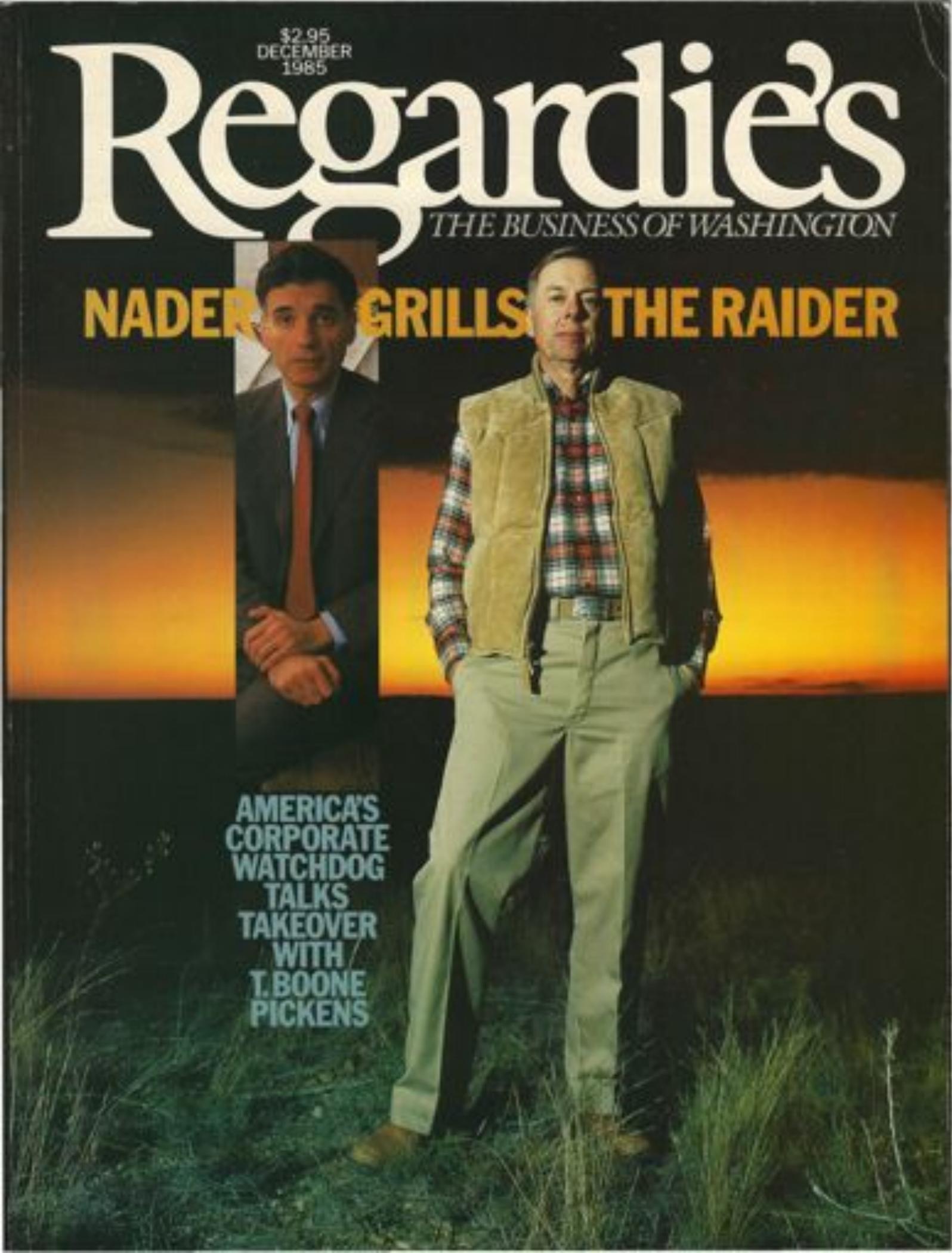


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THE BUSINESS OF WASHINGTON

NADER GRILLS THE RAIDER

The cover features two men standing in a field of tall grass at sunset. The man on the left is wearing a dark suit and tie, sitting on a dark surface. The man on the right is wearing a tan jacket over a plaid shirt and khaki pants, standing with his hands in his pockets. The background is a bright orange and yellow sunset sky.

**AMERICA'S
CORPORATE
WATCHDOG
TALKS
TAKEOVER
WITH
T. BOONE
PICKENS**

NADER GRILLS THE RAIDER

T. BOONE PICKENS TALKS TAKEOVER WITH...

The pairing is not as strange as you might think.

Ralph Nader, 51, of Washington, DC, is a lawyer turned advocate who made America safe from the Corvair and a host of other products that malfunctioned, blew up, or smelled bad. He spawned a legacy of consumerism that has changed the way we live. His targets have included many companies—among them, General Motors and Ford—all of whom have disliked him intensely. He heads the Center for Responsive Law and has made many chief executives lose sleep.

