

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INVESTIGATION OF THE
BUREAU OF INTERNAL REVENUE

UNITED STATES SENATE

SIXTY-EIGHTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 168

AUTHORIZING THE APPOINTMENT OF A SPECIAL COMMITTEE
TO INVESTIGATE THE BUREAU OF INTERNAL REVENUE

DECEMBER 31, 1924, JANUARY 8, 9, 10, 12, AND 13, 1925

PART 13

Printed for the use of the Select Committee on Investigation
of the Bureau of Internal Revenue



WASHINGTON
GOVERNMENT PRINTING OFFICE

1925

**SELECT COMMITTEE ON INVESTIGATION OF THE BUREAU OF
INTERNAL REVENUE**

JAMES COUZENS, Michigan, *Chairman*

JAMES E. WATSON, Indiana.

ANDRIEUS A. JONES, New Mexico.

RICHARD P. ERNST, Kentucky.

WILLIAM H. KING, Utah.

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

WEDNESDAY, DECEMBER 31, 1924

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE
THE BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 10 o'clock a. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Watson, Jones of New Mexico, and Ernst.

Present also: Earl J. Davis, Esq., counsel for the committee

Present on behalf of the Bureau of Internal Revenue: Mr. D. H. Blair, Commissioner of Internal Revenue.

Present on behalf of the Prohibition Unit, Bureau of Internal Revenue: Mr. Roy A. Haynes, Federal Prohibition Director; Mr. James J. Britt, counsel; and Mr. V. Simonton, representative.

The CHAIRMAN. As the department knows, we have been making some inquiries into some of the operations of the Prohibition Unit of the Internal Revenue Bureau, principally concerning the method of handling permits and releases of industrial alcohol and medicinal whisky. Those inquiries have been going on for several months, although the matter has not as yet been taken up before the committee, and we have accumulated quite considerable data. The committee has been devoting its time to the Income Tax Unit of the bureau and has not as yet gone into the prohibition feature of it. After consulting with my colleague we asked you gentlemen to come here this morning to make a survey of what we had done in a general way, and to give you some ideas of what we think ought to be done in the future, as well as to get your views as to what you thought of the way we were proceeding, and to learn whether you had any helpful suggestions as to any better way in which we might proceed.

With that end in mind I have asked Mr. Davis, the attorney for the committee, to prepare a summary of what we have done and what we hope to do, so that you gentlemen may hear it and then criticize it, if you so desire.

Mr. Davis, you may proceed.

Mr. DAVIS. I might state at the outset that, so far as the investigation of prohibition goes, we have had one man working on that feature of the investigation. He is Mr. George Storck, who is connected with the Department of Justice, but who has been assigned to this committee for work here. He has been the only employee that we have had in that connection, and the expense that we have been put to is the expense of this one agent, coupled with the expense of the stenographer that we have had working with him some of the time. I might also say that Senator Couzens' stenographers have

been used practically all the time, except for the last few weeks, in this particular branch of the investigation.

We have gone into the matter in a rather constructive way in order to ascertain what is wrong with prohibition enforcement, whether or not it can be enforced, what the sources of bootleg liquor are, how matters are handled, and to learn whether we could in some way get some helpful suggestions. We have not gone out into the four corners of the country to dig up scandal stories. We have not indulged in charges of crookedness or anything like that, because it is my impression that those are grand jury matters, matters for the United States attorneys.

I believe that the work of this committee should be more of a constructive character. It should be that kind of work upon which legislation may be based and upon which suggestions for the enforcement of the prohibition law may be based. On that theory we have proceeded so far in rather a small way.

In the first place, it occurs to me that a short survey of the personnel, with a statement of the way matters are handled in the Prohibition Unit, might be given at this time. It is my impression, gained from my experience as United States attorney and later as Assistant Attorney General, and now from the work of this committee, there is an overlapping of work connected with prohibition enforcement.

Let us take the State of Michigan, for example. We have a State director there, and that State director has under him certain agents, Federal prohibition agents. These agents are assigned to the work and they are working upon violations of the prohibition law in that State.

We then have the divisional chiefs. The divisional chief of our division now is Mr. Dikeman, formerly of Toledo but now of Cleveland. His territory covers lower Michigan, Ohio, and Indiana. General agents work under the divisional chief, and oftentimes we find these general agents coming into a State without any knowledge on the part of the State director or on the part of the Federal prohibition agents in the State. These general agents are assigned to and work on cases which the State Federal prohibition agents may at a particular time be engaged in working upon, thus doubling the work on a particular case.

That brings to mind the fact that these general agents give the impression sometimes that they are spying upon the State agents to see whether they are doing their work correctly, or to find whether they may be guilty of this or guilty of that. That situation rather destroys the morale of the State prohibition agents.

Over and beyond all of this we have a supervisory field agent. I believe they call him. Is that correct?

Mr. HAYNES. Field supervisor.

Mr. DAVIS. Yes; a field supervisor. There are 10 or 12 of those in the country. Those men go about looking up conditions and working on certain matters that may be looked after or are being looked after by the divisional chief or State director, so that there is an overlapping again. There is a situation which in a way, to my mind, would seem to help to destroy the morale of the Prohibition Unit.

I have a suggestion, which I have not discussed very much with anyone, which has occurred to me from the work that has been done in connection with the enforcement of prohibition.

I believe that in each judicial district if we could have an officer—call him a Federal prohibition director, if you will—and that officer should take the place of the State prohibition director, and then have him work in the district with the United States attorney, who knows how things are handled in the district, who knows the assistant United States attorneys, and who knows the way matters are conducted there, much in the same way as other Federal laws are enforced in the district, it would improve matters greatly.

For instance, we have our chief of the bureau of investigation there, and if anything occurs in our district there is a definite understanding as to how it shall be handled, and we all understand each other. It is my opinion that we could arrange to have those directors in the different judicial districts, so that there would be no confusion as to what is happening in the different districts. The director should be given complete charge of the agents under him, and he could report to Washington very much the same as the United States attorney does to the Attorney General.

We could then eliminate the divisional chiefs, and we could take the money that we are paying to those men and hire more agents. I believe that would be very helpful, and better results would be arrived at than result from the way we are working at the present time.

I know that there is always more or less friction between a divisional chief and a State prohibition director. I am not speaking particularly of our own district now, but I have had State directors come and tell me that it would be a great deal better if the divisional chiefs were not there. They feel that the divisional chiefs are overriding them, that they are out looking them up and watching them, and that destroys the morale of the men in the office and everybody connected with the work.

I think that is a matter that ought to be looked into.

The State director has been referred to as a "rubber stamp." In many instances that is true. Hearings are held, for instance, with reference to permits, and the State director makes a finding, in a way; but the matter finally goes to Washington and the whole thing is again gone over there; witnesses are sworn, testimony is taken, and evidence produced there, all of which makes for needless repetition in the handling of papers, etc.

It might work out that the hearings on permits could be held before a United States commissioner and a finding there made in the nature of a decision. The matter could then be dealt with in a more legal way.

It appears that the State prohibition director, in the Government service, his legal advisers in the Government service, and everybody connected with the hearing are on one side of the case, and it strikes me that that is a sort of one-sided affair, and it has been so considered. If something along that line could be worked out, I believe we would get some very good results.

That, in a way, covers some suggestions that have occurred to me. We have under consideration at the present time the Cramton bill.

Senator WATSON. Mr. Davis, do you want to proceed uninterruptedly or are you willing to have anybody ask you questions as you go along?

Mr. DAVIS. I will be glad to answer anything I can, Senator.

Senator WATSON. I want to ask you this: In the administration of the permit section, does the head enforcement officer in a State deal with the question of permits?

Mr. DAVIS. Yes.

Senator WATSON. To what extent?

Mr. DAVIS. The State Federal prohibition director has the hearings before him, Senator.

Senator WATSON. Yes.

Mr. DAVIS. And the legal adviser for the State director acts as his counsel. The matter is brought in before him, and the hearing is held before the State prohibition director.

Senator WATSON. Can any State prohibition director grant a permit?

Mr. DAVIS. It is in the nature of a recommendation. The permits have to come through the Washington office, really.

Senator WATSON. He recommends, but there are no permits granted except here in Washington?

Mr. DAVIS. No.

Mr. HAYNES. No.

Senator WATSON. That is what I wanted to get at.

Mr. HAYNES. Perhaps 95 per cent of the directors' recommendations, however, are approved in Washington. Washington's function is merely a checking function in looking for errors, and I think fully 95 per cent of the recommendations of the directors are approved.

Senator WATSON. That is what I wanted to get at.

Mr. HAYNES. Yes.

Senator WATSON. I did not know that.

Mr. DAVIS. I wish, in a brief way, to review what some of our investigations have shown so far.

To start with, I think we can all agree that the one great evil in connection with the sources of bootleg liquor is the alcohol. I think that is admitted by practically everyone. We have gone into the files of certain alcohol companies in the department. The Prohibition Unit has furnished us with those files in order to get some of the data that we were looking for. I believe it is safe to say that practically 75 per cent of the bootleg liquor comes from the improper diversion of alcohol from legitimate into illegitimate channels.

Senator WATSON. Then, it is your contention that there is more bootleg liquor, so called, made in the United States than there is imported into the United States?

Mr. DAVIS. I would say so, Senator. I would say there is an evil in the importation, but I believe a great deal of this so-called imported liquor is home product, and I think the investigation will show that.

We have taken certain industrial alcohol concerns, and have gone into the files as they appear in the unit. We have run down the procedure and also ascertained the number of gallons that have been improperly diverted, according to those records.

There is one concern alone in which alcohol was improperly diverted to the extent of over 400,000 gallons; I believe 450,000 gallons.

The CHAIRMAN. Is that the Fleischman Co. case?

Mr. DAVIS. That is the Fleischman Co. case, Mr. Chairman, and the fact is, as I understand it, that 1 gallon of alcohol will make 2 gallons of whisky. Is that right?

Mr. STORCK. That or more.

Mr. DAVIS. That is true. That would make nearly 1,000,000 gallons of whisky from that one source.

We find that this is done in several different ways——

Senator WATSON. Let me interrupt you. We have plenty of time to-day, as there is no session of the Senate, and if we do not get through to-day we can on to-morrow, can we not?

The CHAIRMAN. That is right.

Senator WATSON. Can you tell us about that case? You say it was illegitimately diverted?

Mr. DAVIS. I shall attempt to go over that briefly, Senator.

Senator WATSON. All right.

Mr. DAVIS. The Fleischman Co. has different branches around the country, and the diversion takes place in this way: A legitimate permit will be granted, say, to A.

The CHAIRMAN. What does A do?

Mr. DAVIS. He may be engaged in some legitimate business, where they would use the alcohol; say, the manufacture of hair tonic, or something like that.

We find that that permit might call for 10 gallons of alcohol. We then find that a forged permit comes along in the hands of B, and that permit will call for a thousand gallons of alcohol, and the alcohol is obtained on that forged permit.

I believe in the Fleischman case there were around 50 forged permits.

The reports of the agents show that sometimes these so-called holders of the fake permits were fictitious persons, and the agents, on running them down, found that the whole deal was a crooked deal from the start—the forged permits, the possession of them, the giving out of the alcohol, and the whole situation.

The reports of the agents who investigated the matter are on file, and they show the recommendation made that permits should be canceled, and the company should be prosecuted.

I think you will also find, coupled with the agent's recommendation to cancel the permits, etc., there will be a finding by some one in the department who bases his conclusions upon the agent's report, and finally the matter is disposed of by a compromise settlement.

In this case, I believe, there was a compromise settlement of \$75,000, and there was no criminal prosecution. The company is still doing business, though I believe those violations occurred as late as July, 1924.

That is a sample of the way liquor is diverted, and that runs through several other cases of that nature that we have.

Another feature of the investigation has been in connection with the distilleries. We have gone into the distillery question to some extent and have reports made on some of those cases.

In connection with some of the distilleries, we find that the whisky is released by a so-called robbery. A robbery will take place, for instance to-day, and another robbery a week from to-day, until finally the distillery is practically cleaned out of its product.

We also found that whisky is sometimes sold without any permit at all from the distilleries.

In addition, we have found that the distilleries have secured permits to export some of the product, and the permit was not secured in good faith. After the product leaves the distillery there is a theft, or something happens, and the product goes into illegitimate channels.

There is a case in which some whisky was exported, to be sold in France, I believe. They claimed that they had a buyer there who was willing to take the product. After it was there for some time the concern reported that they could not sell it, and asked that they be permitted to reimport it, and while that whisky was on the high seas it was diverted to some other channels, and finally reached the bootlegger. There ought to be a closer check-up on the distilleries. Whether that should be done by constant supervision of all products going out of the distilleries, and a check-up made of the party who is receiving it, or just how that should be done, I believe is a matter that can be worked out.

We then have another situation with reference to the breweries. The brewery question has been a very hard one to handle in many respects.

It has been said by some of the concerns that manufacture near beer that their market is practically destroyed on account of there being so much beer on the market, and that it is released very easily in some cases. In the manufacture of near beer the breweries are permitted to manufacture real beer, and then dealcoholize it to one-half of 1 per cent or less. It often happens that after hours, in the nighttime, and so on, this real beer will be racked off, put on trucks, covered up, and then diverted into bootleg channels.

It has been my experience, and I believe the results of the investigation will show, that a great deal of real beer is on the market continually. That could be checked up by a more constant supervision. In other words, a brewery that operates under a permit could agree or could be made to consent to absolute supervision before the permit should be issued and all of its product going out could be checked up. I think a good many of the agents who are now running around chasing up the liquor after it gets into the field and after the product gets to the consumer, investigating the hip-pocket cases, and all of that, could better be employed in checking up on this brewery situation, on the distillery situation, and on the industrial alcohol situation.

The CHAIRMAN. May I interrupt you there, Mr. Davis?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. I want to ask you whether you are going to tell us what the records show in connection with the continuing of these concerns in business?

Mr. DAVIS. Yes.

The CHAIRMAN. After flagrant violations have been discovered and they have been found guilty, do they still continue to do business year in and year out, regardless of their conduct?

Mr. DAVIS. I have cited the Fleischman case as a sort of example of what happens in the matter of industrial alcohol. I believe the same thing will follow through, both as to breweries and distilleries. After investigations showing that there have been violations and evidence of irregularities which would warrant the permits being revoked we find that these people are still continuing in business. They are violating again and again, and their business continues right along. In fact, very few of the important industries that I have mentioned—if they may be called important industries—have been put out of business, although the irregularities seem to have been very grave and criminal prosecutions in many of them should have taken place.

I think I am safe in saying that you will find this situation: Certain bootleggers get together and they will form a combination and propose a legitimate business. I can illustrate that by the hair- tonic business. We have one or two cases like that that we will submit. Upon investigating big releases of alcohol we find that the place of business itself is not doing any business; that they are not manufacturing any product, or very little; and as soon as the alcohol comes into their place of business it is immediately taken out and diverted into bootlegging channels, without any manufacturing on the part of the man who gets the alcohol. If these men are caught in that position and it looks blue for them there, we find that they will go into another organization; they will reorganize under some other name and again get the permits. So we find that these big bootleggers are continuing in business in some way or other. They get out of one concern and go into another, and the department, I believe, under the present law is required to find out who the parties are that are seeking permits and to get information from these companies showing who the members of the boards of directors are, and if there are any changes these companies must submit to the unit a list of the boards of directors, showing who the men in these concerns are.

We have another situation with reference to the so-called use of wines for sacramental purposes. In certain respects that has developed into a great scandal. We find that not only wine but whisky, and in some instances champagne, is released for religious purposes. Of course, that is entirely unlawful.

We have found in our investigations that these people are signing their names as rabbis, and they are peddling out this liquor to their churchmen—supposed churchmen—and in that way they dispose of hundreds of thousands of gallons of wine, when the party signing is not a rabbi at all and when the parties to whom the wine and liquor were dispensed were not of the faith at all and had no license to get any wine for sacramental purposes.

That runs into quite large figures. To give you some idea about that, in the month of September, 1924, there was released for sacramental purposes wines, etc., 246,949 gallons. That covers wines and other intoxicants for religious and sacramental purposes. It is running into amazing figures, due to the fact that they do not have to have permits to distribute it. It is rather a question of the so-called rabbi getting it and passing it on to the folks in his church, and those people do not have to use it at the church services, but use it in their homes, for breakfast and luncheon and dinner. I

believe the gentlemen here will agree with me in saying that there is no prohibition if those people can get away with that sort of thing.

Senator WATSON. Is that sacramental liquor confined to an alcoholic content of one-half of one per cent?

Mr. DAVIS. It is not, Senator, no.

Senator WATSON. Is there any limit put upon the amount of alcohol in sacramental liquors?

Mr. DAVIS. I think not, except in this way, that it should be used for religious or sacramental purposes, and when it goes out to an extent beyond that, of course, it becomes an ordinary bootlegging evil, such as we have found it here.

The CHAIRMAN. Is there any maximum alcoholic content in the sacramental wines?

Mr. DAVIS. No; because that might be construed as interference with religious rights.

Mr. STORCK. I think under the old revenue statute, it was classed as wine. With over 23 per cent it is distilled liquor.

Mr. DAVIS. There is another suggestion that might be made here. I know it is a hard matter to propose at this time a raising of wages, but if we could pay more money to prohibition agents and get a better class of men, it would help to a very great extent in getting greater efficiency in enforcing the law.

Senator WATSON. I think we can all agree on that.

Mr. HAYNES. Everybody agrees on that.

Senator WATSON. That was inevitable from the start.

Mr. DAVIS. It has been difficult to keep good men in the service when they could get them. The efficient men will say, "We are associated with these other fellows; they do not do their work right, and we will resign."

With reference to some distilleries, we have found this situation. They have agents, say, in New York. Their agents go around to certain drug stores. They have what is called a fourteen-case bill. These distillery agents tell the druggists that they are entitled to 14 cases; that is, they can get 14 cases for them and there will be no record made of it. The papers and permits will all be destroyed. I think we have a case in New York covering 60 druggists who got in on that 14-case bill. They would deliver it to the druggists, that is, these distillery agents would, and then sometimes they would take it back immediately or very shortly afterwards, paying the druggist for just allowing it to go into his place.

That flooded the druggist market with liquor and gave opportunity for the bootleggers to get releases of liquor in that way.

I think, in a general way, that that embraces a summary of our investigation. I would suggest that Mr. Pyle, whom we have here to-day, and who has been familiar with the workings of the prohibition law as legal adviser and acting director, etc., be allowed to carry on this work. I am willing to sort of supervise it.

Senator WATSON. Have you any idea, or from your investigation have you reached any conclusion, as to the quantity of illegitimate liquor that has been captured or confiscated in a year?

Mr. DAVIS. I have not any yet, Senator; but out of 20 concerns that I have here, taken at random, there was a total of 949,490 gallons of liquor. That covers a period of probably around two years for those 20 concerns. I have not any statistics here.

I do not believe you have any records in your department, Mr. Haynes, as to the exact amount of that, have you?

Mr. HAYNES. Of what was diverted?

Mr. DAVIS. Yes.

Mr. HAYNES. Of course, we would not have that, because we do not know. I do not think we could possibly get that record.

Mr. DAVIS. No. I might say, further, that in the investigation, as it proceeds, we will be calling upon the Prohibition Unit for data with reference to agents and with reference to cases, etc., and I expect that information will be furnished to us as we go along. Mr. Pyle has some certain ideas with regard to it, and there will be some additional information that he will want.

Senator JONES of New Mexico. Mr. Davis, I hear a great deal of complaint about the prices which druggists charge for whisky for medicinal purposes, and I was just wondering if your inquiries into this situation have furnished any reason as to why that should be?

Mr. DAVIS. All I can say with reference to that, Senator, is that they pay the doctor for a prescription, and then they pay the druggist a pretty good price for his liquor.

How much does a pint of liquor cost, Mr. Storck?

Mr. STORCK. Three dollars is the usual price.

Mr. DAVIS. \$2.50 and \$3 is the usual price?

Mr. STORCK. Yes, sir.

Senator JONES of New Mexico. For prescriptions?

Mr. STORCK. No, sir; for the liquor.

Mr. DAVIS. That is for a pint of liquor, Senator.

Senator JONES of New Mexico. I have heard of the price being even higher than that. I recall one gentleman, whose wife was sick in the hospital, and who had a physician prescribe some whisky. He paid \$4.50 per pint for it, and I have heard that figure mentioned more than once, too. Now, if it is legitimate to have whisky for medicinal purposes, it seems to me that we ought to devise some means for patients being able to get it at a fair price.

Mr. DAVIS. I think that is a grievance which should be looked into, Senator. That is constantly complained of by people who have to get it for medicinal purposes. There is a constant complaint regarding the cost of it.

Senator JONES of New Mexico. As I understand it, there is nothing in the law which makes liquor for medicinal purposes any more expensive than it used to be, and that the prohibition law is not supposed to interfere with that medicinal use of liquor; but for some reason these druggists charge what would seem to be an exorbitant price. I think that question ought to be gone into here, because, in the case of sick people—and poor people get sick as well as people of means, and if they are entitled to it at all, and the doctor thinks it is important for them to have it, it seems to me that they ought to have it at a reasonable price.

The CHAIRMAN. I would like to ask permission of the committee to listen to Mr. Pyle for a moment as to what his experience has been.

Mr. Pyle, will you tell us what your experience has been with the difficulties of enforcing the prohibition law?

Mr. PYLE: Mr. Chairman and gentlemen of the committee, after I had been in the prohibition service for three months I knew what was wrong and how to cure it.

Senator ERNST. After you had been in the service how long?

Mr. PYLE. After three months I knew what was wrong and how to cure it. After two years in the prohibition service I am not sure that I know just what is wrong, and I know that I do not know how to cure it. That is why I am very glad that the Senate of the United States is cooperating with the Prohibition Unit in an endeavor to dig into the facts and ascertain just what the trouble is.

Senator WATSON. What is your position now, Mr. Pyle?

Mr. PYLE. I am out of the service. I resigned in October. I am practicing law at the present time.

Senator WATSON. Oh, yes.

Mr. PYLE. There are a good many features in this connection, and Mr. Davis has touched upon most of them.

I have been impressed very much in my contact with the agents. I went into the service as an agent, not in a legal capacity, and I have been impressed with the fact that the status and condition of the agents, the type of agent—and that will necessarily involve his compensation—are matters that need attention. I think the honesty of an agent is a matter that will depend to a large extent on the compensation that he is receiving from the Government. The compensation, as Major Haynes and I discussed at one time, for a married man is almost prohibitive. He can not stay in one place indefinitely, and moves are very expensive. It looks very attractive to get into the service, but in the long run it is not very remunerative. I believe a high type of agents should be encouraged, and we ought to leave the routine police work to policemen. We need agents capable of doing the other work. A man whose qualifications are muscular can not handle a case requiring intellectual ability. That, I believe, is the biggest immediate need of the prohibition service.

There are other features that ought to be investigated. I am not making recommendations myself. I am simply stating what I believe should be looked into from all sides, and with evidence from all factions, so that it may be decided as to what is the best recommendation to make to the Senate and to the country, and to the department, of course.

The matter of the warehouses in which the distilleries store liquor should be considered. While the amount of liquor actually taken from the warehouses will not run to so many hundreds of barrels, nevertheless, through the system of dilution used, it makes a big market sale and quite a leak, and that can be handled and should be handled in some way. I am not going to say how, but I believe it should be investigated, and the opinion of Mr. Blair and Major Haynes, based on years of experience, should be given very great weight. The distillers should be allowed a voice. Ultimately, a system can be arrived at which will handle it.

The druggist associations are protesting very vigorously at the treatment they are receiving from the Prohibition Department. Resolutions are being continually adopted, and I believe the druggists should be allowed to appear before this committee and concisely state what their grievance is. Major Haynes should be allowed to appear and state the viewpoint of the Prohibition Unit. In other words,

this should be a meeting place of permit holders, permittees, and the views of the Prohibition Unit should be sought. The prohibition directors should be encouraged to give us their views, based on experience, and not on individual influence, political or otherwise, but their honest views as to what will help the service.

That is the problem before the country. It is to get this thing built up, and obviously, the more men who contribute to the ultimate conclusion, the better the ultimate result will be.

The things that I would touch on are, as I said, personnel, warehousing, the manner of dealing with permits, and permittees. I would take up the matter of the advisability of giving more power to the directors, so that the permittees can get a more immediate and direct contact. The matter of the revocation of permits should be considered. The matter of sacramental wine should be considered, although the cure in that respect will be legislative. The prohibition law now gives no power of discretion to the prohibition service.

These are matters that can be taken up, and the ideas of all sides arrived at. I do not think that any one man's views should be impressed upon the committee at the cost of others, but the law having been tried out for a matter of four years or more, the people who have come in contact with it in enforcing it, or in dealing with it—permittees and even bootleggers—should be allowed to come in and have their voice. The result of this should be a modification of the system, which will tend to greater effectiveness, but I do not believe that any one man's views are comprehensive enough to cover it all, and the ultimate result should be a composite of the views of the persons most familiar with the prohibition question as it now stands.

Mr. DAVIS. Mr. Chairman, I mentioned to Judge Britt a few moments ago certain suggestions that were important with reference to the law and investigation, and so forth, and while it may be difficult to get by with a suggestion like this, if we could take the present Cramton bill and hold that up for a minute, allowing us to go on and get suggestions for legislation through the investigations of the committee, and put them through in connection with the Cramton bill, it would be a mighty good thing, I think. I do not know what Judge Britt or Major Haynes may have to say about that.

Senator ERNST. I would like to have Major Haynes heard, too.

The CHAIRMAN. Yes. I was just wondering whether Mr. Davis has put in all that he wants to at the beginning of this hearing.

Mr. DAVIS. Practically.

The CHAIRMAN. Is there anything that Mr. Storck wants to say at this time?

Mr. DAVIS. I think not. That covers it in a general way.

The CHAIRMAN. We will now hear from the bureau, if they desire to say anything.

Senator ERNST. I saw Mr. Haynes yesterday, in delivering the invitation of the chairman to the President, and I told him that I, for one, would very much like to hear him make a comprehensive statement of the work, so that the committee would have it before them in this investigation, and he told me that he would be very glad to give it. If that meets with the views of the committee, I am very anxious to hear it.

Senator WATSON. I understand that is what he is here for.

The CHAIRMAN. Yes; that is what he is here for.

STATEMENT OF MR. ROY A. HAYNES, FEDERAL PROHIBITION COMMISSIONER, BUREAU OF INTERNAL REVENUE

MR. HAYNES. Mr. Chairman and members of the committee, I certainly appreciate this opportunity at the beginning of the hearings to be here in person and contribute whatever I can by way of suggestion or answer to inquiry.

In the first place, the whole desire of the Prohibition Unit—and I know that it is also true of the bureau—is to be of all the help we can in this constructive inquiry.

We have had your very able representative, Mr. Storck, with us, I think, for almost three months, and we have furnished him with everything as expeditiously as we could that he has asked for.

We have nothing in the Prohibition Unit which we want to hide. We know we are not infallible. At least, perhaps, we have made some mistakes in judgment. They are not mistakes in motive, however. We are intensely and sincerely endeavoring to bring about, under the present law, the very best possible enforcement.

Now, we want to continue to be helpful to the committee and to Mr. Storck or to the gentlemen who you have suggested might assist him. We want to be of every aid possible.

In the first place, gentlemen, I suppose the Prohibition Unit is engaged in the prosecution of the biggest task that was ever given to a Government unit. We are trying to enforce a law which, in large measure, supplanted personal habit and custom which had ramified into the social, political, and business activities of the Nation for 140 years or more. As a Government we have been engaged in that task for a little over four years.

My good friend General Davis has very splendidly outlined many of our shortcomings. Many of them we acknowledge; however, we maintain most of them to have been caused largely by inadequate legislation. However, I think it is only right and proper, if I may be permitted, Mr. Chairman and gentlemen of the committee, to suggest a few things that we have done, calling your attention to the size of the task as we first approached it, and then making suggestions as to what, in view of our experience, we believe should be done by way of remedial legislation.

General Davis, and quite properly, because it has not come within the purview of his experience perhaps as to those of us who are engaged in the work 24 hours a day, 7 days a week, and 52 weeks a year, and in intimate association with the problem, could not be expected to grasp the situation as readily from the outside, and it is because of that fact that I want to give you the benefit of whatever my experience might be worth.

In the first place, the second section of the eighteenth amendment provides for a joint responsibility in enforcement. As the lamented President Harding in his wonderful speech—and I believe it was one of the best he ever made—delivered in Denver, Colo., upon his trip west, said, it was never intended by the framers of this act or the eighteenth amendment that a great national constabulary should be built up in this country to enforce this law.

That statement was made upon the basis of the second section of the eighteenth amendment, which, as I say, divided responsibility

for what I term strong-arm enforcement or positive police enforcement.

In other words, under the eighteenth amendment the Federal Government was to take the leadership and the local governments, beginning with the municipality, the county, and the State, were to come along and take their share of the enforcement burden. To carry out those provisions and ideals, all of the States but two of the United States have adopted State enforcement units. Some States have even set up a force similar and equal to the Federal force, with a State commissioner, etc.

The entire program that we have built up has been predicated upon that thought, that the Federal Government was to take care of its functions and the local governments were to take care of their particular local policing functions.

I think the greatest difficulty, Mr. Chairman, that we have had has been to establish this fundamental, and the necessary cooperation is growing every day. This work is an evolutionary process. We are not going to approach perfection in 10 or 12 or 15 years. It is evolutionary, and the greatest outstanding problem that we have had has been to get the officials locally and the people locally to understand that they have responsibilities with reference to the enforcement in their own several local communities.

For a time, as you all know, after the eighteenth amendment was adopted, a great many officials said: "This is Uncle Sam's job: let him do it." There was a breakdown in regard to the enforcement of the eighteenth amendment in the police organizations. State officials were recreant, and so were many county officials, and as a result of that, as you will probably recall, within six months of his passing President Harding called a conference at the White House of the governors of the States. The governors of 17 States were there, and we discussed this matter of divided responsibility. President Harding announced that he wanted to have another conference later which would be more largely attended.

President Coolidge, soon after taking office, called me into conference, and the second was arranged for. That conference was held last October at the White House, and it was attended by 37 governors or their representatives and representatives of the Federal departments. The matter of divided responsibility was gone into thoroughly at that time.

When the Federal organization under the present administration was in the beginning we reviewed all of these situations, and we knew that our responsibilities were primarily with regard to the controlling of the sources of supply. There was a great clamor from almost every community in the United States for enforcement agents, with statements being made that "The prohibition law is being broken here," and "The prohibition law is being broken there: send agents: send agents." We were trying to cover that great area with a little handful, comparatively speaking, of men.

As this condition has been pointed out to officials and citizens, I am thankful to say, and to report to this committee, that we are improving that condition. Local communities are cooperating. For instance, the chief of police of the city of Louisville a year ago made a trip to Washington especially to see me, and he said: "Mr. Haynes, every officer on my force is instructed to enforce this law, just the

same as a Federal agent." We are having wonderful cooperation in the city of Chicago under Mayor Dever. We are getting more cooperation everywhere than we were before, and as we are able to liberate our agents from the handling of these petty cases, and as we are relieved from filling up the Federal courts with these petty cases, we will be able to divert our men to the performing of functions which more properly belong to the Federal Government.

What are those supervisory powers and responsibilities of the Federal Government?

In the first place, I believe our greatest responsibility is with reference to the permit situation. We must keep this before us, gentlemen, always. We have two responsibilities. The first is to see that the legitimate dealer, the man who is recognized under the law, is given everything, and promptly, that is coming to him under the law. On the other hand, it is our responsibility to prevent diversion to beverage purposes. Now, we try to keep those two purposes before us all the time.

So the first outstanding responsibility of the Federal Government is the operation of a permit system, through which there shall be manufactured, if need be, and distributed, intoxicating liquor for medicinal and other legal purposes.

When we began to build up our organization, we had to reorganize 48 States, Alaska, Hawaii, Porto Rico, and the Virgin Islands. That was some considerable task.

General Davis has referred to the directors' forces, and I want to explain why we organized as we did. We had a reason for giving the director certain responsibility, and the divisional chief certain responsibility.

