulation of natural gas prices. Traditional downstream transactions, such as leasing and farm-outs, slowed almost to a halt; while several oil companies and financial institutions, which had relied on forecasts of \$40-a-barrel oil, headed toward bankruptcy court. Meanwhile, the upstream sectors of the natural gas industry saw the first, tentative movements toward the complete reorganization of transportation and marketing agreements.

The series of events precipitated by the fall in oil prices should have been predictable; for price instability and industry shake-outs seem to have been permanent characteristics of the oil industry since Edwin Drake brought in his gusher at Titusville, Pennsylvania on August 27, 1859.

On the other hand, it is difficult to imagine that anyone could have predicted the ultimate impact of the deregulation of the gas industry, which was in its earliest phase. For half a century the gas industry had been characterized by long-term, or even life-of-the-well, purchase contracts between producers and pipeline companies. The pipelines purchased natural gas for resale to local distributing companies under equally long-term agreements. Pricing at the L.D.C.'s end had been regulated since the 1930's and at the producers' end since the decision in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954). Interstate pipelines themselves had been closely regulated since the passage of the Natural Gas Act, 15 U.S.C. § 717 et seq., in 1938. Although free-access, spot sales, producer-to-consumer sales and the other current characteristics of the gas industry were still in the future, the events that led to them were taking place; and most industry participants were aware that confusion, chaos and ultimately major changes in the way natural gas was marketed would take place as deregulation progressed.

From a case-law standpoint, the two most hotly discussed decisions in the 1986-87 period were probably *Sun Exploration & Production Co. v. Jackson*, 715 S.W.2d 199 (Tex. App. – Houston [1st Dist.] 1986) and *Texas Oil & Gas Corp. v. Hagen*, 31 Tex. Sup. Ct. J. 140 (1987). In *Jackson* the court of appeals held that a lessee has an implied obligation to drill "exploratory development wells" to test potentially productive formations outside proven fields. In *Hagen* the Texas Supreme Court ruled that the standard for reviewing a lessee's marketing activities is that of a reasonable prudent operator, not that of a fiduciary; but also concluded that a prudent operator would have secured for itself and its lessors the right to receive income from the sale of sulphur removed in processing natural gas and would also have obtained the right to renegotiate its pricing arrangements as the market value of gas escalated. The debates within the section ultimately proved more interesting and informative than the cases themselves; for the opinion in *Hagen* was withdrawn after the parties settled, and

Jackson was overturned two or three years later, with the Texas Supreme Court reiterating its long-held position that there is no implied covenant of exploration, only an implied covenant of reasonable development. *Sun Exploration & Production Co. v. Jackson*, 738 S.W.2d 202 (Tex. 1990).

Skipper Lay Chair, 1987-88

I was Chair of the Section during the years 1987-88. I became Chair sooner than expected because of the resignation and relocation (to California) of Richard Simms during the year Ernest Smith was Chair. I was thus elected Chair of the Section a year before the usual order, but my chairmanship was made smoother by the assistance of Professor Smith. During the year of my leadership, the Section consisted of about 5000 members.

The goals I set during my year as Chair included a review and update of Texas oil, gas and mineral law statutes and guidance of the University of Texas Oil, Gas & Mineral Law Institute and the State Bar Oil, Gas & Mineral Law Course. I also wanted special recognition for the Section since it was the 50th year of the charter of the Section, and also wanted to memorialize A. W. Walker, Jr., since he had passed away in 1987. I, in addition, chaired the State Bar Annual Convention Oil, Gas & Mineral Law Section meeting of 1988. Finally, I wanted special attention to be given to seminars, institutes and courses in oil, gas and mineral law, since the State Bar had adopted board-certification in that field the year before.

During my year as Chair the Council members worked extra hard in convening study committees to review the oil, gas and mineral law statutes, both regulatory and non-regulatory. During the year the committees completed their review and made recommendations, and the result was included in the State Bar legislative package. The recommendations were then enacted into law and signed by Governor Clements with support of TIPRO and

TMOGA. However, in one instance, it took several succeeding sessions of lobbying at the Legislature to obtain passage of the legislation.