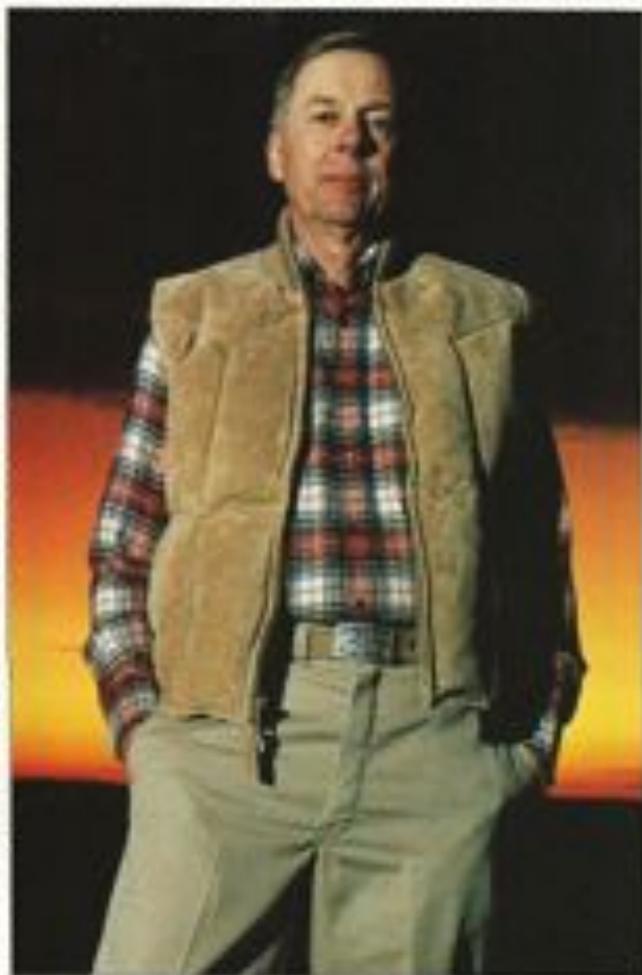
Thomas Boone Pickens, Jr., 57, of Amarillo, Texas, is a prologist turned financier who showed America that there is a way to make money from the excesses of companies that are heavy around the middle and light in the head. He spawned a legacy of takeover mania that may yet change the way we live. His targets have included many companies—among them, Citicorp, Service, Gulf, Phillips Petroleum, and Unocal—all of whom have disliked him intensely. He is chairman of Mesa Petroleum Company and has made many chief executives lose sleep.

Both men think corporate America is taking a dangerous turn. Both are writing books about it.

The odd couple was joined when Nader asked to interview Pickens for his book; Nader subsequently made the full interview available to *Regardie's*. Co-authored with Bill Taylor, Nader's book, *The Big Boys*, is due out this spring; it will contain extensive profiles of nine major executives—none of whom is Pickens.

"I saw Pickens as a counterpoint to the other executives," Nader explains. "He is on their minds. In a strange way he represents the latent corporate accountability fed. I would never have dreamed it 10 years ago."

Nader says he found Pickens fascinating. "I always like fiercely assertive people," he says, noting that Pickens "stands head



and shoulders above the other raiders in terms of his intelligence and creativity."

Still, Nader is Nader, and he is troubled by much of what Pickens has wrought. As a result of takeover attempts, companies are burdened with debt and small shareholders are losing their rights. Is Pickens the great defender of the shareholder, as he sometimes portrays himself? "I don't think so," says Nader. "I think it's all public relations."

In the end, though, Nader kept his cool. "I wasn't there to debate him. I was playing the role of journalist."

BN: When you look at the CEOs of the top 200 corporations, are you in any way worried in terms of the quality, the vision, the narrowness?

BP: Yeah. I'd say with more than half of

them the quality is disturbing.

BN: Who are the two or three you think most highly of?

BP: Let me think about that one.

BN: Lee Iacocca?

BP: I'll say one thing, he bailed out a bad situation pretty well.

BN: Bill McGowan of MCI?

BP: I don't know him.

BN: But none of them leap out? No heroes?

BP: I may be unfair. I don't know them that well. I've been pretty sheltered as far as the oil industry is concerned. And I just haven't had that much contact with them. I mean, sure, all of them are great guys socially. But I haven't done business with them. And you don't know if they're good performers or poor performers unless you're actually in deals with them and see how they handle their businesses.

BN: Looking at the major oil companies, who's the best manager?

BP: I'd say that's kind of shifted around some. There's no doubt that Arco certainly looks good in what they've recently done for their stockholders. So I tip my hat to Arco on that one. I would say as far as good explorers are concerned, Amoco has been quite good at times. Their record hasn't been so good the last few years, but there's no doubt that number one on the list of major oil companies in the United States, as far as protecting the asset base of the stockholders, has been Shell Oil Company. They're number one. But Shell Oil Company is now a part of Royal Dutch. And I would say that it's unlikely that morale will ever be at the level it was.

BN: That was not a good acquisition?

BP: Well, it was a hell of a deal for Royal Dutch. But as Shell stockholders sure got screwed.

BN: There are two schools of thought: one says that a big corporation can't really be changed by the man at the top; the other one says that the man at the top can change even a big bureaucracy.

BP: That's exactly right. I believe the

latter. I believe if you're running the operation and you're the leader, you better be able to change things. Or it's a very peculiar organization.

EN: Do you think there is too much secrecy in corporate America?

EP: There is too much secrecy, yes. Look at the stuff they've uncovered about the major oil companies and price-fixing of gasoline. All the price-fixing was done by telephone. No memos were passed back and forth. No letters were passed back and forth. Files didn't have anything in them. But the investigators got enough of the stuff to know damn well the oil companies were in cahoots on pricing. That's bad.

EN: Are you concerned about the rash of corporate crimes?

EP: Yeah, I am. I think that's a sad situation.

EN: What's the solution—stronger prosecution, tougher enforcement?

EP: Sure. I have said that time after time; you don't have to cheat to win. You don't even have to bend your principles. Because let me tell you one thing: I can beat the other side because I'll work harder than they do.

EN: Do you think there is more corporate crime now than there was 10 years ago?

EP: I don't know. I don't know that I'm qualified to answer that. But what I read about it, I don't like.

EN: Saul Steinberg's attempt to take over Disney—does it hurt your cause when something like that happens? You know, pure greenmail. Do they tar you with the same brush?

