Oil price controls made a bad situation worse, and Oklahoman Robert Sutton very rich. Thereby hangs a moral.

The rise and well-cushioned fall of Robert Sutton

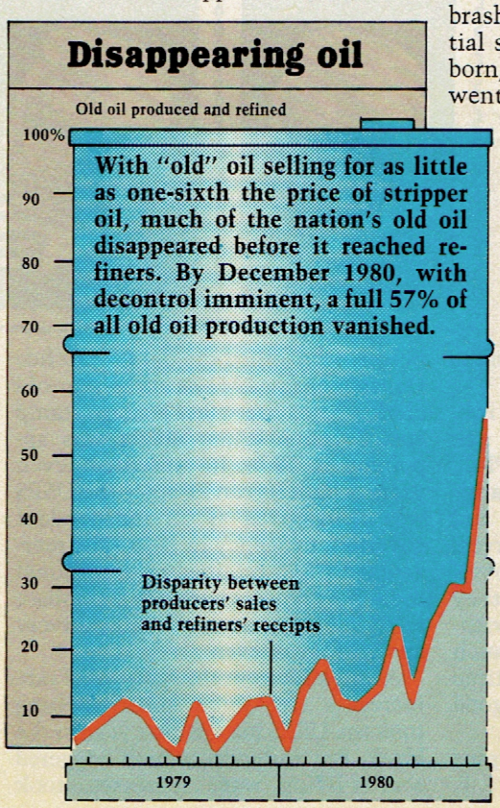
By Jonathan Greenberg

ROBERT SUTTON, at the moment, is leading a rich, full life. He keeps private jets to take him to and from his enormous mansion in Louisiana, an estate in California and a resort home in Freeport, Bahamas. One of the richest men in America, Sutton, at 50, has a net worth that he admits exceeds $150 million, and he's the sort of man who enjoys spending it.

Sutton also has the distinction of being in dollar terms the target of the largest criminal case ever prosecuted against an individual by the U.S. Department of Justice. He may even soon have the added distinction of being one of the wealthiest men ever to serve time in a federal prison. His companies got rich, the government has charged, not by finding oil but by turning cheap old oil into expensive new oil, not by chemistry but by fraud. The government came out empty-handed on those charges, and a $10,000 fine and a five-year prison sentence for obstruction of justice—which he is appealing—have been the extent of Sutton's penance. Not a high price for becoming a centimillionaire.

The chance of a lifetime for Sutton and hundreds of opportunists like him who became oil resellers was conceived by Congress in 1973. Faced with the rising price of Arab oil, the lawmakers decided to prevent U.S. oilmen from doing what OPEC had already done: raising the price of their oil. The price of so-called old oil—that discovered before 1973—would be kept below the price of newly discovered oil or oil from stripper wells. The new and stripper oil would be allowed to sell at higher prices in an effort to encourage production and exploration. These types of oil could be sold for as much as 6 times the price of old oil. It was a typical situation whereby politicians hoped to gain votes by nullifying the rules of the marketplace.

The government compounded opportunities for mischief by trying to be fair. In order to equalize the cost to refiners of the various tiers of oil, the government devised the entitlements program. The object of this was to lessen any competitive advantage a refiner with access to cheap oil would have over one who had access to more expensive oil. So the companies that purchased a lot of old oil had to pay a subsidy to companies that didn't have access to it. It was a law so complicated and so full of opportunities for manipulation that it could have worked only in heaven. Enter Robert Sutton and a lot of others like him. By becoming involved in complex trading chains they and their companies were able to obfuscate the lines between the different kinds of oil and thus to change old into new.



According to congressional investigators, as much as 10% of the nation's domestic production was being miscertified by late 1980, raising prices to the consumer by about $10 billion. Half this amount probably lined the pockets of resellers like Sutton. The rest, it is believed, went to oil companies, including some of the majors.

Robert Sutton's early career showed little promise of great wealth. Raised in Sapulpa, Okla., he quit college in 1950 to work for 13 years at Sunray DX Oil digging ditches and loading trucks with gas before working his way up to transport billing clerk. In 1963 he left, for reasons not entirely clear, and went into business for himself. He's a man who could and did sell people just about anything. At one point he hawked ballpoint pens out of the trunk of his car. There were $40 leather-bound Bibles he would front to pastors, cutting them in for a percentage.