I was the Chair of the State Bar of Texas Advanced Oil, Gas and Mineral Law Course in 1987. The Course was dedicated to the memory of Professor A. W. Walker, Jr., who died that year. In addition, 1987 was the bicentennial of the writing of the United States Constitution, so between each speaker at the Course, I fondly remember reading quotes from various commentators on the Constitution. Also for the first time a bibliography of oil, gas and mineral law-related materials was compiled by Bryan D. Wright and included in the Course materials. Finally, I obtained Exxon's permission to use several old "oil business" photos, and these were included on the Program cover of the Course (and also *Newsletters* throughout the year). Attendance at the Course was about 385 participants

In 1988 Edgar Norwood was the chair of the University of Texas Law School Oil, Gas and Mineral Law Institute, and that institute was also dedicated to the memory of Professor Walker. The Institute was attended by 353 participants.

Since 1986 was the first year recognized by the State Bar of Texas for board-certification in the field of Oil, Gas & Mineral Law, special attention was given not only in 1986 but also in 1987-88 to exam-oriented content of various seminars, institutes and courses. This was done in order to furnish maximum assistance to those sitting for the exam. Frank Douglass, a former chair of the Section, did not sit for the exam in its first year—he assisted in preparing and grading the exam. We recognized his work and contributions in 1987. Shortly afterward, to no one's surprise, he joined the ranks of those board-certified in Oil, Gas and Mineral Law.

Because 1988 was the 50th year of the chartering of the Section, the oldest of all State Bar sections, all former chairs or widows were notified and invited to attend

the luncheon held in conjunction with the State Bar convention, to honor the former chairs. Many did attend. At the luncheon, Tom Scott, a former chair of the Section, gave a history of the Section. His work and research was roundly appreciated and applauded. That afternoon, at the Section meeting, Professor John S. Lowe spoke on oil and gas legal issues. The night before Professor Lowe had been awarded the "Best Law Review Article" award by the State Bar Foundation for his article, "Anatomy of a Farmout."

The State Bar of Texas Oil, Gas & Mineral Law Section meeting in 1988 was held in Corpus Christi, and the speakers included John Sharp, Railroad Commissioner (Railroad Commission plugging issues), Professor John Dzienkowski (oil and gas legal ethics), and Texas Supreme Court Chief Justice Jack Pope (current oil and gas legal developments). I concluded the Section meeting with my appreciation for being afforded the honor of being Chairman of the Oil, Gas & Mineral Law Section.

**Jan E. Rehler
Chair, 1988-89**

New members Jacqueline L. Weaver, Dan Moody, Jr., and Thomas W. Lynch, attended their first Council meeting during December 1988. The second day of the Sixth Annual Advanced Oil, Gas and Mineral Law Course, which started on September 15, 1988, was cancelled as a result of Hurricane Gilbert. The entire institute program was again conducted on November 14-15 to allow the registrants an opportunity to receive full MCLE credit. To my knowledge, this is the first time that an institute was cancelled due to weather conditions.

The State Bar analysis of membership confirmed that the Section had 2,920 members with 768 members in Houston, 420 in Dallas, 202 in Austin, 78 in Fort Worth, 65 in Corpus Christi, 49 in Amarillo, and 25 in Lubbock.

At the January 1989 winter meeting of the Council, writing fellowship topics submitted

by law school professors affiliated with Duke, Tulane, Texas Southern, Texas Tech, LSU, Tulsa and Case Western were reviewed and the Council decided to award, I believe for the first time, two research grants/fellowships. During the Council meeting on March 30, 1989, the Council unanimously endorsed passage of the then proposed Texas Disciplinary Rules of Professional Conduct and adopted a supporting resolution. The speakers at the June 1989 Annual Section Meeting were the Commissioner of FERC, and Supreme Court Justice Eugene Cook.

**H. Philip Whitworth
Chair, 1989-90**

The programs and activities sponsored by the Council during the period from June of 1989 to June of 1990 continued to focus upon providing oil, gas and mineral lawyers with meaningful, practical assistance in their practice. The Council established a committee, led by immediate past Chair Jan Rehler, to work with the Real Estate Section Title Committee in adopting standards for mineral title opinions. Two outstanding articles were also completed and sent to Section members during this time as a result of the Section's research grants. Professor Owen Anderson's "The Anatomy of a Drilling Contract" and Professor David Pierce's "A Practical Guide to Drafting Assignments" are excellent publications that have and will continue to benefit lawyers dealing with oil and gas matters.