EP: There's no doubt. We've never taken greenmail. We've never negotiated greenmail. We've been very up-front about it. Yet they still call me a greenmailer. So sure, it hurts sometimes. But again, I say the culprits in the greenmail deals are the managements of the companies.

EN: Aside from the oil industry, are other sectors ripe for takeovers?

EP: Anytime market values are at a fraction of appraised values, management had better get moving. One can put money together very fast now, and deals can be made. I'm not going to identify any other industries that are ripe for takeovers—I'll leave it up to you. Just look at those undervalued assets. Those people are vulnerable.

EN: There have been reports that you're not averse to going into other industries.

EP: We've said that at some time we may do that. We haven't done it as yet.

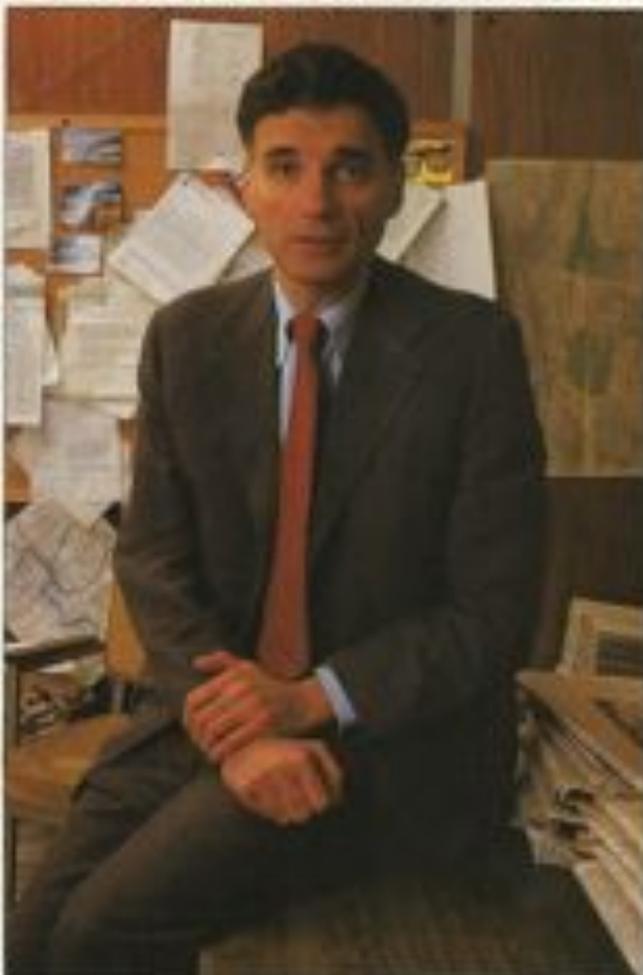
EN Taylor: What do you think of the way that most annual meetings are conducted now? Are annual meetings basically a joke?

EP: More or less, most of them are.

EN: Any ideas on how a CEO can go about making his annual meeting more meaningful in terms of soliciting shareholders' opinions and ideas?

EP: You can't go to a shareholders meeting and open up the meeting with 500 people and start a roundtable discussion. That isn't going to work. You've got to control the meeting. I think sometimes I'm disappointed at what CEOs say when they stand up in front of a group of stockholders.

AMERICA'S CORPORATE WATCHDOG



EN: It's as if it's the most painful day of the year for most of them?

EP: It is. And that's incredible to me. I look forward to our stockholders meetings. We actually encourage questions about the management of the company, and all the directors are there. But at the Unocal stockholders meeting in California this spring, they turned off the lights. I thought they hadn't paid the light bill. It was dark, like a theater. And the spotlight was on the CEO up front. You should have seen it.

EN: That's one way to daunt the shareholders.

EP: That's right. But the questions and answers out there were unreal. Last year a stockholder told us that he had gone to the '84 stockholders meeting at Unocal. He said that he stood up and asked Un-

ocal's chairman, Fred Hartley, if he would consider paying a higher dividend. And Hartley's response to it was, you look like an elderly person, why don't you sell your stock and go out and enjoy yourself? Well, it was a ridiculous remark. And a woman followed right up and said that she felt the same way—that she didn't even have enough to buy a cup of coffee with her dividend. And he said, come by my office after the meeting's over and I'll give you a free cup. That kind of arrogance.

This year I was there. A guy got up and said, I don't know whether to tender my stock, sell my stock, or hold my stock. Hartley looked at him and said, I'm not your investment adviser. They had a woman get up and say, why don't you have a woman on the board? He got around to finally saying that women are not qualified. He didn't quite say it, but it was all but that. Then he said that he had a woman picked out one time, but she died. It was a two-hour meeting. I finally said, "This meeting's dragging pretty bad, Mr. Hartley." He said, "I like to hear from all the stockholders." I said, "The problem isn't the stockholders' questions, it's your dragging on the answers."

EN: Do you get letters—critical letters—from CEOs denouncing you?

EP: No, they never write me.

EN: How bad was all that trouble with the private detectives?

EP: That's really a sleazy deal.

EN: Can you tell us something about that? Was it instigated by all the companies you tried to take over?

EP: Every one of them had the same people.

EN: What was the firm?

EP: Jules Kroil & Associates of New York.

EN: And what was their purpose?

EP: To dig up dirt on Boone Pickens.

EN: How did you counteract that?

EP: They never found any dirt.

EN: Anything else? Did you contemplate a suit?