In the first place, under the operation of the law in 1920, and into 1921 slightly, there had developed a very unfortunate situation. You all know that there was a breakdown on the part of public confidence in enforcement, and conditions were not right; and I have not any criticism because of that condition, for it was pioneer work. We are still engaged in pioneer work. There is no precedent. It is for administrative officers to work out these problems. So upon coming into office I knew that psychologically it was necessary for us to revamp and change the old organization, which had been regarded as not successful.

I went before the Senate Finance Committee, of which Senator Watson was a member, and I outlined my plan of reorganization, upon the basis of localizing in every State, under State authority, responsibility for enforcement, as well as the permissive features. That recommendation was approved by the committee, approved by Commissioner Blair, and by Secretary Mellon, and we built our organization upon that recommendation; and we also developed what General Davis has called the overlapping mobile force, known as the general agents force, in order that they might take care of the large cases having interstate ramifications.

In my humble judgment, gentlemen, that mobile force has developed into the most practical, the most helpful element of our program; and, in this connection, recognizing that the times have changed, that conditions are different, the problems are different, we have now evolved a plan for a change of organization somewhat as has been suggested by General Davis, namely, in each State the

director shall operate by taking charge of the permit features with a corps of inspectors, but all enforcement work will be transferred to the divisional chiefs throughout the United States. In view of my experience, I am confident that that plan is right. We are transferring the enforcement work in the State of Wisconsin this week, and in two weeks we expect to transfer the work in the State of California, to the divisional chief.

Senator ERNST. How many divisions are there?

Mr. HAYNES. There are 18 divisions. So that the suggestion made by General Davis is very largely now being put into operation.

Senator WATSON. In a case of that kind, what becomes of your State enforcement officer?

Mr. HAYNES. The State director continues with the permit end of the operation, with his inspectors inspecting the permittees.

Senator WATSON. That is all he does?

Mr. HAYNES. Yes.

Senator WATSON. Does the divisional chief then operate through the State agents for that purpose, and all of the subordinates of the State agency, or does he have a separate force for that enforcement that he has undertaken?

Mr. HAYNES. We combine two or three States and put all of the enforcement agents under him for that area.

Senator WATSON. Does he have different agents from those in the State?

Mr. HAYNES. He will absorb the State agent.

Senator WATSON. Oh, yes.

Mr. HAYNES. There will be no depletion of force, but they will be absorbed or transferred.

Senator WATSON. Take the situation in Indiana; take Mr. Morgan, the director there, for instance, as a concrete illustration?

Mr. HAYNES. Yes, sir.

Senator WATSON. And he has some 30 men, say. Who is the divisional chief for Indiana?

Mr. HAYNES. Mr. Dikeman has charge of Ohio, Indiana, and Michigan.

Senator WATSON. From this time on, what will be the spheres of activity of Dikeman and Morgan?

Mr. HAYNES. Dikeman will have all of the enforcement of the law in Ohio, Indiana, and Michigan. Morgan will have the permissive work of the State of Indiana alone.

Senator WATSON. Then, will Dikeman use Morgan's forces for that purpose?

Mr. HAYNES. Oh, yes; all except those used for inspection work will be transferred to him.

Senator WATSON. Acting in that new capacity, they will look after the permit end of it?

Mr. HAYNES. Just the permits; not the enforcement.

If Commissioner Blair wants to make a statement at this time, in order to get away, I will be glad to suspend.

The CHAIRMAN Mr. Blair has asked to be excused until some other time. He has another engagement now.

Mr. BLAIR. If I could go now, I would be glad to come back at any other time.

The CHAIRMAN. That is all right, is it not?

Senator WATSON. Sure; that is all right.

Senator ERNST. Oh, yes.

Senator JONES of New Mexico. I do not believe I am quite clear, Major, on the point that was just raised by Senator Watson.

Mr. HAYNES. Yes.

Senator JONES of New Mexico. As I understand it, he wanted to know whether these men who would operate under the director in a State in looking after the permittees, after this new arrangement, would transfer their efforts to——

Mr. HAYNES. The divisional chief.

Senator JONES of New Mexico. The regional chief.

Mr. HAYNES. No, sir.

Senator JONES of New Mexico. The regional chief would have men in the same State with the director's force looking up other branches of the work?

Mr. HAYNES. Let me make it a little clearer. For instance, if there are 40 agents in the State of Indiana, and 20 of them are engaged in inspection work, the 20 will be left with the director, with Director Morgan in Indiana, to be confined in their activities to the State of Indiana on the inspection of permittees.

Senator WATSON. Yes.

Mr. HAYNES. The other 20 will be transferred to enforcement work in the States of Indiana, Ohio, and Michigan, operating under Mr. Dikeman.

Senator JONES of New Mexico. Then these field employees, working under the director, in looking after the permittees, will have nothing to do——

Mr. HAYNES. With enforcement.

Senator JONES of New Mexico (continuing). With enforcement?

Mr. HAYNES. Yes, sir; that is it exactly.

Now, one other reason for that is that a different type of training is necessary for the inspector and the enforcer, as has been indicated by Mr. Pyle a few minutes ago.

In reference to the permit feature, gentlemen, there are 130,000 permits in operation in the United States of all classes to-day. They all require inspection; they all have to be checked up; and there is a field force of approximately 1,700 men for the United States, Alaska, Hawaii, Porto Rico, and the Virgin Islands, to take care of that tremendous task in itself, and that is only one of our functions.

Senator WATSON. How many applications for permits are there?

Mr. HAYNES. They are very much in excess of that number, of course.

Senator WATSON. Very much in excess of it?

Mr. HAYNES. Very much in excess of it.

Senator WATSON. And they are all investigated?

Mr. HAYNES. Yes, sir. That is our first big function.

The second function with reference to the source of supply has had to do with the concentration of bonded liquor. There is to-day about 33,000,000 gallons of bonded whisky left in the United States. When this administration began to operate that whisky was scattered all over the country, in perhaps 300 bonded warehouses.

Under the concentration legislation, which was most wise, we have saved \$300,000 or \$400,000 a year in guarding expenses. That whisky is concentrated in 80 warehouses, and they are better guarded, more securely guarded, at very greatly reduced cost, and to-day there is practically no leakage of bonded whisky.

The CHAIRMAN. At this point, may I ask if there is any regulation as to storage charges in these recognized bonding places?

Mr. HAYNES. Yes, sir; that is all a part of the contract which the owners make with the Government. That rate shall not exceed a certain amount.

The CHAIRMAN. Is there not considerable complaint about it from the owners of this liquor as to the warehouse charges and bonding charges?

Mr. HAYNES. Yes; there was some complaint at times, but I think practically all of these difficulties have been ironed out. In addition, we have had practically no cases taken into court regarding the concentration movement. It has been very successfully done.

Now, with reference to this source of supply. This bonded whiskey source was the first thing we had to approach. We could not take the breweries of the United States and the distilleries of the United States and wineries of the United States, and handle all of those great sources of supply at one time. That was manifestly impossible, and we first approached what we considered was the most dangerous, because in 1920, there were 12,500,000 gallons of bonded liquor withdrawn upon permits, assuming it, of course, to be used legally. Perhaps 11,000,000 gallons were diverted to illegal purposes. In 1920 there was no difficulty in getting a good quality of beverage liquor, but to-day 98 per cent of the liquor seized by our agents, the United States over, is deleterious in quality and positively not bonded liquor.

The CHAIRMAN. Then, you concur in the views of counsel that the great mass or volume of this bootleg liquor is—

Mr. HAYNES. Synthetic.

The CHAIRMAN. Made in the United States?

Mr. HAYNES. Oh, yes; there is no question about that; but I think we have successfully gotten control of the bonded liquor source of supply and are preventing its diversion.

In the development of the permit feature, under which that liquor was withdrawn, we had to devise a new permit form and system.

Formerly, and in the cases that General Davis has just referred to, there was no trouble about forging a permit. They were printed upon ordinary paper. Any little printing press in the country could turn them out. It took some time to evolve a system, but to-day we have a specially manufactured paper, and a specially manufactured machine to write in, in perforation the quantity to be withdrawn on the face of the permit. We have a regulation requiring the countersignature on the part of the State director recommending the withdrawal. We have such elements of safety that I believe to-day the bonded liquor supply is as well under control as is practically possible.

The CHAIRMAN. Take the Flieschman case.

Mr. HAYNES. If I may be permitted, that was the first problem; to the bonded liquor.

The second problem was with reference to smuggling. To fight that situation it required the development of sentiment and the securing of an appropriation to provide a fleet of vessels adequate to meet the influx of liquor which was being smuggled. I think a large percentage of it was not bonded whisky. I think much of it was merely manufactured on the boats on Rum Row; but, as I say, it was not possible for us to compete with that without this fleet of vessels. The Coast Guard branch of the service has taken that responsibility, and their facilities have been completed over 50 per cent, and by early spring the entire flotilla will be completed and that problem will be solved.

Senator WATSON. What force have you engaged in that work?

Mr. HAYNES. We have no force on smuggling on the water.

Senator WATSON. I know; but the Treasury Department?

Mr. HAYNES. Well, the fleet, as I understand it, is made up of about 450 vessels, and they are over half finished now. They will be entirely adequate to meet the problem.

Senator WATSON. What do you do with reference to smuggling from Canada and Mexico into this country?

Mr. HAYNES. That is a border problem that we have to use our men on, and wherever there is a State constabulary, of course, they assist in that work.

Senator WATSON. Yes.

Mr. HAYNES. The next problem was the alcohol problem. As we closed up the bonded liquor sources, as we closed up the smuggling sources, these problems changed with conditions. The importance of the alcohol source is accentuated.

Now, it must always be remembered, gentlemen, that Title III of the act itself places upon us, as administrative officials, the responsibility, in the language of the act, to stimulate and promote the legitimate alcohol industry; in other words, to see that there is no dearth of supply of alcohol for legitimate manufacturing and chemical purposes. So that is as much our responsibility as it is our responsibility to prevent diversion. Therefore, as we have remedied these other things, the difficulty in the alcohol industry increased, because it could be diverted to beverage purposes.

Senator ERNST. How is that done? Can you tell us that?

Mr. HAYNES. General Davis, before you came in, Senator, explained that very well.

Senator ERNST. That is all right, then.

Mr. HAYNES. And I think his explanation of how it can be done is entirely correct.

Senator ERNST. All right; I will get it from the record.

Mr. HAYNES. In the denatured alcohol the denaturing substance is extracted by an illegitimate permittee and the product is used for beverage purposes. Before another congressional committee the other day it was estimated that 6,000,000 gallons out of a total of 60,000,000 was, perhaps, diverted.

The CHAIRMAN. Is there any way of dispensing with this specially denatured alcohol?

Mr. HAYNES. We do rather encourage it for the reason that if we liberate the pure alcohol, all one has to do is to mix water with it and call that synthetic gin; so we have very greatly reduced the

amount of the withdrawals of the pure alcohol and have made it more difficult to divert by causing them to use denatured alcohol.

The CHAIRMAN. Specially denatured alcohol, though, is difficult to get, as I understand it?

Mr. HAYNES. Yes; and we encourage the use of that, because with that it would be more difficult to divert it into other channels.

The CHAIRMAN. What is the amount of that specially denatured alcohol?

Mr. HAYNES. About 6,000,000 wine gallons of raw alcohol. The denatured alcohol in 1924 was 67,000,000 gallons.

The CHAIRMAN. Was that all specially denatured?

Mr. HAYNES. No; denatured.

The CHAIRMAN. How much of that is specially denatured alcohol? As I understand it, that causes a great deal of trouble, while the ordinary denatured alcohol does not cause any difficulty, because it can not under any circumstances be used for beverage purposes.

Senator WATSON. That is my understanding. Is that true, Judge Britt?

Mr. BRITT. I beg your pardon, Senator.

Senator WATSON. Is it true that it is only the specially denatured alcohol that can be used for beverage purposes?

Mr. BRITT. There are 60,000,000 wine gallons. That would be twice that in proof gallons. It would be 120,000,000 gallons all told, and about 67,000,000 gallons of that was withdrawn for denaturization; that is, special denaturization and complete denaturization. The great bulk of it is for special denaturization, and, of course, that is capable of being redistilled and converted into some sort of liquor by distilling out of it certain denaturants.

Senator WATSON. Whereas, when completely denaturized, it can not be diverted?

Mr. BRITT. Yes.

Mr. HAYNES. If there could be legislation requiring that this denaturization be performed by the use of a formula which would make it so unpalatable as to make it impossible to use it for beverage purposes without the knowledge of the people, that would be desirable. Wood alcohol, as you know, is tasteless. That is where most of the deaths come from. I think that would be very fine legislation.

Senator ERNST. It can be done, as a practical matter?

Mr. HAYNES. Oh, yes; but it has to be done by legislation.

Senator WATSON. What is the difference between thorough denaturization and a partial denaturization between wood alcohol and the other special denaturization?

Mr. HAYNES. In the manufacture of certain articles, like perfumes, cosmetics, and things of that kind, the use of the whole or completely denatured would be very dangerous and impracticable, of course. That is the reason for the use of specially denatured alcohol.

The CHAIRMAN. That is, specially denatured?

Mr. HAYNES. Yes.

Senator WATSON. What is the difference in the process between the completely denatured and the partly denatured?

Mr. HAYNES. The only difference in process is the different chemicals that are put in the grain alcohol.

The CHAIRMAN. In other words, in the wholly denatured alcohol you use the wood alcohol, kerosene, and things of that kind?

Mr. HAYNES. Yes, sir; because the uses to which it is put are not affected by such denaturization.

The CHAIRMAN. To do that, of course, makes the odor disagreeable, and it is not useful for perfume and cosmetics.

Mr. HAYNES. Yes; it would destroy the use of the alcohol for the manufacture of cosmetics. What I want to try to impress on you here at this point is that we are tremendously criticized—and we expect to be criticized in this work—on the one side by the industrial manufacturers, and the manufacturers of various products on the one hand seeking large withdrawals of alcohol because we are too restrictive, and on the other hand, we are tremendously criticized by the type of prohibitionist who can not see any legitimate use for these large withdrawals of alcohol. When these latter people see that 60,000,000 wine gallons of denatured alcohol are manufactured in a year it is so amazing as to call down a tremendous criticism upon us; whereas, under the law, we are enjoined with the responsibility, wherever a man comes to us in proper form and makes application for industrial alcohol for legitimate uses, to permit it. There is no way under the present law that we can refuse it to such. So that the alcohol problem is, perhaps, our big problem to-day.

Senator WATSON. You have not any desire to change the law in that respect, have you?

Mr. HAYNES. Oh, yes; I will come to that in just a minute, in the way of recommendation.

Senator WATSON. All right.

Senator ERNST. Is there no way of tracing this alcohol after it has once gone to these parties?

Mr. HAYNES. We do the best we can, and we make literally hundreds and thousands of cases, alcohol cases, Senator; but it is a very difficult thing to trace trucks as the alcohol is taken from the denaturing plant to every consumer, etc. We do it, but it is manifest that with 1,600 or 1,700 men in the United States, it is very difficult. In Philadelphia, for instance, we are trying to get General Butler to use a great many policemen to help us on this work.

The CHAIRMAN. If more care were exercised in granting those permits and seeing that they were granted only to legitimate users, would you not have less trouble then?

Mr. HAYNES. Tremendously; and that is a problem I want to deal with in just a minute.

Now, General Davis has referred to the brewery situation—manifestly tremendously difficult. Prior to prohibition there were approximately 1,400 breweries in operation in the United States, manufacturing about 2,000,000,000 gallons of beer. To-day there are 357 permittees operating cereal-beverage concerns, which last year manufactured 160,000,000 gallons of near beer. We know that there is considerable diversion of a high-powered beer. We are careful in the granting of those permits. I perfectly agree with General Davis in the thought that we ought to have men on the inside to see that the alcoholic content is not, in the beverage product, above one-half of 1 per cent.

The CHAIRMAN. Have you not got that now?

Mr. HAYNES. It would take 1,428 men to-day in the breweries of the United States, and we have 1,700 men in the United States for all the inspection work, taking care of breweries, distilleries, etc.

The CHAIRMAN. It still gets back to the protection of the permittee.

Mr. HAYNES. Absolutely. There is no question about that, and we have reason to believe that the permittee is going to play fair before we give him a permit.

The CHAIRMAN. I think, according to some of those that you have granted permits to, you have no reasonable basis for believing that they will.

Mr. HAYNES. Unless we have reason to believe otherwise, the law requires us to do it; but as we are relieved from the local policing work, we are going to have more men released to do this inside supervisory work.

Prior to prohibition there were 130,000,000 gallons of American-made whisky used in the United States. In 1920 there were 12,500,000 gallons, and in 1921, the first year of our administration, it had been reduced to 3,500,000. In 1922 it was still further reduced to 1,750,000, and in 1923 it was approximately 1,800,000.

That shows, I think, a very fair degree of increased control of bonded liquor.

As General Davis suggested a few minutes ago, a bill has passed the House, and it is known in the Senate as the Sterling bill. Conferences innumerable have been held and hearings are now on in the Senate committees, as formerly in the House. Conferences with the trade, with dealers, with druggists, and with manufacturers have been held, and it has been thoroughly threshed out, and I believe that a great deal of the difficulty which has been outlined here this morning will be cured with the passage of that bill.

In the first place, the alcohol problem was not recognized, Mr. Chairman, as a prohibition problem. When the act was adopted, industrial alcohol was supposed to be legitimate and the diversion of it was not regarded as a serious matter. As a result the alcohol permits and the so-called collectors' permits were issued by the collectors of internal revenue. The collector of internal revenue manifestly had no particular interest in prohibition enforcement. He did not have the facilities with which to make inspections, and literally hundreds of permits of that character were granted which, perhaps, should not have been granted and, perhaps, never would have been granted if there had been originally the right supervision.

Under the Cramton bill or the Sterling bill all of the functions which to-day reside in the collectors of internal revenue having to do with liquor or alcohol come over to the Federal prohibition directors' offices and will be supervised there.

Senator ERNST. In each State?

Mr. HAYNES. In each State. That concentration of authority would bring the alcohol problem over to where it always should have been placed, in my opinion, and is a step forward in a better supervision of the work.

That is the first thing that the Cramton bill will do.

The second thing it will do will be to place the agents under the civil service.

There have been prohibition appointees of all classes since the amendment became effective, totaling about 10,175. Out of that number there have been dismissed for cause about 1,716.

We hear a great deal of jest about the prohibition agent unfortunately. He is made the subject of jest. We read columns of material about one who falls subject to the most tremendous temptations of any people in the Government service. I have seen them come into our offices with their pockets torn from their clothes, where permittees have tried to place rolls of bills in their pockets. Every effort is made by the enemy to discredit, because it is felt by them that the more one discredits the prohibition service and the more they make it appear in the minds of the people that the force is without morale and without efficiency and without the qualities that we all admire—honesty, particularly—the more difficult the enforcement of this law will be, and the more likely will be the breaking down of the machine. That is their under-cover method.

Agents, by a congressional limitation, have to start in at \$1,800 salary. Under the present régime of the committee on classification, a new man must be taken on on a basis of \$1,680, and I grant it is a difficult thing, as has been suggested by General Davis and also by Mr. Pyle, to go out in a city like New York or Philadelphia, or into the great centers of population in this country, and secure a man adequately prepared and adequately fortified morally to withstand these temptations at that kind of a salary.

I think one of the greatest things that this committee can do is to recommend to Congress that these men be put on an adequate salary, where they will not be subject to all of these temptations that we all know they are subjected to.

I would call your attention to the fact that no less a personage than the chairman of the Appropriations Committee of the House, my good friend Mr. Madden, rather disagreed with us in the idea that the amount of money received would have anything to do with a man's honesty. I grant that that is a high plane on which to operate, but when you get down to the practical affairs of life we know that it is a very difficult thing for a man to withstand these temptations when his family is actually suffering and because he is not adequately paid.

The CHAIRMAN. What is the maximum salary that these men get now?

Mr. HAYNES. The maximum salary to which they can aspire is arranged under the different classes; some \$1,800, some \$2,250, some \$2,500, and some \$2,750.

The CHAIRMAN. \$2,750 is the maximum?

Mr. HAYNES. No; we have divisional chiefs getting \$4,000 and comparatively few in one or more slightly less classification.

The CHAIRMAN. I mean for the regular agents.

Mr. HAYNES. Yes.

The CHAIRMAN. And the minimum is \$1,680?

Mr. HAYNES. The minimum is \$1,680; yes, sir.

The Sterling bill will put these men under civil service.

The CHAIRMAN. What will that do to the men already on the staff?

Mr. HAYNES. They are all to be subject to examination, civil service examination requirements within six months.

Senator WATSON. Does that include the directors too?

Mr. HAYNES. Everybody; yes, sir.

With reference to further legislation, gentlemen, in addition to the Cramton bill, which will cure over 50 per cent of our difficulties, we need tremendously legislation which would make a felony of the counterfeiting of withdrawal Forms 1410 A and the doctors' prescription blanks. It is an amazing thing, but nevertheless true, that Form 1014 A, which is the form upon which withdrawals are made by the permittee, may be counterfeited—more valuable than hundred dollar bills—they may be worth a thousand dollars, or \$50,000, without any crime involved sufficient to put the counterfeiter in the penitentiary. The counterfeiting of these forms should be made a felony. That is one of the most glaring inadequacies, in my opinion, that we have to-day. There should be legislation making it a felony to counterfeit the doctors' prescription blanks and the withdrawal forms. Other legislation is greatly needed which will require that denaturing plants be only on the distillery property. Under present law they may be elsewhere and be operated by other than distillers.

Senator ERNST. Is there any bill pending which will cover that?

Mr. HAYNES. Not to my knowledge.

Mr. BRITT. There was a bill in the last Congress.

Mr. HAYNES. I think it was not introduced.

Mr. DAVIS. The only thing which could take it in would be the conspiracy section.

Mr. HAYNES. Yes. Then the next piece of legislation that I believe certainly should be given attention is the giving to the Prohibition Commissioner and his subordinates, including directors, the unquestionable power of discretion. Under the present law we have no discretion, though we try to use it.

Senator WATSON. What do you mean by that?

Mr. HAYNES. I mean to say that when a permittee comes before us and we think his type, his antecedents, his surroundings, and associations make him unfit to enter into a permittee relation with the Government, we ought to be permitted to refuse him a permit. Unless we have instances of overt act, it is impossible, when he meets the requirements and come to us guiltless, so far as we know, of violations, it is impossible for us to refuse to grant him a permit.

The CHAIRMAN. Have you ever been mandamusd to grant any permits?

Mr. HAYNES. I have two illustrations that I want to give you. Only last week in a certain judicial area an eminent judge rendered his decision in a case in which we had refused to grant a permit to a brewery, in which he said it was necessary under the law for us to grant that permit.

Three weeks ago there was an alcohol permittee from the city of Philadelphia who came to us with an application. He was a dealer and had for some time been getting 35,000 gallons of alcohol a month. He came to us, making an application for an increase to 75,000 gallons of alcohol a month. It was disapproved by the State director. It came to our permit division, which sustained the State director. It came before the central committee, which is composed of a member from each section of the unit, as my personal representatives, to make a recommendation to me.

They said to the gentleman—and it is a matter of record in the office, and this is one of the typical cases—

You are getting 35,000 gallons of alcohol a month?

Yes, sir.

What are you going to do with this increase?

I have demands for it. I might as well sell it as anybody else.

He showed his order book.

Do you think any of it will be diverted?

Undoubtedly some of it will be. That is none of my business. I can't help it. It is none of my business.

The committee unanimously disapproved the application.

Within, perhaps, 48 hours after that, the permittee having gone to a local Federal court, we were enjoined from refusing to liberate to that permittee 75,000 gallons of alcohol a month, until it was shown that he was guilty of diversion.

Now, those are only instances, as I said, where we do try to exert the discretionary power which we ought to have. We are being defeated almost altogether, everywhere, by the courts, when the cases are taken into the courts.

That is certainly another instance where there should be a law which is unmistakable.

There is a law in Canada, in the Provinces where they have prohibition, giving absolute discretion to the commissioner, or the officer corresponding to him: When a permit comes in, and he thinks there are sufficient permits, of a certain classification in a certain locality, he can use his own discretion and say, "I do not think you need any permit; I do not think that community needs any more permits of this class."

The CHAIRMAN. Would you favor a committee or a board of appeals acting in cases of that kind; I mean within your own bureau?

Mr. HAYNES. Well, yes; I am entirely agreeable to that; but it is after we have gone through the case in the director's office, the permit section, and the committee of review and the board of appeals; it is then overturned because the law is defective in the opinion of the judiciary.

Mr. DAVIS. Major, if you had in your division a board of permit appeals, to which appeals could be taken directly from the State director, that board to be composed of lawyers, that might meet the problem, and they would thereby get a sort of legal ruling on the thing.

Mr. HAYNES. This committee to which I have referred is made up of Judge Britt and other lawyers of the unit, and they represent as competent authority as we will be able to get, Mr. Davis. In other words, that committee takes the place of what I think you are referring to. What we need is better law.

Mr. DAVIS. Do they review the entire case, or just the charges of error that might be made locally?

Mr. HAYNES. No; they review the entire case.

Mr. BRITT. They review the entire case, both from its legal and administrative standpoints.

Mr. HAYNES. Yes, sir.

The next piece of legislation that I think we need is with reference to the use of confiscated automobiles.

Our automobile hire, as Mr. Davis will recall, amounts to tremendous figures, and yet we have in storage seized automobiles, that are lying there awaiting court orders for disposition, the owners, perhaps, in many instances not known. They are piling up storage charges, and yet, under the present law, we have no authorization to use a seized or confiscated automobile.

Senator ERNST. Suppose you do wish to use one, who is going to prevent your doing it?

Mr. HAYNES. In the first place, it is against the regulation, and under the law, as I say, I think the agent would be haled into court. In fact, that has happened frequently, and we have had literally hundreds of agents who have yielded to the temptation, for the good of the service, dismissed by the department for it.

Mr. BRITT. Those automobiles are within the custody of the court after they are seized. They are not within the jurisdiction of the bureau. We have no authority to use them.

Mr. DAVIS. It has been suggested, Senator Ernst, that the court could make an order allowing the agent to use those cars while they are in the custody of the court, and before final forfeiture after seizure.

Senator ERNST. After final judgment, do they belong to the Government then?

Mr. BRITT. Under the law, they have to be advertised and sold then.

Mr. HAYNES. Just one or two other points, Mr. Chairman and gentlemen. Perhaps I am going into too much detail here.

Senator ERNST. No. I do not know how the others feel about it, but I am very glad to hear it.

Mr. HAYNES. I want to give you the benefit of whatever information I have.

As to the overlapping of work which Mr. Davis has said occurs under the present system, I want to clear the situation, and I think I should explain why it was originated. We had to change psychologically, the organization and did it. It served its purpose.

He mentioned a third group, which is the field supervisor's group. The field supervisor has nothing to do with enforcement. He has nothing whatever to do with permit matters, except in this way: There is a force of 12 men, corresponding to bank examiners, who unexpectedly drop into directors' and divisional offices. They take up the question of the organization there, and check up the administration of the offices, to see whether or not the expenses of administration can be decreased, the number of employees decreased, or whether more employees are needed, and whether or not the trade is being promptly served.

The CHAIRMAN. What salary do those men get?

Mr. HAYNES. Those men are classified at from \$2,800 to \$3,600. They are very high-type, experienced men.

The CHAIRMAN. You have only 12 of those?

Mr. HAYNES. Yes, sir. They correspond to auditors, Mr. Chairman, and, as I say, they do not overlap in any respect whatever.

General Davis has referred to the wine situation. As I have just indicated, we could not handle the distilled spirits, the cereal beverages, and the wine all simultaneously with a force of 1,700 men. We undertook the problems which seemed to be the most danger-

ous, and the wine was left to the last. We are dealing very vigorously with that problem this year, on the Pacific coast especially. Wine withdrawals have very greatly decreased. There were only 3,500,000 gallons of wine withdrawn during the last fiscal year.

The CHAIRMAN. Have you the amount that was withdrawn for religious purposes separate from that withdrawn for medicinal purposes?

Mr. HAYNES. I presume we have those figures; but I have not them with me. I will be glad to get that for you if you would like to have it.

The CHAIRMAN. You said it had decreased. I think our investigators have figured that it was increasing.

Mr. HAYNES. It was 3,500,000, as compared with 6,500,000 the previous year.

The CHAIRMAN. That is, the total of both?

Mr. HAYNES. Yes.

The CHAIRMAN. Have you got that separation?

Mr. HAYNES. As I say, I have not those figures separate.

The sacramental-wine situation has been a difficult one, because there is the religious element that enters into it, and if a rabbi makes application for sacramental wine, and he has a bona fide congregation, and he is in any way thwarted, you gentlemen have no conception of the tremendous furor which is created and the criticism that comes down upon us. We have tried to be careful, and have tried to find, wherever possible, just where these congregations were and have inspected them; and, as General Davis has just indicated, those investigations have shown a great many congregations that are altogether fictitious; but it requires agents to go to the addresses given upon the list, which must be furnished by the rabbi to the directors before the wine-withdrawal permit is issued, and that means covering miles of territory in checking up each one of those persons.

Senator ERNST. Do you say that those leases have been found to be fictitious?

Mr. HAYNES. Oh, tremendously fictitious—forged and everything else. In other words, it is a very deplorable but true situation.

Mr. BRITT. In some instances it has been a fictitious congregation throughout?

Mr. HAYNES. Yes; a fictitious congregation throughout.

Mr. DAVIS. They have Irish rabbis, and rabbis of every description.

Mr. HAYNES. Yes. There have been literally hundreds of those congregations. We simply had to let it drift until we could get to the inspection, and we are on that now.

The CHAIRMAN. Does that happen in connection with any other religious sect than the Jewish?

Mr. HAYNES. No; for this reason: In the case of the Catholic Church, the priest takes the communion; but in the case of the Jewish congregations, the individual members take the communion.

Mr. DAVIS. They use it in the homes of the members of the Jewish congregation.

Mr. HAYNES. It is a part of their religious rites, and those rites are performed in the homes.

Senator ERNST. That is, by law.

Mr. HAYNES. By church law, by the head of the family. And, as I say, when you get to interfering with the religious rites of a religious congregation you are getting on delicate ground, even though we know that in many instances this situation has been tremendously abused.

Now, with reference to champagne, that is a matter that I think Judge Britt is more able to discuss than I am.

Mr. Chairman, I would like to file with you a compilation of figures which will be helpful to you, showing these withdrawals and decreases in quantities, together with other facts and figures and what we have done in the way of regulation, for the information of the committee.

Furthermore, I want you to know that we are at your service. It will not be possible for me to be here always, unless you want me specifically, but the Secretary has designated Judge Britt and Mr. Simonton. Judge Britt is the solicitor of the unit and is personally familiar with all of its work. Mr. Simonton has been in the service for many years and understands the entire situation. Either one or both of them will be here whenever you need them, and we will be at the service of Mr. Storck or Mr. Pyle or anybody that you have down there. We want to be just as helpful to the committee as possible.

The CHAIRMAN. I wonder if you could state briefly what your views are about the placing of prohibition enforcement in the Department of Justice?

Mr. HAYNES. I think it would be a very great mistake. There have been four attempts made, always unsuccessful, to do that, for this reason: As I have tried to explain, our functions are not so much the functions which reside in the Department of Justice. They are supervisory; they are of permit and supervisory character; they are of administrative character; they are of tax-assessment character, and you would have to set up in the Department of Justice a duplication of machinery which now exists in the Treasury Department. I think without question the Sterling bill, which makes a bureau of the Prohibition Unit, takes it out from under the internal revenue and separates it from these duplications and provides for concentration of responsibility, as I have just explained—I think putting it in the Treasury Department as a separate bureau is an ideal place for it in the light of my experience.

The CHAIRMAN. Can you tell us, Major, why these enormous losses have occurred in the Government because of compromises in the cases of these violations of law that were referred to by Mr. Davis?

Mr. HAYNES. The compromise matter is another legal matter which, if permitted to do so, I want Judge Britt to handle.

The CHAIRMAN. I understand that as the result of such compromises millions of dollars have been lost to the Government.

Mr. HAYNES. I think that is perfectly misunderstood by those who are not familiar with the processes and the conditions. Judge Britt will explain that to you.

**STATEMENT OF MR. JAMES A. BRITT, SOLICITOR, PROHIBITION
UNIT, BUREAU OF INTERNAL REVENUE**

Mr. BRITT. Mr. Chairman and gentlemen, I shall be very brief, unless you wish to keep me longer for questions.