He sold computer paper, pipe valves, grain, petroleum products. At one point he worked for Pitney Bowes, where he built a reputation for brashness. Sutton was the quintessential salesman. "I think a salesman is born, not made," he told FORBES. "I went to Dale Carnegie and almost got up there and taught the class."

But pitchmen, no matter how eloquent, rarely get superrich. Prior to 1973 Sutton says he tried his hand in the oil brokerage business, but "it wasn't making any money, so I had to go to work." Sutton claims that by 1974 he was already a millionaire from trading commodities. However, others dispute this boast. Paul McBride, his former attorney, with whom Sutton has had a rancorous falling out, claims that in 1975 Sutton paid taxes on earnings of less than $8,000.

In 1976, with OPEC in full cry and Congress' trying to make time with the consumer, the oil industry was enmeshed in controls. That year Sutton created his own business, which he called BPM Ltd. With a typewriter, Telex and telephone, he became an overnight success.

Sutton claims he got lucky—that he was trading foreign oil and that he had a few million barrels of crude in tankers on the water when the price of oil nearly doubled, increasing the value of each barrel by $10. But the government claims that miscertifying rather than luck was at work.

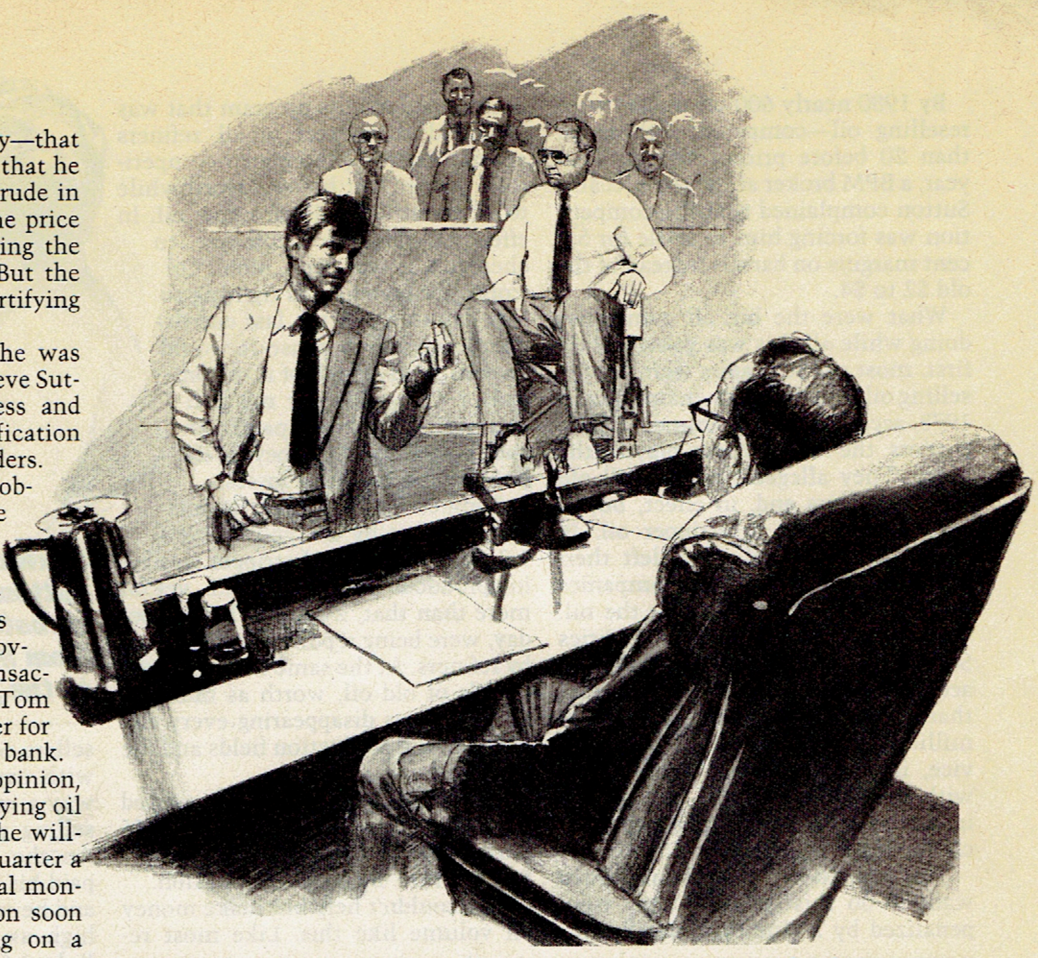
People who knew him as he was breaking into the big time believe Sutton was led into the business and taught the ropes of the certification game by established oil traders. Somehow the inexperienced Robert Sutton found his way to the Fourth National Bank of Tulsa. Fourth National guaranteed $150 million worth of letters of credit for Sutton but was unable to provide the federal government records of the transactions during Sutton's trial. Tom Henson, once account manager for Sutton, is now president of the bank.