EP: Oh yeah, we sued them finally. Kroil, in the Phillips deal, called an ex-employee who they thought was an enemy of mine. The irony of the thing was, yes, I had fired him, but we weren't big enemies. It so happened our families were good friends, and our children were. And Kroil asked if he would talk about me, and he said, yes. And they said, the first thing is, do you know his children? And he said, yes. And they said, can you tell us where his children are located? And he said, that's all for this interview, and he hung up the phone. And he called me and said, they now want to know

where your children are.

BN: Do you think they were being rough?
BP: I really don't think they were going to do any harm to them. I think what they were going to do was harass them. I think they were going to start calling them up and saying, your dad's a bad guy, and stuff like that. [The lawsuit was later dropped by Pickens.]

BN: Has anybody tried to set up a debate between you and a CEO?

BP: About 25 times.

BN: None of them would debate?

BP: Hell, no, they won't debate. They won't even consider it.

BT: Not even Andy Sigler [the chairman of Champion International and the head of the policy committee for the Business Roundtable, a lobbying group made up of chief executives of major corporations], who's obviously an expert?

BP: Oh, no. He's been asked numerous times. Leslie Stahl of "Face the Nation" asked every one of them. She said, I'll get somebody from a major oil company to debate you. She said, is there anybody in particular? I said, I'll take anybody that'll sign. She said, well, alright, I'll get one of them. She called me back and said, I can't get anybody. I'll tell you why they won't debate. It's because I've got the right side of the issue and I understand it.

BN: Do some people put pressure on banks not to lend you money?

BP: That goes on all the time. But it's worse than that. The Business Roundtable puts pressure on them.

BN: How do they do that?

BP: That's real easy. They tell the banks, you quit doing business with this guy or we're going to quit doing business with you.

BN: Does it work?

BP: Sure. They eliminated some of our banks that way.

BT: I guess Citicorp was one of the most aggressive companies doing that.

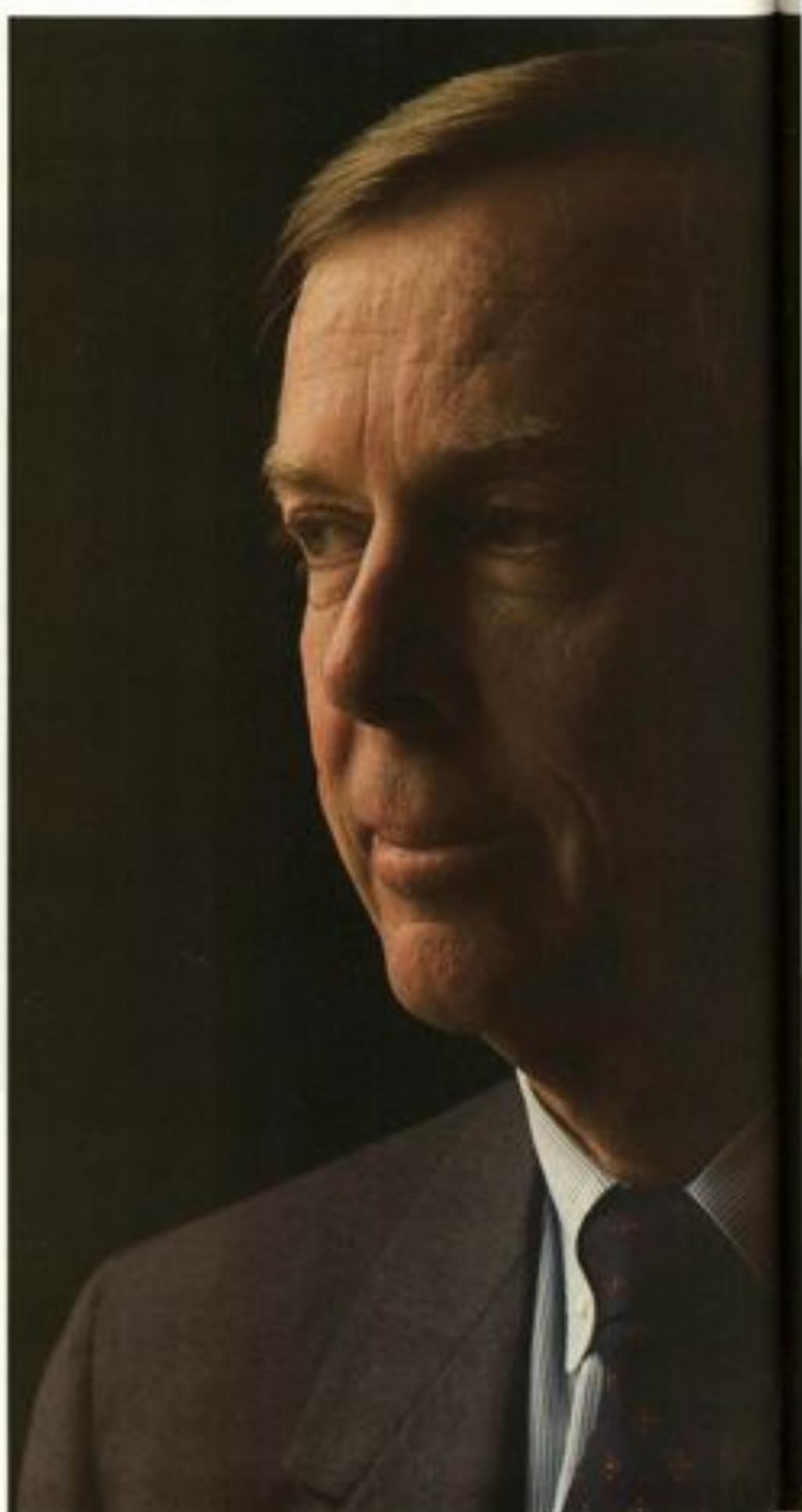
BP: No. That was back in the early days. The ones that were the most aggressive have been in the last two deals - Phillips and Unocal. They got the Business Roundtable mobilized.