In the first place, I want to reinforce what Mr. Haynes has said—that Mr. Simonton and I are entirely at your service. The Secretary has designated us for that purpose, and he and Commissioner Blair and Commissioner Haynes have specially authorized us to render every service we can at all times to the committee. Mr. Storck, Mr. Pyle, Mr. Davis, and others can have the use of any record or file or paper or case that we have, the only condition being that we be given a chance to list it and turn it over in a proper way, so that we discharge our own responsibility to the Treasury Department in protecting records.

We do not come, of course, as lawyers. We know that we are here by your permission. We come to render service; but if at any time we feel that something could be made plainer and clearer by our offering a suggestion or asking a witness a question, we would like to have the privilege of doing so.

As to the use of champagne for sacramental purposes, there has been some of that since I came into the unit, but very little of it, to my knowledge. It is a rather peculiar thing.

Champagne in law comes under the heading of wine, and champagne, legally speaking, is wine, and when the national prohibition act authorized the use of wine for sacramental purposes generically it authorized the use of champagne, because the courts have held that champagne and wine are legally without distinction; but we have endeavored to prevent its use by administrative control, and we have done so, practically.

Very soon after I came into the unit I advised that champagne was not recognized by religious denominations as a necessary sacramental element; that to use it a forced use of a symbol for a most serious purpose; and that while it had legal semblance, because champagne comes under the head of wine in a legal sense, it had no sanction amongst religious bodies nor amongst the intelligence of the country, and therefore we ought not to allow permits for that purpose. We have discontinued them absolutely, over a very fierce opposition.

However, there is some wine in the country that is called still wine that is scarcely distinguishable from some carbonated wine or champagne. A line of distinction is given, and, of course, they thought they could manage that. They have endeavored to do so, but it is clearly the policy of the bureau not to allow it if we can prevent it.

Now, as to compromises, I suppose you would want me to speak of particular cases. I think that would be the better way, to have them made the object of special inquiry.

The CHAIRMAN. I think that is correct, because we are anxious to have the committee hear about some of these specific cases that we have investigated, and then the bureau can reply.

Mr. BRITT. But, in a general way, just a word. If it is an internal-revenue case purely, the law still authorizes a compromise of the civil liability and of the criminal liability, and that internal-revenue case

may be an internal-revenue case also under the national prohibition act, having reference to distilled spirits. I am talking about an internal-revenue case involving liquor, which has not been taken into court; the Commissioner of Internal Revenue may compromise it, with the consent of the Secretary of the Treasury. But if it is a prohibition case with criminal liability it can not be compromised at all, because the law specifically forbids it. But the civil liability may be compromised under the law.

Now, the question as to what that liability is, Mr. Chairman, is always a very difficult one.

The prohibition agents find certain irregularities on the part of a permittee that look flagrant and serious, and there is a vast amount of suspicion connected with them, and there is a report of them. But those of us who have spent years trying liabilities in courts under judicial rules know that there is a vast difference between what a case is said to be by common report and what it is after it is sifted in court, when both sides have been heard. There are cases, Mr. Chairman, that may look very flagrant, but a lawyer in examining those cases might think that the bureau would stand a very poor chance of sustaining anything in court, or, if anything, not very much.

Now, take the case of a forged permit: a forged permit, 1410, as Mr. Commissioner Haynes has referred to it, and hundreds of thousands of gallons of liquor may be withdrawn upon that; but when you look at it, not being a technician, and not being accustomed to specialize in questions of that kind, and not well informed on things like that, you can not tell the counterfeit from the genuine. They who accept it and let the liquor go out on that will say that it was counterfeit, probably, but I could not tell the difference; it fooled me, and it fooled many of your agents, too. And it did fool many of our agents.

That being true, you can see how hard it is to fasten legal liability on a man who goes before a court and makes that sort of an excuse. There are more or less of these elements in most of these cases that are compromised. The result is that the bureau, after it goes into them as carefully as it can, gets the best legal advice that it can—and generally it passes through a number of hands—can tell what the chances are to win in court. What prohibition agent made this case? Has he since been discredited? Is he out of the service? Is it an old case? Are the proofs very remote and very improbable? What are the chances to prove the case in court? All of those questions are resolved and resolved over and over again.

In dealing with these cases I might say, Mr. Chairman, it is not done by a mere clerk at his desk. The clerk does the elementary work which comes up to his section chief or to his division chief. It finally goes to a lawyer, or sometimes to several lawyers, and in many cases it comes to a higher officer, and he goes over it and says something like this: "Considering the uncertainties of the case in court, it is probably best for us to take so-and-so and let the matter end."

But there is another thing that I wish the committee would take into account. The Department of Justice—and this is no criticism at all, because it is one of our fixed rules in our unit never to criti-

cize another department, publicly or privately—but the Department of Justice was so crowded that it could not bring many suits on old bonds. In connection with many of those old civil liabilities the criminal liability has long since been disposed of, or is in process of disposition by the Department of Justice.

In instances I have advised with the Department of Justice, informally and formally, and they have said that our chances for bringing suits on those old bonds are so poor that “we advise you to make settlement.”

I think that advice was sound, and I commend the department for giving it.

You will find that some of these old cases are four or five years old. The agent who found them is either dead or out of the service. He may have been discredited; he may have been “tempted,” as Mr. Haynes has told you.

Now, is it the best thing for us to wait and get that case into court, wherever we can get it into court? The Department of Justice, like every other department, is overwhelmed with work, and we make the best settlement we can now and get what we can.

The case to which particular reference has been made here, the Fleischman case, was a case in which the findings, etc., were made before I came into the service. This is not said for alibi purposes, but merely as an explanation of why I do not know more about it. But I advised as to the settlement of it, and I understand—I think Mr. Storck and the other gentlemen will verify it—that there is an immense record. I did not go into all of the aspects of it, but the phases I did go into impressed me at the time, and although the proposed assessment was a large one, I thought it probably best to compromise it.

I had tried many cases of this sort, and if this had been a client and he had said to me, “Now, would you take the risk of winning more, or if they would pay me \$100,000 down, should I take the \$100,000?” I would have so advised. I ask myself a similar question in all these cases. You understand, Mr. Chairman, I do not settle these cases. They are settled by the commissioner or the Secretary. I simply advise as to them when asked. When asked about the case I said, “I had not gone into it fully; I was not here at the beginning; but from what I saw of it, I would take the \$100,000.”

Senator JONES of New Mexico. Judge Britt, necessarily the commissioner and the Secretary must accept your recommendation, must they not?

Mr. BRITT. Not necessarily, although they usually do. I recommended \$100,000 in this case, but \$75,000 was accepted.

Senator JONES of New Mexico. Because it is impractical for them to give their particular individual attention to it?

Mr. BRITT. Yes; but in this particular case it is proper that I should say that the question of compromise had been pending for quite a while. I think it is one of the helpful things of this inquiry, Mr. Chairman, and I approve heartily what Mr. Davis and Mr. Pyle have said, that out of this exchanging of our views we may be much wiser than we are on both sides. As I said, all of us who have tried lawsuits know the difference between what we hear rumors about and what we finally sift out in court where the charges

are made on one side and are answered on the other. In that way this committee will be much nearer the truth.

My own view about it is that the Prohibition Unit and the bureau, and I know it is the wish of Commissioner Blair and Commissioner Haynes to make known to you everything that has been done and why it has been done, just as it occurred, and their motive in doing it, and leave you to make your own deductions. If those deductions are not favorable to the unit or the bureau, then that is as it is; but it seems to me that that is the only way to reach a proper conclusion.

The CHAIRMAN. In connection with this Fleischman case, I do not understand just where the question of compromise came in. As I understand it, a certain amount of alcohol was released, and if that had been legitimately released there would have been a tax; but the fact that it was illegitimately released does not change the question of the tax per gallon, does it?

Mr. BRITT. Yes.

Mr. DAVIS. It increases the tax.

The CHAIRMAN. Yes. In other words, I do not see where there is any compromise when it is an admitted fact that the alcohol was released.

Mr. BRITT. Well, that is in question. It is not an admitted fact. I do not think it is admitted, Mr. Chairman.

The CHAIRMAN. I think the record will show——

Senator ERNST. What case are you speaking of?

The CHAIRMAN. The Fleischman case.

Senator ERNST. Have you examined the record?

The CHAIRMAN. I have examined the report.

Mr. BRITT. If the tax was paid at \$2.20, and it was diverted it would have been taxable at \$6.40, there would have been a differential of \$4.20 due.

The CHAIRMAN. I would like to ask Mr. Storck here whether this settlement was made on the basis of the minimum amount per gallon, namely, \$2.20 for all of it, or was it compromised on the excess for illegitimate diversion?

Mr. STORCK. As I recall it, it was on 470,000 gallons. The first proposal was 25,000, the next was 50,000, and they finally got \$75,000.

Mr. DAVIS. Was there a compromise settlement?

Mr. STORCK. Absolutely.

Mr. BRITT. My recommendation was \$100,000.

Mr. STORCK. On the basis of the \$6.40 per gallon?

Mr. DAVIS. That is the way the basis was fixed?

Mr. STORCK. Yes, sir.

Mr. DAVIS. That would amount to how much?

Mr. STORCK. If they had taken it on 434,000 gallons as the proposed assessment, it would have been \$2,279,000.

Mr. DAVIS. And the \$75,000 was simply a compromise settlement; it was not figured at so much per gallon?

Mr. STORCK. No; just \$75,000.

Mr. BRITT. I think it very important that this fact be kept in mind. I know the committee desires to get the actual facts. When we say in a case like this that the finding by the office was that so

much was diverted we should keep in mind that that does not mean anything more than a prima facie case. We should keep in mind that there is often much misunderstanding arising from the fact that when an agent makes a finding in a case it is taken for granted that responsible officials accept the finding as a fact. This is often not the case; it is only a prima facie case. That is what he says the proof seems to indicate. That is what we would call "probable cause," or a prima facie case. It remains to be proved, and I think the committee would not be justified in acting upon the case as an established or admitted fact. That would be a mistake, in my judgment. To let the case be examined in all of its details and be carefully reviewed on all sides would seem to me to be proper.

As I said, I came into the case at a late date and only examined it cursorily, getting some help from some of my assistants. The question of compromise had been pending for some time, and a \$25,000 offer had been made. I advised that bureau should not take any less than \$100,000, and I, of course, expected there would be criminal prosecution.

The CHAIRMAN. Why was there not criminal prosecution?

Mr. BRITT. I do not know, sir. The case was transmitted to the Department of Justice.

The CHAIRMAN. That is one of the criticisms that our inquiry has developed, that in many cases of compromise on the civil side no criminal prosecution appears.

Mr. BRITT. Let me make one point clear, Mr. Chairman.

We are not authorized nor permitted by law to compromise a criminal case. That advice is kept constantly before everybody in the Prohibition Unit, and I made it in the legal department a standing request to specify in definite terms that the compromise is on the civil liability only and negatives any settlement of the criminal liability. This settlement should be of that character. The law requires the commissioner, when the officers make a finding, to send a copy of this report of its finding to the district attorney in the judicial district in which the finding is made. The Prohibition Unit does that in every instance.

The CHAIRMAN. I would like to ask at this point, Mr. Storck, if you have found any report of these cases having been transmitted to the Department of Justice?

Mr. STORCK. In some of the cases; yes, sir.

The CHAIRMAN. But not in all of them?

Mr. STORCK. No, sir.

Mr. BRITT. I am speaking of the rule, Mr. Chairman. I was not in the unit when the reports were made.

The CHAIRMAN. Yes.

Mr. BRITT. To show that that is attended to, I frequently call in the head of the enforcement division, and say: "Are you making sure that copies of your reports go to the district attorney?" They bring in the copies, and at the bottom they will show, "Copy to _____," and "copy to the district attorney." I always make that as insistent as I can, and I have every reason to believe, Mr. Chairman, that that is carried out.

The CHAIRMAN. When those compromises of civil liability are arrived at, in what manner do they arrive at them—like conferences

in open hearing, or behind closed doors, or just how are they arrived at?

Mr. BRITT. Never behind closed doors, and never in a low tone, and never in any private way.

The CHAIRMAN. Would you object to a newspaper man or a Congressman or a Senator walking in there while this conference was going on?

Mr. BRITT. Anybody would be welcome, Mr. Chairman, and I might say in that connection that if an attorney comes in, or a party, and says, "There is something I want you to know about it that I do not want anybody else to know," the first thing is to say, "You can not talk in a whispered or a low tone, and you can not say anything in confidence. Talk right out. Put your proposition direct and clear."

There are always employees and others coming and going and anybody could come in. As a rule, I think the office force are moving in and out, dispatching the business, and a case is discussed openly as one of many. There is a compromise section of the office that first has charge of it, and then it goes to the head of a division; then it goes to the main bureau, and finally to the Assistant Secretary.

The CHAIRMAN. Then, as I understand it, when you arrived at a compromise of \$75,000—

Mr. BRITT. I advised a settlement for \$100,000, not \$75,000.

The CHAIRMAN. Is there any record as to why you settle on \$75,000?

Mr. BRITT. Oh, yes, the final act of settlement is a record.

The CHAIRMAN. Is that a record in the bureau?

Mr. BRITT. I speak generally. I do not recall about this particular case.

The CHAIRMAN. But I mean that would be the rule?

Mr. BRITT. Oh, yes. The sum-up of the case, the memoranda and so forth, are the records. The person who last has charge of it puts the reasons on the memoranda and records. I do not recall what was done in this case.

The CHAIRMAN. In other words, you give the reason for your conclusion?

Mr. BRITT. The whole action on the case shows the reasons for it; yes, sir.

Mr. HAYNES. Now, Judge Britt, I wish you would take just one minute on exportation, because that was referred to.

Mr. BRITT. Yes.

Exportations are now almost wholly disallowed.

The CHAIRMAN. Exportation is what?

Mr. BRITT. Exportation is almost wholly not allowed.

The CHAIRMAN. Not allowed?

Mr. BRITT. Let me explain in a word.

Mr. Haynes and Mr. Blair directed two lawyers to go to the Dominion of Canada and spend a number of weeks there. They learned that all of the so-called orders for exportation of liquors to that country were spurious and illfounded and fraudulent, with the result that we now absolutely refuse to export any liquor to Canada.

That occurred two years ago, Mr. Haynes?

Mr. HAYNES. Yes.

Mr. BRITT. Now, as to foreign exportations. We have a specially selected commission of five persons who go into such case in all its aspects, and we make the applicant prove that the person who is buying it in the foreign country is a person of good character and good business standing; that he is permitted to do that business by law in his own country, in the first place, and then we go further and have him produce affidavits that the ultimate use of it in the foreign country shall be a nonbeverage use, just as we have in this country.

The CHAIRMAN. Is there any law which permits the transportation of export liquor?

Mr. BRITT. Oh, yes. It is authorized to be exported for nonbeverage use.

The CHAIRMAN. Only for nonbeverage use?

Mr. BRITT. Yes. The result of the rigid exactions that I have just spoken of is that there are practically no exportations.

Mr. HAYNES. Pardon me, if I may interrupt, the percentage is 4 per cent of the applications.

Mr. BRITT. Yes; we deny 96 per cent of the applications.

Mr. HAYNES. Judge Britt, while we are on this question, I wish you would refer to the application that we are considering at present. I would like to have the reaction of this committee on it.

Mr. BRITT. Yes. Recently there came before us, Mr. Chairman, an application for the exportation of 75,000 cases, as I recall it, old liquors, from Chicago to Cuba.

The CHAIRMAN. Who made application for it?

Mr. BRITT. I do not recall the name, sir.

Mr. SIMONSON. Moran Bros.

Mr. BRITT. Yes; Moran Bros. This will be interesting to Mr. Davis, Mr. Chairman, and to Mr. Pyle and the other gentlemen. It was the most perfect case on paper that I have ever seen. I carried the case to Mr. Commissioner Haynes. Then I spoke about it to Commissioner Blair, and I said, "If we were to act on this case prima facie, we would shoot this liquor out of here, but there is no demand for American liquors in Cuba. A vast amount of liquor is being run from Cuba into the United States. We will simply not grant it. We will hold it up." And we are holding it up. I might say frankly that we are holding it up pretty arbitrarily, but we know it is fraudulent, and we intend to make an inquiry that will justify our actions.

The CHAIRMAN. I should say that that was sound and reasonable judgment.

Mr. HAYNES. However, Mr. Chairman, the probabilities are that if they were to appeal our decision to a court of equity, they would meet with approval.

I want to explain just this feature of this particular case. Mr. Carr, of the State Department, who has charge of our supervision over the Consular Service, is a very warm personal friend of mine, and a very splendid gentleman, and he has taken a personal interest in it. As soon as we receive an application of this kind, we ask the State Department to have a consular representative make an inquiry as to the bona fides of the prospective consignee, and we have asked that that be done in this particular case in Cuba. We have information that possibly the American consular officer at that point might already have been approached and influenced in some way,

and we have asked Mr. Carr to make a particular inquiry, through an outside agency.

So you see we do resort to every expedient to secure the proper kind of information before action is taken.

Senator JONES of New Mexico. To what sort of nonbeverage purposes would good old liquor be put to in Cuba?

Mr. HAYNES. It is supposed to be manufactured into a proprietary medicine of some kind, which has been on the market for years and years. The question is not whether or not, however, under the present law, it permits the exportation for nonbeverage use. After the applicant has established the bona fides of the prospective consignee, the question is whether, under the law, it can be refused.

Mr. BRITT. Just a further word, and I am done.

I think Mr. Davis has spotted the chief part of the problem. Of course, until very recently, rum running furnished the greatest immediate supply. My information is, Mr. Chairman, that when the Coast Guard provision, with its vessel equipment and money allowances for officers and men, gets into full swing, it can be trusted to completely destroy rum running, and it should be expected to do it. In my opinion, it will do it. That is my opinion as to rum running.

The CHAIRMAN. I can appreciate that another serious difficulty is found along the borders, like Canada and Mexico.

Mr. BRITT. Well, when you come to Canada we have no 3-mile limit or 12-mile limit. We have no limit at all. A commission was appointed by the Secretary to go up to Canada and negotiate an understanding by which their minister of customs would refuse clearance papers to ships loaded with liquors ostensibly for the United States.

Senator ERNST. What do you do on this big river—the St. Claire River? What do you do there?

Mr. HAYNES. The Detroit River is one of the big problems, but Governor Groessbeck has been wonderfully cooperative. I think during this last year it was better than it has been previously. We expect to increase the number of our own boats there, and I think the governor will also.

Mr. DAVIS. They used to handle that through a system of wig-wagging. When they got just across the international boundary line a guard would wave his little flag to indicate that the coast was clear, and then they would shoot across. If these speed boats would follow them, they would drop down in a little boat garage.

Mr. HAYNES. Is it not your opinion that the situation this year is better than it has been?

Mr. DAVIS. I have not been out there so much during the last year. I have been engaged in work down here.

Mr. HAYNES. The governor tells us that that is so.

Senator ERNST. With that long stretch of that big river, I do not see how it is possible to guard it. I have spent some time on that river and I know that you have great disadvantages.

The CHAIRMAN. I think you will find a greater one than that is the land borders. There are miles and miles of this imaginary border line between the United States and Canada, where you will have a hard time protecting it.

Mr. HAYNES. If it is necessary to control that border situation after the water front has been disposed of, and, of course, it is ob-

vious that we can not do that without State help, and if the State enforcement force can not do it, I think the Government ought to authorize the Army of the United States to see that it is done.

Mr. BRITT. Millions of gallons of alcohol are being diverted in spite of the Bureau of Internal Revenue. Here is a familiar dodge: after we make two or three inquiries as to the character of the permittee and investigate him and reinvestigate him and the application comes up and the paper case is recommended by the best people in his State, in his city, and in his community—

The CHAIRMAN. Mostly by Congressmen and Senators. I suppose?

Mr. BRITT. No, Senator; I would not say that. In some instances that is true, but it comes recommended by the community, by the best element in the community, and finally we are brought to a standstill. Now, before me I have the title to the Act, and it says that we shall grant a liberal supply, and we shall encourage its use. That is the mandate which the Congress has put upon the Commissioner of Internal Revenue, and if we investigate until we have investigated to the last notch, and we find nothing, and have the best recommendations that the community can give, then we are at a standstill. We can not rebut that case, Mr. Chairman, and we must act favorably.

The CHAIRMAN. Yes; but where the same individuals transfer their activities from one corporation to another, is not that prima facie evidence that the business is of the same character?

Mr. BRITT. Yes; I was coming to that.

Senator ERNST. But it is not proven.

Mr. BRITT. Then we must, under the law, grant a permit. He has not shown any cloven hoof as yet. The permittee has not shown that he is a violator. There is nothing, and he stands legally all right, Mr. Chairman.

We grant that permit. Then, through temptation, or through a disclosure of his wicked nature, which may be already existed but which we could not find, he proceeds to divert the alcohol. We can deal with him very properly when we get up with him. He may then turn and operate in a different way, under a different name, under different colors. It may be a corporation now, whereas before it was only an individual or a partnership, or an association, and we now set out to get him in his new game. We make inquiry to see whether it is the same old fellow, and to our dismay we sometimes find out that it is.

Mr. HAYNES. He never appears, Mr. Chairman, on the application. We never would grant a permit to a man who has violated.

Mr. BRITT. Oh, no; that goes without saying.

Now, that is all, unless there is something that you want to ask. I apologize for taking up so much time, but I do want to say that you need not fear that the Prohibition Unit or the bureau is going to keep anything back. We will give you everything we have. We will tell you what we have done, and we will tell you why we did it. There is a persistent bitterness on the part of those who think we do not restrict enough. There is persistent bitterness on the part of those who think we restrict too much. We try to do the best we can, and I trust the committee will be good enough to get the case, the file, and the testimony showing the motive and the deed.

I thank you, Mr. Chairman.

The CHAIRMAN. Do you want to ask this witness any questions?

Mr. DAVIS. I think not at the present time.

The CHAIRMAN. Mr. Pyle, do you want to ask any questions?

Mr. PYLE. No; I do not think it would be proper to go into any cases without all the facts before us.

The CHAIRMAN. Mr. Haynes, would you say that prohibition enforcement is eminently satisfactory?

Mr. HAYNES. Oh, I would not go that far, Mr. Chairman. I think the most remarkable progress for an undertaking of this size has been achieved.

The CHAIRMAN. Would you say it was fairly satisfactory?

Mr. HAYNES. I would say it is fairly satisfactory; yes, sir. I think, in the final analysis, it resolves itself back to more adequate implements in the way of law and increased cooperation on the part of local enforcement facilities.

The CHAIRMAN. You desire more legislation that is embodied in the Cramton bill?

Mr. HAYNES. Oh, yes; because I do not think that some of the additional legislation needed could properly be incorporated in it.

Senator ERNST. Have you anything here reduced to writing showing just what other legislation you would like to have than that contained in the Cramton bill?

Mr. HAYNES. Not reduced to writing, but I have put it in the record this morning.

Senator ERNST. All that you want to include?

Mr. HAYNES. Yes, sir.

The CHAIRMAN. There is nothing that you have suggested in the record this morning that our counsel have in mind, so far as you know, that would interfere in any way with the passage of the Cramton bill?

Mr. HAYNES. None whatever. I think fully half of the difficulties which have been enumerated by Mr. Davis will be cured by the passage of the Cramton-Sterling bill. These other matters with reference to discretionary power must be given by a special enactment, of course. Then there is the matter of the use of automobiles.

There is one other piece of legislation which I forgot to suggest, and it is very important to mention this: It should be required by special legislation that a cereal-beverage manufacturing concern can not operate without a permit. We have given all cereal-beverage manufacturing concerns notice that they must have permits.

The CHAIRMAN. They do not get them, do they?

Mr. HAYNES. Many of them do not. We have only 357 operating with permits to-day. The nonpermit operating brewery will have gunmen at the gates to drive off the agents. Agents can not go in there without a search warrant, of course, and it is the most difficult thing in the world to supervise a nonpermit brewery.

I think that is one of the most important things that should be brought out in this hearing.

Senator JONES of New Mexico. What is the advantage of having a permit?

Mr. HAYNES. It gives us power of inspection.

Senator JONES of New Mexico. I know, but what advantage is there to a permittee in getting a permit?

Mr. HAYNES. There is no advantage to him, perhaps, except that he goes into a contract with his Government to the effect that he is going to conduct a legitimate business and wants protection, which this contract or permit will give him.

Mr. BRITT. Pardon me; Senator, in making this cereal beverage of less than one-half of 1 per cent, he has to make it above one-half of 1 per cent and then reduce it, and, of course, in making it above that he is having in his possession an unlawful product and is making an unlawful product. Without a permit that is unlawful.

Mr. HAYNES. But the law is in dispute on that point and should certainly be clarified.

The CHAIRMAN. The records, I think, will indicate that there are many beverage concerns operating without permits; that is, small beverage concerns?

Mr. HAYNES. Yes, sir.

The CHAIRMAN. It is a well-known fact that they must, at some point of production of this near beer, for instance, be violating the law?

Mr. HAYNES. Yes, sir.

The CHAIRMAN. Is it your contention that there is nothing that you can do in that connection?

Mr. HAYNES. We can not go in without a search warrant.

The CHAIRMAN. Is it not a well-known fact that they must be violating the law?

Mr. HAYNES. They must be assumed to, but we can not get a search warrant on that assumption. I have advocated that they be required to have a permit under all circumstances, and that the failure to have a permit shall be a ground of seizure or of some formal action. That, however, has not been adopted all the way through the Government.

We have also held that the best remedy is to seize and confiscate these persistent breweries—they are not properly breweries, and we think the best way is to seize and confiscate them if they persist in violating the law, but other methods have been thought to be better.

The CHAIRMAN. I am still at a loss to understand the advantages of the Cramton bill, outside of the civil service features of it.

Mr. BRITT. I do not want to delay the committee in its work, but it seems to me that if the Cramton bill is to come up in the Senate at this session, this committee, in investigating both the income tax unit and the prohibition unit, should know what advantage is to be gained by the passage of this bill.

Mr. HAYNES. We will be glad to express to you our views on that subject, although they have already been expressed before the Senate Judiciary Committee.

The CHAIRMAN. Yes.

Senator ERNST. I make the suggestion that we have a copy of the bill, and then deal with it section by section.

The CHAIRMAN. I understand the civil service part of it.

Mr. HAYNES. It can be explained in a few minutes.

The CHAIRMAN. The great criticism that comes to me—and I recognize it as a part of human nature—that a governmental agent appointed to do a specific thing, or having a multitude of things to do, one being greater than the other, emphasizes the greatest of the lot, and a fear seems to exist in the minds of industrial alcohol users and

many others, as you know, that the practice of the commissioner under the Cramton bill will be based solely upon prohibition, to the detriment of the proper use of industrial alcohol.

Mr. HAYNES. We appreciate that that is the position of those alcohol users.

The CHAIRMAN. I think it is a natural contention. I would do the same thing if I were a large industrial alcohol user.

Mr. HAYNES. I have tried to explain that there is such an interrelation between the alcohol problem to-day and enforcement, because the alcohol becomes the element which is susceptible to diversion, and it is so intricately interwoven with the enforcement problem that it can not properly be separated if we are to have a good administration of the law.

The CHAIRMAN. What does the Cramton bill do any different from that?

Mr. HAYNES. I have tried to explain the issuance of permits in the office of the Collector of Internal Revenue. Those are collectors' permits. We have no supervision over them. It is not a part of our work.

The CHAIRMAN. I know, but the collector can give you that.

Mr. HAYNES. Those will all come over under the Cramton bill, by legislation, into the offices of the prohibition directors.

The CHAIRMAN. Why do you want to be separated from the Commissioner of Internal Revenue?

Mr. HAYNES. I think it is only in the interest of better administration, for this reason: Wherever you have decentralization you have lost motion. The Prohibition Commissioner, whoever he may be, under the new legislation, is the man who, in the eyes of the public, is responsible for the proper administration and enforcement of this law.

The CHAIRMAN. Have you not now, in the eyes of the public, the full responsibility for it?

Mr. HAYNES. Without question. However, my policies must be developed and approved by the Commissioner of Internal Revenue and then passed on to the supervision of the Assistant Secretary of the Treasury and finally appealed to the Secretary of the Treasury. I think, under the present organization, to a very remarkable degree, we have had a continuity of thought, etc., but I say it does not make for wise administration in a business way or a Government way that the office that really, in the eyes of the people, is responsible, can not be, in practical parlance, the final power in the matter of control, and that is provided for by the Sterling bill.

The CHAIRMAN. As to the method which you adopt for the dismissal for inefficient or incompetent agents, do you have just an arbitrary power to do that, or do you have any procedure for doing it?

Mr. HAYNES. We have a procedure. There is in the Bureau of Internal Revenue a unit known as the special intelligence unit, whose function it is to make inquiry into the personnel of the entire bureau. If complaint is lodged against anybody, the complaint is forwarded to the Intelligence Unit, and they make the investigation and a recommendation.

Senator ERNST. Mr. Haynes, as I understand it, you believe in having all of the present field men put under the civil service?

Mr. HAYNES. Yes; and the Cramton bill puts all of them under the civil service. Just now we have the office people under the civil service. This will put the field force in the civil service.

Senator ERNST. If you had a man who was not acting honestly, and if he were under the civil service, do you not think that you would have more trouble in getting rid of him?

Mr. HAYNES. No, Senator. I had that impression at first, when they were discussing that civil service feature of it. I have found some disadvantages as well as advantages, but after very thorough inquiry of those who have had large experience in the matter around the department, I believe we will be able to get rid of any undesirable agent.

Senator ERNST. From what I have seen of the work down in Kentucky, it seems to me that there are many cases where you would have great difficulty in making out a case against an agent and one who ought to be gotten rid of in a hurry.

Mr. HAYNES. Yes.

Senator ERNST. You would be up against that difficulty constantly?

Mr. HAYNES. Of course, it would be up to the Civil Service Commission, having charge of the matter, but, as I say, those who have had large experience with it say it works all right, and I would be very willing to make a trial of it.

Senator ERNST. I am afraid you are getting ready for a lot of trouble.

Mr. HAYNES. Well, possibly so; but the public generally is for the civil service, and I am perfectly willing to try it.

The CHAIRMAN. My experience is that the executives do not use all of the privileges and opportunities that they have under the civil service to get rid of these characters that you speak of. I think it is a lack of initiative and energy and determination upon the part of the executive that retains these incompetents in office, frequently. I was under the same impression as you are, for a long time.

Senator ERNST. Yes; I am under that impression.

The CHAIRMAN. I found that many of the executives thought that because a man was under civil service there was no practical way of getting rid of him; but they can get rid of them if they exert themselves to protect the Government.

Senator JONES of New Mexico. I think it is quite difficult to prove a great many of these cases. When I was in the Interior Department, it was quite evident that an employee was not doing his work as he should be doing it, and yet to make formal charges and try the case and do all of that, and to get results, was the most difficult procedure, and owing to the difficulties in the way, and everybody else having something else to do, mighty few changes were made. I am not meaning by that to say that those classes more than overbalance the ones of the other side, but it is an extremely difficult thing to get rid of a civil-service employee.

Mr. HAYNES. I have never been an ardent advocate of civil service for the field forces at all, but, as I say, I think public sentiment is demanding the civil service in Government affairs. I think there are some advantages. I think a man who has to pass the examination and who feels a sense of security in his position will be perhaps more

inclined to come into the service under those circumstances and make it a life work than a man who is appointed under the present method.

Senator ERNST. I am saying what I say, of course, in the interest of law enforcement.

Mr. HAYNES. Yes; I appreciate that.

Senator ERNST. You have an agent in the field, and he may be very active against the little fellow. He will make arrests here and there, and every day his name appears in the papers. But he pays no attention to some big fellow. He may ignore what a brewery is sending out, but he will bring in 20 or 30 small offenders, and his record appears to be good; but I would want to get rid of him in a hurry. I know there are just such cases.

Mr. HAYNES. I think a director, for instance, in a typical State like yours, or a divisional chief would have the same ambition as to him, because they are of the proper type. But we have not had any difficulty in your State.

Senator ERNST. I can not help but feel that if you put these field men under the civil service you are going to experience quite a little difficulty.