Paul McBride says, "In my opinion, when Sutton started miscertifying oil in 1976 he . . . was probably the willing dupe of others, netting a quarter a barrel while they made the real money." But, says McBride, Sutton soon got wise and began insisting on a greater share.

Robert Sutton had found a highly lucrative niche in the oil trading business, and his thirst for money was unquenched. "I never looked at myself and felt rich," he recently told FORBES. "You never get enough."

In time Sutton operated on a huge scale. After auditing the transactions of BPM and Sutton's other, smaller companies, the Department of Energy established that in less than five years, from May 1976 to January 1981, he bought a total of 109 million barrels of old oil and resold it as stripper oil, and another 47 million barrels of new oil he sold as higher-priced stripper. The DOE also claims that Sutton's companies gave other miscertifications to 21 million barrels. DOE calculated the dollar value of these violations at $711 million. Precisely how much Sutton held on to, after allowing for taxes, bad investments and employee swindling, is still uncertain. Sources familiar with Sutton's business think his companies had profits of something like $250 million. One investigator believes $500 million is closer to the mark.

Whatever the amount, merely huge or truly fabulous, Sutton maintains he did nothing illegal. "They believe a guy can't move that much oil and that I've got to be doing something wrong making that kind of money," he complains. "They can scream all day long about miscertification, but I didn't do it." He adds, "What my brokers did, that's a different ball game."



Attorney Sauber was confident the government had a solid case against Sutton, who attended his trial in a wheelchair. Prosecutors established through records and testimony that the business of Sutton's companies hinged upon the miscertification of oil.

Sutton contends that he dealt in foreign oil and left the domestic trading to his brokers, most of whom he characterizes as double-crossers. "I had other things to do than mess with that stupid oil," he says. "I let my employees do it, and I boogied."

Despite Sutton's disavowals, his former employees paint a very different picture. None contacted by FORBES can remember Sutton successfully trading foreign oil, and they say that he insisted on approving every major transaction his traders made for the company. In court last year Sutton's secretary Kay Johnson testified that Sutton told her, "We didn't buy stripper, we sold it."

The Department of Justice believes Sutton's companies were the largest factor in the false certification business. It has listed 55 resellers who traded directly with him in a three-year period.

But BPM Ltd. never bought from oil producers directly. Sutton admits that he didn't have the contacts for that. The number of customers in what has been called a daisy chain of oil resellers varied in structure over the years, depending upon how careful the resellers felt it necessary to be. The same barrel of oil would sometimes pass through the books of dozens of companies within a few days, a practice that was known as "layering."

Each step of the way, a reseller would usually take a profit, as well as "gathering and handling" charges *(see diagram p. 36)*. "Some of these transactions were so complex they looked like DNA molecules," says a congressional investigator. "The resellers were just launderers for . . . oil, and the pipelines became bookkeepers for them."

As it became clear that the government was not effectively policing the business, the resellers became more brazen. Some daisy chains shortened because resellers became less worried about keeping carefully layered. What's more, the number of companies willing to perform the dirty work of miscertifying multiplied. It all looked so easy.

By 1980 nearly 600 oil traders were reselling oil—compared with fewer than 20 before price controls. That year, a BPM broker at the time recalls, Sutton complained that the competition was forcing him to settle for 50-cent margins on barrels instead of the old $2 to $4.