BT: So it's like the old-boy network.

BP: Absolutely. Totally.

BT: Do you think that the Business Roundtable is the key vehicle for the broader corporate pressure that operates on people, as opposed to CEOs just doing it on their own?

BP: I don't think everybody on the Business Roundtable is working on my case. I think that the policy committee, which is headed by Andy Sigler, is certainly anti-Boone Pickens. So you're going to have people that are more aggressive than others. I'm sure I have friends in the Business Roundtable - people come up to me and say something that's surprising at a cocktail party from time to time. A managing partner of a New York investment banking firm who we've never



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done business with sent word to me: “Tell Boone to keep doing what he’s doing. It should have been done years ago.” So it’s interesting where your support comes from. But I can tell you, a lot of things that have been going on in corporate America gag a lot of people. Not just Boone Pickens. There are a lot of people that don’t like it.

BN: Just to get a better description of this wave of antitakeover defenses that is sweeping corporate America, how would you describe it?

BP: The only reason the opportunity for takeovers is there is because managements haven’t performed for stockholders. The number one defense against takeovers is to have your stock price up—then the opportunity is taken away. If you want to become vulnerable, then have your price at a low percentage of the appraised value of the company—therein lies the opportunity. Now that’s it in a nutshell. When these managements come crying, “Oh my God, they’re coming after us,” takeover advisers tell them right off that they need to get the price of their stock up and they need to do something for their stockholders. Just go back to this basic point: who is it that owns the company? The stockholders. Why shouldn’t they be allowed to decide whether they want to sell it or not?

BN: In looking over the whole takeover drive, what we’ve noticed is something that the press has virtually ignored—that thousands of companies in the last two years have instituted antitakeover provisions, charter amendments, and bylaws. The companies that have never been exposed to any takeover drives are rigging the process. Has your success and the success of others who are doing the same thing provoked a reaction by thousands of corporate managers who want to make sure that such efforts are not going to be successful in the future?

BP: There’s no doubt about that. They’re changing the rules, arbitrarily in some cases, just taking rights away from people. Sometime soon we’ve got to establish in this country that stockholders do own the company. Not the managements. That’s just not the way it was designed.

Let me tell you, a lot of CEOs treat these assets like their own private fiefdom. They have no financial risk, they have no ownership, but they have full control of the assets. It’s an incredible situation.

BN: In terms of defenses, is the antitakeover epidemic going to make it almost impossible for people such as yourself?

BP: It’s not. And the reason is this: I still believe that any time you have 51 percent of a corporation, you’re going to be in a commanding position. And whether they have an 80 percent supermajority vote or not, there’s not any board of directors I know of that’s going to stand up to a 51 percent owner for very long and continue to take financial risk and assume liability

for the results. They’ll do it with ownership fragmented all over the world. But with a 51 percent owner you’re going to have to have real guts to continue to make financial decisions where you can have losses and assume that liability.

BN: Let me run down the list of antitakeover measures and tell me which ones you think are serious and which can be overcome. Staggered directors?

BN: A staggered board of directors is not a problem against a 51 percent owner.

BN: Elimination of cumulative voting?

BP: Cumulative voting is good for the stockholders. It’s not a disaster when you don’t have it, but it’s an advantage when you do have it.

BN: The supermajority provision?

BP: I think it falls in the same category as the staggered board.

BN: The Unocal two-tier defense?

BP: That’s a serious one, very serious. If you’re going to be able to discriminate against a stockholder, then something’s wrong with the system. If that continues, about the only way you can go then is with a 100 percent cash-tender offer. Look at the Unocal deal—they called our deal a front-end-loaded two-tiered offer, but what was theirs? They offered to buy 50 million shares of stock for \$72. They bought it. And what’s the price of stock today? \$30. Now that’s a two-tiered deal if there ever was one. Ours was a \$54/\$54 deal, and theirs was \$72/\$30. Now there’s something queer.

It’s really interesting to hear comments about “hostile” takeovers. In whose mind is it hostile? Look at the R. J. Reynolds/Nabisco deal—that’s \$85 on the first step, \$42.50 on the backside. But it’s okay, because it’s a friendly deal; it’s friendly because they tenured the Nabisco management. Now, if it hadn’t been that way, Nabisco’s management would have said it was two-tiered and front-end loaded. You know, “Bootstrap! Destroy our company!” All that kind of malarkey. Well, 42 million stockholders in America are going to have to understand this and get with it on these deals. I can point out another one—an unbelievable situation. Can you believe that 12 percent—12 percent—of Unocal’s stockholders did not tender their stock to the \$72 offer?

BN: They didn’t know about it, or what?

BP: I don’t know. But the chairman of Unocal did; he tendered to it. Let me tell you what that cost the 12 percent who didn’t tender: \$250 million.

BN: Back to the list. Reincorporation in Delaware?

BP: Well, there’s no doubt that because of the Delaware Supreme Court’s decision against us in the Unocal takeover, the Delaware courts have established again that they will protect managements and boards of directors under the Business Judgment Rule. That’s an incentive, certainly, for companies to move the incorporation to Delaware.

BN: In the past Delaware has done things

like that to attract more charters, going back 80 years. Do you think that Delaware is being more protective of management in order to get more charters?