In addition, Eric Sigsbey prepared the first of several indexes covering all articles presented at oil, gas and mineral law institutes sponsored by the Section and the University of Texas Law School, advanced courses put on by the State Bar of Texas and articles appearing in the Section's newsletters. This index, which was also provided to all Section members, has been updated several times since its original publication in May of 1990 and has been an invaluable tool for researching questions of oil, gas and energy law. The Council also co-sponsored the Sixteenth Oil, Gas and Mineral Law Institute (now aptly named for Professor Ernest E. Smith) in Houston on

March 30, 1990, with an impressive group of speakers and articles that attracted some 480 attendees.

**Jon R. Ray
Chair, 1993-94**

The 1993-1994 term occupied a period which was probably not the economic best for most oil, gas and mineral law practitioners. The domestic drilling rig count had leveled off at around 750, down from 4,500 in 1982. Crude oil prices fell from a high of around \$15.00 to a low of nearly \$10.00 per barrel. Transactional practitioners were still making some headway with the activities spawned by horizontal drilling, while trial lawyers made their living with royalty and implied covenant cases. We all had to begin to learn something about hedging and financing with derivatives.

Likewise, the resources of the section were strained with reduced membership and lower attendance at energy-related seminars. During this time, the council took the hard step of increasing dues in order to continue the level of services provided to its membership, and was, I think, the first of the State Bar sections to begin a formal budgeting process.

One of the significant events which occurred during my term was the nomination and election of freshman council member Ernest V. Bruchez of Bryan. Through Ernie's enthusiasm for technology, the Section began its journey into the electronic age. From humble beginnings as "Sys/Op" on his home computer, Ernie single-handedly extended services to the Section into the information age, evolving through the fine library of resources which now appears at <http://www.oilgas.org>.

The Section was also very well served by all of its council members who were active and dedicated in their contributions. During this time, a milestone in matters of gender was passed with the nomination and election of Elizabeth N. "Becky" Miller to the slate of the Section's officers; hence the beginning

of her extended service through that as the Section's first female Chair.

**Michael L. Grove
Chair, 1994-95**

I assumed my responsibilities as chairman of the Section at the Annual Meeting in June 1994. At our annual meeting, our speakers were Texas Supreme Court Justice, Honorable Raule Gonzales, and Professor John S. Lowe. Professor Lowe presented his treatise, *The Royalty Obligation*, which he wrote with the support of the Section's 1994 Research Grant. Justice Gonzales spoke about recent Texas Supreme Court decisions relating to oil and gas law matters, focusing on *Rogers v. Ricane Enterprises, Inc.*, 884 S.W.2d 763 (Tex. 1994), which had been decided just nine days before the annual meeting. In that case the Supreme Court held, among other things, that even though an assignment of a lease incorporated the base lease obligations, and the base lease included determinable fee language, the court would not infer that the assignment created a determinable fee. The court held that "even if we were to imply a drilling purpose in the assignment, we reject the notion that automatic termination would be the resulting remedy. The appropriate remedy would be an action for breach of that implied covenant, or a conditional decree of cancellation allowing the parties to fulfill the purpose of the assignment by drilling to avoid losing the assignment." 884 S.W.2d at 767. The *Rogers* case reminds us what a tortuous path litigation can be. It began with a lease executed in 1937, it continued with assignments of the lease made between 1949 and 1983, resulting in a lawsuit being filed in April 1984, with five ensuing reported opinions, three by the Amarillo Court of Appeals and two by the Texas Supreme Court, with the most recent one being *Rogers v. Ricane Enterprises, Inc.*, 930 S.W.2d 157 (Tex. App.—Amarillo 1996). The second Supreme Court decision in *Rogers v. Ricane Enterprises, Inc.* of which Justice Gonzales spoke was later analyzed in 19 *State Bar Oil, Gas and Mineral Law Section Report* 4 (June 1995).

During 1994, the Section considered whether a standard environmental audit protocol for oil and gas properties would be helpful to our Section members and their clients. Ms. Susan Zachos developed a "Report of the Subcommittee Regarding Environmental Audit Protocols for Oil & Gas Properties," dated October 7, 1994. In order to develop that Report, Susan coordinated with the American Society of Testing Materials, the American Association of Petroleum Landmen and the Texas Independent Producers and Royalty Owners Association. The Report acknowledged the controversial nature of the topic, and the Council determined that there was probably not one single protocol that would serve the oil and gas industry as a "workable product." We declined to proceed with efforts to endorse such a protocol.