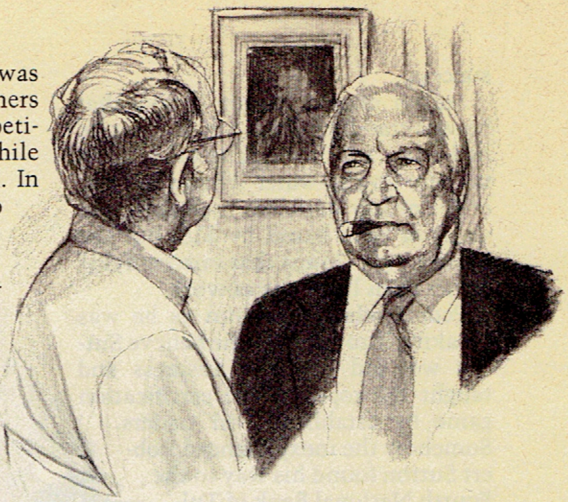
What were the big oil companies doing while all this was going on? At first, most of the majors were simply selling oil into the daisy chains. But in 1978, according to government investigators, the majors began playing the game. They allegedly would sell old oil to resellers and, in effect, buy it back as new oil or stripper oil. In many cases, the oil never left their pipelines. In effect, the oil companies used the resellers to launder the oil. Gulf, in a countersuit against Cities Service arguing why it didn't want to acquire Cities last summer, asserted that Cities Service made over $500 million in this manner. Cities Service, in a separate suit filed earlier with the DOE, admitted to engaging in such questionable practices but claimed they were legal.

Why should the big oil companies want to do this? Because they were penalized by a clumsy, federally imposed entitlements program that was supposed to protect small refiners against their big integrated competitors. Suddenly it became worthwhile to "convert" old oil into new oil. In effect, it became necessary to cheat just to stay even. Mobil Oil Corp., for instance, is fighting to this day to block the last entitlements payouts because it would owe millions, much of it to companies that allegedly miscertified oil. For oil companies in such circumstances, obeying the law could mean huge losses.

Congressional investigators contend that by the end of 1980 1.3 million barrels of stripper was being produced daily in the U.S., yet far more than that, 2 million barrels per day, were being reported as purchased by refiners. At the same time, 700,000 barrels of old oil, worth as much as $30 less, was disappearing every day between the production fields and the refiners.

So, more and more oil passed through the resellers' hands. In 1976 Sutton's BPM had revenues of some $5.7 million. By 1980, $2.7 billion.

You couldn't help but make money on volume like this. Like most resellers, Sutton did not need oil traders with experience. One of his traders was a man who had impressed him selling pants at Orbach's in Tulsa. Another had been a car salesman. He paid his traders about $50,000 a year, and he was known to give bonuses as high as salaries. One year he gave Robert Noland, his favorite trader at the time, a $256,000 bonus.



Unaware of an FBI wiretap, Sutton tried to get a mobster to stop associates from bringing information to the government.

During Sutton's trial last year, almost every ex-employee who took the stand was accused of dishonesty by Sutton's attorneys. Before the trial, Sutton sued or threatened to sue almost every employee who had ever worked for him in a serious capacity. A litigious man, Sutton says he currently has over a dozen law firms working for him, and twice that number of lawyers.

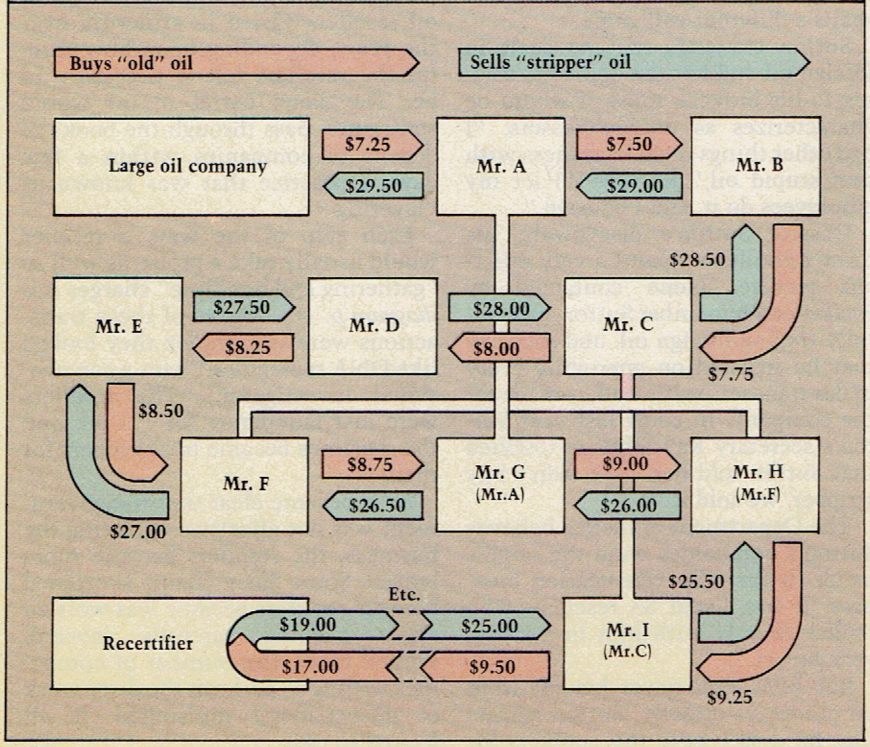
Clearly the litigation had the effect of bolstering Sutton's defense that he was an honest man, betrayed by unscrupulous employees. "My employees were good people when I hired them," Sutton says, sounding like a disappointed parent. "But the temptation got to them. Ninety percent of the people I hired stole from me. Easy pickings, I guess." And even disinterested observers think it likely that a few of Sutton's employees did actually sting him, although not to the extent he claims. Some former employees themselves readily point fingers at others, while absolving themselves of any wrongdoing.