BP: I don't know. I don't believe I want to go on record saying that, but I don't think there's any doubt that they raised the flag for the Business Judgment Rule here, and probably calmed the anxieties of managements and boards of directors. They said that the intent of the takeover was greenmail. We said time after time that we would not take greenmail from Unocal. When we almost reached a settlement with Unocal at one point, we told them that the settlement would have to go to the stockholders for approval. But Unocal said it would not. So there was no way that that court could have ruled that the intent was greenmail. On that point, they clearly discriminated against the stockholder.

BN: What about other, more serious takeover defenses—variations of the poison pill?

BP: Well, the poison pill has to be wiped out. I mean, that's something that stockholders are starting to catch on to and vote against. If you'll give them a little bit of time, stockholders are just like voters. They finally get the picture and understand what's going on, and they believe somebody is not telling the truth.

BN: What about greenmail?

BP: My feeling is that greenmail is almost a thing of the past, because it's now being

understood that those so-called greenmailers were really not the culprits in these deals. The culprits were the managements of the companies.

BN: Would those managements be afraid of a backlash if they do that anymore?

BP: Oh yeah, I think we're coming around to that. I was saying that voters and stockholders are very much alike. Once they find out that something is screwy, they aren't going to put up with it for very long—they'll throw the buggers out. And that's what you're coming down to here. I think these managements are absolutely scared to death to do any greenmail transactions. Now, they'll try to package it in a different way. For instance, Phillips tried with us. They had a grand design for how they were going to pass us greenmail, but it wouldn't be called greenmail. We turned it down. That was only three days after we showed up as a stockholder. We told them that we weren't interested in that. Other companies may try to do some of that, but greenmail is going to be a thing of the past pretty quick. Poison pills are, too.

BN: What are the worst poison pills?

BP: In the case of Unocal's poison pill, for instance, when we paid \$34 for 51 percent of their stock, they would buy the other 49 percent for \$72. What they would have done was to collapse the company around our equity. We wouldn't have gotten anything. We would have ended up with a bankrupt company.

BN: Isn't there a poison pill that involves preferred stocks?

BP: Yes, there is. And then they've got an exploding pill. There are all kinds of variations of the pill.

BN: Why do you think that's going to be a thing of the past?

BP: When you put the pill in, you're taking rights away from stockholders. They don't get to see the offer. The offer goes away if the pill sticks.

BN: So what's going to make the pill go away?

BP: The pill itself—that's exactly what killed the Phillips recapitalization plan. The pill was so repugnant to the stockholders that they voted against the recap plan. I think the picture's becoming clearer and clearer all the time.

BN: What about the ultimate takeover defense—issuing two kinds of common stock, like they do at the *Washington Post* and the *New York Times*, for example. The family-owned common stock is voting stock, but the non-family-owned common stock is nonvoting. The New York Stock Exchange is about to approve the listing of corporations with two kinds of common stock, voting and nonvoting.

BP: There should be legislation against that.

BN: Isn't that the ultimate antitakeover defense?

BP: Sure. If I put one in Mesa Petroleum and said, there's going to be just one person who can vote and that's going to

ANGLING IN THE FINANCIAL SPORTSMAN'S PARADISE

TERMS OF THE TAKEOVER TRADE

BOOTSTRAP: A raiding technique that involves using the assets of a target company as collateral for loans to purchase the company.

the best interests of the company.

CUMULATIVE VOTING: A mechanism that allows minority shareholders to win one or more seats on a board of directors by concentrating their votes on a few can-

GREENMAIL: The practice of accumulating a sizable block of stock in a company, then selling the stock back to that company—usually at above-market prices—in exchange for agreeing not to continue seeking control of the company.

POISON PILL: Complex stock provisions

tended to be sympathetic to management under siege.

SHARK REPELLENTS: Any of a variety of antitakeover amendments to corporate charters or bylaws.

STAGGERED DIRECTORS: Directors whose terms overlap. It is difficult for a raider—even a raider with a majority of the stock—to take control of a board of staggered directors.

SUPERMAJORITY PROVISIONS: Bylaw amendments that call for more than a 50 percent vote by shareholders to approve decisions such as mergers.

TWO-TIER TENDER OFFER: A raider's bid to purchase some of a target company's shares at above-market prices, fol-

lowed by his lower bid for the remaining shares after gaining control of the target.

UNOCAL DEFENSE: The target company's equivalent of a two-tier tender in which the company tender offer offers to buy back a select portion of outstanding stock—all the shares not owned by a raider; for example. This controversial defense was used by Unocal to thwart

T. Boone Pickens earlier this year; the move was upheld by the Delaware Supreme Court.

WILLIAMS ACT: The 1968 federal law that provides protection for shareholders during tender offers. Basically, the law gives everyone a fair chance to sell their stock at the same price.

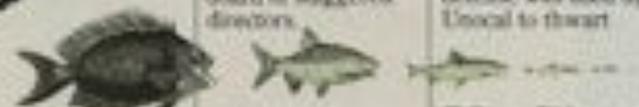
BUSINESS JUDGMENT RULE: The legal principle that says corporate managers need not seek shareholders' approval for most decisions, as long as they believe those decisions to be in

their best interests. It has been used by dissident shareholders to install critics of management.

GOLDEN PARACHUTE: A severance agreement for senior executives that often provides substantial benefits in the event of a takeover.

that we used to deter a hostile takeover bid by making the target company financially less attractive.

REINCORPORATION: A takeover defense that transfers the corporate charter to another state, usually Delaware, where laws and courts have



be me, that's exactly what you have. But that's so bad, so counterproductive, and against the free-enterprise system that it's incredible. I would be in favor of legislation to protect stockholders' rights — that my 100 shares are going to get just as many votes as your 100 shares.