Mr. BRITT. I just want to make an observation about the civil service. I have had nearly 25 years' experience in different branches of the civil service, four years as Assistant Postmaster General and in other positions, and I have been a careful observer of the efficiency of employees under the civil service and those under the excepted service. The result of my observations and experience is that the settled civil-service employee—that is, the one who has gotten in regularly and got into his place and is fitted to it—as compared with the excepted employee, who is in his place and fitted to it, is as two to one in favor of the civil-service employee. I have no doubt about it, Mr. Chairman.

The CHAIRMAN. I think that is shown when they come to appeal to the representatives of their States for influence. It is generally understood that the employee who is not under the civil service is afraid that he will be removed through changes in administration. I think the psychology of it is something that a person who has had any great experience in executive work goes through.

Mr. HAYNES. He feels no security in his employment.

Senator JONES of New Mexico. That question was given very great attention by the Committee on Reclassification, of which I happened to be chairman, and our recommendation was that these employees be not only put under the civil service, but their work be supervised as well by the Civil Service Commission, so that the branch of the Government employing the personnel would have some authority and be responsible for the efficiency of the personnel employed by reason of the examination; that there should be a system built up to check the service of these employees, and that it not be left up to the head of a bureau to prefer charges against the employee, because we all understand the difficulties in the way of that.

I think the whole question of personnel should be gone into with the utmost care, and that some very definite system be adopted for engaging these employees and for discharging them as well.

Mr. BRITT. The chairman hit it when he said that the psychological feature has a great deal to do with it. A civil-service employee strikes a different attitude toward the service. He is a different man in his relation to it; he feels that he is a fixture and feels his obligation.

Senator ERNST. Mr. Chairman, I move we adjourn.

The CHAIRMAN. Yes; the committee will adjourn now until Friday morning at 10 o'clock.

(Whereupon, at 12.45 o'clock p. m., the committee adjourned until Friday, January 2, 1925, at 10 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

THURSDAY, JANUARY 8, 1925

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE THE
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Watson, Ernst, Jones of New Mexico, and King.

Present also: John S. Pyle, Esq., of counsel for the committee.

Present on behalf of the Prohibition Union, Bureau of Internal Revenue: James J. Britt, Esq., counsel, and Mr. V. Simonton, representative.

Senator WATSON. Mr. Chairman, before we start in on this matter, I think we ought to have an executive session of the committee.

The CHAIRMAN. This meeting, Senator, is for the purpose of presenting a certain number of questions to the bureau as to the method of organization.

Senator ERNST. I know, but I think we ought to discuss the question as to whether we want to go into executive session or not.

The CHAIRMAN. Of course, that is up to the committee to decide. Personally, I think this is not comparable with the income tax unit matters.

Mr. WATSON. I am opposed to publicity, as far as I am concerned, and I want to talk it over in private.

The CHAIRMAN. Do you want to go ahead with an executive meeting now?

Senator WATSON. I think we had better do so.

The CHAIRMAN. Then, we will have to ask that the room be vacated for a while.

(Whereupon the committee went into executive session, after which the hearing proceeded as follows:)

The CHAIRMAN. The committee has decided that this meeting, at least, will be held in executive session.

Mr. Pyle, you may proceed.

Mr. PYLE. Mr. Chairman and gentlemen, the matter of the discussion of this prohibition law will naturally fall into certain groups. As we proceed these will be taken up one by one.

As I conceive the law, it has three distinct phases; first, the criminal law enforcement; second, the permit administration; and, third, the liquor tax assessment.

Senator KING. You do not mean as to this industrial alcohol? You mean the alcoholic liquors proper?

Mr. PYLE. Well, on all beverage taxes.

Senator KING. Yes; beverages.

Senator ERNST. What did you say was the third one?

Mr. PYLE. Liquor tax assessment.

Senator ERNST. All right.

Mr. PYLE. That applies to liquor dealers. It is the liquor tax on the liquor itself.

In taking this matter up we first have to consider the organization of the Prohibition Unit itself. This is a matter not discussed in the law at any place. The law simply places the administration of the prohibition act upon the Commissioner of Internal Revenue, after giving him authority to hire such agents, assistants, and clerks as he might deem necessary, and also giving to him the right to delegate such of his powers as he might see fit to these assistants, as well as giving him the right, with the approval of the Secretary of the Treasury, to formulate certain regulations for the enforcement and the more effective carrying out of the act.

Under that authority the Prohibition Unit was created, consisting of the commissioner, an assistant, down through the various functions, an outline of which in a few moments will be taken up by Mr. Britt and explained to you more fully by way of foundation, so that as these matters are taken up in specific instances later you will have before you a clear picture of the exact procedure involved in correcting the various conditions that may arise. Every function will be discussed by the representatives of the unit, but I would like, with your permission, to run over briefly the outline of the matters that I think should be touched upon as we proceed with this investigation by way of a general plan.

Senator KING. May I ask you this question: Have you not determined for yourself, from your investigation, the way they are functioning?

The CHAIRMAN. He has not made the investigation.

Senator KING. Their virtues and their defects; because, generally speaking, it is human nature for the heads of these various bureaus to give us the virtues of their operations, but they do not challenge our attention to the evils.

The CHAIRMAN. I think I can explain to the Senator in that connection—

Mr. PYLE. Senator, in that connection I simply intend to lay the matter before you by way of foundation of the actual organization as it is. Whether that is the most efficient way or not will be disclosed by a later showing as the investigation proceeds.

Senator KING. All right.

The CHAIRMAN. I think Mr. Pyle used the wrong expression when he spoke of how the bureau was functioning. He should have said how it was intended to function.

Mr. PYLE. Well, which ever way it may be taken.

The CHAIRMAN. Yes.

Mr. PYLE. In permit administration—

Senator WATSON. Did Mr. Pyle explain his connection with the bureau, Mr. Chairman? You worked with the bureau, did you?

Mr. PYLE. I worked for nearly two years in the department.

Senator WATSON. You might state, then, for the record, so that we will have a clear understanding of it. I do not know whether the other Senators have knowledge of it.

Mr. PYLE. I started in after some time as prosecuting attorney, becoming interested in prohibition. I entered the Government service as general prohibition agent.

The CHAIRMAN. Where?

Mr. PYLE. My first assignment was in the State of Utah, Senator, and from then on I was sent to Pittsburgh, to Illinois, and back to Pennsylvania, my work covering generally the work of agent, group head, chief enforcement officer of a division, and in the legal work, being legal adviser to directors in two different States. From that work I have obtained certain ideas, but I do not intend to force my opinions upon the committee, except when they are called for. I prefer to lay the facts before the committee, from which they can draw their own conclusions.

Senator WATSON. What were your duties in connection with those positions?

Mr. PYLE. As I stated, I was first an agent.

Senator ERNST. Yes; you have told us of your official positions, but you have not told us what you did.

Mr. PYLE. As an agent, doing general enforcement work, making raids, and serving warrants. Then I was made a group head for Pittsburgh, and then field enforcement officer of that district. Later I was made adviser to the directors of Illinois and Pennsylvania. I was sent to Chicago as legal adviser at the time that Mr. Moss had charge there. (They had some trouble with the director there), and when the divisional chief at Pittsburgh went to Chicago to take charge of enforcement I was sent back to Pittsburgh and made chief enforcement agent. Then I was later made legal adviser for the State of Pennsylvania for several months.

Senator WATSON. During those times did you try cases yourself, lawsuits, in court?

Mr. PYLE. No, sir; I prepared the cases for submission.

The CHAIRMAN. As a legal officer did you hear any permit applications?

Mr. PYLE. I presided in revocation courts. When revocation hearings would be held in western Pennsylvania, I was the judge of the revocation court.

Senator KING. Let me ask you this question. You may regard it as impertinent, but I do not want you to. Is there anything in your connection with the department, your former connection with the department and your services and your relations to any of the employees in the department, particularly those occupying high positions, that would embarrass you in criticising the individuals or in criticising the methods of enforcement, or in pointing out the defects which you believe to exist? In other words, are you in that frame of mind that you can go after in a proper way, as a prosecuting attorney would go after, this department for the purpose of pointing out defects and mistakes and transgressions, if they exist?

Mr. PYLE. Yes, sir; I can do that. I have no animosity, no hard feeling against any member of the department, and I owe no favors to any member of the department.

Senator WATSON. Did you quit voluntarily?

Mr. PYLE. Yes, sir; I quit voluntarily.

Senator WATSON. And you had no difficulty with them?

Mr. PYLE. I had no difficulty. I never had had difficulty. I have always had pleasant relationships with the members of the administrative portion of the Prohibition Unit. I have never had trouble.

My hope and purpose in this matter is to get this so laid before the committee that you can not help but see where the present system is falling down.

The resolution crediting this committee provides that you shall investigate and suggest corrective legislation. I desire to lay before you such matters as will call to your minds or suggest to you needed legislation.

There are some cases that will come up that will reflect against individuals of the department. There are others which will reflect against the law. We will show the impossibility of functioning under the present law, but I have no connection or no animosities that would in any manner affect the presentation of these matters before the committee.

Senator KING. You can see what I have in mind?

Mr. PYLE. Yes, sir.

Senator KING. I would not want a person to occupy the important position that you are called upon to occupy, who was not willing to go the limit and find out the evils that exist in the act, if any, and in the enforcement of it, if there are any there, or to go into matters of misconduct on the part of individuals or the method of administration. We want to know, and as far as I am concerned, I want a full exposé of the department, no matter whom it hits. I want to know whether there are any political considerations or personal considerations, because of your connection with the department, or for other reasons, that would keep you from going to the bottom of affairs there, to expose its transgressions, its wrongdoings, its inefficiencies, if those things exist.

Mr. PYLE. There is absolutely nothing, Senator. My interest is in getting prohibition on a working basis, to give it a fair trial—not necessarily that we should have prohibition, but to give it a fair trial—so that when the ultimate success or failure of it is established, it can not be said, if it failed, that it was because of lack of proper cooperation in the administration of the law. I want to go to the bottom. If there has been corruption, I think it should be shown, though I do not think that should be featured, but it should not be concealed. If there has been inefficiency, that should be highly emphasized, and if the law needs to be remedied in certain particulars in order to enforce prohibition, that should be laid before the committee.

I pledge this committee that I will not either shield or persecute because of any connection I have ever had in the service or elsewhere.

Senator KING. I am satisfied.

Mr. PYLE. As to permit administration, that is one of the functions of the department, and if you will take the national prohibition act and read it through you will find that the greater portion of the act is devoted to the permit features of the law.

The department, in carrying out the permit feature as to intoxicating liquors fit for beverage purposes, has used regulations 60, in which they have classified 17 different classes of permits, of which

one-half are practically obsolete now by reason of the act of November, 1921, and others are of minor importance to the committee.

But there are a number of classes which have considerable importance in determining the source of liquor now in the market. The way they are functioning must be shown to the committee by concrete instances, from which you may draw your conclusions as to the sufficiency of the present regulations and system of enforcement.

What they call the C permit is a permit to manufacture, possess, store, pack, bottle, and deliver distilled spirits, such as whisky and commodities of that sort. The way that is functioning must be studied to get a comprehensive idea of where the liquor is coming from.

The B permit is the wholesale liquor dealer's permit. That will primarily enter into the discussion of alcohol. There is a great deal of diversion in the wholesale dealing in alcohol. The permits to transport are a minor issue. Permits to export are, for the present, abolished.

Permits to export will need study and discussion. There are two classes, one to near-by localities, such as Canada, Mexico, and islands adjacent to the country. Another one is the exporting to more distant points.

The history of prohibition has shown that there is a great deal of liquor exported that in some way finds its way back to our shores, as was brought out before the committee the other morning by Major Haynes in his discussion. It is a matter that should be studied as one of the sources of liquor.

Permits known as the H permits are of minor importance to this committee. Those are used by druggists and pharmacists in compounding.

The I permit is for the retail druggist and pharmacist. There is quite a substantial quantity of bonded liquor or bonded whisky in a great many localities, not only through the druggists but through diversion, purported robberies, and otherwise.

I expect to produce instances before your committee of diversion in that manner, so that you may determine whether the regulations and the law properly cover the situation.

The physicians' permit, I think, is generally known to be an abuse, but it is very difficult under the law to change that situation. Nevertheless facts pertaining to that will be placed before your committee.

The L permit, for breweries and wineries, is a matter worthy of considerable study. The law as it stands at the present time provides for the dealcoholization of beers and wines. In actual practice everyone connected with the prohibition department will say, I think, that it is a system that is very hard to control. So it requires careful study, and I expect to lay considerable evidence before the committee as to the operations of the breweries and wineries and the way in which they are, either without permit or with permit, getting their illegal product upon the market.

Now, in addition to the regular forms, they are given orders, one of which is for the concentration of whisky in what are known as concentration warehouses. That is a matter that deserves a great

deal of study, as it will involve these so-called distillery robberies. There undoubtedly have been a few bona fide distillery robberies, but the consensus of opinion everywhere is that the matter is very generally arranged in advance.

The advisability of almost entire concentration is a matter that must be considered. Evidence of these robberies, the conditions of the warehouses, and the indications as to whether or not it was what is known as an inside job, must be laid before the committee for consideration.

The concentration of whisky might even go as far as to the placing of all in the hands of the United States Government. That is a matter that needs consideration, because the present system places the distiller in the possession of the whisky, which, after bottling, is worth to him \$8 a gallon, and if he can run that out onto the general market, it is worth from \$30 to \$50 a gallon. It leads to perpetual temptation to slip the liquor out illegally. That is a matter that should be carefully considered.

The statement which was made the other day by Major Haynes before this committee, to the effect that a great share of the liquor now illegally upon the market, came from alcohol, I think will be borne out by investigation. The committee will have to go into some detail with respect to a number of cases to sufficiently bear out the different statements and charges made as to how much is getting out, how it is getting out, and if the department can not cope with it under the present law—the present law, you will recall, calls upon the department to encourage the use of alcohol for industry, arts, and science—and if the present law is not adequate to handle that, there is no question but what some modification should be made, because the alcohol distilleries to-day are the source of substantially all of the whisky. Whisky can be made with alcohol and water and burnt sugar, with the addition of some flavoring matter. That will make a fairly passable whisky, the kind that is used in most clubs and places where liquor is sold. The same concoction of alcohol and water, placed in a charred barrel, with a certain amount of charcoal, and agitated for a period of time, will give aged whisky in a very few weeks. The system used makes it a potable beverage, with very little additional expense.

A barrel of alcohol makes two barrels of whisky; so that becomes the biggest problem in curbing the present flow of intoxicating liquor on the market.

The CHAIRMAN. How do they make gin out of this alcohol?

Mr. PYLE. The recipe?

The CHAIRMAN. Just generally.

Mr. PYLE. Gin can be made very successfully out of alcohol, water, and juniper berries, or essence of juniper, which is derived from the berries. The former Gordon gin, which was on the market for years, was made by that process.

Senator ERNST. What is the proportion of alcohol in most of the gin that we have?

Mr. PYLE. The ordinary distilled spirits are 100 proof. That is approximately slightly under 50 per cent; so that, for all practical purposes, we can figure that a gallon of alcohol makes two of whisky, gin, or brandy, or whatever is being made.

Those are the various permit matters. I have taken them up in a little more detail, perhaps, than is justified at this time.

There is another matter in connection with the permits that should be laid before the committee to determine whether or not the present organization is functioning to the maximum of efficiency. Under the present regulations—this is not the law: this is promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury as provided by law—permits are issued, except in the case of physicians and the transportation—that is, the trucker, or something of that sort, who is hauling for the permittees—by the commissioner in Washington, the Commissioner of Internal Revenue having delegated that authority to the Prohibition Commissioner; but they are all handled in Washington. The process will be roughly: The application is made to the director: the director investigates, and indicates his approval or disapproval. Then it goes to Washington, where the commissioner disapproves or grants the permit. It is then returned to the director, who then returns it to the permittee. In the State of Pennsylvania there has been a great deal of complaint of delay in the past in the issuance of permits. Just how much there is at the present time I am not prepared to state; but a permittee is a person authorized by law to perform certain acts dealing with intoxicating liquors. If he is so entitled, he is entitled to prompt and satisfactory action, regardless of what his business may be. It is authorized by the Congress of the United States. If the delay is due to these various steps, the matter of elimination should be studied at least; specific instances of delay should be taken up. I have worked in a prohibition office where the mail was months behind. That was due to insufficient personnel, but nevertheless, the permittees were the sufferers. They had to wait.

Take, for instance, a druggist who applies for a permit. If, within a few weeks, he has his permit, he can go ahead with his business properly. If, on the other hand, he has to wait a number of months, a competitor will draw a certain portion of his patronage for the reason that he could supply liquor on prescription, whereas the druggist without the permit could not do it. There has been a great deal of complaint in that respect.

I have talked with representatives of druggists' associations who desire to appear before the committee, and I have stated that I thought their evidence would be received if they would take it out of the form of a kick and bring it in in concrete examples of delay, something that the committee would consider specifically, rather than somebody's complaint and grievance.

In the case of brewery permits, the matter should be given some consideration to determine whether the permittees are receiving absolutely fair treatment. I believe there have been a couple of late court decisions that have seriously modified the attitude of the department in the handling of brewery permits, and the indications are, as Major Haynes said the other day, that any one can have a permit that has not violated the liquor law within a year, regardless of his previous record in other lines.

The criminal law enforcement must be discussed. That is the best settled law there is to-day.

Senator KING. That is what?

Mr. PYLE. The criminal enforcement end of it.

Senator KING. That is what?

The CHAIRMAN. That is the best settled law there is to-day.

Mr. PYLE. That is the best settled law there is to-day, because there have been far more criminal cases than any other kind, and the cases are approaching some degree of uniformity. Up to the present time, however, and to a large extent yet, there are pretty nearly as many different viewpoints of the prohibition law as there are different districts of the United States. What is good law in Pittsburgh will not hold in Philadelphia. What is good law in Philadelphia will not apply in Baltimore. One court's viewpoint is so different from the other's, and so few cases have gone to the higher courts, that there is no uniformity.

The matter of dealing with this variation should be considered by distributing the responsibility more instead of centralizing it in Washington, and possibly placing a higher responsibility in the hands of individuals in the various judicial districts, so that they can cooperate more closely with the district attorneys.

I can state—and I think Mr. Britt will bear me out—that in too many cases there is an unfortunate amount of friction between those in charge of prohibition enforcement and the different district attorneys' offices. Neither fully understands the difficulties of the other, and as a result we find that there is a certain friction all the time, which needs to be removed by a closer cooperation. However, I believe there is less friction between men who work together daily than between men who meet occasionally on the work.

Senator KING. If I may interrupt you, district attorneys have told me that that situation, in some instances at least, results from what they denominate the fanatical attitude of some employees of the Prohibition Unit who refuse to concede that any person has any personal rights. They think they can invade the person or the home without a warrant or without a sufficient warrant. They feel that they are a law unto themselves, and they would wreck the Constitution of the United States in order to carry out their views.

Mr. PYLE. The attitude of most district attorneys is that they are champions of the fourteenth amendment, and the attitude of most prohibition agents, who are not men of intelligence, and with very few exceptions of any legal training whatever, is that anything that gets in their way must be thrown aside.

Take a concrete example. We are acquainted with Mr. Morse, the district attorney in Salt Lake City. He was in continual conflict with the divisional chief there at one time, to such an extent that their work was practically at a standstill, because the divisional chief wanted a step taken that the law would not sanction. Mr. Morse wanted other information secured that the divisional chief could not or would not get. There was a friction there that just caused things to be at a standstill. A certain other divisional chief went into the district attorney's office in Pittsburgh, making some demands which the district attorney did not think could be granted, and the chief left with the statement that he could throw a handful of pebbles out over that office and you would not hit a lawyer.

There is a great lack of understanding. The divisional chief does not understand the necessities, the constitutional safeguards, that

the district attorney must look after, and this district attorney could not understand why this chief could not go out and get some more evidence to build up his case. It is a complete lack of understanding that exists. That is something that should be considered, and I think it would be just as well to have evidence from people who are connected with that feature of it.

I have a theory—and I just give it as a theory; I am not giving it as a conclusion—that the prohibition enforcement should be handled by judicial districts, the same as the other investigation units of the Government function. It might even be advisable to have the directors appointed by judicial districts, responsible for their districts, so that there will be the closest possible communication and liaison, as we call it in the Army, between the prosecuting agent and the investigating agency, without which the case is bound to fall down.

Senator ERNST. Have they not had some trouble in the East with the district attorneys because they do not show a very active disposition to enforce the law?

Mr. MILLER. There has been some from report. I have only newspaper information on that. That has been charged in one district with which I am familiar. Whether or not that is true, it will not be generally true, because most district attorneys value their standing as professional men more than they do their political standing, so that a man taking that position will make the most of the cases brought before him. There may be isolated cases where political or local forces would predominate, but I believe that would be in the great minority of cases, because I have found from my experience that United States attorneys, even those who are personally very much opposed to the act, nevertheless give their very best efforts toward the enforcement of it in the handling of every case that comes before them.

The CHAIRMAN. You must recognize that all these members of the committee are lawyers, I suppose?

Mr. PYLE. I am not familiar with the profession of the various members of the committee.

Now, the third matter I wish to touch on is the matter of taxation. Formerly the taxation of intoxicating liquors, retail liquor dealers, wholesale liquor dealers, and taxing penalties were handled entirely by the Revenue Service. That was the reason, I believe, that prohibition was originally placed in that service, or that was the controlling consideration. Now, the Prohibition Unit being more or less severed from the Revenue Service, has carried with it the matter of proposing a tax in the case of intoxicating liquors.

The system at present, roughly, is as follows—and you will be given more detailed evidence later—that the agency which makes a criminal case determines the evidence of unlawful sale. In the report of that case, in the final paragraph, near the end of the report, the tax is recommended and penalties are provided by law. This is first investigated by the Prohibition Unit, and the proposal is ultimately sent to the director in the district, who whereupon notifies the respondent that a tax is proposed, giving him an opportunity to be heard. That will then result in an offer of compromise, which is then considered by the various persons concerned. If not, a hearing is had on the question of the tax. First, the tax is proposed

by the prohibition department. Then, the offer in compromise can be made. The recommendation for acceptance can be made by the officials of the Prohibition Unit, the officials in the field, to the collectors' offices, and even by United States attorneys. They make the recommendations and compromise the thing determining that just like a bad debt, where you take up the matter of a man's resources and determine whether or not you can prove it in court, or one thing or other, and determine to ultimately offer this to the Commissioner of Internal Revenue which can be accepted by him with the approval of the Secretary of the Treasury.

There will be quite a few matters brought before you involving specific instances of the operation of this compromise system, so that you may have concrete evidence before you from which to determine whether or not you approve the system of compromise now in effect.

I have taken more time than I intended in outlining this matter, but I wanted to do so to give you some idea of the matters that I propose to go into.

I propose excluding from this committee, so far as possible, everyone who has a grievance or a personal ax to grind, or who represents some faction or partisan group in this matter, because anything touching prohibition is still pretty actively in politics. One group favors and one group opposes, and we must see that the people who come in here have specific facts to which they can take oath, before taking them before this committee.

There are occasional people whose opinion we will want, people who have been in such close contact with the entire discussion that their opinions would have some weight with you, in the same way as the opinion of an expert would in your ordinary everyday affairs: but I will make every effort to keep those down to specific facts, so that the committee may have the facts from which to draw their own conclusions, and not make this a debating ground for various factions and groups.

As I say, the matter of national prohibition is on trial. Some favor it and some oppose it. At any rate, it is a big venture, and it should not be condemned and it should not be accepted without a fair trial. It should be given a fair chance to see whether it will work.

In the future other matters will come up. We want either an intelligent warning or an intelligent precedent to go by. It is not only a consideration of prohibition by the United States, but the world is watching the experiment with a great deal of interest, and I believe those who are in responsible administrative places should be given careful consideration in their recommendations and requests in order that everything possible may be done to give it a fair, good trial. Let us find out whether it works. If, with everything favorable, it can not be enforced to a very large extent, we know it is a failure. The matter of prohibition, I think, has but one side. No one can oppose prohibition. The matter of national prohibition has political aspects which are entirely different, upon which men's opinions have been divided since the formation of our country, and, for that reason, I believe in getting every bit of evidence which is pertinent before this committee, at least to the extent of getting concrete examples of the various matters that will come up. Let

this committee determine where the big leaks of liquor are, and by that determination seek to provide some way to check it. Give everything a fair trial, and then, if the people do not want it, they can say so.

The CHAIRMAN. Do you intend at this time, Mr. Pyle, to ask Mr. Britt or the representative of the bureau here any questions concerning this method of procedure?

Mr. PYLE. I had intended to. How long does the committee intend to sit?

The CHAIRMAN. Just go ahead until we decide to adjourn.

Mr. PYLE. It will take some time to go into it in the way I desire.

Mr. BRITT. I called on Major Haynes yesterday, and I explained that we desired to have you explain to the committee your present organization, covering the organization of the Washington office, the field forces, and the entire organization, with their duties and powers, and to lay a comprehensive outline before the committee of the system now in use.

I have here, Mr. Chairman and gentlemen of the commission, a few office charts. I fear there are not enough to go around, but to the extent to which they will they are available. This chart shows the arrangement, physical and divisional, of the central Prohibition Unit office. It is practically self-explanatory.

As Mr. Pyle has said, there is no official mentioned in the National prohibition act except the Commissioner of Internal Revenue, who is the enforcer of prohibition, officially speaking. In practice, he enforces it through his assistants. These assistants are appointed by him. There are various designations: there are attorneys, an assistant prohibition commissioner, field enforcing officers, civil-service clerks, typists, stenographers, etc.

The managerial part of the work of the unit and of enforcement generally is, in practice, in the hands of the Prohibition Commissioner, whose name and style of position are placed at the head and center of the chart. He has one assistant, who acts in his place in his absence, and who assists him generally when he is present.

The counsel's office, the head of which is an attorney, styled by the Commissioner of Internal Revenue in his commission, chief counsel of the Prohibition Unit, is divided into two divisions—the division of interpretation, in which the regulations, the legal opinions and letters involving legal questions are drafted primarily; and the litigation division, in which all of the records, files, and papers are kept concerning cases that are in litigation in the courts or that are pending before directors or other officers on revocation questions.

The counsel's office also has charge of the work in connection with the making of assessments and the preparation of compromise cases, of rebate cases and refund cases; in other words, all of that class of administrative work which involves a greater or less requirement of legal knowledge, much of which may be done by nonlegal persons, but most of which is thought to be susceptible of being better done by persons of legal knowledge.

In the counsel's office also are the central files of the entire unit, and these two divisions which I have named are divided into various sections, according to the particular work which the employees in them do.

There is one section called the nonbeverage section, which is intended to deal more directly with liquors authorized for nonbeverage purposes, not taking into account any diversion of beverage features in connection with it.

Another section is called the beverage section, where the employees work altogether with questions in connection with the diversion of liquors, of beverage liquors which are forbidden by law, and, as I have said, the various claims and compromise and assessment sections.

The chief counsel advises the Prohibition Commissioner, his assistant, his heads of divisions, on such matters of law or legal inferences or legal judgment as may come up in the administration of the Unit. He also advises the Commissioner of Internal Revenue and the Secretary of the Treasury and his assistants on matters relating to prohibition when called upon for advice.

It is proper that I should say to the committee that in this position, while the functions are chiefly legal and professional in their character, they are not inseparable from administrative matters, and the chief counsel is often called upon to advise with administrative officers and to give his judgment as to whether a proposed administrative course or act would not be a proper thing.

Ordinarily speaking, that is outside of the functions of people filling the position which the chief counsel fills, but I felt that it was due to the committee that I make that statement in the interest of clear understanding.

Prior to the appointment of the person holding the position at the present time, these functions were performed by the Solicitor of Internal Revenue and his assistants; since this appointment was made, by an administrative order—I do not recall whether it was informal or formal—it was thought that the Solicitor of Internal Revenue might chiefly or almost wholly be relieved of legal advisory matters in connection with that part of the Bureau of Internal Revenue, and they devolved upon the person designated by the commissioner as chief counsel of the Prohibition Unit. That is the practice at this time.

As to the various administrative heads, there is the division of audit, which has the auditing of all accounts in relation to distilled spirits and all tax questions arising in that connection that become a matter of statistics and records and the preparation of the part of the annual report of the Commissioner of Internal Revenue arising from the Prohibition Unit.

There is the chief of general prohibition agents, who has his office in the Prohibition Unit, the attorneys and the general prohibition agents throughout the country—this mobile force of which Commissioner Haynes spoke the other day.

Mr. PYLE. Will you explain more fully, Mr. Britt, the distinction between the Federal agent's forces and the general agents?

Mr. BRITT. Yes. After the establishment of the unit, the establishment of the directorates in the States, and the appointment of directors in those directorates, one in each State, or practically so, a number of enforcement officers were attached to these directors in the several directorates in greater or less number, and these were styled Federal prohibition agents. The force under the central general prohibition agent's office took the name of general prohibition

agents because they were mobile, subject to go anywhere, and, in general, subject to cover the whole field of the continental United States, and I believe they occasionally go out into the territories also.

That is not a very apt distinction between the general prohibition agents and Federal prohibition agents, as they are all Federal prohibition agents, but in ordinary parlance, as I understand it, Mr. Pyle, that is the distinction. If, in speaking of some of these administrative matters, Mr. Chairman and gentlemen of the committee, one whose business is chiefly with legal matters may not speak with the precision that would be desired, I should be glad to have the particular administrative officer come who can go into some matter better than I can, as you would readily see, although I am familiar with all these things in a general way.

We have a chief in the division of industrial alcohol and chemistry, which, in my judgment, is the most important division of the unit. It is he who administers for the Prohibition Commissioner everything in relation to industrial alcohol and denatured alcohol, in so far as they are administered from the central unit, but a large part of the administration in connection with this devolves upon the collectors of internal revenue, as you will see later.

Then, we have a small bureau of information, which Commissioner Haynes has improvised, whose duty it is to secure matters of intelligence for the information of the public in connection with the service.

The CHAIRMAN. In those branches, Mr. Britt, how far down in grade do you go until you find that the appointees are selected from the civil service? Are there any civil-service employees?

Mr. BRITT. The civil-service appointees are intermixed with the others throughout the service, Mr. Chairman. That is to say, in the counsel's office, by far the greater number of employees are civil-service employees, typists, stenographers, a few messengers, and clerks—clerks in the sense of the meaning of departmental civil-service clerks.

Senator ERNST. They are all civil-service employees, are they?

Mr. BRITT. The clerks are all civil-service appointees; yes, sir.

The CHAIRMAN. Do you know the total number of employees in the Washington office that come under this unit?

Mr. BRITT. Yes; it is about 725.

The CHAIRMAN. Seven hundred and twenty-five?

Mr. BRITT. Yes; about that.

The CHAIRMAN. What proportion of those are civil-service employees, and what proportion are appointees?

Mr. BRITT. That would be a matter of estimation. I can get it for you precisely. I should say that of that number between 500 and 600 are civil-service employees. That may be an underestimate. What is your judgment about that, Mr. Simonton?

Mr. SIMONTON. I would say that that is about right, Mr. Britt. Of course, there is another class of employees, which class are not known as civil-service employees but who have a civil-service status—the exempt class.

Mr. BRITT. Yes; I was going to speak of that class. I should say, between 500 and 600; and they, of course, are appointed in the usual way, Mr. Chairman, in which civil-service appointments are made. That is, there is a request made by the head of the bureau upon the

Civil Service Commission for a certification of the three highest eligibles for a certain position, which is named, and out of the three the selection is made. That is the general plan throughout all the departments.

Mr. PYLE. May I interrupt you for a moment there?

Mr. BRITT. Yes.

Mr. PYLE. At the time of the creation of the general agents' force, as I recall it, there was a large number of revenue agents transferred.

Mr. BRITT. Yes; I was going to speak of that.

Mr. PYLE. Are they still on a civil-service status?

Mr. BRITT. Yes. As I understand that, those that were not civil-service employees in the collector's offices, say, at that time, and were transferred to the enforcement division of the unit, lost their status. Of that I am not sure, however. Mr. Simonton can advise you as to that.

Mr. SIMONTON. Mr. Britt, to some extent that is true, where they were deputy collectors, or had some particular positions, appointed under the law, they did lose that status; but where they were appointed as clerks they carried with them their status and remained as clerks in the civil service.

Mr. BRITT. That is true.