Sutton contends in a lawsuit that his former attorney, Paul McBride, siphoned off millions of dollars of corporate funds and bought a local bank. McBride denies any improper action and filed a countersuit.

It's well known that salesmen are

The miscertification game

By selling old oil into a complex reselling chain like this, an oil company could earn a profit and, by buying back the same quantity of stripper oil, might never have to move a single barrel. The oil is relabeled by recertifier "Mr. X." Various resellers "layered" this act, some coming in and taking profits more than once in the very same chain.



Submerging a videotape camera in a fish tank proved ineffective in recording verbal deals: Sutton couldn't help daring associates to find the hidden camera.

themselves suckers for a good sales pitch, and that the better they are, the more gullible they are. Sutton himself seems to have been taken several times. As a status symbol, he spent some $8 million buying the old Xanadu Beach Hotel in the Bahamas from Howard Hughes' Summa Corp., although observers believe it was worth far less. And he poured $24 million into building a refinery in Louisiana now in Chapter 7. He bought a potpourri of other moneylosers, including a plastics factory in Colorado, a synfuels company in Dallas and more.

Yet Sutton had a highly suspicious nature. He would ask employees to snitch on one another and hired a high-powered private detective, Gary Glanz, to head up security. While Glanz denies it, former employees believe that he bugged their phones and had them followed.

Because so many of Sutton's deals were verbal agreements, he installed a videotape camera in a fish tank near his desk. This wasn't very effective, however, because Sutton reportedly couldn't help bragging to associates that they were being taped, and challenging them to find the hidden camera.

In 1979 the Department of Energy handed the BPM case over to the Department of Justice to investigate. The Department's investigation was certainly not helped by the unexplained unavailability of a potentially critical witness. In May 1981 a subpoena called William Johnson, 59, an accountant who had done sensitive work for Sutton, to Tulsa to testify before a federal grand jury. Johnson refused to answer questions, claiming attorney-client privileges, and was found in contempt of court. Johnson appealed, but before the appeal could be ruled on, he was found dead in his office, a single pistol shot in the head.

There was no suicide note or signs of robbery or altercation. Nor did Johnson betray any indication of depression or unhappiness. His business was doing very well, and he had plans to marry later that year.

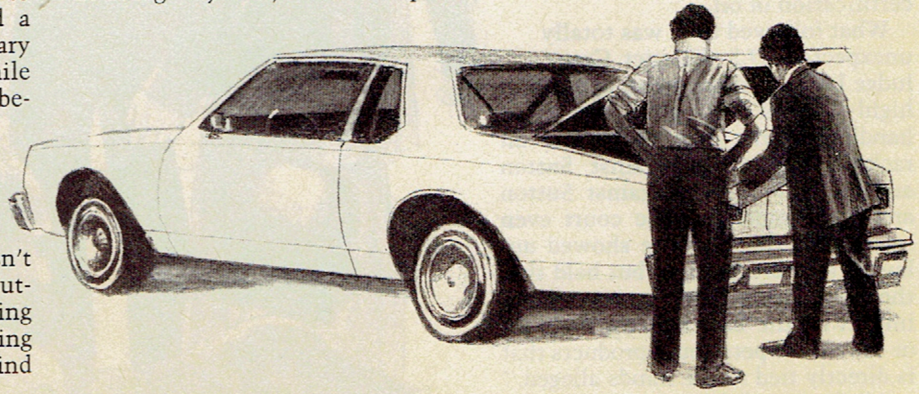
As the threat of government prosecution became imminent, Sutton became more and more interested in foreign oil deals. Some former employees believe that he did so in anticipation of the trial, where he argued that he had concentrated on foreign trading while his brokers handled all the domestic deals.