BN: The New York Stock Exchange has already indicated that they're going to approve it, because they don't have any choice. General Motors wants it, and the NYSE wants the Washington Post on, and they're worried about competition from over the counter markets and the American Stock Exchange.

BP: I think it's time for the NYSE to have guts and say fine, if that's what you want to do, you need to go down the street, fellows.

BN: Are the shareholders going to have more rights in 1986 than 1976? Or is the rebound — the backlash — so severe with the antitakeover defenses that managements are getting shareholders to approve, that basically it's going to end up with fewer opportunities to make management accountable?

BP: I think that '86 will be certainly worse than '76 was. And I think that '86 will even be worse than '85. But I also see the thing turning, too.

BN: How is it going to turn?

BP: You're going to see stockholders become very aware of the situation. They're going to be very suspicious of managements, and they're going to revolt.

Interview

BN: Do you give much credence to this institutional stockholder group, the pension fund managers?

BP: Sure, but I was disappointed in the way the California pension fund, with over a million shares of Unocal, voted with management.

BN: Why do you think the Council of Institutional Investors was formed by California's state treasurer, Jesse Unruh?

BP: I know why Jesse formed it, and I commend him for what he did. The council represents \$100 billion. There's \$38 billion out there in California. That's a huge number that Unruh has fiduciary responsibilities for. They're going to bring some accountability.

BN: Do you think pressure for accountability will come from the institutional shareholder, or the individual shareholder, or both?

BP: The institutional shareholder will lead, because they have research at their fingertips and they have fiduciary responsibility. So they have the answers to the questions, or they have recommendations from experts. And as a fiduciary, you've got to act on your recommendations, in most cases. But a lot of that's got to be cleared up. You've got some very weak fiduciaries in the system, and you've got some that are very strong, headed by Dean Lebaron at Batterymarch.

BN: Do you foresee a reversal of these antitakeover changes in corporate bylaws?

BP: It's already starting. I think you're going to have a reversal. Shareholders should vote on these things every year.

BN: Well, that'll have to be by legislation.

BP: It may have to come by legislation. You may also have industry leaders who say, we will vote on these questions every year. When that happens, it puts pressure on other managers.

BN: On the one hand, you have management changing the charters and bylaws with the supreme approval of the shareholders, who may not know what they're doing. On the other hand, you have the Delaware Supreme Court. How can you combat those two unless you have federal legislation?

BP: Well, you can have legislation. But as far as the Delaware decision is concerned, that can be taken care of by the SEC under the Williams Act.

BN: You think it will?

BP: I think it will. I have confidence that the SEC knows its responsibility to look after stockholders. There just happens to be 42 million stockholders out there, as you well know. And somebody has got to come forward and say, these people have to be taken care of.

BN: That means someone may have to petition the SEC?

BP: The SEC has already made remarks to the press that they're looking at this situation very closely, at what happened

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in Delaware. It's going to give them starch to do some things. And I think you're going to see the Delaware decision probably taken care of by the SEC. As far as getting these charter amendments voted on every year, I think that's going to take a little while to do.

RE: Do you see the possibility that you, and other people who are doing the same thing that you are—Carl Icahn, Irwin Jacobs—do you see the need for establishing an advocacy group that just does that? Changes are not going to happen very fast by themselves—maybe a company here or there. But what about a shareholder advocacy group to work the SEC route—the direct annual meeting shareholder proxy route, the public opinion route, the litigation route. You've got all these shareholders out there and you've got Jesse Unruh's fiduciary group, but you don't have a professional, fully staffed advocacy group to turn the tide, which is now overwhelming. Even family-owned businesses are passing antitakeover defenses against their relatives. The count must be in the tens of thousands in terms of changed bylaws.

BP: It's ridiculous. But that's what you've got to have happen. It's almost like a selling or buying climax in the stock market. You finally have to have something wild happen for somebody to say, hold it, there's something going on here that's not quite right. But I have always believed that this revolt will be led by the institutional holders. They will be the ones who will lead, because they have to. If I'm a fiduciary, let me tell you, when I get that research recommendation to accept a tender offer or not, I've got an easy call. I'm not going to go against that. But it doesn't always work like it should. In bank trust departments, they often reverse the recommendations. You know why? Because there's no Chinese wall between the commercial lending side and the bank trust department. In the Gulf deal, we saw trusts where, out of a seven-person proxy committee, we had it won going away, and we were reversed. We were reversed at the top.

RE: Because?

BP: Because they got the pressure from outside. You won't believe the pressures that are involved here. For instance, in one case, I knew I had one block of stock that was committed to us in the Gulf deal. But there was pressure put on that particular investment adviser to go with Gulf management. This pressure was totally removed from Gulf. It was another company. The CEO called the investment adviser and said, vote with the Gulf management, because we're thinking about investing some of our pension funds, and we're looking at your firm right now. It's that kind of pressure that is coming to bear on these money managers.

RE: For years, fiduciaries have been satisfied with very low rates of return. I mean, the record of the New York banks on

their trust returns is about 5 percent over the years. There's nobody, really, to put their feet to the fire.

BP: That is what bothered Unruh. You've got these California state employees, retirees, and present employees—what kind of results are those people getting? That's the 5 percent you're talking about. That's ridiculous.

RE: But my point is, nobody will make them accountable. They've been getting away with it for years. What I'm talking about is: isn't it more likely that the change here could come from the leading takeover advocates such as yourself, in terms of an advocacy movement for shareholder rights? Isn't that where the real power can come from? The institutional holders—they should have an interest, I agree—but they've been sitting on their duffs for years.