The CHAIRMAN. At this point, Mr. Britt, I would like to have you give us your experience as to which of the two groups of employees render the best service. You have in mind quite a well-defined line between civil-service employees and those who are not with the civil service.

Mr. BRITT. There are two classes of attorneys—the class which do not have civil-service status, and the other are civil-service employees, of which we have just spoken. Their work is different in the counsel's office, and I have no opportunity to make a distinction between them, but I have had a rather large general experience, and, as I stated the other day before the committee, generally speaking, I think the difference as to clerks and employees of that class is practically two to one in favor of the civil-service employee. I do not mean that there would be that difference, of course, between a new civil-service employee and a new unclassified employee, but when each has, respectively, become settled into the service I regard the relation as being, in my judgment, practically two to one.

The CHAIRMAN. In favor of the civil-service employee?

Mr. BRITT. In favor of the civil-service employee. I do not mean by that, of course, that, man for man, the civil-service employee will do twice as much work. That is not the point; but his efficiency generally, his attitude toward his work, his psychology toward it, if I may say it, his agreeableness with his chief, and his pride in the service are things that we appreciate and know better than I can describe; and the deduction that I have just made is the result of long experience. I was for four years an Assistant Postmaster General, in which position this matter was brought immediately before me, and I gave it careful attention for four years. We had a bureau at that time in which there were about 300 of them. This was under the Taft administration. We also had some employees who were not civil-service employees—temporaries, as they were called. Most of

the people in the section of the country in which I live do not take very strongly to the civil-service policy.

The CHAIRMAN. Do you have any difficulty in getting rid of civil-service employees who may be recalcitrant about the adoption of new methods and new policies?

Mr. BRITT. Senator, that has not been my experience, and I will tell you some experience that I have had in my present position with civil-service employees.

I am, some have said, a rather rigid disciplinarian. I was a teacher in an old-fashioned school. I found objections, moral objections in some instances, to a few people in the counsel's office, and I proceeded to have them investigated, and ultimately some of them were removed. I did not find any impediment against doing that, other than that to which they were justly entitled; that is, that the case against them should be well established. I did not find any impediment on the part of those above me. The Prohibition Commissioner and his assistant, and the Commissioner of Internal Revenue, and on up to the Secretary made no resistance whatever, but fully acquiesced in the action when the facts were established. I have not had any trouble in that connection. I had but little in the Post Office Department. I did at first, but pretty soon I was given my own way about it, and I cleared out some that I thought were not competent for their places and in one or two instances were not otherwise fit.

The CHAIRMAN. It has been stated in the press that if prohibition employees are to be put under civil service, you will never be able to get rid of the grafters, the inefficient and incompetent agents, but if they are left as they are now, the chief under whom they serve can get rid of the undesirable employees. What is your answer to that?

Mr. BRITT. My answer to that is that there are no legal or regulatory impediments to keep a chief from getting rid of an employee when he should, and the balance will depend upon the efficiency, the business qualifications and the courage of the chief. If he has those he will get rid of undesirables summarily. I do not mean summarily in the sense that they will be dismissed at the moment, but very soon. The chief will make short shrift of the whole matter.

Senator JONES of New Mexico. What system have you for determining the efficiency of the employees, whether they are in the civil service or not?

Mr. BRITT. Let us take the case, Senator, of those who are non-civil-service employees now, as all the field agents are noncivil service at this time, and their appointments are made by the commissioner. They start with an application for the position, which is made on a form prescribed by the bureau, and they furnish such other references as they themselves want to furnish, or as they are advised to furnish by those interested in their advancement. Then, usually, as is done in the Prohibition Unit, further inquiry is made by the commissioner through his own officers, and particularly through his local officers in the field where the applicant lives. If it is an employee for the director of a State, some inquiry is made there, and, of course, I assume, though not having this function myself, I would not know all of it, and I hope the committee would not hold me to a rigid interpretation of it, that the Senator and Representative of the applicant, are advised, as I think they should

be, if they have information. I do not mean by that that it should be controlled by politics at all. Far from that; but I believe always that our Senators and Representatives are persons——

Senator JONES of New Mexico. I will state that I have never been consulted regarding a single one of these appointments in my State.

Senator KING. Neither have I, for any of these offices.

The CHAIRMAN. Neither have I. I want to say for the record, though, that I do not want to be.

Senator JONES of New Mexico. Well, I merely wish to state that it is a job that is not very pleasing to anyone, to have to pass upon the qualifications of applicants for these various offices.

Senator ERNST. Do you say that is the custom? I was not aware of it.

Mr. BRITT. I said I assumed that.

Senator ERNST. Oh!

The CHAIRMAN. Yes; he asked not to be held too rigidly to it.

Mr. BRITT. Yes; as I do not know all of the sources of information. Senator.

Senator KING. Let me say that, as far as I know, all of the employees of your unit in Utah are Republicans. A Democrat would have no more chance of being appointed by Mr. Haynes or your organization than I would have a chance of being appointed professor of Greek in Harvard.

The CHAIRMAN. You would not expect that they would, would you, though, Senator?

Senator KING. I assume they are trying to get good men, and I know that many of the men employed in your department are far from good. They are wholly incompetent and are mere political appointees.

The CHAIRMAN. If they were Democrats, of course, they would be better.

Senator KING. I do not know whether they would or not. They may or may not. I am merely saying that the men who are appointed are political appointees, and I have come in contact with a good many of them that I think are wholly incompetent.

The CHAIRMAN. I think Mr. Britt got away from the point of Senator Jones's question. He asked how they could get rid of them.

Senator JONES of New Mexico. No; I asked him how did they judge of their efficiency.

The CHAIRMAN. Oh, yes.

Mr. BRITT. I have given some of the steps that I understand are taken.

Senator JONES of New Mexico. That relates to the manner of their selection.

Mr. BRITT. Yes.

Senator JONES of New Mexico. What do you do to ascertain their efficiency after they are installed in office?

Mr. BRITT. Their efficiency, after they are installed in office, Senator, is demonstrated by their work, of course. Then, if there are charges against their character or against their fitness, that, of course, is a matter of inquiry by those responsible for their appointment. As a matter of fact, the bureau has an institution for that purpose.

Senator JONES of New Mexico. I might make a more detailed inquiry there. Take those five or six hundred civil-service employees working down here in the bureau.

Mr. BRITT. Yes.

Senator JONES of New Mexico. How do you determine the efficiency of those employees so that you may know whether you have just as many as you ought to have or not enough?

The CHAIRMAN. Senator, let me ask this question: Do you have somebody in the bureau who knows more about this than you do?

Mr. BRITT. Oh, yes; I always admit that there is somebody who knows more about anything than I do.

The CHAIRMAN. I mean who are more charged with that responsibility than you are?

Mr. BRITT. Well, possibly the Assistant Prohibition Commissioner.

The CHAIRMAN. Do you not think that we ought to have that answer from him?

Mr. BRITT. I would like to give my answer, if you desire it.

The CHAIRMAN. You may proceed with it.

Mr. BRITT. My answer is that there are about 275 people in the counsel's office, and some of these in places somewhat inaccessible to me, but I go among them as often as I can. I have the heads of the divisions and the heads of the sections with me when the work is not pressing badly and ask about this man or this woman, whom I know something about, and regarding whom inquiry has been raised in my own mind. I sometimes send for such person, and, as well as I can, I look at the work of that person and ask for reports from the head of the division or the head of the section in which various persons are employed, particularly on the matter of their occupying their time and being on duty all the time, and in sundry ways I determine, Senator, whether I think those who are under me are fit for the places they have. Then, if there is a charge made against them, it is not my official duty to investigate the charge. I make that known to the commissioner and the special intelligence unit of the commissioner's office makes the inquiry officially.

Senator JONES of New Mexico. Do you have any system of keeping records of the efficiency of the employees?

Mr. BRITT. Oh, yes, sir. This efficiency record is kept. The report is made up annually, and just now, at the beginning of the year, the efficiency report of all is being gotten up for the commissioner. It becomes a part of the files and records of the office.

Mr. PYLE. Is that the work of your office, Mr. Britt, or does that come under the Classification Board?

Mr. BRITT. It is under the supervision of the Assistant Prohibition Commissioner, and it only comes to my office as it comes to the other offices.

Mr. PYLE. Does the unit keep that for itself, or does it prepare it for the Classification Board?

Mr. BRITT. It prepares it for the Classification Board, but copies of it are kept in the unit.

Senator KING. Do you think that your experience is the experience of others in connection with civil-service employees of the Government; that is, in your lack of difficulty in getting rid of incompetent employees?

Mr. BRITT. Well, Senator, I have heard a good deal about that. I have heard that there was a good deal of trouble in getting rid of them. I have always been rather surprised at it. I never had any trouble. Of course, I never try to remove anybody unless he ought to be removed.

Senator KING. In all of your experience in the Post Office Department and other branches of the Government, how many complaints have you made for the removal of employees?

Mr. BRITT. I could not tell you. It has been some years since I was in the Post Office Department. At first they were rather numerous there. You see, I was only an assistant, and I had charge of particular parts of the service. At first they were rather numerous, but, as I recall now, in the last two years they were very few.

Senator KING. You mean in the prohibition service?

Mr. BRITT. No; I am talking about the Post Office Department. I thought you were talking generally. In the prohibition service—and, of course, I have taken no steps about any except those in the chief counsel's office—I think the number of cases would probably be less than one dozen during the time that I have been in that office.

Senator KING. Have charges been preferred against them?

Mr. BRITT. Oh, yes; charges were preferred.

The CHAIRMAN. Were they sustained?

Mr. BRITT. They were sustained.

The CHAIRMAN. Were hearings had?

Mr. BRITT. Oh, yes; hearings were had.

I think, possibly, Senator, to make that answer clear, in two or three instances they waived everything and resigned without a record of a hearing at all against them. I know that that is true in one instance, and I think it may be true in some others. No; I have never had great trouble, Senator, and I appreciate it, because it has always been intimated that chiefs generally did have trouble.

The CHAIRMAN. My own experience is that there is no difficulty when a chief who is desirous of getting rid of any incompetent people goes after them. He can do it if he has the energy and courage to go after them in the right way.

Mr. BRITT. That is my opinion, based on my own experience.

Senator KING. Are there not many of the chiefs who are persons who have come up from the ranks through the civil service and who are so thoroughly saturated with the civil-service idea that they are disinclined to enforce that efficiency or discipline, that order, that they do not prefer charges?

Mr. BRITT. Well, Senator, I think there might be something in that point of view, as disclosed by my own observations—something, but possibly not a great deal. There is one unfortunate thing in connection with the men and women who are brought into the service, in that they tend to become bureaucratic. I do not want to use a long word, but that is the most expressive one I know of. They sometimes do not carry a quick, ready, business conception into the discharge of departmental work. There is something in that, I am sorry to say. I am constantly trying to impress my associates on that point, and get them over that and induce a belief that a man who would be a lawyer in the bureau would be a good lawyer in court, and that if he is a good lawyer he is a pretty good

business man, and if he is a good business man he might be a good lawyer.

Senator KING. Have you not found a good many cases like this? It has been brought to my attention—in fact, many civil-service employees have told me—that if, when they first go into the service, they set about with great zeal and diligence to discharge their duties they would be admonished by their associates that they must not set too rapid a pace, and they would be told “If you can make a 70 per cent grade they are bound to pass you and you are promoted.” That is particularly true in the Post Office Department, in some branches outside of Washington. They are told that if they make a 70 per cent grade they are bound to pass, and there is no need of working 100 per cent. Scores and scores of employees of the Government have told me that they meet with that spirit and that situation in the service. To what extent do you think that is true?

Mr. BRITT. That is a very important question, Senator, and you are certainly entitled to a candid answer. I have heard much of that, much more than I have seen in my personal experience. There must be some places in the service where there may be some of it. In my experience in the unit, I had one little symptom of it.

Senator KING. Pardon me. You say that your employees are only lawyers?

Mr. BRITT. Oh, no; I have more civil-service employees than lawyers. The lawyers themselves have a civil-service status. There are about 275 people in the office, and the great bulk of them are civil-service employees, typists, stenographers, clerks, etc., and a few messengers. But what I started out to state is that there is always more or less complaint about advancements. There are always some who feel that they are not getting enough, and it is human nature to complain. In one of my sections I heard a little about that. The chief brought me word that there was a sort of quiet understanding being passed around that “We do not get much, and therefore we must not try to earn much.” The intimation in that case was rather striking. They were saying, “We are low salaried, and we do not want to do too much.” It was proved that there was some disposition of that sort. I immediately went among those employees and talked with them personally. I brought them into a sort of general conference room that we have, and I talked with them collectively, and I said something after this vein: “I sympathize with you in wanting more salary; I am sure you need it, and some of you deserve it. Some of you are mistaken in thinking you do. But under no circumstances is this the way to get it.” I then instanced some people about some of whom I knew a good deal, who had done their hardest and most efficient work on almost starvation salaries, living on hope and ambition to make a record. I went on to show them that they could not do anything for themselves in that way. Then I said, “If you persist in this, I am going to make short shrift of it; you are going out of the service entirely. I am sorry that your situation is not better, but you can not better it that way, and I can not better it.” I had some personal talks with them about it, and I think the entire difficulty disappeared. There were some of them that were slightly advanced, but I think the difficulty disappeared entirely, because I intended to ask for the removal of one who would not work because he was not satisfied.

The CHAIRMAN. Would not that also happen if your force was not under the civil service?

Mr. BRITT. Certainly; yes, sir.

The CHAIRMAN. It is not confined to only the civil service, is it?

Mr. BRITT. That is true of all.

The CHAIRMAN. Of all?

Mr. BRITT. Yes, sir.

Senator KING. A number of postmasters have talked with me, one—and I do not want to localize it, because it might cause some little trouble—one where they have several hundred employees, and he told me about it and wanted to know if some remedy could not be brought about through legislation. He said that a large number of the employees were only seeking to get their 70 per cent or 60 per cent or whatever it is. He told me, but I have forgotten; but my recollection is it was a 70 per cent grade, so that they could be promoted. Notwithstanding the fact that he had remonstrated with them, that they had better work, they would not do it, and their action was a deterrent upon the efficient class of employees who wanted to do better work, for the reason that the others were promoted by reason of their seniority in the post office rather than due to any efficiency.

Mr. BRITT. The fault was with the chief, that he did not do one of two things—interest those people in their work or get them out of the service.

Senator KING. Well, he said he could find no way in which he could rid himself of those employees.

Mr. BRITT. Well, I am not very ingenious, but I could find a way. I wish it to be clearly understood that when I am speaking of these things I am only referring to my own division. I am not talking about the Prohibition Unit or the Bureau of Internal Revenue. I am talking about the counsel's office, which is merely in the nature of a division, and always, of course, subject to those above.

Senator ERNST. Mr. Chairman, how long are we going to continue this session?

The CHAIRMAN. I think we had better adjourn now until tomorrow morning at 10.30 o'clock.

(Whereupon, at 12.40 o'clock p. m., the committee adjourned until to-morrow, Friday, January 9, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

FRIDAY, JANUARY 9, 1925

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE THE
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Jones of New Mexico, and King.

Present also: John S. Pyle, Esq., of counsel for the committee, and George W. Storck, Esq., examiner for the committee.

Present on behalf of the Prohibition Unit of the Bureau of Internal Revenue: James J. Britt, Esq., counsel; and Mr. V. Simonton, attorney.

The CHAIRMAN. The absence of Senator Watson is due to the fact that he is attending the meeting of the Interstate Commerce Committee this morning, and Senator Ernst has had to attend a meeting of the Committee on Revision of the Laws.

Mr. SIMONTON. Mr. Chairman, Mr. Britt wishes me to make his excuses for him. He is required to be at a meeting of a subcommittee of the Judiciary Committee this morning. He will be here as soon as he can. In the meantime, I will be glad to do anything that I may.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. Mr. Chairman, at the time of adjournment on yesterday, we were taking up the organization, the system at present used in the Prohibition Unit, etc., and, as will be recalled, we had covered at that time the general organization in the administrative offices, as shown by that chart, not thoroughly covering the same, perhaps, but touching upon the various phases that came up. In that connection, the statement was made by Mr. Britt as to the field forces, describing them as Federal agents' forces and general agents' forces, the Federal agents working under the State director, and the general agents working under the chief of the general agents.

I would like this morning to have the matter taken up before your committee as to the functions, distribution, and general operation of the two branches, showing just how they harmonize, whether there is a duplication of work, or whether they cooperate in enforcing the law, as well as the numerical strength and organization of each.

Mr. Simonton, do you desire to discuss the general agents, or do you wish to have Mr. Kennedy take that up?

Mr. SIMONTON. I think we had better give the information to you first-hand. I have with me here Mr. W. H. Kennedy, who is the assistant to Mr. Yellowley, chief, general prohibition agents, and he will give you any information you may desire in that regard.

STATEMENT OF MR. W. H. KENNEDY, ASSISTANT CHIEF, GENERAL PROHIBITION AGENTS, PROHIBITION UNIT

Mr. PYLE. If you can do so, Mr. Kennedy, I would like to have you give me the number of general agents, their present distribution by divisions, as well as the territory embraced in those divisions, and their duties and manner of functioning in the various cases, and, as well as possible, give us some history of their original plan of organization and the manner in which they are now used.

First, take up the numerical end of it, as to the number and distribution of them.

Senator JONES of New Mexico. First, let me ask you what your position is?

Mr. KENNEDY. Assistant chief of general agents.

Senator JONES of New Mexico. How long have you been in the department?

Mr. KENNEDY. Since 1912.

The CHAIRMAN. Since 1912?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. We want to know how long you have been in the Prohibition Unit.

Mr. KENNEDY. Since its organization; since the law became effective. I was in the Internal Revenue Service previous to that.

The CHAIRMAN. But the prohibition law did not become effective in 1912.

Mr. KENNEDY. No; I have been in the prohibition service since its organization.

Mr. SIMONTON. Since January 16, 1920?

Mr. KENNEDY. Yes.

The number of agents assigned to the respective divisions on December 31, 1924, was as follows:

Number assigned to division No. 1, comprising the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island, 27.

Number assigned to division No. 2, comprising the State of New York and the fifth internal-revenue collection district of New Jersey, 218.

Number assigned to the third division, which consists of the twenty-third collection district of the State of Pennsylvania, 37.

Number assigned to the fourth division, which consists of the States of Maryland, Delaware, West Virginia, and District of Columbia, and five counties in Virginia, 34.

Number assigned to the fifth division, which consists of North Carolina and Virginia, with the exception of the five counties in the fourth division, 21.

Number assigned to the sixth division, which consists of South Carolina and Georgia, 18.

Number assigned to the seventh division, which consists of Florida and Porto Rico, 16.

Number assigned to the eighth division, which consists of Louisiana, Mississippi, and Alabama, 22.

Number assigned to the ninth division, consisting of Kentucky and Tennessee, 24.

Number assigned to the tenth division, consisting of Ohio, Indiana, and the southern Peninsula of Michigan, 40.

Number assigned to the eleventh division, consisting of Illinois, Wisconsin, and the northern Peninsula of Michigan, 38.

Number assigned to the twelfth division, consisting of Minnesota, North and South Dakota, Iowa, and Nebraska, 17.

Number assigned to the thirteenth division, consisting of Missouri, Kansas, Oklahoma, and Arkansas, 28.

Number assigned to the fourteenth division; that is, the first and twelfth internal revenue collection districts of Pennsylvania, and the first collection district of New Jersey—

Mr. PYLE. That is practically eastern Pennsylvania and southern New Jersey?

Mr. KENNEDY. That is right—84.

Number assigned to the fifteenth division, Texas, Arizona, and New Mexico, 15.

Number assigned to the sixteenth division, Wyoming, Utah, and Colorado, 12.

Number assigned to the seventeenth division, Washington, Oregon, Idaho, Montana, and Alaska, 15.

Number assigned to the eighteenth division, California, Nevada, and Hawaii, 18. There were also 7 on December 31 who were working out of Washington on special assignments, making a total of 691.

Mr. PYLE. That is just the general agent's forces, 691?

Mr. KENNEDY. Yes, sir; that is, as of December 31.

Mr. PYLE. Now, Mr. Kennedy, will you state historically the creation of the general agents' forces, the purpose of it, and the manner in which it functions, together with a statement of what its exact duties are?

Mr. KENNEDY. The force was organized on July 1, 1921, for the purpose of having a force of men with more experience than the Federal agents, to make investigations of distilleries, breweries, wineries, conspiracy cases, or violations that could not properly be handled by the Federal agents.

Mr. PYLE. Why?

Mr. KENNEDY. For general agents we try to obtain men with investigating experience, and men who are better qualified for the investigations—

Mr. PYLE. Men with a more technical knowledge?

Mr. KENNEDY. With a more technical knowledge; yes.

The CHAIRMAN. What salary do these general agents get?

Mr. KENNEDY. The salaries at the present time?

The CHAIRMAN. Yes.

Mr. KENNEDY. At the present time, the entrance salary is \$1,680 for men without investigating experience and for those with investigating experience, \$1,860.

The CHAIRMAN. That is the minimum and maximum?

Mr. KENNEDY. Yes.

The CHAIRMAN. Of these 691 men that you refer to?

Mr. KENNEDY. Yes.

Mr. PYLE. No; that is the entrance salary.

Mr. KENNEDY. Yes; that is the entrance salary.

The CHAIRMAN. I asked you what was the maximum salary?

Mr. KENNEDY. We have some men that have been in the Internal Revenue Service as deputy collectors and revenue agents who are now receiving \$3,000 and \$3,600.

The CHAIRMAN. Just how are the salaries regulated among those 691 men? Is there any schedule of salaries?

Mr. KENNEDY. The salaries are now regulated by the Classification Board.

The CHAIRMAN. Can increases in salaries or promotions be made without regard to the Classification Board?

Mr. KENNEDY. No, sir; they have to conform to the Classification Board.

The CHAIRMAN. The comptroller checks that, does he?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Can you give a man a better classification or does that have to be referred to the board?

Mr. KENNEDY. We can recommend that a man be given a higher classification, but that must be approved by the board. The appropriation bill under which we are now working also enters into it. There is a provision in there that the average salaries of the employees of any particular grade shall not exceed the average specified by the grade in the classification law; so in raising a man from one grade to another, the appropriation act, as well as the classification law, is taken into consideration.

Mr. PYLE. As I understand it, the general agent's force, as I understand it, is a mobile force?

Mr. KENNEDY. That is right.

Mr. PYLE. As I recall, an agent who enters that service, among other statements, states that he will accept assignment in any place in the United States.

Mr. KENNEDY. That is right.

Mr. PYLE. I wish you would go somewhat into the matter of expense of these men; that is, the subsistence, as it is known in the service. Take an agent stationed, we will say, for example, at the Chicago office. While in Chicago he gets no expense, whether it is his home or not?

Mr. KENNEDY. All men in the service have what we commonly refer to as a post of duty, or headquarters, and the posts of duty of the men are fixed at the points where they spend the greater portion of their time. In the case you refer to, Chicago, the posts of duty of most of the men in that division are in the city of Chicago because that is a large city, and they naturally spend a good portion of their time in that city.

Mr. PYLE. Then, in the case of a man entering that service at \$1,680, who is given an assignment, the most of the time will get no extra compensation from the Government other than that salary?

Mr. KENNEDY. That is right.

Mr. PYLE. But if he was away from his post of duty for a few days, he would get his actual expenses?

Mr. KENNEDY. That is right—actual expenses, not to exceed \$5.

Mr. PYLE. The general agent's force is working directly under the chief of general agents, and in that matter, directly under the Commissioner of Prohibition.

Mr. KENNEDY. That is right.

Mr. PYLE. Their reports are made directly to the chief of general agents?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. They are supervised by divisional chiefs at the headquarters of these various divisions?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Eighteen of them?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. At the present time you have other people, I believe, unassigned to divisions, men who have had divisions, but who are not now in actual charge, but still carry a rating as divisional chiefs?

Mr. KENNEDY. We have two men that act as field assistants. They are in the field a greater portion of their time.

Mr. SIMONTON. They are field supervisors, are they not?

Mr. KENNEDY. No.

Mr. SIMONTON. Field assistants?

Mr. KENNEDY. Field assistants.

Mr. PYLE. Referring to these divisions that you have named, the eighteenth, for example, with headquarters at Los Angeles, covers the States of California, Nevada, and the Territory of Hawaii. In that territory what is the relation between the general agents' force and the State directors of those States?

Mr. KENNEDY. Of course, the primary duty of a prohibition director is to make investigations of all violations of the prohibition law; to make an inspection of permittees' applications for basic permits.

Mr. SIMONTON. And withdrawals?

Mr. KENNEDY. And withdrawals. The general agents' force in that same territory makes investigations of wineries. In this particular territory there are a great many wineries, and a good portion of their time is spent on the investigation of those. They also investigate the illegal manufacture, sale, and transportation, practically the same as the director's men would do.

The CHAIRMAN. Just how is that work divided, respectively, as between the director's men and the general supervisor's men?

Mr. KENNEDY. There is no distinct line of demarcation drawn.

Mr. SIMONTON. You mean in that division?

Mr. KENNEDY. No; in that division, or, for that matter, in any division.

Mr. SIMONTON. How about Pennsylvania, in Philadelphia?

Mr. KENNEDY. Except in Pennsylvania and New York, where the general agents have charge of all of the enforcement work.

Mr. PYLE. I am going to take that up in a few moments now.

The CHAIRMAN. Just at this point I would like to ask how you recruit the staff of this large organization of nearly 3,700 men. I understood Commissioner Haynes to say that they were selected men and frequently taken from men of experience in the director's force; is that correct?

Mr. KENNEDY. We take some men from the directors' forces, yes; that have had experience. Others are men that have never been in the service before.

The CHAIRMAN. And you secure them by application?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. You mean the applications that you have on file?

Mr. KENNEDY. Yes, sir. We receive applications every day by mail or personal call, and the divisional chiefs in the field likewise receive applications by mail or personal call.

The CHAIRMAN. Do you get many of these recruits through recommendations from Members of Congress?

Mr. KENNEDY. We get some; yes.

The CHAIRMAN. Is that a large proportion or a small proportion?

Mr. KENNEDY. Well, I do not know the per cent of them. Some applicants when they come in will have various letters of indorsement or recommendation, and they will send them in with their applications.

The CHAIRMAN. From Members of Congress?

Mr. KENNEDY. From Members of Congress or from private citizens in the community where they reside—bankers and lawyers.

The CHAIRMAN. Do Members of Congress come to the bureau and ask for certain men to be appointed?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. And is there a record made that those requests were made by Members of Congress?

Mr. KENNEDY. They generally have a letter with them or send a letter.

The CHAIRMAN. Do Members of Congress appear in person?

Mr. KENNEDY. They appear in person.

The CHAIRMAN. And a record is made of that also?

Mr. KENNEDY. There is no record made of the call. There probably will be a notation made.

The CHAIRMAN. That the Member of Congress called?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. Well, that is what I wanted to get at.

Mr. PYLE. This is an executive session, Mr. Kennedy, and you can talk pretty freely.

As a general proposition, what is the feeling, inclusive of the States of Pennsylvania, New York, and in other States where the director has the power of enforcement, between the prohibition agents working in the general agents force and those working in the State director's force? Is it friendly or rather antagonistic?

Mr. KENNEDY. It is friendly.

Mr. PYLE. Is it not a fact that there is a feeling in the office of most of the State directors that the general agent's force is kept there to rather check them up and spy on them?

Mr. KENNEDY. I do not think so. It might be true in some instances, but—

Mr. PYLE. In many cases, are not the general agents used to re-check work done by the various directors, that is to say, the effect of applications?

Mr. KENNEDY. That is true.

Mr. PYLE. In the case of a brewery, for instance, if a permit is inspected and approved by a State director, it would be common, would it, for the general agent's force to be called on to also check it?

Mr. KENNEDY. If it is thought that further investigation is necessary it might be referred to the general agents for further inspection or investigation.

The CHAIRMAN. Do these general agents work exclusively on assignments, or are they free lances in some cases?

Mr. KENNEDY. Well, the men are assigned to the divisions. There is a divisional chief in charge of each division, and the men are given assignments by the divisional chief.

The CHAIRMAN. They do not go out unless they go out on assignment; is not that right?

Mr. KENNEDY. The divisional chief knows what every man of his force is doing.

The CHAIRMAN. By assignment or by report afterwards?

Mr. KENNEDY. By assignment and by report.

The CHAIRMAN. So it is quite possible for a citizen to have two or three men from the Prohibition Unit call on him concerning the same matter?

Mr. KENNEDY. Oh, no; that should not be true.

Senator KING. It is, though.

The CHAIRMAN. It is true, and you say that they are sending them out to check up the other men, so it would seem that there are two people calling on the same person?

Mr. KENNEDY. The case Mr. Pyle is referring to is where it is thought a further investigation should be made. That might be two or three weeks later or a month later.

Senator JONES of New Mexico. Who does the thinking that another investigation should be made?

Mr. KENNEDY. The heads of departments that pass upon the matter.

Senator KING. You mean in Washington?

Mr. KENNEDY. Yes, sir.

Mr. SIMONTON. As Mr. Britt pointed out yesterday, Mr. Chairman, there is also an additional force known as the special intelligence unit for investigating the activities, both moral and otherwise, of the agents in the service against whom suspicion has been directed. Investigations made by these agents may be covered again by the special intelligence unit to determine whether or not they are performing their duties properly.

The CHAIRMAN. Does anybody check up on the special intelligence unit?

Mr. SIMONTON. No; that is right under Mr. Irey and the Commissioner of Internal Revenue, Mr. Blair.

The CHAIRMAN. We have three checks there, and I was wondering why you should not permit them to have a still further check?

Mr. SIMONTON. To the extent only, Mr. Chairman, that an agent's personal qualifications and attention to duty are inquired into does the Special Intelligence Unit act, that is true only in regard to special instances in which the agents do not enforce the law. The Special Intelligence Unit seldom makes first-hand investigations to enforce the prohibition law. They check the men who enforce the law when suspicion is directed against them.

The CHAIRMAN. Yes; but do you not check up a man's qualifications before you employ him, or do you wait to do that until afterwards?

Mr. SIMONTON. Oh, yes; every man's qualifications are checked up before we employ him, and then we check him up sometimes afterwards, when charges are made against him. But the general agents are not doing that work. These Federal officers who follow up these employees, are from the special intelligence unit, and very often investigations of that kind are confused in the minds of the public with those of the general and Federal prohibition agents.

The CHAIRMAN. I am not surprised that they get confused.

Mr. PYLE. Mr. Kennedy—

Senator KING. Mr. Chairman, has it been decided that these hearings are not to be public?

The CHAIRMAN. We did not have a quorum when we started this session this morning.

Senator KING. I will say frankly that I think they ought to be public. I would like the public to know about the Prohibition Unit.

The CHAIRMAN. I want to say that that has been my view right along, but the consensus of the meeting yesterday was that we should proceed in executive session.

Senator KING. Yes. I shall move when we meet next that we have all of these hearings publicly.

Mr. PYLE. Mr. Kennedy, what I would like to get at now particularly is the degree of cooperation between these various units. It is an actual fact, I believe, that a great many directors feel that the general agents are in the nature of checkers or spies on their work. That condition has come to your attention at times, has it not?

Mr. KENNEDY. Not generally, no; I do not believe they are of that opinion generally, because we are constantly receiving requests from directors to have the assistance of general agents. They will state that there is a situation in their State or they have some particular case that they can not handle, and they want help.

The CHAIRMAN. Is it not the feeling among the general agents that they are superior to the forces of the directors?

Mr. KENNEDY. That may exist in individual cases, but not generally.

The CHAIRMAN. You generally classify them as higher than the other staff, do you not?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. So that the men in the director's forces are justified in feeling that way because you feel that way?

Mr. KENNEDY. Probably so; yes.

Senator KING. Your employees feel that they are being subjected to espionage at the hands of these intelligence unit men and control themselves accordingly.

Mr. KENNEDY. Well, that is a different proposition entirely. We are speaking of the general agents now.

Senator KING. Oh, I beg your pardon. I thought you were referring to the special intelligence unit.

Mr. PYLE. In the States of New York and Pennsylvania, as I understand it, the enforcement power under the national prohibition act has been taken entirely from the State directors by the unit?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. And the entire enforcement of the prohibition law, so far as the Federal Government participates in those States, is handled by the general agents' force.