The 1994 Advanced Oil, Gas and Mineral Law course was held in Houston during October 1994. Among the hot topics was *Commodity Swaps: Basic Terms and Documentation* by Patricia J. Naghshineh, in which Ms. Naghshineh observed that "once understood, the basic economic terms and purposes of a commodity swap are usually fairly simple. The documentation, on the other hand, may appear to be complex." It was during that time frame that many of us oil and gas practitioners were first becoming introduced to the concept of commodity derivative products. Another hot topic during the March institute was *Current Gas Marketing Issues*, which was presented by a panel of commentators moderated by Ms. Janis Hartrick. Those two topics, among others, foreshadowed the "brave new world" that we were all to encounter during the ensuing eight years – and what an eight years it has been since then. After thinking about what has been happening in the industry of late, I see new meaning in the old adage, "The more things change, the more they stay the same."

The Annual Oil, Gas and Mineral Law Institute was held in March 1995. Among the hot topics was *Texas Title Examination Standards*. At the time of that presentation,

the February 15, 1995 discussion draft of the *Texas Title Examination Standards* had been promulgated by The Title Standards Joint Editorial Board of The Section of Real Estate, Probate and Trust Law and the Oil, Gas and Mineral Law Section. The purpose of the *Texas Title Examination Standards* was to create guidelines for title examiners. Mr. Jan Rehler presented the draft standards, and solicited comments from oil and gas practitioners.

In my introductory chairman's message during 1994, I noted that the Section had its peak membership of 3,268 members in 1985, just four years after the industry, itself, had its all-time high domestic rig count during September 1981. By the end of 1993, Section membership had declined by almost one third, to 2,345 members. During 1994, we established as one of our Section goals an increase in membership. In my final Chairman's Report in the June 1995 edition of the *Section Report*, I was able to state that "Section membership for the 1994-1995 year has rebounded, showing a slight increase."

I passed the chairmanship to Thomas W. Lynch of Dallas at the Section's annual meeting in June 1995. The time that I spent on the council from 1987 through 1996 was an interesting and challenging time for the oil and gas industry, which was reflected in the activities of the Section and its members. I will always be thankful for the opportunity to have walked and worked with other council members, officers and members of the Oil, Gas and Mineral Law Section, with the other participants in the oil and gas bar in Texas, and with the extraordinary people who comprise the oil and gas industry in Texas and nationwide.

**Thomas W. Lynch
Chair, 1995-96**

While I was on the Council (1988-97) the burning issue in oil and gas law involved the interpretation of various gas royalty clauses, particularly the most common clause which provided for royalties based on "market value at the well." What post-production costs, if any, are deductible in calculating

royalty? This issue was big, not only in Texas but in most gas-producing states. It is now largely settled.

Richard F. Brown
Chair, 1996-97

In 1996-97, the Council completed work on the first edition of the Texas Title Examination Standards. This was the culmination of years of work by others, which the Council was pleased to bring to the Section for adoption. The Council also completed a strategic planning review of all the services delivered by the Section to its members. Most of the existing practices and procedures were retained and some new initiatives were launched. The Section's first website was created and work began on adding content to the site that would benefit the members. Most of the interest was focused on moving prior seminar papers and the index online. The Section Report was modified to include a summary of the topics presented at the Oil, Gas & Mineral Law Institute. Talks began on more ambitious projects, some of which are now nearing completion. These included the possibility of producing pattern jury charges, form mineral deeds, form oil and gas leases, and form purchase and sale agreements.

The Council awarded the thirteenth and fourteenth research grants and produced two fine seminars and the annual meeting. The hot issues in the practice were post-production costs and the application of the Discovery Rule to oil and gas cases. The hot cases were *Neal v. HECI* and *Rogers v. Ricane*.

David G. Dunlap
Chair, 1997-98

I assumed the duties of Chairman of our Section in June 1997. During the Section's 1996-1997 fiscal year, while I held the office of Chairman-Elect, I worked closely with then Chairman Richard Brown and the other officers and members of the Council as we undertook a thorough review of the services being provided to Section members and considered various additional or alternative

member services. The conclusion of this process was a decision that the services offered to Section members represented a tremendous bargain for the annual dues and that "if it ain't broke, don't fix it". We did decide, however, to move forward with the establishment of a Section website.