BP: Again, though, a lot of them are graded on performance. This is one of the really funny parts of this whole thing. For instance, you've got retirement accounts over at Unocal, and the company has them scattered around with five or six different money managers. They're comparing performance all the time. It's really interesting, because corporate managers will say, listen, Pickens is just for short-term performance, not the long term. And then they're over with the pension fund manager saying, you'd better get your performance up, or we're moving the funds away from you.

RE: So you don't think it's necessary for the leading takeover specialists to form a shareholder defense group, given the wave of antitakeover defenses and the Delaware court, and all the other problems that are coming on the horizon—the backlash?

BP: Well, let me think about that. That's a new one for me, because these people who have made offers for companies—the aggressive ones that have made things happen—are all individuals. When you start taking those people and trying to put them into a group, they generally don't work well together.

RE: Do you contact them often?

BP: I talked to Carl Icahn probably six weeks ago, and I talked to Irwin Jacobs three weeks ago. So we're not in constant contact at all. In fact, I don't even know what deals Irwin's in right now. I know he's reported to be the largest stockholder in ITT.

RE: Isn't that ironic?

BP: And Pioneer Corporation. And I look at Carl's TWA deal. Can you believe those ads they ran against Carl? Here he owns 34 percent of the company, and they say we're not going to let you take over "our" company. It was signed by the CEO. He doesn't own any stock.

RE: What about the argument, the claim, that you're really not interested in ever

managing these companies, that your interest is to primarily provoke them into being better managers?

BP: We wanted to run every one of the companies.

BN: You really did?

BP: Absolutely. I'd love to run one of them. Man, if only we'd gotten our hands on Cities Service, or Gulf, or Phillips, or Unocal. The last two offers, Phillips and Unocal, were for the entire company, and nobody topped the offer. It was a \$60 offer for Phillips. How they explained the lower price of their recapitalization to the stockholders, I do not know. I mean, if I were a stockholder, I'd be all over them on that deal. And with Unocal we made a \$54 offer, and the blended price now is 10 points under that. So they're costing their stockholders today \$2 billion. And why the hell somebody doesn't jump on them, I don't know.

BN: Give us your response to the argument that now that these oil companies are heavy in debt, the next time that there's an energy crunch and they're asked to explore and produce they're going to say, Washington, you're going to have to pay for it because we're too much in debt and we don't have any money.

BP: That's a myth. Let me tell you what these oil companies were doing, the ones that have been recapitalized. Most of them are spending money, and not getting very good results for it. In fact, in most cases it has been pitiful. And the consumer will suffer anytime you have inefficiencies. Eventually, the consumer's going to get stuck for it. In the case of Phillips, that company had \$2.5 billion a year in cash flow. They had more money than they had investment opportunities. Consequently, they were making bad investments. What you've done here is transferred equity to the owners. The stockholders of the company have just received the equity out of the deal. And so now you have debt in the company, which has plenty of cash flow to amortize that debt. All that does is make the company more efficient. That's it.

BN: Why were they putting their money in inefficient investments? There are a lot of other things they could acquire outside of oil.

BP: Well, you didn't like that when Mobil acquired Marcor. You didn't like it when Reliance Electric was acquired by Exxon. And you didn't like it when Kennecott was acquired by Sohio. And you didn't like it when Anaconda was acquired by Arco. The people have proved that they are not good managers—certainly of assets away from their industry—and it's questionable whether some of them are good managers of assets within their own industry. So again, we're back to the point that there's more money here than there is in investment opportunity.

BN: You think Exxon is performing the way you want it to perform now? ▶

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bers then I'll come on there. But one against 12 is not much of a deal.

BN: How is the Business Roundtable going to go after your type of activity? What's their strategy?

BP: They're working diligently to try to get antitakeover legislation, just like the people you've interviewed.

BN: So it's reflected in the bill that they're supporting?

BP: They're supporting anything that will entrench management. Of course, the first thing they do is yell about national security. They say, this is against national security, this is against America. They're also saying, we can't have any research and development because these people force us to concentrate on the short term and not the long term. Well, those are absurd arguments, and they can be broken down quickly. Have you got Professor Michael Jensen's study from Harvard? He goes through there and just points out myth after myth. What's happening is, the Hill is catching on to all this. They had Fred Hartley up there earlier this year. He went on for about 20 minutes in just a rambling diatribe. He called me a jackass and . . .

BN: At this hearing?

BP: Yes. He said that any jackass can do what Pickens has done, something like that. Then he made the Unocal deal the whole subject of his testimony, and that wasn't what they had asked for. And then he pointed to Senator Alfonse D'Amato and said, you have to do something about these barbarians that are destroying America! You have to! And D'Amato laughed at him and said, what do you have in mind for us to do, Mr. Hartley? You know, as if it was a joke. Hartley said, you heard me! You know what's wrong: if Pickens took over Unocal, 22,000 people would lose their jobs.

And so when [European takeover specialist James] Goldsmith had an opportunity to talk, he said, I've got to speak to that. He said, I didn't plan to get into this, but if Pickens took this company over and he couldn't make it go, 22,000 people wouldn't lose their jobs—Pickens would lose his job and somebody else would take it over. When I got to say something, I said that I had to analogize to *The Cruise Mystery*. I said, I think we've just seen Captain Queeg testify here today—he all but had those three steel balls in his hand.

BN: Are you going to write a book on all this?

BP: Yes, we're writing right now.

BN: So you've kept your records, if not a diary?

BP: Oh yeah. It will be out in the spring of '87.

BN: In your book are you going to name names?

BP: Oh yeah. I'll have it all in there.

BN: Any movies being done on you?

BP: On me? Yeah, I'm in one. *Titanic Returns*.

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