Mr. KENNEDY. That is right.

Mr. PYLE. When that was done, there was not a removal of the Federal agents, but simply a transfer?

Mr. KENNEDY. They were transferred.

Mr. PYLE. To the general agents?

Mr. KENNEDY. To the general agents' force.

Mr. PYLE. As a group, just as they were?

Mr. KENNEDY. Yes.

The CHAIRMAN. That is under Mr. R. B. Sams; is that correct?

Mr. KENNEDY. In Philadelphia; yes, sir.

Mr. PYLE. And under G. J. Simons in Pittsburgh?

The CHAIRMAN. And these men are superior, I suppose, to the directors, are they not?

Mr. KENNEDY. No, sir; they have no jurisdiction over the directors at all.

The CHAIRMAN. Does the director have any jurisdiction over them?

Mr. KENNEDY. No, sir.

The CHAIRMAN. Detail as briefly as possible the respective duties of those men under Mr. Sams and those under the director of the State.

Mr. KENNEDY. In Pennsylvania, the director is charged with the inspection of permittees and the divisional chief has charge of all the enforcement work.

The CHAIRMAN. Just how do you go about it to enforce the law? Tell us about that, so that we can get a picture of it.

Mr. KENNEDY. He makes investigations.

The CHAIRMAN. Of what?

Mr. KENNEDY. Of all violators of the law.

The CHAIRMAN. How does he find the violators?

Mr. KENNEDY. Those things come to him in different ways. Information will come to the Washington office, and we send it to the field, to the divisional chief. Information will come to the divisional chief in the form of letters written by citizens, some of them signed, some of them anonymous. It will come to him by people calling in person; it will come to him by the agents through the investigation of one case giving a lead on another case.

Mr. SIMONTON. And investigating permittees?

Mr. KENNEDY. Yes.

The CHAIRMAN. I understood that the director took care of the permittees.

Mr. KENNEDY. In Pennsylvania, now, the director investigates the permittees.

Mr. PYLE. That results, then, that in the city of Philadelphia the Government maintains two prohibition officers.

Mr. KENNEDY. That is right.

Mr. PYLE. One for the director and one for these general agents' forces.

Mr. KENNEDY. Yes, sir.

Mr. PYLE. And the same thing is true in the city of Pittsburgh, the headquarters of the western division?

Mr. KENNEDY. Yes, sir; that is right.

Mr. PYLE. The Government is maintaining two offices there for handling prohibition?

Mr. KENNEDY. Yes.

Senator KING. In two separate buildings?

Mr. KENNEDY. No; it is all in the same building in Pittsburgh.

Mr. PYLE. No; I think not.

Mr. KENNEDY. Well, it was until recently.

Mr. PYLE. They are in buildings across the street from each other.

Mr. KENNEDY. In Philadelphia there are two separate and distinct buildings.

Mr. PYLE. Those are rented properties?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Not Government buildings?

Mr. KENNEDY. No, sir.

Mr. PYLE. Do you know what the condition is in New York as to having separate offices?

Mr. KENNEDY. In New York both forces, the director's forces and the divisional chief's forces, occupy one building; in fact, one floor of the Onyx Building.

The CHAIRMAN. How long have you tried out the system that you have just referred to?

Mr. KENNEDY. That is, the placing of enforcement work under the general agents; is that what you are referring to?

The CHAIRMAN. That is the system that you have been talking about in Philadelphia?

Mr. KENNEDY. Yes. That was in either March or April, 1923.

Mr. PYLE. April 1 is the date.

Mr. KENNEDY. April 1?

Mr. PYLE. Yes.

The CHAIRMAN. What prompted the application of that system to that particular territory, to the exclusion of other territories?

Mr. KENNEDY. It was believed that since the general agent's force is mobile and has more experience in making investigations that force would be more capable of detecting violations of the law than the director's force.

The CHAIRMAN. Are you satisfied with the way the system has worked?

Mr. KENNEDY. It has worked satisfactorily, and I think Commissioner Haynes stated before the committee that he thinks it would be good policy to place the enforcement work throughout the country under the general agents and leave the permissive features—that is, the inspection of permittees—to the State directors.

The CHAIRMAN. That means the establishment of two offices in all of these districts that you have given us a list of to-day?

Mr. KENNEDY. No; that would not mean the establishment of any more offices than we have now. It might mean two or three more divisions, but that can be handled from our present headquarters in our 18 divisions that we have now established.

The CHAIRMAN. Then you would extend throughout the country this division of responsibility and authority, the same as you have planned and established it in Philadelphia or Pittsburgh or New York?

Mr. KENNEDY. That is right.

Mr. PYLE. Does that plan, Mr. Kennedy, include the absorption of the present Federal agents into the general agent's force?

Mr. KENNEDY. Yes; they would all be taken over by the general agent's force.

Mr. PYLE. The same men would simply do the work under different units in Washington?

Mr. KENNEDY. Yes.

Mr. PYLE. The reports would come to a different place; that would be the only difference in operation?

The CHAIRMAN. Would you say that the plan you are now carrying out in Pennsylvania and New York absolutely separates the work of the permissive features of the legislation and the law enforcement; in other words, the violations and the prohibitory features of it? They are absolutely separate under that system, are they not, that you have just described?

Mr. KENNEDY. Yes, sir.

Mr. SIMONTON. You might state, Mr. Kennedy, the number of men who are working for Mr. Sams in Philadelphia.

Mr. KENNEDY. Yes, sir. In Pennsylvania now the director is charged with the inspection of permittees or the permissive features only.

Senator KING. What is his full title?

Mr. KENNEDY. Divisional prohibition director.

Senator KING. For the State of Pennsylvania?

Mr. KENNEDY. For the State of Pennsylvania.

Senator KING. The entire State?

Mr. KENNEDY. The entire State. He has 20 men—20 inspectors or agents. On Mr. Sams's force, who has the enforcement features of it, there are 84.

The CHAIRMAN. Eighty-four.

Mr. KENNEDY. Yes, sir.

Mr. SIMONTON. Now, in New York, Mr. Kennedy?

Mr. KENNEDY. In New York—

Mr. PYLE. Just a moment. In that connection Mr. Sams also has Atlantic City and southern New Jersey in his territory, has he not?

Mr. KENNEDY. Yes; that is true.

Mr. PYLE. He laps over into the State of New Jersey?

Mr. KENNEDY. His division laps over into the State of New Jersey; yes.

Now, in New York the director does not make inspections of any permittees. That is all under the general agents, but probably within the next 60 days the permissive work will be placed in charge of the director.

Mr. PYLE. Now, I want to go into that for just a little. The director there is required by regulations 60 to approve applications for permits before a permit is issued?

Mr. KENNEDY. That is right.

Mr. PYLE. But he has no right to inspect?

Mr. KENNEDY. No; inspections are made by the general agents.

Mr. PYLE. In other words, the director is called upon before a permit is issued to approve the issuance of that permit upon knowledge obtained by men over whom he has no control, and as to whom he probably has no personal knowledge?

Mr. KENNEDY. That is right.

Mr. PYLE. How long has that condition prevailed?

Mr. KENNEDY. Since April 1, 1923.

Mr. PYLE. Until recently, in Pennsylvania, the same system was followed?

Mr. KENNEDY. That is right.

Mr. PYLE. In other words, the director, when he places his approval on a permit, has no knowledge of whether the approval should go on it or not?

Mr. KENNEDY. Well, he does—

Mr. PYLE. From his own force, of his own knowledge?

Mr. KENNEDY. No. He bases his recommendation of approval or his disapproval upon reports submitted by his general agents.

Mr. PYLE. Then there is no use of his putting his approval on, inasmuch as the information has come to the Washington headquarters rather than to his office?

Mr. KENNEDY. Well, it goes directly to him before it comes to the Washington office.

Mr. PYLE. But he has to put on his approval or disapproval without inspecting the actual application or the premises of the permittee?

Mr. KENNEDY. That is right.

Mr. PYLE. Now, Mr. Kennedy—

Mr. SIMONTON. Before you pass from that—I do not know just what the order is, but I would like to develop a few points as I go along, and if I am not doing it properly, please instruct me. In connection with a great many of these permittees the solicitor has been dealing with them in the matter of withdrawals for probably a year or two.

Mr. KENNEDY. Yes.

Mr. SIMONTON. A great many of these permittees apply for renewals, do they not?

Mr. KENNEDY. Yes.

Mr. SIMONTON. What proportion of the applications are for renewals, do you know?

Mr. Loveland, one of the assistant heads of the permit division, is here.

Mr. KENNEDY. Yes; and perhaps he can explain that.

The CHAIRMAN. Put him on afterwards, Mr. Simonton.

Mr. SIMONTON. Have you in mind the number of agents in New York?

Mr. KENNEDY. The number of agents in New York was 218 on December 31.

Mr. SIMONTON. Under Mr. Merrick, the divisional chief?

Mr. KENNEDY. Under Mr. Merrick, the divisional chief.

Mr. PYLE. Those are for all purposes, those agents?

Mr. KENNEDY. Yes, sir.

Mr. SIMONTON. Are there any under the director at all?

Mr. KENNEDY. None under the director.

Mr. PYLE. The director, however, has to accept their reports on applications for permits, either original applications or renewals?

Mr. KENNEDY. That is right.

Mr. PYLE. Mr. Canfield is the director there.

Mr. KENNEDY. Paul Canfield; yes, sir.

Mr. PYLE. Now, the duties of general agents, as I understand it, in the field, with the exception of New York State, are enforcing duties?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. The criminal enforcement of the law rather than the administration and permits?

Mr. KENNEDY. They make investigations of permits.

Mr. PYLE. But only under instructions?

Mr. KENNEDY. No; if the general agents have reason to believe that a permittee is violating the law or the terms of the permit, they may make an investigation without referring it to the Washington office.

Mr. PYLE. I recently heard that in Philadelphia a great percentage of the applications for permits were reinvestigated by the general agent's force under Mr. Sams, after the inspection and report by the director's office. Do you know whether that would be under instructions or voluntary?

Mr. KENNEDY. If an investigation is made by the general agents, after one has been made by the director's agents, it would be under some one's instructions. The director himself asked it to be reinvestigated, or when the application for the permit comes from Washington, before it is passed upon, if they thought another investigation was necessary, it would be sent from Washington to the general agent.

Mr. PYLE. That would indicate a lack of confidence in the director, if it were done without his knowledge or approval—that is, in the director or his force.

Mr. KENNEDY. Well, not necessarily a lack of confidence.

The CHAIRMAN. It might be for further information?

Mr. KENNEDY. It might be for further information; yes.

Mr. PYLE. What was the occasion for the removal of the enforcement work in the State of Pennsylvania from the director's office, do you recall?

Mr. KENNEDY. Just as I stated a few moments ago, when I remarked about the work in the States of Pennsylvania and New York, it was thought that the general agent's forces, having a broader experience, were better qualified to make these investigations.

Mr. PYLE. About that time, or shortly before that, in the State of Pennsylvania, there had been some serious charges made against a former director, I believe, had there not, and indictments were brought?

Mr. KENNEDY. Yes; that is true.

The CHAIRMAN. What is his name?

Mr. KENNEDY. McConnell.

The CHAIRMAN. What became of him?

Mr. KENNEDY. If I remember right, his case was taken into court.

Mr. SIMONTON. I might state right here, Mr. Chairman, that, from a legal standpoint I probably know more about that than Mr. Kennedy does.

Mr. McConnell, and several of his assistants, both in Philadelphia and Pittsburgh and throughout the State, I might say, were indicted for criminal conspiracy in connection with the operations of that office. The case was tried—

Senator KING. Those indictments were procured by your department, were they?

Mr. SIMONTON. With the assistance of our department, cooperating with the Department of Justice.

Senator KING. You believed there had been infractions of the law?

Mr. SIMONTON. Undoubtedly infractions of the law. Just who was guilty, though, I would not say. I was not in the investigation myself.

The indictments were found faulty, as I recall the facts, for the reason that more than one conspiracy was alleged in the same indictment. They had not conspired together, but they were charged with several different conspiracies, and all were indicted together; so the court, on motion, when this developed in the trial, quashed the indictment.

The CHAIRMAN. What became of the man?

Mr. SIMONTON. That was the end of it. Nothing further has been done by the United States attorney.

The CHAIRMAN. What became of the men involved? Are they still in the bureau?

Mr. SIMONTON. Oh, no sir; they were long out of the service then.

The CHAIRMAN. And are they still out of the service?

Mr. SIMONTON. Yes, sir.

The CHAIRMAN. All of them?

Mr. SIMONTON. I do not remember their names; but I would say, safely, yes.

The CHAIRMAN. The practice of the bureau is not to retain these men after they have once been indicted?

Mr. SIMONTON. Oh, no. Particularly when a charge is preferred against them, they are suspended, and then when the matter is investigated and they are found guilty of the charge, they are discharged.

Senator KING. Was the head man discharged?

Mr. SIMONTON. Yes.

Senator KING. He has been out of the service?

Mr. SIMONTON. He has been out of the service since 1922.

Mr. PYLE. Mr. Kennedy, in this proposed move to place all of the Federal enforcement under the general agent's force—that is, more directly under the commissioner, without any intermediate steps—just what are the benefits that are contemplated, after studying the proposed system, that would be derived from the change?

The CHAIRMAN. I think the witness has answered that, Mr. Pyle.

Mr. PYLE. Well, he said he thought there would be better results. I want to know in what way the results would be better with the same men reporting, only to a different source.

The CHAIRMAN. As I understood it, he said that they picked these men as men of experience in investigating work and assigned them to the general agents' force, for the reason that they were better men in investigating work than were the men under the director.

Mr. PYLE. Then he went further and said that in the change it was proposed to take over the present Federal agent's force—the director's force right over into the general agents' force, in toto.

Senator KING. Good, bad, and indifferent.

Mr. PYLE. And I wondered how it was thought that it would give better results in that way.

Mr. KENNEDY. The plan has worked out successfully in New York and Pennsylvania.

The CHAIRMAN. Oh, I am interested in that statement. As I understand it, you mean that it has worked out satisfactorily, because the law has been enforced?

Mr. KENNEDY. We have had better results.

The CHAIRMAN. Now, I am interested in that.

Senator KING. In getting convictions, or in enforcement—which?

Mr. KENNEDY. In procuring evidence.

The CHAIRMAN. You say “better results.” That is interesting, because you must have some comparative statement that would indicate that. Have you?

Mr. KENNEDY. No; I have not any comparative statement.

The CHAIRMAN. In other words, that is just a general statement, without being supported by any evidence at all?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. I think the committee would be interested if you could produce any evidence to the effect that conditions are better as a result of this change. You must have something, because you have reached that conclusion.

Senator KING. There is a feeling in Pennsylvania, especially among some of Mr. Pinchot’s supporters, that it is a pure farce.

The CHAIRMAN. I think that is more political, Senator.

Mr. PYLE. Mr. Kennedy, this is in executive session. There are no reporters present. As a matter of fact, it is the purpose to relieve the field forces from political interference—

Mr. SIMONTON. With regard to your question, Mr. Pyle, may I say just a word? Mr. Kennedy was instructed before he came up here, by Mr. Britt, in my presence, to speak freely, no matter who was present, and to say everything that should be said, and when called upon to give his opinions freely. I do not think it is necessary to caution him a second time about that.

Mr. PYLE. Well, it makes a difference in the way a person will discuss things, whether it is going to all the corners of the world or not.

The CHAIRMAN. I want to say now, for the benefit of Mr. Pyle, that this is going to all corners of the world, because this evidence is not confidential evidence, although we are hearing it in executive session. It is public information, and we do not want any representative of the bureau to be misled that this is going to be confidential information.

Mr. KENNEDY. What is your question?

Mr. PYLE. The question was whether the real purpose is to relieve it from political interference with the field work.

Mr. KENNEDY. I do not know as you could state that that was the purpose.

The CHAIRMAN. Was it one of the purposes?

Mr. KENNEDY. No; I can not say that. It is true that a man can more effectively enforce the law if he is not subject to any local influences.

Senator JONES of New Mexico. What is your official position?

Mr. KENNEDY. Assistant to the general prohibition agent.

Senator JONES of New Mexico. Assistant chief? Who is your chief?

Mr. KENNEDY. E. C. Yellowley.

Senator KING. Of prohibition agents?

Mr. KENNEDY. Yes.

Senator KING. Mr. Yellowley is chief of the prohibition agents?

Mr. KENNEDY. Yes.

Senator KING. And you are the assistant chief of the prohibition agents?

Mr. KENNEDY. Yes, sir.

Senator KING. Who is the chief of your permissive organization?

Mr. KENNEDY. The general agents are just one division of the organization, the same as any of the other divisions as shown on the chart of the organization there. You have a permit division, a legal division, and so on, and the general agents are just one of those divisions.

Mr. SIMONTON. The permissive features come under the director and under the commissioner, but I think not under the general agents, except where they investigate. I might say here that Mr. Yellowley is out of the city; otherwise he would be here.

Mr. PYLE. As to this distribution—

Senator KING. Just a moment. I am interested in this. Have you not found a great deal of political pressure in the appointments and protests against removal of employees of the department?

Mr. KENNEDY. Yes, sir. We have had requests for appointments.

Senator KING. Have not your appointments been purely political?

Mr. KENNEDY. No, sir. We try to make our appointments on the man's merits. We investigate every applicant before he is appointed.

Senator KING. Have you made a single appointment in the State of Colorado or in Utah, except as requested to do so by the present Republican Senator and the former Republican Senator, now deceased?

Mr. KENNEDY. They probably indorsed the applicants. I should not say offhand just whom we have appointed during the last year.

Senator KING. Is it not a fact that in the State of Colorado you appointed a man who had been the political manager of the Senator, and that he has been indicted?

Mr. KENNEDY. I do not recall his name. If you will give me his name, perhaps I can tell you.

Senator KING. And in connection with his indictment, there was an indictment of a priest and a number of others for conspiring with him to violate the law?

Mr. KENNEDY. If I knew his name, I could probably enlighten you on that. I do not recall now. I can tell you how many men we have in the State of Colorado.

Senator KING. Was there not a great deal of notoriety and publicity, and was there not some agitation in your section two years ago about the violations of law in Colorado by your agents and representatives?

Mr. KENNEDY. There was quite a little publicity given in connection with the indictment, and I think he was convicted also, of a priest.

Senator KING. Have you not any recollection of the indictment and removal, or at least the resignation of the head of your organization there?

Mr. KENNEDY. That is, of the director?

Senator KING. Yes.

Mr. KENNEDY. Well, I do not primarily look after that because he was not a member of the general agent's force. He is under the State director, and that is under the personal supervision of the commissioner and the assistant commissioner.

Senator KING. And did you not send agents from Washington, or from the State of Utah, over to Colorado to help clean up the situation?

Mr. KENNEDY. I do not think we sent any of our general agents there. I can tell you how many men we have in the State of Colorado.

Senator KING. I am not asking for that.

Mr. SIMONTON. Let me ask you a question in regard to that. Are most of the charges against agents or directors handled by your force or by the special intelligence unit?

Mr. KENNEDY. They are handled by the special intelligence unit.

Mr. SIMONTON. Have you anything at all to do with that force?

Mr. KENNEDY. Not a thing. If there were any charges there and if there were men sent in to investigate them, it was by the special intelligence unit. Our men do not make personnel investigations.

Senator KING. No; but if your agents are removed, you ought to have some knowledge of it.

Mr. KENNEDY. We have knowledge of it, yes; if their removal is based on an investigation made by the special intelligence unit, which is an entirely separate organization.

Senator KING. What proportion of your agents are removed and what proportion resign, relatively? What has been the situation with regard to that in a given year?

Mr. KENNEDY. I could not say offhand.

Senator KING. There are a good many removals, are there not?

Mr. KENNEDY. Yes, sir.

Senator KING. Are there a good many resignations?

Mr. KENNEDY. Yes, sir.

Senator KING. Forced or otherwise?

Mr. KENNEDY. Not forced. We have men resign on account of inadequate salaries. They could not live away from home on the salaries that we pay them.

The CHAIRMAN. It is a fact, though, that a great many of them resign immediately charges are made against them, so as to prevent prosecution of the charges, is it not?

Mr. KENNEDY. That often occurs when a man is charged with some irregularities, and if, after investigation, the charge is not substantiated he is permitted to resign.

Mr. PYLE. In that connection, are resignations accepted when a man is under charges and resigns?

Mr. KENNEDY. Not always. If the charges are sufficient to remove him, he is removed from the service.

Mr. PYLE. His resignation would not be accepted then?

Mr. KENNEDY. No.

Mr. SIMONTON. And is he also prosecuted?

Mr. KENNEDY. He is prosecuted if there is sufficient evidence; yes.

The CHAIRMAN. Criminally?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. Through your department or through the Department of Justice?

Mr. KENNEDY. Through the Department of Justice.

The CHAIRMAN. The Department of Justice acts promptly on all of these requests for prosecutions?

Mr. KENNEDY. I think so. The evidence, however, would be procured by the special intelligence unit, and they would follow the case up to the Department of Justice.

The CHAIRMAN. Who in your department is kept informed as to the promptness with which the Department of Justice acts on questions involving the Prohibition Unit?

Mr. KENNEDY. On the prosecution of employees charged with irregularities?

The CHAIRMAN. Yes; or in any other connection between your department and the Department of Justice?

Mr. KENNEDY. Some one in the legal department.

The CHAIRMAN. Mr. Britt, for instance?

Mr. KENNEDY. Mr. Britt; yes.

Mr. SIMONTON. Mr. Britt would be best informed on the latter, Mr. Irey on the former.

Mr. KENNEDY. That is right; yes.

Senator KING. Mr. Britt stated yesterday that there is quite a lot of cooperation, and sometimes agents might not know the law and would not be prosecuted; but I think he answered that quite fully yesterday.

Mr. PYLE. Mr. Kennedy, you have given us the personnel of the various divisions. What is the rule by which you are guided in determining the number of agents to station in the various sections.

Mr. KENNEDY. We have no rule at all, excepting the size of the division and the conditions generally.

Mr. PYLE. And the conditions?

Mr. KENNEDY. Yes.

Mr. PYLE. That is, the directors have men in all the States, except in New York and Pennsylvania, for the purpose of enforcing the law?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Is the number of men already there taken into consideration in assigning the general agents?

Mr. KENNEDY. Yes, sir.

Senator KING. Let me understand that. You said there were a number of States in which there were directors who were enforcing the law?

Mr. PYLE. I do not believe you were present, Senator, when the matter was taken up, but it was shown in the early part of the record that there are two forces of agents—the Federal agents, who operate under the State directors, and the general agents' force, which Mr. Kennedy is discussing, and which operates directly under Mr. Yelowley as chief, general prohibition agents, from Washington.

Senator KING. Yes; I understand that.

Mr. PYLE. The figures show that there are 691 of those.

Senator KING. You have two sets of agents.

Mr. PYLE. Two sets of agents.

Senator KING. And then you have your inspectors, etc.?

Mr. PYLE. They come under the director.

Senator KING. And the special intelligence unit?

Mr. PYLE. And the special intelligence unit, which operates mostly on personnel.

Senator KING. Are the duties of the agents under the directors, and the duties of the agents under this organization the same?

Mr. PYLE. They are substantially identical, answerable only to different chiefs.

Mr. SIMONTON. With the exception of Philadelphia and New York.

Mr. KENNEDY. Yes.

Senator KING. So there would be a duplication there unnecessarily?

Mr. SIMONTON. While on that point, let me ask you, Mr. Kennedy, a few questions about the phases of this organization.

You say this was organized on July 1, 1921—the general agent's force?

Mr. KENNEDY. Yes.

Mr. SIMONTON. When did Major Haynes take office?

Mr. KENNEDY. I do not know the exact date. May or June, 1921.

Mr. SIMONTON. In June, 1921. Previous to that, were there not squads, known as flying squads, that operated from Washington, with special duties?

Mr. KENNEDY. We had a few men—not over four or five—who were out on some special cases.

Mr. SIMONTON. Do you recall that at the time there were organizations that investigated breweries, particularly, who were trained in brewery investigation?

Mr. KENNEDY. Yes; they had some special mission.

Mr. SIMONTON. That was because the men who were in the supervising field agent's office were at that time not familiar with the work that was required in investigating distilleries and breweries.

Mr. KENNEDY. Yes; they got together some internal revenue agents, or men who had been internal revenue agents, and deputy collectors, who were familiar with the operation of the breweries and distilleries, etc. We had a few of those operating out of Washington.

Mr. SIMONTON. That was under Mr. Kramer, the former Federal Prohibition Commissioner?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. At the present time you have these flying squadrons also, do you not, in various lines, working under Mr. Yellowley and yourself?

Mr. KENNEDY. Well, we have men that we sent out occasionally on special work, but we will take them out of some division and send them out on special work.

Mr. PYLE. Some months ago, I believe, you had a squad, known as the alcohol squad, under Mr. Anderson?

Mr. KENNEDY. That is right.

Mr. PYLE. They were specialists in cases involving alcohol, especially denatured alcohol?

Mr. KENNEDY. That is right.

Mr. PYLE. That squad is not operating now?

Mr. KENNEDY. No, sir.

Mr. PYLE. Have you any squads of experts working along that line now?

Mr. KENNEDY. Not on alcohol. That work is all taken care of by the divisional chief.

Mr. PYLE. Not in the Pennsylvania or New York divisions, is it?

Mr. KENNEDY. Oh, yes, sir.

Mr. PYLE. You handle that right through your divisional chief?

Mr. KENNEDY. Yes; we handle that through the divisional chief.

Mr. PYLE. And you have no specialists working on the alcohol problem?

Mr. KENNEDY. No, sir.

Mr. PYLE. Other than the general work of agents?

Mr. KENNEDY. That is right.

Mr. PYLE. What is the responsibility in the case of the special denatured alcohol, for instance? Has the divisional chief full responsibility, or is that divided between the collector and the Internal Revenue Service?

Mr. KENNEDY. That is divided. It goes through the collector, through the divisional chief and the director.

Mr. PYLE. They do not have joint supervision, but they have divided supervision; is that it?

Mr. KENNEDY. Yes, sir.

Senator KING. You mentioned the collector. Do you mean the internal revenue collector?

Mr. SIMONTON. He issues the specially denatured alcohol permits, does he not, Mr. Kennedy?

Mr. KENNEDY. That is right.

Mr. PYLE. For instance, take the State of Pennsylvania. There are a number of alcohol distilleries and denaturing plants around Philadelphia, I believe. To what extent does your force have supervision of that work?

Mr. KENNEDY. The application for the permit would be filed with the collector.

Mr. PYLE. That is, the internal revenue collector, and would have nothing to do with the Prohibition Unit?

Mr. KENNEDY. No; filed with the collector. From the collector it would be referred to the divisional chief for investigation. I am not entirely familiar with all of that procedure.

Mr. PYLE. The divisional chief or the director?

Mr. KENNEDY. It would go through the hands of the director after the collector. I think that is the order. It goes from the collector to the director. From the director the investigation is made by the divisional chief. Perhaps when Judge Loveland comes on the stand he can explain that more fully, or some one else.

The CHAIRMAN. I would like to say to the witness that if there are any of these questions that he is not familiar with he had better not guess at the answer, but just refer us to the proper officer.

Mr. KENNEDY. Yes.

Mr. PYLE. Your work is enforcement work very largely?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Let us trace a case through to show the method of its handling. We will assume that an agent apprehends an illegal sale. Just what steps at the present time are taken in the handling of that case?

Mr. KENNEDY. If they would find a still operating illegally it would be seized and report would be made to the divisional chief of the seizure; an arrest would be made of any parties found at the still operating it, and the parties arrested at that time would be taken before a United States commissioner, a hearing would be held, and they would be held for action of the grand jury. The agents making the investigation and seizure would make a report to their divisional chief.

Mr. PYLE. That report is made?

Mr. KENNEDY. Yes; the report would be sent to Washington and a copy sent to the United States district attorney for his information, on which to base the prosecution.

Mr. SIMONTON. By whom are the copies furnished?

Mr. KENNEDY. By the divisional chiefs.

Mr. PYLE. As to the copy sent to Washington, what disposition is made of that; is that filed or is any action taken?

Mr. KENNEDY. That comes from Washington to the litigation division, where it is reviewed, and the correspondence had with the district attorney regarding the prosecution.

The CHAIRMAN. Just why does it have to come to Washington, and why does the correspondence have to take place with the district attorney when there are already bureau representatives on the ground?

Mr. SIMONTON. I might answer that, as a legal matter.

There is one legal advisor only in each director's office, and I think now there is probably one in some of the divisional chiefs' offices. Mr. Pyle should know how that works out. In addition to the divisional chief and director, they are the only ones who have contact with the United States attorney. Very few of the directors are lawyers. Some of the divisional chiefs are. The work of handling the legal end, then, must come to Washington, where they have a legal force. We have lawyers who very often draw all the pleadings in a case, draw the indictments and libels and answers in equity, and do a great deal of work that relieves the United States attorney. Then, in addition to that, if there happens to be a violation of the law or of a permit, it must go through a revocation hearing, in which legal officers must act.

The CHAIRMAN. I wish to repeat my question, though, as to why. I do not mean with reference to permittees. Why is it necessary to have all of that come to Washington when you have legal officers in the field?

Mr. SIMONTON. For one reason, he could not handle all of the work that has to be done.

The CHAIRMAN. Would it not be better to have him equipped, so that he could handle it, and not concentrate it all in Washington?

Mr. SIMONTON. It might, of course, be decentralized. I do not think it would be wise, however.

Mr. PYLE. Take a moonshine still, for example. Why is it necessary that it should be taken up here and correspondence had with

the United States district attorney, when it is already started in his office?

Mr. SIMONTON. Of course the commissioner has charge of that end of it. Take this moonshine still, for instance. In many jurisdictions, owing to the inability to get cases disposed of rapidly, and lack of force on the part of the United States attorney, a great many moonshine stills are in storage, some thousands of them. We quite frequently prepare libels disposing of those moonshine stills to get them out of storage. All of this, as you say, might be done at the point of contact.

The CHAIRMAN. Would not that facilitate the matter?

Mr. SIMONTON. Yes; but you would have a force, of course, in each State, just as is the case with the War Veterans' Bureau now, instead of having it all in Washington.

The CHAIRMAN. You would not be able to reduce your force in Washington, then?

Mr. SIMONTON. Of course, that is problematical. I could not answer that question.

The CHAIRMAN. Well, but you ought to know.

Mr. SIMONTON. I am rather in favor of the centralized form, where everything comes to the headquarters handling it, and where they are familiar with the actions in all jurisdictions. For instance, in the Agricultural Department, where I was at one time, in the solicitor's office, they draw all of the pleadings in cases, and they draw the same pleadings for Florida as they do for the State of Washington. The decisions are consequently uniform. The decisions of the circuit court of appeals for the eighth circuit would be of weight, say, in the first and other circuits, because their pleadings are uniform and standardized. Now, to take this service apart and separate it and send different units out, you might have a greater force to do the work, or you might have a less force, but certainly the decisions in the different jurisdictions would not be as uniform as they are in the Agricultural Department now on account of the centralized services.

Mr. PYLE. Well, the uniformity does not result from that action here? It results from the views of the courts?

Mr. SIMONTON. That is true, but, Senator, let me say this: In the Agricultural Department we drew all of the indictments, and we charged the violation of the law as we saw it. In that way we had uniform decisions in all jurisdictions on any one indictment. That is one reason why a supervisor in the prohibition service is required. He will go around with authority to advise as an auditor or bank examiner with authority to require a director to perform his duties substantially as it is done in other jurisdictions. This makes for uniformity in each district. We have a director's office in each State.

Senator KING. I want to say right here that I do not approve of this plan which is rapidly being extended, of getting an enormous staff of legal advisors here in Washington. That is the case with the Post Office Department, this branch of the Post Office Department, and all branches of the Post Office Department, and it is the case with the Treasury Department, the Internal Revenue Bureau, and the Interior Department. The result is that you have hundreds, if not thousands of lawyers functioning in Washington and going

out into the various States. It presupposes that the district attorneys are wholly incompetent to handle these questions. The district attorneys are always good lawyers. In my opinion, they are better than many of the lawyers that you find in these departments here, and that is no criticism. They know the grand juries; they know the courts, and they know the law. But all of these departments are trying to expand and extend their authority. They build up legal departments here. Take the Department of Justice. We are giving it millions of dollars annually for the enforcement of the law. They have district attorneys, and in many of the big districts they have an assistant to the district attorney, and they are multiplying the legal staffs in all of the departments here in Washington. I am very much opposed to it.