During my year as Chairman, with then Council member Ernie Bruchez manning the laboring oar, the Section website became a reality. At the University of Texas School of Law sponsored 15th Annual Oil, Gas & Mineral Law Institute in March 1998, Ernie Bruchez made a presentation on the information then available on the website and plans for future enhancements to the website content.

1997-1998 was also a year in which the State Bar organized the Council of Chairs. This Council was comprised of the chairmen of all Sections of the State Bar and was intended to serve as an advisory group to the State Bar Board of Directors and, to some extent, as a watchdog group overseeing all State Bar Section activities and proposals for the formation of new Sections. The thought behind the organization of this Council was that it would facilitate input to the State Bar from a broader base of State Bar members. I attended several meetings of this Council throughout the year, as efforts were made to define better the role of and funding for this fledgling organization. Then Immediate Past Chairman, Richard Brown, stepped in willingly when scheduling conflicts precluded my participation in several meetings of this Council.

At the Section's Annual Meeting in June 1998, I turned leadership of our Section over to Becky Miller, the first female Chairperson of our Section. I assumed the office of Immediate Past Chairman knowing that leadership of our Section was in the good hands of Becky Miller and the other officers and members of the Council. Serving as Chairman of our Section was one of the greatest honors in my career. I will always treasure the many friendships established during my nine years of serving on the Council.

**Elizabeth N. Miller
Chair, 1998-99**

I was Chairman of the Oil, Gas and Mineral Law Section for the Bar Year June 1998 through June 1999. During that year we planned, staffed and chaired the Oil, Gas and Mineral Law Institute with the University of Texas, the Advanced Oil, Gas and Mineral Law Seminar with the State Bar and our own Section's annual meeting. In addition, during that year the Section was approached by the Rocky Mountain Mineral Law Foundation to join them as a Governing Organization and Trustee. The Section Council recognized potential benefits to the Section and its members by having "a seat at the table" of this distinguished foundation. However, because Rocky Mountain Mineral Law Foundation by-laws required state bar membership and not just section membership on its governing board, we proposed to the State Bar that it join the Rocky Mountain Mineral Law Foundation and allow a member of the Section, appointed by the Section Council, to be its representative. While at first this appeared to be a fairly straight forward request and one the State Bar would have no trouble with, it turned out to be a difficult process which was not completed for another year. Janice Hartrick, who succeeded me as Chair the following year, was able to finalize this agreement during her tenure. The State Bar, represented by the Section, is now a governing organization and trustee of the Foundation.

The second major issue we began addressing during my tenure was to recognize that the membership of the Oil, Gas and Mineral Law Section had grown stagnant and that while new people were coming into the practice of oil and gas law in Texas, they were not necessarily joining our section. We created a subcommittee of the Council to look into membership issues and to formulate recommendations to expand our membership. Ernest Bruchez and Al Cummings were appointed as co-chairs of that committee. Both eventually became a chairman of the section, continued to pursue those goals and have implemented a number of recommendations to

encourage the Section's continued growth and vitality.

The primary legislative issue during my tenure was the proposed voluntary unitization statute. The Council awarded a grant to Professor Jacqueline Weaver, University of Houston, to write in detail about the unitization statute, contingent upon its passage. However, the unitization statute did not pass and remains an issue to be dealt with in future legislation.

Finally, Ernest Bruchez and Eric Sigsbey worked during this time to establish, build upon and maintain the Oil, Gas and Mineral Law Section's own website. The website is unique and contains both general information of interest to section members, as well as Eric Sigsbey's cumulative index of articles published at the various oil, gas and mineral law seminars held in the state each year. The value of the website to the section members will continue to grow over time.