In 1979 and 1980 Sutton tried establishing large oil deals in Egypt and Ecuador. Sutton sent Robert Noland, secretary and chief trader at the time, and a man named Joe Hegeman to Ecuador. Eventually Sutton sued Noland, accusing him of misusing funds for the deal. Noland denies any wrongdoing and has countersued. One employee says that Sutton told him he lost over $10 million in Ecuador. Sutton, understandably, was unhappy.

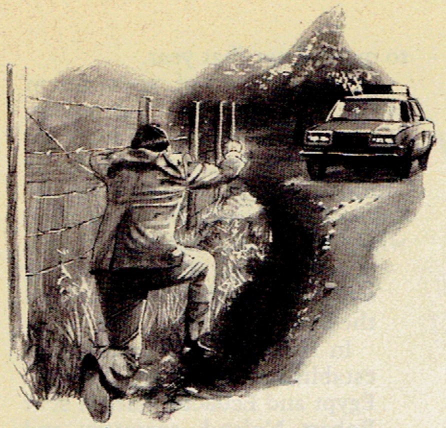
On Jan. 16, 1981, Joe Hegeman, 54, was picked up outside his hotel in Dallas and driven to a field by two men who told him they were being paid $10,000 to kill him. He offered them $15,000 to spare him, but they shot him in the head and stabbed him twice. Left for dead, he somehow survived and struggled onto a barbed wire fence, where he flagged a passing car.

The two assailants, eventually convicted, knew Hegeman and had been employed by a dry-cleaning establishment owned by an associate of Robert Sutton's who, according to a government source, had borrowed money from Sutton.

Robert Smith, who was the assistant district attorney in Dallas who handled the case, says that Hegeman was convinced Sutton was behind the attempt on his life. But aside from the



Accountant William Johnson, later found dead, was reportedly glad to get the records he had audited for BPM off his hands. Sutton was convicted of ordering an employee to destroy the records.



Shot in the head and left for dead, Hegeman lived and flagged a passing car.

eerie connections, there is no other indication of Sutton's possible involvement. Indeed, Smith acknowledges that there are a number of other parties who might have wanted to kill Hegeman.

Despite Hegeman's ill health, in July 1981 Sutton sued Hegeman, charging him, like Noland, with misusing funds from the Ecuador deal.

In October 1981 a grand jury handed up a 17-count indictment charging Sutton and his companies with willful miscertification, wire and mail fraud under the racketeering statute and obstruction of justice.

Sutton's case was to be part of the Justice Department's campaign against alleged miscertifiers. (Four other resellers had already pleaded guilty in Tulsa and drawn prison sentences of from 1 to 14 months.) Justice attorneys William Hardy and Richard Sauber felt they had a solid case. They had reconstructed the trading records of Sutton's companies and established through the testimony of former employees that BPM's business activity hinged upon the miscertification of oil.