Mr. PYLE. As to your proposal that the decisions should be handled more easily as to all of them, you can hardly reconcile the various decisions now under the prohibition law, can you, from the various districts?

Mr. SIMONTON. It is done in the Agricultural Department. We do very little of the district attorneys' work.

I might say, Senator King, that I can think of two matters that might come up in connection with your statement. In the Agricultural Department, where they enforce the pure foods and drugs act, the evidence is highly technical, and the United States attorneys are not at all familiar with the different aspects of it. We found that they had been delaying a great many of our cases, not because they did not want to work on them, but they found other matters at hand that were not so technical. It was found that we could help the United States attorneys, and our help was always welcomed, by drawing up indictments and helping in the presentation of the case. I was engaged in that work for five years.

In the prohibition service, of course, we all know of the enormous amount of work that has been thrown on the United States attorneys' offices and on the judges through the enactment of the prohibition act, and it has been the endeavor in Washington to aid the United States attorney where he desired it, by preparing the pleadings for him and aiding in other ways that he might desire, just as if we were an adjunct or an arm of his office, and take from him some of his extra burdens on account of this work.

Senator KING. How many lawyers are there in your department here in Washington?

Mr. SIMONTON. I have not the exact figures before me. Did Mr. Britt give them to you yesterday?

Senator KING. No.

Mr. SIMONTON. I will get them for you, if you wish.

Senator KING. All right.

Mr. PYLE. The various United States attorneys, however, speaking as a lawyer—and I understand that most of the members of the committee are attorneys—would hesitate somewhat about accepting a pleading, without carefully studying it, that had been drawn by some one whom he had not closely worked with, would he not?

Mr. SIMONTON. Yes; certainly.

Mr. PYLE. Personally, I would hesitate to take a pleading that had not been verified by myself.

Mr. SIMONTON. Pleadings are sent to them with the statement that it is purely a tentative form, and they are asked to advise us of any changes, and that we will try thereafter to meet their views. We have found no opposition at all to that; in fact, we have found that it has been welcomed. In Philadelphia alone we have prepared innumerable pleadings that have been filed. In New York pleadings have been prepared, and they have been filed. The endeavor was not only to move the cases but to clear ourselves of the delays that have been charged against us, and to keep from storage articles that were seized, to keep them from piling up and having nothing done with them. Of course, if we have gone too far in that regard, it has been an error of zeal, rather than otherwise.

Mr. PYLE. At the present time, Mr. Kennedy, the divisional chiefs, who are supervising the enforcement work in connection with the wineries, breweries, and distilleries, you said have no resident attorneys connected with their offices, unless some agent happens to be one?

Mr. KENNEDY. No, sir.

Mr. PYLE. There is no attorney detailed?

Mr. KENNEDY. No attorney.

Mr. PYLE. They rely entirely on the United States attorneys in their jurisdiction?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. In which they are working?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Now, I am a little curious on this matter as to the duplication of work. Let us take the Sixteenth Division, the district of Utah, Colorado, and Wyoming. Each State had a director with a substantial field force. For the purpose of laying it before the committee, in those places the divisional chief and the director work independently of each other?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Neither is superior to the other?

Mr. KENNEDY. No, sir.

Mr. PYLE. They are entirely independent?

Mr. KENNEDY. They cooperate, though.

Mr. PYLE. The agents all go around on cases, but they are paired off from the respective offices?

Mr. KENNEDY. That is right.

Senator KING. The employees under each are called agents?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. The result is duplication is always possible. There is no one head in any one territory?

Mr. KENNEDY. No, sir.

Mr. PYLE. The only head is at Washington?

Mr. KENNEDY. That is right.

Mr. PYLE. The commissioner reaches the agents through the chief of the general agents and the directors' force through the various directors?

Mr. KENNEDY. That is right.

Mr. PYLE. Is that designed to keep the two forces working without any common counsel or plan for the purpose that one might catch that which the other misses or deliberately overlooks?

Mr. KENNEDY. One force does not know what the other is doing; that is to say, the general agent's force will not know what the directors' men are doing, and vice versa, but there should be no conflict there.

Mr. PYLE. There is a certain jealousy, however, throughout the country, is there not?

Mr. KENNEDY. There may be in individual cases; yes.

Mr. PYLE. And in the different forces.

Mr. KENNEDY. But, as a whole, I think there is a good feeling between the directors' forces and the general agent forces.

Mr. PYLE. In maintaining these 18 offices of the general agents in the field the expense of that includes the expense of clerical hire?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. And they are provided with stenographers and clerks to handle their work?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. And the rental of offices?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. There is another feature, Mr. Kennedy—

The CHAIRMAN. Just at this point may I ask if you have any figures as to the cost of that work that is done by these 691 agents?

Mr. KENNEDY. No. Perhaps that has already been furnished.

Mr. PYLE. I understood that that had been asked for, Senator.

Mr. KENNEDY. That has either been asked for or is being prepared; that is, in the organization as a whole?

Mr. PYLE. Yes.

Mr. KENNEDY. On the entire unit?

Mr. SIMONTON. On the entire unit. Has that been separated, as the chairman has asked for it?

Mr. KENNEDY. I think so; yes.

Senator KING. Do those separate units—and I may use the word "units" improperly, perhaps, as I do not know about it—have to report to different heads in Washington?

Mr. KENNEDY. No, sir. All of those reports come to the commissioner.

Senator KING. Then, when they come to the Prohibition Commissioner are they sifted out, and do the reports of the divisional chiefs go to one section here?

Mr. KENNEDY. They come to the chief of the general agents.

Senator KING. And then the reports from the directors' agents go to another section?

Mr. KENNEDY. Yes, sir.

Senator KING. Though the work may—

Mr. KENNEDY. Ultimately, in the end, they all go to the same place in the unit.

Senator KING. Yes; and the agents of one unit may have investigated the same subject matter as the agents of the other and submit separate reports, and then those reports are sifted out and sent to the different units here, and are then finally merged under the director?

Mr. KENNEDY. That would not happen very often, Senator, because if one force would get the evidence, the other force would not go on and investigate the same man. He would be held before the United States commissioner for the action of the grand jury.

Senator KING. Yes; but before the arrest, is it not a fact that both forces may be working to secure evidence against the same concern or the same individual?

Mr. KENNEDY. That might occur; yes, sir; with one force.

Senator KING. Does not that often occur?

Mr. KENNEDY. Or they might go ahead and work together, and the case would be turned over to one or the other of the forces.

Senator KING. Is it the view that one force is not to be depended upon and the other must keep watch of it?

Mr. KENNEDY. No, sir; that is not the view at all.

Senator KING. Is one force to act as a spy upon the other force?

Mr. KENNEDY. No, sir.

Senator KING. In case of a conflict between the agents in the two respective forces, who determines which course shall be adopted and which agents?

Mr. KENNEDY. In administrative matters, do you mean?

Senator KING. Yes; or in executive matters.

Mr. KENNEDY. The commisisoner would determine that.

Senator KING. Suppose that in a given field, in Utah, say, or in New York, the agents under the State director are operating against the Fleischman Co., or some other company, and the agents of the other organization are operating for the purpose of securing evidence of alleged violations of the law, and they came into conflict, or their paths crossed, would one have to desist, and if they should refuse to desist, what steps would be taken to determine who should continue the investigation?

Mr. KENNEDY. There should not be any conflict there. They should work that out amongst themselves and see who is to make the investigation.

Mr. SIMONTON. Is it not a fact that conflict, if any, would be dissolved in a conference between the director and the divisional chief?

Mr. KENNEDY. Yes; they get together, and one man of the director's force and one man of the general agent's force, or whatever number of men is necessary, would go ahead and complete the investigation.

Senator KING. Have you not found that there is a great deal of controversy, jealousy, and abortive effort, just the same as there has been, for example, between the different officers in many of the municipalities, where they are authorized to enforce State laws, and they come in contact with the county sheriff and his large forces, if it is a large county, and both forces will be jealous of each other, oftentimes producing great confusion and permitting criminals to escape?

Mr. KENNEDY. That is not true, generally speaking, Senator. I do not believe it is. When the forces learn that they are working on the same investigation or are trying to accomplish the same end they are going to get together and endeavor to so arrange the work that one can withdraw from it.

Senator JONES of New Mexico. But how do they find out whether they are working on the same thing or toward the same end?

Mr. KENNEDY. If one man or any group of men is working on a certain investigation, they are going to find it out before they go very far, whether somebody else is working on it.

Senator JONES. They may or may not. It depends upon the secrecy of it.

Mr. SIMONTON. I will say this, Senator. I have been connected with the service for four years, and I have never heard of the condition that you speak of. If there was such a situation, would it not be reflected in the case? In other words, the two agents' reports would come in to Washington direct, and the two reports would be upon the same case. The general agents make their report, and the Federal agents make theirs independently. I do not know what Mr. Storck's investigation has developed or Mr. Pyle's, but I do not remember ever seeing, in any case, reports by the different forces, nor in fact any indications that they were in conflict or that there was any jealousy.

The CHAIRMAN. I would like to ask Mr. Storck at this time whether he has discovered anything of that sort?

Mr. STORCK. No, sir; I have not, Mr. Chairman, but I have noticed that the enforcement officer would make a report, and subsequently the general agent was sent over that work again to make a further investigation.

Mr. KENNEDY. That is especially true with respect to permits.

Mr. STORCK. Yes.

Mr. KENNEDY. On other occasions Mr. Irey's unit would cover it.

Mr. SIMONTON. That is true. Mr. Irey's unit does go out and check up. The special intelligence unit goes out and checks over the work done by agents, but only when they are suspected of corruption or incompetence.

Senator KING. I can not see how it is possible to have two forces working in a field, under different offices, different chiefs, and not duplicate the work. It is humanly impossible, if they are energetic and if they are good sleuths they may be working for weeks upon a case without coming into contact with each other.

Mr. PYLE. Mr. Kennedy, the permit work under the proposed plan will be handled by the director, and the investigation and inspection will necessarily fall a great deal into the criminal-work line?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. That is what you are checking and investigating, to see whether a man is violating the prohibition law?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Would it not be better if the same force that would have the criminal reports on this man and such rumors and actual knowledge as there might be concerning his criminal activities—if it is generally known that you can go into his store and get a pint, would it not be better that that information should also be available to the man that was inspecting him and checking him?

Mr. KENNEDY. That is available. The directors get a copy of those reports. In other words, of all reports made by the general agents a copy goes to the director.

Mr. PYLE. That is true in case a case is made?

Mr. KENNEDY. Yes.

Mr. PYLE. The proof is obtained, but there are a great many druggists as to whom no cases are made, where it is generally understood that anybody who is known can go in and get a pint. On such a rumor the permit can not be revoked, but would it not be valuable

information for the man who is inspecting him to have in guiding them in making their inspection?

Mr. KENNEDY. Well, if that information came to the chief of the general agents or the divisional chief, he would give it to the director.

Mr. PYLE. But these would be rumors, and they would not come.

Mr. KENNEDY. Perhaps not rumors, no; but—

Mr. PYLE. The enforcement of this law depends a great deal on working up a case on underworld rumors?

Mr. KENNEDY. Yes.

Mr. PYLE. And information that they pick up from odds and ends of the work when they are under cover?

Mr. KENNEDY. Yes. You infer from that, that perhaps the directors' inspectors in making the check of the permittee would not discover this?

Mr. PYLE. What I am trying to get at is the advisability of one local head, whether that would not have a better result ultimately instead of having two in a given territory?

The CHAIRMAN. Mr. Pyle, you referred a while ago to the men in the field acting upon underworld information. I would like to ask Mr. Kennedy or anyone else who knows to what extent the time of the bureau's men is given to investigating underworld rumors. I ask that because I conceive that to be more the duty of the police and the sheriffs than it is the duty of the Prohibition Unit.

Mr. PYLE. I think I can answer that, Senator, that an agent will come in and say, "I hear they are planning on knocking off a certain works." That means that they are planning robbery. Steps would be taken to offset it. If the rumor seems to be something big, it is followed out.

The CHAIRMAN. Do they follow it up, or does the police department follow it up?

Mr. PYLE. That will depend upon whether you have a police department which will follow it up.

Mr. SIMONTON. You mean by "warehouses" bonded warehouses?

Mr. PYLE. Yes; something of that sort.

Mr. KENNEDY. In that case, it will probably be followed up by the agents. That would be a big case?

Mr. PYLE. Yes; in the case of a warehouse.

In Pennsylvania, the agents work with the State police to quite an extent in following these down, and I have found in my experience that we get much valuable information from pool halls and saloons by going in and keeping your ears open. The famous Douglas Kelton case in Pittsburgh was almost entirely worked up from barroom rumors which were substantiated, and that made a very large case. The police will not help in many of the large cities in running down liquor cases.

There is one other point, Mr. Kennedy—

Senator KING. Is it the purpose to continue this plural agency in the States, this double organization, to say nothing of the other organization?

Mr. KENNEDY. Our present plans, Senator, are, as I stated a while ago, and I think Commissioner Haynes stated when he was before the committee that it was his plan to place all the enforcement work under the general agents.

Mr. PYLE. It has developed to the point where you desire to take over the entire enforcement of the prohibition law?

Mr. KENNEDY. Yes, sir.

Mr. SIMONTON. Yes; the enforcement end of it, not the permissive end.

Mr. PYLE. Not the permits, but the other end.

Mr. SIMONTON. Yes.

Mr. PYLE. Mr. Kennedy, I believe that some time ago mimeographs were sent out to the various agents in charge to the effect that the department was concerned over the cost of transporting these general agents from place to place as witnesses, as an incident of the mobility of the force. That is, an agent will be assigned to make a case in New York City. He will work there for a while, and then he will be sent to Philadelphia, or to New Orleans, or to Chicago. He is called back as a witness from time to time. Have you any idea of the expense that that has been to the department per year?

Mr. KENNEDY. We keep no record of that expense separate from any other.

Mr. PYLE. They were very much disturbed over it, I believe, at one time, and some letters were sent out.

Mr. KENNEDY. That is quite an expense, of course.

Mr. PYLE. That is necessarily incident to a man's working from place to place throughout the country?

Mr. KENNEDY. Yes.

Mr. PYLE. He has to come back under subpoena.

Mr. KENNEDY. That is right.

Mr. PYLE. And that expense has been held, I believe, to be chargeable against the Prohibition Department.

Mr. KENNEDY. That is right.

Mr. PYLE. I believe that the Attorney General held that that was a part of the duties of the agent.

Mr. KENNEDY. Yes, sir.

Mr. PYLE. And not of the Department of Justice?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. I wonder if figures could be furnished showing how much was spent in that way. I do not know that you could do that, either, as that would be mixed up with the subsistence, would it not?

Mr. SIMONTON. Yes; you would have to take each report.

Mr. PYLE. The railroad fare involved could be determined, could it not?

Mr. SIMONTON. I am not an accountant, but I would say that by taking each report and going through it and taking the travel of each man, you could get it in that way.

Mr. PYLE. I do not want to put the department to too much trouble.

Mr. KENNEDY. To do that it could be necessary to take the individual agent's monthly account and go through it and segregate it, so much for his subsistence, and so much for travel.

Mr. PYLE. Yes.

Mr. KENNEDY. You would have to determine what number of days he was in court.

Mr. SIMONTON. While on that point, I would like to suggest an idea that probably is involved in the question raised as to the desir-

ability of establishing divisional chiefs and their forces, rather than Federal agents under the director. I find in my experience that where agents are located at a point for a great length of time, their faces become as familiar to the bootleggers as they are to the people who are enforcing the law; so that in switching an agent from one jurisdiction to another, we find it makes for better enforcement, because we are putting him into a jurisdiction where he is not known and where he can more readily detect the violators. Agent Asher, whose picture you have seen in the papers quite frequently, goes from place to place and, naturally, when he is called upon as a witness in one of these cases, he may be anywhere in the United States, and he has to travel back. There is an expense in that, and that is considered an expense which is properly borne because of the results that may be obtained in that matter.

Mr. PYLE. Mr. Asher's work is not so much that of making investigations as it is the investigation of purchases of liquor; is not that so?

Mr. SIMONTON. Yes, sir; I mentioned him simply for purposes of illustration.

Mr. PYLE. Mr. Asher is a general agent?

Mr. SIMONTON. Yes.

Mr. PYLE. What proportion of the general agent's work is embraced in the making of what they call "buys" and how much is involved in making investigations?

Mr. KENNEDY. I could not state the per cent. Of course, it is the duty of the police department to obtain evidence against soft-drink stands and places of that character that are selling liquor illegally, but in some cases it is necessary for us to get the evidence. I do not know what percentage of our cases are of that character.

The CHAIRMAN. Has there ever been an attempt to analyze the time and ascertain the portion of the time that the agents are engaged on these respective kinds of investigation? In other words, I think the country has the impression that you are spending a lot of time in investigating near-beer saloons and hip-pocket cases, which time might better be spent in watching and properly controlling your permittees?

Mr. KENNEDY. It would be quite a little work in detail, Mr. Chairman, to keep a record of that kind, to keep an accurate record of the number of days or hours that a man spends on investigations of permittees, or obtaining evidence against violators of the law. Each agent does make what we refer to as a daily report showing his activities during the day.

The CHAIRMAN. There would not be much trouble in abstracting the time shown on those reports as applied to the different activities. I would like to ask at this time whether or not, if the bureau devoted its time to the stopping of the illegitimate releases of alcohol and bonded liquor, it would not effectually stop the sale of them in the near-beer saloons and stop the hip-pocket cases? In my opinion you will never stop it in the near-beer saloons, nor will you stop the hip-pocket cases, if you do not stop the source of the supply.

Mr. SIMONTON. Mr. Pyle himself, Mr. Chairman, was group head in Pittsburgh, and I think he can give you some correct information as to what they do with hip-pocket complaints and near-beer saloon complaints. He can tell you about his activities while there.

Mr. PYLE. That is a little different. The general agent's force absorbed the work of the Federal director's office at Pittsburgh. The Federal director was regulating the matter through the commissioner and the divisional chief. The saloon work was left in the hands of the director to handle, and the breweries and distilleries and importations in quantity in the hands of the divisional chief. In other words, the director's force had what was called the "petty larceny," the little stuff, and the general agents the larger cases. I was group head at the time of the former, and I continued the saloon work, but we later got to work almost exclusively on breweries and carload purchases, just hitting the saloons enough to keep them a little bit worried about stocking up. Beer went up to about \$50 a barrel, and we had to hit the saloons enough to prevent them from stocking up. If they could run in a carload of a hundred barrels, they would be reasonably safe; so we aimed when they got the carload to take it away from them, which imposed more of a penalty than the courts could.

Mr. SIMONTON. You were looking up the purchaser rather than the distributor?

Mr. PYLE. We had certain men who were valuable principally as buyers. They were used for that purpose, and one or two warrants were served just to keep them alarmed.

The CHAIRMAN. When you talk about "buyers," do you mean buyers of drinks or buyers of cases?

Mr. PYLE. Buyers of drinks. In that connection I would like to state—and Mr. Kennedy can state the same thing—there used to be a great deal of delay in getting the money back that was invested in purchasing evidence. That has been corrected now, so that the agent can figure that within about 60 days he will have his money back that he has invested in evidence; but the fact that there is a 60-day delay to a man getting from \$175 to \$200 a month was so important that they confined their expenditures mostly to 50 cents or a dollar at a place in buying drinks, because they could not afford to tie up money in case lots.

The CHAIRMAN. In other words, the men had to take chances in drinking this sort of stuff to get evidence; is that it?

Mr. PYLE. They have to take a very decided chance to get a case.

The only ground that was recognized—I will not say the only ground, but the principal ground recognized by most courts for getting a search warrant is the purchase of liquor. That is something you can testify to before the United States commissioner—that you bought and tasted and knew it to be liquor. A search warrant will then issue without question. That is the only ground that I have ever found for a search warrant of a saloon or a place where it is being sold. That is accepted without considerable argument. So the agents had to spend a good deal. I think the appropriation asked for covered several hundred thousand dollars for that purpose, did it not?

Mr. KENNEDY. I do not know the exact figures; but each year we have a certain sum of money for the procurement of evidence.

The CHAIRMAN. I would like to ask if you will not convey back to the commissioner or to the bureau the fact that the committee would like to have some statement, either represented by man hours or in

dollars, showing the extent to which the bureau devotes its time to these various efforts.

Mr. SIMONTON. Just what do you mean, Mr. Chairman? As to travel, as to the handling of these small hip-pocket cases, and as to larger ones, etc.?

The CHAIRMAN. Yes. You spend an enormous amount of money, and I do not ask for a statement reduced to exact dollars and cents but a statement which must be available, at least roughly, of the amount of money involved and the amount of time devoted to the respective elements necessary to the enforcement of the prohibition act.

Senator JONES of New Mexico. I would suggest the idea that, if you have an unlimited amount of money, the inquiry would be suggested whether you should use it principally in getting your evidence at the source of supply rather than at the distribution end of it.

Mr. SIMONTON. I do not think you are going to be able to get that in detail. The largest cases often result from the smallest investigation. A man may be informed as to where whisky is sold. For instance, we will say—not that this is true—we are informed that “the Stuart Distillery in Baltimore has been bootlegging, and you can buy liquor down in John Smith’s saloon.” Then we send an agent down, and he goes into that saloon and stays there long enough to get, as best he may, some samples of Stuart Distillery whisky. That is traced, and finally it may result in the Stuart Distillery being prosecuted. Of course, I am just illustrating a case now.

The CHAIRMAN. In other words, you mean the place where you buy it may turn State’s evidence and say where it was gotten?

Mr. SIMONTON. No. We get evidence through the source of distribution in liquor cases. We realize, of course, that it goes through several hands until it finally gets down to the individual who uses it, or the near-beer saloon. To get evidence, the agent must go there.

The CHAIRMAN. I understand all of that. I am asking you how you trace it back to the brewery or distillery.

Mr. SIMONTON. We get a bottle of it, with the label on it, or maybe a case of it, and then that case is traced through to its source, from the individual back to the near-beer saloon, and back to the man who sold it to the near-beer saloon.

The CHAIRMAN. But why do you not find out what this brewery or distillery is doing, in the first place, instead of having to trace it from the saloon? If you can trace it all the way back from the saloon, you must know enough about it to go to the place where it is made and distributed in the first instance.

Mr. SIMONTON. That is done, Mr. Chairman.

Mr. KENNEDY. Our agents in that situation all have instructions to work at the source, to get the source of supply. We are getting big cases; but in doing that, as they go along they are going to see a man out in the street, a hip-pocket bootlegger, and they are going to pick him up. Naturally, as they go along they try to make up cases, and they pick up small cases as they go along, in an effort to make up big cases.

Mr. PYLE. In that connection, Mr. Kennedy, these general agents are distributed more or less experimentally all over the United States. Now, as I understand it, the general agents are primarily

designed to combat the larger production of liquor, and the production in quantity is found in some three or four States.

Mr. KENNEDY. Yes, sir.

Mr. PYLE. What, then, is the purpose of keeping as many general agents as you have, a matter of probably 400, in the territory that, so far as large violations go, is essentially dry. Take the States of Maryland, Pennsylvania, New Jersey, New York, Kentucky, and Illinois. They are practically the large production points of alcohol and the storage points of intoxicating liquors, I believe.

Mr. KENNEDY. That is right.

Mr. PYLE. Would it not be advisable to throw a large number of these men whose purpose it is to get these large institutions, into the territory where those large institutions are, rather than to keep them where they are not?

Now, concretely, I will tell you that I worked as general agent in the State of Utah, where we had to hunt diligently to find a violation worthy of attention, and in Pennsylvania it was a question of only picking out the bigger ones. What would you think of the advisability of throwing this mobile force where the battle was thickest?

Mr. KENNEDY. We do. If you will note here, the majority of our force is in the States that you have mentioned.

Mr. PYLE. Well, I did not get the figures that way.

Mr. KENNEDY. In the fifteenth division, for instance——

Mr. PYLE. That is, Texas and the Mexican border?

Mr. KENNEDY. That is Texas, Arizona, and New Mexico. That reaches from the eastern boundary of Texas, which is only a short distance from New Orleans——

Mr. PYLE. To California?

Mr. KENNEDY. To southern California.

Mr. PYLE. Yes.

Mr. KENNEDY. Three States.

Mr. PYLE. Well, is it necessary——

Mr. KENNEDY. In that district we only have at the present time 15 men; so you might as well say we only have a skeleton organization there.

Mr. PYLE. Those men are in addition to the Federal agents who are already there?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. How many Federal agents in that section, for instance, are there?

Mr. KENNEDY. In that section Texas has 33, New Mexico 15, and Arizona 15.

Mr. SIMONTON. Sixty-three.

The CHAIRMAN. Seventy-eight men.

Mr. PYLE. Sixty-three Federal agents covering that territory?

Mr. KENNEDY. That is right.

Mr. PYLE. That is, 15 special agents, whose creative purpose was working on distilleries, breweries, and the large sources of production or supply, are in addition to the 63 that were there?

Mr. KENNEDY. Yes, sir.

Mr. PYLE. Now, the point I am getting at is this: If this force was created for handling distilleries, breweries, and importations of

a large nature, why are they not thrown into the few States where this large production or importation is taking place, unless they are there just to check on the director's office?

Mr. KENNEDY. The work for the general agents in these, you might say, Western States, where the violations do not compare with those in the Eastern States—

Mr. PYLE. Work that a Federal agent could not do?

Mr. KENNEDY. Yes; there is work that they might do; but, for instance, we might have a carload of liquor shipped into some of those States. That happens quite often.

The CHAIRMAN. It goes right back again to the question of the source. If you had prevented that carload from being shipped in the first instance, you would not have had to have these men out in the field to prevent its consumption. You have your forces out now following the hip-pocket cases, instead of having them placed in the distilleries.

Mr. KENNEDY. In those particular three States referred to we have a total of—

The CHAIRMAN. Seventy-eight, including both divisions—

Mr. KENNEDY. Seventy-eight men.

The CHAIRMAN. Yes.

Mr. KENNEDY. It would not appear advisable to bring all of those men to the East.

The CHAIRMAN. That was not suggested by Mr. Pyle at all.

Mr. KENNEDY. No.

The CHAIRMAN. He said you apparently had these men distributed in proportion to population or area, when, as a matter of fact, the production of this product is much more centralized in certain sections than it is in other States, according to the population. In other words, you do not have producers in Kansas like you do in Pennsylvania or New York, and you have practically no distilleries there at all. Then, why put these general agents out in Kansas, when you might better have them in Illinois in an effort to stop the production.

Mr. KENNEDY. Of course, it would be possible to confine these general agents' forces entirely to the East.

The CHAIRMAN. Well, we are not asking you to go to extremes. Of course, you can use an extreme case, but we are talking about placing these forces at the points where the stuff is produced.

Mr. KENNEDY. I consider 15 men for the fifteenth division of Texas, New Mexico, and Arizona as small a number of men as we could have there and have any organization at all.

Mr. PYLE. In Texas you actually have one or two distilleries, I believe?

Mr. KENNEDY. Yes.

Mr. PYLE. And a brewery or two?

Mr. KENNEDY. The customs primarily looks after smuggling, but there is liquor that gets into this country and goes into the interior as far as Omaha, St. Louis, and Kansas City.

Mr. SIMONTON. I might say, as I understand the law, Mr. Chairman, the Commissioner of Internal Revenue has authority under the tax statutes to place an agent in a distillery, but the prohibition forces have only the right of inspection. That is also true as to the industrial-alcohol producer. The collectors have representatives,

storekeeper gaugers, in each distillery and in denaturing alcohol plants where they are making denatured alcohol. They are there through the taxing provisions of the internal revenue law. Under the prohibition act we have only the right of inspection. I have never been of the opinion that we could place a man there all day long under that authority.

Mr. PYLE. These men stationed there by the internal revenue collector as storekeeper-gaugers, do you know what their pay is?

Mr. SIMONTON. No.

The CHAIRMAN. Could they not act for the Prohibition Unit there, if they are placed there, no matter what bureau places them there?

Mr. SIMONTON. Certainly they could.

The CHAIRMAN. Why not?

Mr. SIMONTON. They can.

The CHAIRMAN. Why don't they?

Mr. SIMONTON. They do, as a matter of fact.

The CHAIRMAN. How does it get out?

Mr. SIMONTON. Let me illustrate with the Guckenheimer case.

Their distillery is at Freeport, Pa. Permits were received in that distillery which were forged. They would deceive the ordinary individual. Confirmations were there that were forged that would deceive the ordinary individual.

The CHAIRMAN. When was that forgery discovered?

Mr. SIMONTON. It was discovered—

The CHAIRMAN. I mean how close to the point of the forgery?

Mr. SIMONTON. The last forgery was in July, 1922, and the distillery was seized in October.

The CHAIRMAN. I am not talking about that. When was the forged permit discovered: I mean, when the permit was produced which was forged, how soon after that did the bureau discover that that was a forged permit?

Mr. SIMONTON. I am trying to answer you, Mr. Chairman, by showing the date of the last one that they received and withdrew the liquor on. That was on July 22, 1922. The distillery was seized on October 10, 1922, about three months afterwards, and in the meantime information had come to the department, and it had investigated it between July, 1922, and October, and had reached the conclusion to seize the distillery.

The CHAIRMAN. If a bank was in receipt of a forged check it would discover it much sooner than that, would it not? There is some way of checking banks.

Mr. SIMONTON. The bank, of course, would protect itself. We convicted the principals of the Guckenheimer distillery of withdrawals. In other words, they had produced or purchased the forged permits.

The CHAIRMAN. That is not the point. I mean when these permits came back to the bureau.

Mr. SIMONTON. They do not come back to the bureau, sir.

The CHAIRMAN. Why do they not, to find out whether they are forgeries?

Mr. SIMONTON. Because the forger would never send back his own papers for us to check over.

The CHAIRMAN. I mean the man who has the permit delivered to him for materials.

Mr. SIMONTON. That would be in this case the Guckenheimer officers. They were in the conspiracy. They released the liquor and they naturally would not send in any of the permits to us.

The CHAIRMAN. Why were they not required to?

Mr. SIMONTON. They were required.

Mr. PYLE. I would suggest in that connection that you explain to the Senator the system of permits and purchases.

Mr. SIMONTON. Every person who deals in liquor must have what is known as a basic permit. That permit says that he is permitted to do business. He may not use it at all. If he is a user or a seller or wholesale druggist or retail druggist, he may thereafter withdraw liquor from the distillery. To do that, he must make a separate application on form No. 1410; that application comes in to the director. The director checks the applicant's permit record, to see whether he has a basic permit, whether there is anything against him, and whether he has overdrawn his allotment, and then approves the application for the amount allowed. Then six copies of that permit are issued. The vendor's, carrier's, collector's, director's, and the commissioner's copies go to the vendor. The vendee, the man who has applied to make the withdrawal, gets what is known as the vendee's copy. He must identify himself thereafter, either through the mail or in some proper way, to the vendor before the vendor will release the whisky to him.

The CHAIRMAN. When he appears at the distillery and withdraws under the permit, is there a representative of the unit in this distillery?

Mr. SIMONTON. No, sir.

The CHAIRMAN. I thought you said you did have representatives in the distilleries?

Mr. SIMONTON. The representative of the collector's office, the storekeeper gauger is there, whose primary duty is to see that the tax is paid on the goods.

The CHAIRMAN. But I understood you to say that the unit had authority, under the law as you construed it, to put men in distilleries and alcohol plants, but not in breweries. Is that correct?

Mr. SIMONTON. Yes. Of course, I mean the Commissioner of Internal Revenue has under the tax statutes.

The CHAIRMAN. You do not have a man in the distillery, then?

Mr. SIMONTON. No, sir; not the Prohibition Unit.

The CHAIRMAN. You have authority to do so under the law?

Mr. SIMONTON. That is my opinion under the internal laws; yes, sir.

The CHAIRMAN. But you do not take advantage of it?

Mr. SIMONTON. It has not been used, except to the extent of placing storekeepers, gaugers, and deputy collectors in such places under the internal revenue laws.

The CHAIRMAN. If there was a man in this plant, for instance, who reported immediately when the permittee had withdrawn, you would immediately discover that his permit was forged, and that there was no permit existing?