**Janice K. Hartrick
Chair, 1999-2000**

During my term as chair, the Section continued its practice of sponsoring two major legal seminars each year and funding research grants for the preparation of scholarly treatises. Practicing energy law in the nineties was particularly challenging as the industry continued to downsize, consolidate and converge. Energy attorneys were challenged by the legal issues surrounding the tortification of contract law and in particular, the issues which arose as a result of deregulation of the gas industry. The royalty valuation claims--filed as class actions or qui tams--alleged systematic underpayment of royalties based on a violation of the implied marketing covenant or express lease terms. Old leases, entered into when pipelines performed the merchant function, failed to address the realities of the marketplace in a deregulated environment with "value added" services of storage, transportation, processing, treating and sales made to affiliates. Litigation ensued with higher stakes as plaintiffs sought large classes of

royalty owner representation and filed for punitive damages under tort theories of fraud and concealment.

As an industry, oil and gas was viewed as "old economy", with the dot coms and the power traders the "new", high tech, fast moving darlings of the investment community. Ours is a cyclic industry, with companies riding the waves of change--price spikes and valleys, consolidations--fighting or joining the "urge to merge", horizontal and vertical integrations, globalization, technological enhancements and political and judicial battles with public opinion continuing to view the "dinosaurs" as polluters and slow-moving monolithic entities.

The Section served its members through education and training in the traditional oil and gas practice as well as with focus on the high dollar trends of class action litigation. The council and officers recognized increasing demands of clients for prompt legal review. This "need for speed" was a product of expectations in this electronic era, with technological advancements shifting some areas of energy practice into greater standardization. The Section was active in developing the Title Examination Standards and in the Pattern Jury Charges and officers participated in several industry planning committees focused on GISB, ISDA, ISO and other standardization efforts to facilitate legal transactions in the 90's (and the naughties). Ernie Bruchez, the Section's dedicated and talented first Webmaster, is responsible for bringing to Section members the vast resources of talented authors of the Section's Newsletter and Institute articles.

The Section was finally successful in its efforts (initiated by Becky Miller of Scott Douglass in Austin) to persuade the State Bar of Texas to join the Rocky Mountain Mineral Law Foundation as a sustaining organization. The Section, as representative of the State Bar, serves as Trustee of this nonprofit educational organization whose function is to encourage the scholarly and practical study of law relating to oil, gas and natural resources.

Energy practioners are a resilient, persistent group of multi-talented professionals. They devote their considerable talents to the exploration for and production of natural resources required to sustain our quality of life and our national security. Ours is a noble profession (whether or not the public understands it to be so). I am honored to be a third generation "oily" and a fifth generation Texan and I am especially honored to have had the opportunity to work with so many outstanding oil and gas attorneys during my years with the State Bar of Texas Oil, Gas and Mineral Law Section.

**Ernest V. Bruchez
Chair, 2000-01**

2000-2001 was a year of "Embracing the Past and Exploring the Future." The Section undertook significant projects in addition to the Section Report (Newsletter), Annual Advanced Oil, Gas and Mineral Law Course, Annual Ernest E. Smith Oil, Gas and Mineral Law Institute, development of additional Texas Title Examination Standards, and Annual Meeting.

In embracing the past to ensure the continued access by Section members to important works in oil and gas law, the Section secured the rights to the republication of selected works of Professor A.W. Walker, Jr. The resulting hardcover book was distributed to each member of the Section.

Exploring the future was achieved through several projects. A Sub-committee was formed to draft Pattern Jury Charges for oil and gas cases. Substantial progress has been made. The first set of proposed pattern jury charges will soon be forthcoming for review and comment by the Section.

A Distance Learning Sub-committee was selected to secure top authors and presenters in various areas of oil and gas law to facilitate low cost availability of basic oil, gas and mineral law education. Professors' Ernest E. Smith and Laura

Burney, together with Elizabeth N. Miller, have agreed to prepare and deliver the first presentations covering the basics of oil and gas law, oil and gas conveyancing, and the oil and gas lease. This lecture series will be recorded along with additional lectures that are planned. They will be made available on a continuing basis to the Section and the industry over the Internet or by video.

A Pro Bono Publico Sub-committee was selected to prepare Frequently Asked Questions (FAQ's) for oil, gas and energy law matters. These are questions and answers that address the most frequently

asked and answered questions pertaining to oil and gas law and mineral and royalty acquisition, ownership, control, disposition and heirship.

Finally, to remain steadfast to its original purposes and expand its scope to include additional emerging energy law areas such as power generation and marketing, alternative fuels and sources of energy, and water law, the Section voted at its annual meeting to change its name to become the Oil, Gas and Energy Resources Law Section.