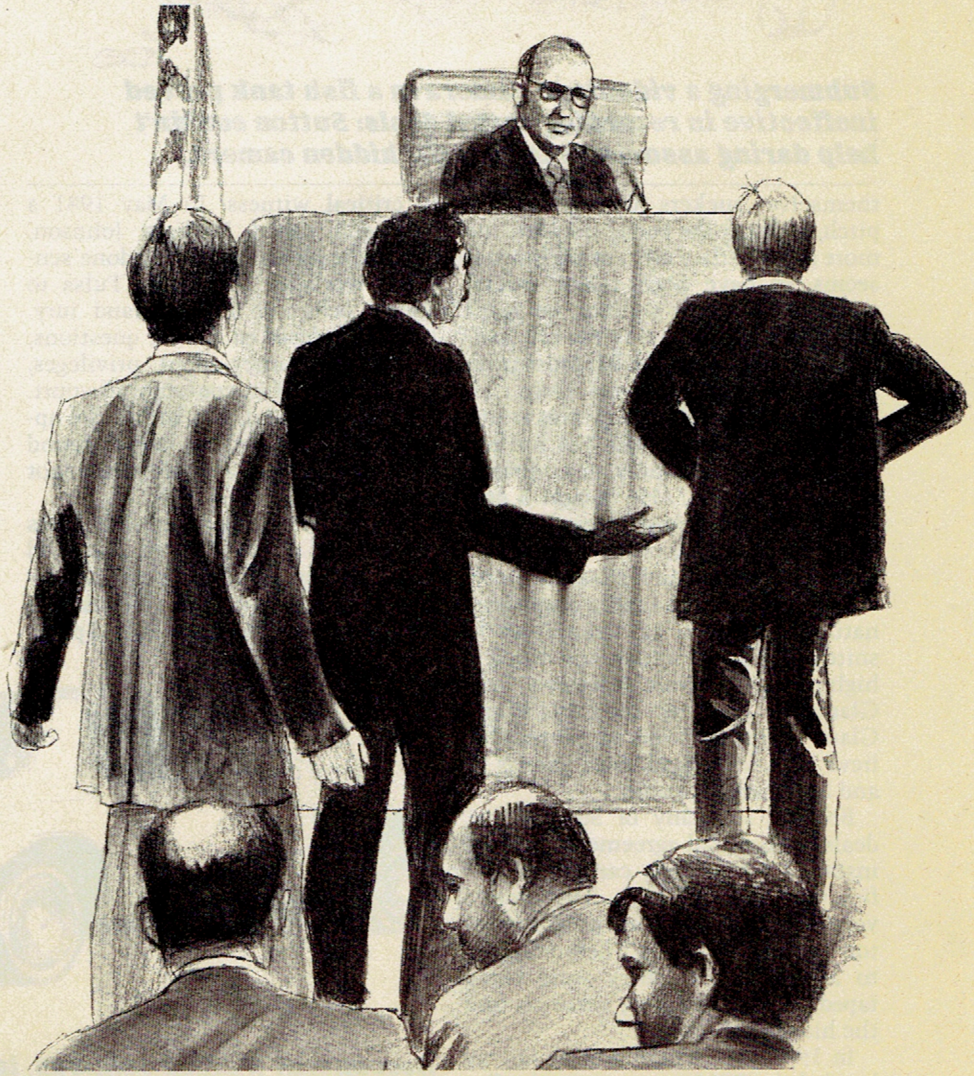
What followed then was totally unexpected. U.S. District Court Judge James Ellison, in an opinion highly critical of the government's handling of the case, threw out all racketeering counts against Sutton and all fraud counts against Sutton and his companies. The court even stated that the evidence showed unlawful miscertification, but held that the prosecution failed to prove "any impact on the Entitlements Program or the cost of petroleum products that is directly tied to the frauds alleged."

All that was left to try was obstruction of justice, based on hard evidence obtained by wiretap and testimony. Sutton had ordered an employee to destroy certain key records and had tried to use a notorious New Orleans mobster to prevent former associates from bringing important records to the FBI. This the government had little trouble proving.

Even so, Sutton, who suffered a stroke two and a half years ago, is appealing his five-year prison sentence and expects to avoid serving time. "I'm up for parole the first day anyway because of my health," he says. Government sources say he could instead be sent to a maximum security federal penitentiary hospital in Missouri.

The bottom line is that further criminal prosecution of resellers by the Department of Justice will be more difficult. For now, recoveries are more likely to come through civil suits brought by the DOE. One such against Sutton and his companies, scheduled for trial next November, will seek $1.1 billion, including accrued interest. District Court Judge Thomas Brett froze all assets of Sutton and his companies last January, pending the end of litigation, and stated that "there is a likelihood of the government establishing improper tier certification." Brett adds that "the evidence has established a strong probability the restitution amount will be a substantial sum of money."

Sutton seems to be taking it all in stride. He and his second wife live well, private-jetting between the Bahamas, California and their 16,000-square-foot Louisiana plantation home. But his big volume reselling days seem to be over. Although his lawyer claims Sutton still trades oil, BPM Ltd. filed for protection under Chapter 11 a few weeks ago. The last broker who worked for Sutton testified that he stopped trading oil on Jan. 28, 1981. That was the very day price controls on oil were lifted in the U.S. ■



Federal Judge James Ellison shocked government prosecutors by dismissing all fraud counts for lack of proof before they ever reached a jury.