Mr. SIMONTON. Yes.

The CHAIRMAN. No permit which would have permitted the withdrawal?

Mr. SIMONTON. Yes.

The CHAIRMAN. In view of the fact that you had so much difficulty with forged permits, why has not that been followed?

Mr. SIMONTON. It was followed to some extent. For instance, storekeeper gaugers were required at one time to have all permits referred to them, and they were supposed to telephone to the director's office to get an approval of the permit. We found that in some cases the storekeeper gauger was fooled on the proposition. He took the telephone down and called for the director's office. The line was cut in the distillery or elsewhere and he never got the director's office. He got some confederate of the distiller, and he received the O. K. over the telephone and he marked it on the permit. When they produced the permit they said, "This permit has been O. K'd by your man."

The CHAIRMAN. Yes; but the permit was not legitimate in the first instance, and I want to find out why the bureau does not discover that these permits are forged in less than three months' time.

Mr. SIMONTON. I started, of course, to tell you the regular course.

The CHAIRMAN. Well, I know, but we want to know why they are not discovered earlier than that.

Mr. SIMONTON. I started to tell you the regular course and then I wanted to show you how the forged permit gets into their possession. The vendor is required to do something after he gets a copy. He is required to write to the director by registered mail and obtain a confirmation and a statement from the director that this permit is all right. When he gets that confirmation back the vendee comes in and identifies himself. Then he has the whisky released to him.

The way that plan is defeated is this: The distiller will be in the conspiracy, and he will secure the permit that is forged and which did not originate in the director's office.

Mr. PYLE. You mean a basic permit or a permit to purchase?

Mr. SIMONTON. A permit to purchase. Then if the distiller is in the conspiracy he will have produced and placed in his file the forged permit, confirmation, white post-office receipt, and the registered-mail card from the Post Office Department, and when he is inspected, all these documents, unless they are checked, every one of them, back against the papers, records, etc., in the director's office, they would seem to be all right.

The CHAIRMAN. That is what I still find fault with, because you could not pull that off with a bank. Somebody would know sooner than that whether the check was forged. If there was this representative of the bureau in the distillery, that could not go on.

Mr. SIMONTON. I agree with you that there should be some one; although, as it stands, the distiller is not like the bank, inasmuch as he is either the forger or a party to the conspiracy.

The CHAIRMAN. There is all this liquor getting out, and you are spending so much time and energy in buying drinks and investigating near-beer saloons, when you might be putting those men in there and stop that thing at the source, at the distillery.

Mr. KENNEDY. Mr. Chairman, some of these forged permits are difficult to determine from legitimate ones.

The CHAIRMAN. I understand that, but when you check up with your records, you must know that you never issued such a permit.

Mr. KENNEDY. They will have the same serial number as the legitimate ones.

Mr. SIMONTON. Yes. When we check them with our records we know that. There is no question at all about your statement being correct. If we had a man placed right there to check every one of those that went out, a great deal of good would be done in that way.

The CHAIRMAN. Yes; then you could stop all of this stuff from the near-beer saloons and the hip-pocket cases.

Mr. SIMONTON. Major Haynes told you the other day, when he was here, how the violations had been reduced in the matter of the distilleries. It has gone down to a very low percentage in that regard.

The CHAIRMAN. Do you do the same thing in the industrial alcohol cases?

Mr. SIMONTON. Industrial alcohol is, of course, a little different. Industrial alcohol permits are approved by the Washington office of the Prohibition Unit; that is, I mean the basic permits. Withdrawals come from the collector's office, and permits to use specially denatured alcohol are issued by the collector's office. The collector has a man in all these places.

The CHAIRMAN. Are there any forged permits in those cases?

Mr. SIMONTON. Oh, no; violations occur largely through diversion after the alcohol or denatured alcohol gets into the hands of the permittees.

The CHAIRMAN. There are no forged permits in the industrial alcohol cases, like there are in the bonded warehouses or distilleries?

Mr. SIMONTON. No; because they work a little differently in the collector's office. After the man has his basic permit, a permit is issued to one, two, or three industrial alcohol people saying, "John Smith is entitled to withdraw 10,000 gallons per month," or per quarter, or whatever it is, "and you will ship him upon his request." John Smith makes request of the distiller. The gauge sheet is made up and sent from the collector and to the Washington office and checked against the shipments. Smith does not have any papers to pass back and forth. After the withdrawal this gets into the hands of the wholesale dealer or denaturer, or after the denatured alcohol gets into the hands of the user of the specially denatured alcohol, there the diversion occurs through false records. A man will claim that he made so much denatured alcohol, and, as a matter of fact, he sold it without denaturing it. The denatured alcohol user will say he made so much bay rum, and may have a record of it, when, as a matter of fact, he sold it to one not a specially denatured alcohol user, who thereafter distilled it over again; and it finally gets into consumption.

Mr. PYLE. That situation is confined to a comparatively few cities, is it not?

Mr. SIMONTON. Yes; that is true.

Mr. PYLE. It is centralized in a few places?

Mr. SIMONTON. In the East; but we are not having any trouble, or very little trouble now from forged permits in distilleries.

Mr. PYLE. You started to touch on the status of the Guckenheimer Distillery a few moments ago. I believe that might be in-

teresting to the committee. Just briefly outline what happened in that case, and what happened to the liquor that was on hand.

Mr. SIMONTON. We seized the distillery. There was a revocation hearing held, at which I presided, and as the deputy of the commissioner, I revoked every permit. The distillery remained under seizure, and no tax assessment was made for fear it might hurt our criminal case. Very often where large forfeitures take place, or large assessments are made and collected, the jury finds out that the man has been mulct in a large sum, and it will not take very much interest in finding him guilty or in letting the court fine him again.

So in this particular case we made no tax assessment. We held the distillery, and criminal indictments were prepared. I helped to prepare the indictments in the case in the office of the United States attorney at Pittsburgh, with Mr. Pagan, who was the Department of Justice's expert on indictments. The Guckenheimers and others were indicted on 649 counts involving substantive offenses, and were also indicted for conspiring to produce false records under the internal revenue laws, and for conspiring to deliver whisky, under the national prohibition act, on forged permits.

They were tried in May of this year, and 8 out of 12 defendants were convicted, some of them being given the maximum sentence of two years in the penitentiary and \$10,000 fine. The corporation also was fined \$10,000.

Mr. PYLE. Just what was the exact procedure that was followed? You have told us everything about the criminal trial in that case. Outline briefly just how they operated in removing this liquor.

Mr. SIMONTON. That is what I have described before.

Senator KING. Was this a distillery or a brewery?

Mr. PYLE. A whisky distillery.

Mr. SIMONTON. In the Guckenheimer plant there were some 310 forged permits, and attached to these forged permits were forged confirmations. Evidence was adduced to prove that they had purchased those forged permits from a forger by the name of Stone. Evidence was also produced—

Mr. PYLE. He testified with regard to that fact?

Mr. SIMONTON. Yes. Evidence was also produced to show that where attempts were made to check the permits the telephone call of the storekeeper gauger, instead of going to the bureau proper at Philadelphia, went to a man by the name of Davis—the same name as that of the director—who was registered at the Walton Hotel, to which place the records of the telephone company showed the call had been diverted; so that instead of it going to the director's office it had been switched to the Hotel Walton in Philadelphia, and there was answered by a man who claimed to be the Federal prohibition director. The permits were O. K'd in that way.

We proved, of course, the forged character of the paper. We proved the paper itself not to be Government paper. We proved the printing not to be Government printing. We proved the signatures to be false. We proved that permits of the same number had been issued to directors' offices not in the State of Pennsylvania. We proved by the permittees named in these permits that they had never received the whisky. We proved that the same permits of the same numbers had been filled in other jurisdictions, and produced the per-

sons who had received the whisky on them. We proved through these forgers that the permits were sold directly to the distillery.

Senator KING. They had used the names of genuine persons as permittees, had they?

Mr. SIMONTON. Yes.

Senator KING. Persons who had theretofore made application?

Mr. SIMONTON. No; even there they failed. We found, for instance, that the man who was the forger is a foreigner. He was not very familiar with English names. He forged one permit in which he placed the name of a druggist in Pittsburgh, Robert O. Lee, from the directory. The name in the directory was O. Lee Robt instead of Robert O. Lee. He did not know the difference, and so wrote it in the permit "O. Lee Robt."

Another firm, the Dykema Co., one of the largest wholesale druggists in the city of Pittsburgh, never had a permit, and yet in the files of the Guckenheimers appeared these forged permits purporting to sell whisky to the Dykema Co.

Senator KING. You mean in the files of the distillery?

Mr. SIMONTON. In the Guckenheimer distillery.

Senator KING. Yes.

Mr. SIMONTON. As the result of the testimony in that case, some of the principals were convicted and others got off. Altogether eight men were either sent to jail or were fined heavily.

Mr. PYLE. Do you recall the amount of liquor that was on hand at the time this warehouse was seized by the collector?

Mr. SIMONTON. I could not say. I would say something like 3,000 barrels.

Mr. PYLE. Were you out to Freeport?

Mr. SIMONTON. No.

Senator KING. Was this pre-war liquor?

Mr. SIMONTON. Yes, sir; Guckenheimer liquor.

Mr. PYLE. As to this warehouse—

Mr. SIMONTON. May I finish my statement there?

Mr. PYLE. Yes; go on.

Mr. SIMONTON. Then after the conviction an assessment hearing was held and a large assessment was levied against them.

Senator KING. How much?

Mr. SIMONTON. I could not say offhand, because I did not handle it personally, but it was a large sum.

Mr. PYLE. That was compromised, I believe.

Mr. SIMONTON. No; it has not been compromised. I thereafter personally drew the libel seeking the forfeiture of the distillery, land, buildings, equipment, whisky, etc., and sent it in to the Department of Justice at the request of Mrs. Willebrandt; and she has since sent it to the United States attorney's office in Pittsburgh for filing. That is the status of the case up to date.

The CHAIRMAN. Is that distillery still closed?

Mr. SIMONTON. It is under seizure.

The CHAIRMAN. And is the liquor still there?

Mr. SIMONTON. The liquor is still there, with the exception, I believe, of two minor robberies that have occurred since, somewhat in the nature of what Mr. Pyle has told you about, "knocking off" a distillery. They have gone in and stolen a wagon load or two out of it since that time.

Mr. PYLE. When this was seized by the collector's office three Government guards were put on working eight hour shifts, and the company also put guards on?

Mr. SIMONTON. Since these robberies the liquor has all been removed from the different outbuildings into one warehouse, and put on the third floor of the warehouse, where it is hard to get at.

Mr. PYLE. This warehouse is composed of a three or four story building, located at Freeport, Pa. Freeport is a very small town. Mining is the principal industry, and the warehouse was at the edge of the town, a rather dark and unsafe place. These guards down there are, I believe, paid \$100 a month, and from indications are overpaid. There have been several robberies. I can not give you at this time the exact figures, though I will ascertain the exact amounts and submit them later. There have been several robberies of several trucks each. There had been on duty at all times until very recently, at least, one Government guard, and one or more distillery guards. There never has been anybody hurt in these robberies. The worst that has happened to anyone is being tied up. There have been several of them pulled off in this place. The liquor has not been concentrated. It has been ordered concentrated but recently. I believe about two months ago it was ordered removed to the third floor of one of the warehouses.

Mr. SIMONTON. It could not be ordered concentrated because it was under seizure and in the court's hands.

Mr. PYLE. I believe there have been three robberies at this place since the Government seized it.

Mr. SIMONTON. I think so, yes; three robberies of a truck or two.

Mr. PYLE. They got away with several trucks to a robbery.

That is one example.

Now, I might explain, and Mr. Kennedy will verify it, that this liquor that is stolen never reaches the market in that shape. Rye whisky, which Guckenheimer & Co. made, is not sold as whisky any more, but it is used to flavor and give the former flavoring odor to the alcohol and water mixture. Rye whisky can be cut to 25 per cent without losing its flavor or odor. So that the whisky thus stolen simply adds several dollars a quart to a large quantity of whisky made out of alcohol and water. I think that has been the experience of the department. It does not reach the market in the shape in which it was taken.

Senator KING. Then, if good rye or bourbon or other whisky—I do not know the names of all of them—gets onto the market illegally, it is used to improve the character of alcohol?

Mr. PYLE. Not bourbon. Bourbon will not stand cutting, according to the bootleggers, who claim to be authorities on the subject. Bourbon will not stand any cutting without losing flavor; but rye will stand cutting down until only a small amount is present. Scotch will stand some cutting, but not much. I have that on the authority of men who claim to know the operation as it is handled to-day.

Mr. Chairman, I would next like to take up the functions of the directors' offices.

Senator KING. Before you go into that, are you through with all of the evidence that you expect to offer on the question of illegal removals?

Mr. PYLE. I have not touched it, sir. It came up incidentally to-day. The matter I was talking about to-day was the organization of the offices. We took up yesterday the general organization into divisions and the functions, duties, and operations of the general agent's force. Now, next, I would like to take up the exact operations of the directors' offices, how they function, in what manner, and what becomes of their reports and various matters. As the committee desires, I can take that up at this time or at a later time.

The CHAIRMAN. It is nearly 1 o'clock now, and I think we had better adjourn until 10.30 o'clock to-morrow morning.

Mr. SIMONTON. There is just one other thing here. I might have given you the wrong impression when I said we might put men into the distilleries or industrial alcohol plants. I do not mean under the prohibition act we could put the prohibition forces there. We could not do that, but the Commissioner of Internal Revenue, who has charge both of the prohibition force and the internal revenue force, has authority under the internal revenue law to put these men in distilleries, and he could take a prohibition agent and place him in a distillery to do just what you suggested.

The CHAIRMAN. Would the so-called Cramton law, which is proposed, give you any more authority to put men in distilleries?

Mr. SIMONTON. Yes; it would take over the entire internal-revenue duties and place them under the Prohibition Unit, so that we would have the full authority in that regard which the Commissioner of Internal Revenue now has.

The CHAIRMAN. Do you mean to say that the commissioner has no authority to place people in these distilleries himself?

Mr. SIMONTON. That is my construction of the law. The prohibition commissioner has the right to make inspections, but the right to inspection does not give us authority to place a man there 24 hours a day. The Commissioner of Internal Revenue has that power under the taxing statutes.

The CHAIRMAN. I understand that, but you say the prohibition commissioner has no right to put his own men in there?

Mr. SIMONTON. That is my construction of the law, sir.

The CHAIRMAN. You contend that the so-called Cramton law will give you that right?

Mr. SIMONTON. That is my understanding of the Cramton law, that it transfers that power to us.

Senator KING. Of course, if you transferred the whole control of this activity to the Department of Justice, you could give it such powers as you pleased?

Mr. SIMONTON. Yes, sir.

Senator KING. And could carry with it such control as is now exercised by the various units in the Treasury Department?

Mr. SIMONTON. Oh, yes; Congress has the power and the choice of language to do that.

Senator KING. There could be that enforcement of the law by the Department of Justice and yet leave with the Internal Revenue Bureau the control of the liquor and the permissive features.

Mr. SIMONTON. Yes; it could be done.

The CHAIRMAN. In fact, you are almost doing that now. You are separating your organization into the permittee system and the enforcement of the law; so I think what Senator King is suggesting

is that it might be separated by departments instead of divisions of the same department.

Mr. SIMONTON. I agree with you, Senator, that that can be done.

Senator KING. They have it in the Treasury Department. They have investigators looking after various activities, but when violations of the law occur the Department of Justice takes charge of the matter and they enforce the law.

Mr. SIMONTON. That is true of every department. The Department of Agriculture has investigators under the food and drugs act, and the Department of Justice is called upon to enforce the law. There is no question about that.

Senator KING. I would like to ask our counsel here, Mr. Pyle, if, when he brings a case to present to the committee, he will bring the case of the Fleischman Yeast Co.?

Mr. PYLE. Very well, sir.

Senator KING. My information is that an investigation was held, and I think Mr. Simonton presided in that case.

Mr. SIMONTON. I beg your pardon.

Senator KING. The case of the Fleischman Yeast Co.

Mr. SIMONTON. I was somewhat in the position of the prosecuting attorney in that case. I presented the evidence. Mr. Rutter presided.

Mr. PYLE. I will bring that case before the committee as demonstrating one of the big sources of alcohol and as showing the various ways in which alcohol reaches the market. That case is a specific example.

Senator KING. I would also like to have you bring out the fact, if it be a fact, that hearings were held, as it is claimed, on irregularities in violation of the law, and the specific findings were to that effect; that the commissioner finally overruled all of those procedures and reinstated the company in the good graces of the department.

Senator JONES of New Mexico: I think it will all be brought out.

Mr. SIMONTON. May I repeat what I have taken note of as to what you want?

As I understand it, you want us to produce evidence of better conditions—either you or Senator King?

The CHAIRMAN. Mr. Kennedy stated that since the scheme of the department in Pennsylvania and New Jersey had been devised, prohibition conditions had improved.

Mr. SIMONTON. You want some evidence of that?

The CHAIRMAN. We want some evidence of that.

Mr. SIMONTON. You also want to know the number of lawyers in the counsel's office?

The CHAIRMAN. Yes.

Mr. SIMONTON. You want the total cost of the keeping of this divisional force, divided up into small cases and big cases?

The CHAIRMAN. State administration, Washington administration, special agents' administration, and directors' administration.

Mr. SIMONTON. Do you want us also to give the cost of the directors' offices?

The CHAIRMAN. In the aggregate. I do not want the bureau to go to any great expense in getting this up. I mean that just in a general way it will be satisfactory.

Mr. SIMONTON. I do not know that we will be able to get it, but I wanted to get your idea.

Senator KING. I would also like the number of employees, if that has not been given.

Mr. PYLE. That will be brought out.

Mr. KENNEDY. It has already been given, or will be given.

Mr. PYLE. For the whole force?

Mr. KENNEDY. Yes.

Mr. PYLE. The amount of compensation paid that force annually, the amount of overhead expense, etc.?

Mr. SIMONTON. That will all show, I think, in the general statement.

The CHAIRMAN. Then we will adjourn here until to-morrow morning, at 10.30 o'clock.

(Whereupon, at 1 o'clock p. m., the committee adjourned until to-morrow, Saturday, January 10, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

SATURDAY, JANUARY 10, 1925

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE THE
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Watson, Ernst, Jones of New Mexico, and King.

Present also: John S. Pyle, Esq., of counsel for the committee; and George W. Storek, Esq., examiner for the committee.

Present on behalf of the Prohibition Unit of the Bureau of Internal Revenue; James J. Britt, counsel; Mr. V. Simonton, attorney; and Mr. H. P. Loveland, associate head, permit division.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. In the discussion yesterday the matter of the organization known as the general agent's force was taken up in some detail, in its manner of functioning, its organization, the extent of its power, and distribution. That is one branch of the enforcement and permit work in connection with the prohibition program.

The rest of the field work is handled by what are known as State directors, there being at the present time one for each State. They also have a force of men, except in the State of New York, where the work is handled by the New York general agents working under Mr. Yellowley.

The matter which I desire to take up to-day is the function of the department in the matter of issuance, the withholding or the revocation of permits, and, in connection with that, the operation of the directors' offices.

The policy of the department, as I understand it, is that permit work is handled directly through the various State directors, and I will ask Mr. Britt that he or a representative of the department in touch with this work discuss first the organization of the directors' forces, the numerical strength in the various States, the issuance of permits, the procedure, and the manner of checking up on these permits.

Mr. BRITT. Mr. Chairman and gentlemen, I apologize, first, for my absence yesterday. I was designated to say something in behalf of the Cramton bill. The hearings were prolonged, and I did not get through until after your session here had closed.

As to the permit division and its operations in so far as they are conducted from the central unit, we have present Mr. H. P. Loveland, who is one of the two associate heads of that division. He deals with it from day to day and continuously, and I think he

would be more readily efficient for the task than I, who have only a general knowledge of it, and if the committee will permit it, Mr. Loveland will testify on that point.

As to the other point which Mr. Pyle has mentioned, the administrative supervision of directors, that is directly under the assistant commissioner, Mr. James E. Jones. Mr. Jones has been ill for several days, but he was out yesterday. He called me up this morning and, in a rather weak voice, told me he doubted whether he would be able to get down to-day or not. I should like to ask that that matter be held open until the next meeting, when Mr. Jones will be able to be here. However, in the meantime I am prepared to give a general description and make a general discussion of the management, but the details had better be gotten through Mr. Jones, who manages it directly.

The CHAIRMAN. I think it would save time and it would save the record if we would postpone that matter until Mr. Jones appeared.

Mr. BRITT. Mr. Loveland is at your service, Mr. Chairman.

STATEMENT OF MR. H. P. LOVELAND, ASSOCIATE HEAD, PERMIT DIVISION, BUREAU OF INTERNAL REVENUE

The CHAIRMAN. Will you give the reporter your full name and position with the bureau, please?

Mr. LOVELAND. H. P. Loveland, associate head of permit division, Prohibition Unit.

Mr. PYLE. Mr. Loveland, will you first discuss the various classes of permits and the powers granted under them? I will ask you, first, to discuss the whisky distilleries.

Mr. LOVELAND. There is a distinction between permits. Perhaps it might be well to give as a preliminary the process of issuing them.

Senator ERNST. Just make a full explanation.

Mr. LOVELAND. Yes, sir. The applicant for a permit of any character first makes application to the prohibition director of the State in which he would operate. Upon receipt of the application the State director invariably and in some manner, probably by inspection, satisfies himself as to the recommendation he should make on the application, whether approval or disapproval. If approved he forwards them for consideration to the Washington office.

The CHAIRMAN. You are referring now to permits for—

Mr. LOVELAND. Generally.

The CHAIRMAN. That includes permits for alcohol for industrial purposes?

Mr. LOVELAND. Yes, sir.

The CHAIRMAN. And for withdrawal from warehouses?

Mr. LOVELAND. Yes, sir.

The CHAIRMAN. And breweries and all that?

Mr. LOVELAND. Mr. Chairman, I will come presently to the distinction between the withdrawal permits and basic permits. I think that should be kept clearly in mind by the committee.

Senator WATSON. What is the distinction?

Mr. LOVELAND. Withdrawal permits are issued by directors and are not authorized by this office, or even presented to the Prohibition Unit here in Washington for its consideration.

Mr. BRITT. And by "withdrawal permit" you mean a permit that gives authority to purchase?

Mr. LOVELAND. Authority to purchase. We use the word "withdrawal" as synonymous with the word "purchase."

The CHAIRMAN. Let me understand you there. Do you say that those permits are not dealt with in the Washington office?

Mr. LOVELAND. No, sir. I am going to reach that presently, Mr. Chairman, if I may proceed in my own way. I will reach that point presently.

At this point let me say that I have had a complaint from the city of Wyandotte, Mich., recently that they had been months in trying to get a withdrawal of a few gallons of alcohol for their laboratory, and they had been unable to get any relief because of the delay in the Washington office. I took it up with the Washington office and the permit was granted. That does not seem to be in line with what you have just said about withdrawals.

Mr. LOVELAND. I think, from what you say, Mr. Chairman, that application that you refer to was an application for a permit to purchase alcohol?

The CHAIRMAN. Yes.

Mr. LOVELAND. And not the application to purchase under a permit which would be granted to him.

Senator ERNST. I do not understand that either.

Mr. LOVELAND. I will try to make that clear. This office will issue a basic permit to an applicant, fixing the quantity that he may have within—

Mr. BRITT. Quantity by months or quarters or years—state that?

Mr. LOVELAND. The quantity that he may have issued by quarterly period. Bonds are generally issued covering the three months' operations, because it makes the premium less on the bond. That is for the accommodation of the permittee. We will issue a permit to an applicant, say for 2,000 gallons of whisky or alcohol during three months. That is his basic permit. He can not purchase in excess of that. The maximum that he can have is 2,000 gallons every three months—

The CHAIRMAN. Two thousand.

Mr. LOVELAND. Well, 2,000, or any quantity. Now, he is qualified to purchase to that amount. After he has a basic permit in hand, when he wants to purchase the alcohol or whisky, as it may be, he makes an application to the Federal prohibition director to purchase any quantity he desires, in that full amount, or any part of it. If he only wants to purchase, say 10 gallons of whisky, he makes application to the director on what we call Form 1410. In that application he states that he wants to purchase from the Rossville Distillery Co. of Indiana, for instance, 10 gallons of whisky, and the director, considering the application and knowing the character and limitations of the permit, will almost invariably approve the application.

Senator ERNST. Where is that done?

Mr. LOVELAND. By the State director. That application does not come to this office.

Mr. BRITT. May I ask a question once in a while to clear up some matters?

Senator ERNST. Oh, yes.

The CHAIRMAN. Why is it necessary for the director to grant a permit for withdrawal after a basic permit has been granted?

Mr. LOVELAND. It is so much more convenient, Senator, for the permittee. If applications had to be sent down to Washington for this action, it would involve a great deal of delay.

The CHAIRMAN. No; I do not mean here; but why is it necessary at all, after you have passed upon the basic permit, to have an individual permit for each withdrawal?

Mr. BRITT. This is the Senator's question: You have already told him and the committee that you grant an annual permit, running for the calendar year, which you call the basic permit, and that this basic permit authorizes them to purchase, on approved applications, so much per quarter during the year. The Senator is asking you why, since he has this basic permit for the business, does he have to get another permit for each special purchase?

Mr. LOVELAND. That reaches to the policy of the service, Senator. I am only stating what exists in our operations. I do not know why.

Senator WATSON. That is to say, if a man is given a basic permit to withdraw 2,000 gallons a month, and he wants to withdraw 1,000 gallons, why does he have to have a special permit to withdraw the 1,000 gallons when he already has a basic permit for the 2,000 gallons?

Mr. LOVELAND. My answer to that is that that reaches to the policy of this service. I can not tell you why.

Senator WATSON. You do not fix the policy?

Mr. LOVELAND. I do not fix the policy.

The CHAIRMAN. How long have you been in the service?

Mr. LOVELAND. Three years and a half—since the 1st of July, 1921.

The CHAIRMAN. And having been there all that time, you do not know why the policy is thus?

Mr. LOVELAND. I know what the policy is, sir.

The CHAIRMAN. But you do not know why?

Mr. LOVELAND. I do not know why. Mr. Blair or the Federal Prohibition Commissioner, adopted that system.

Senator WATSON. Can you answer that, Mr. Britt?

Mr. LOVELAND. I would not attempt to say why; no, sir.

Mr. BRITT. I will be glad to give you my understanding of it, if the committee wants it.

He has already said that this annual basic permit, which is in the nature of an annual license, gives him the privilege to purchase so much during each of the four quarters of the year, but it does not give him the privilege to purchase any more in the aggregate than that. Of course, there must be an accounting of what he does with it all, so that the department may, at any time, know whether he has withdrawn in excess of what he was authorized to withdraw. Then, since the law charges the commissioner with the duty of seeing that the spirits are not diverted to beverage uses, in this application he indicates what it is wanted for and how much is required for that purpose. Thus, the department is enabled to keep him within his authorized quota, and also to follow the purpose for which he withdraws it.

Senator WATSON. Then it is a sort of check-up system?

Mr. BRITT. It is a checking system, sir.

Senator WATSON. The basic permit, the original basic permit, is passed on by the office here?

Mr. BRITT. Yes, sir.

Mr. LOVELAND. Yes, sir; they are issued by this office.

Senator WATSON. Other permits that come within that quota are not passed on by the office here?

Mr. BRITT. There are two exceptions—permits to physicians and permits to transporters, each of which class must have a permit which is obtained first and finally from the State directors in the States.

Senator WATSON. Yes.

Mr. BRITT. Because of their generality, and not being of the greatest importance, they are disposed of there. The others come to the central unit.

Senator WATSON. Suppose a man is granted a permit—to go back to the old illustration of 2,000 gallons a month, and he wants to withdraw 150 gallons. Does he have to come here to get the privilege to do that?

Mr. BRITT. No, sir; he makes his request to the local director, and the local director knows his basic permit and he knows his quarterly authority. He authorizes it and charges it in his accounts to his allowance.

Senator WATSON. So that is a check system?

Mr. BRITT. It is a perfect check, made in the directorate, and then, from the reports, that check is again made in the central unit.

Mr. SIMONTON. As I understand it, Mr. Chairman, you asked a question—maybe I am mistaken—as to why authority is needed for withdrawal by a man who already has a basic permit. Is that your question?

The CHAIRMAN. Yes, sir.

Mr. SIMONTON. Because the law provides that he must get another purchase permit. There are two permits provided in the law; the basic permit puts him into business, and he may or may not use it, but when he does business the law then says that he must get a permit to purchase, which would be for 30, 60, or 90 days' duration.

The CHAIRMAN. That is a statutory requirement, then, and not a regulation of the bureau?

Mr. BRITT. Yes.

Mr. SIMONTON. Yes; the policy is that the director shall issue the latter permit for purchasing a particular quantity after the basic permit has been fixed.

Senator ERNST. That is a fair answer.

The CHAIRMAN. It is not a policy at all; it is a statutory requirement, is it not?

Mr. SIMONTON. The policy as to the person who issues it. It might be issued from Washington, but it would not be workable.

Mr. BRITT. Although the authority is in the statute.

Senator WATSON. Suppose a man gets a basic permit for 2,000 gallons a month. You say he may never operate under that?

Mr. SIMONTON. That is right.

Senator WATSON. Suppose he then has to purchase 150 gallons. Then that is not charged to him if he is operating under that basic permit. How do you know whether he is or not?

Mr. SIMONTON. By the withdrawals. When he makes his first withdrawal he begins operations. If he is a wholesale druggist, and he has a 10,000-gallon allowance, we will say, he makes application for 100 gallons to the director. That is the first time he comes under the law, so far as his operations are concerned, because before that time he never had any whisky.

Senator WATSON. As soon as he begins to withdraw after the basic permit has been secured then he is operating under that permit.

Mr. SIMONTON. Oh, yes; but he may never withdraw.

Senator WATSON. I thought you meant that there were two of these forms of withdrawal?

Mr. SIMONTON. No; I merely meant to say this: That the permit puts him in business, and then he may make his withdrawals.

Mr. BRITT. I understand the Senator is asking him about whether his privilege might be cumulative. We had quite an interesting experience on that point relating to retail druggists. It was the rule for a time that if within a certain quarter he did not use his privilege for that quarter it was passed. That seemed to work a hardship, and a committee called upon Commissioner Blair, and I was called into the conference, and I made the suggestion that if a certain druggist who had an annual permit had such a situation in his business as did not require his withdrawal within the first quarter of the year, say, but that afterwards his business conditions changed, he be allowed to let that quarter accumulate and withdraw in the April quarter for the January quarter also. That is now the rule. However, the permit privileges must all be availed of within the calendar year. None overlap.

Mr. LOVELAND. Providing the bond is sufficient?

Mr. BRITT. Yes, sir; there is always the bond.

Mr. PYLE. I believe it can be stated generally that in the basic permits the applications are made to the director?

Mr. LOVELAND. Yes, sir.

Mr. PYLE. Who investigates and indicates his approval or disapproval, and afterwards it goes to the commissioner?

Mr. LOVELAND. Yes, sir.

Mr. PYLE. Is there any further investigation that is made, or does the commissioner act entirely upon the recommendation of the director?

Mr. LOVELAND. No, sir. We may make further investigation, and this office is at liberty to follow the recommendation of the State director or to act independently of that, according to the facts which it may know.

Mr. PYLE. That would be done by recheck, as was spoken of yesterday by the general agents, or in some such manner?

Mr. LOVELAND. Yes, sir. Generally the State director is confined in his inspections to the Federal agents, who only have local knowledge. When we receive an application through the State director's office and there is any question, our practice is to make inquiry through our litigation division as to whether it has any information respecting the applicant. Frequently the litigation division has information that a State director, even, is not in a position to have, and then we ask the head of our general agents if they have any report on the applicant. That does not involve any delay

of any great character, and if both of those divisions report to the permit division that they know nothing to the detriment of the applicant, that they have no record against him, the application is approved and the permit is issued. If, through such inquiries as I have mentioned, we find that there are some reasons which would justify the disapproval of the application, or that there is such information as would justify a further inspection, it goes through one of two courses. We may return it to the Federal prohibition director and call his attention to such information as we have gained through other sources and request him to conduct an inspection, or we may refer the matter to the general agents. The scope of observation of the general agents is much wider than that of the Federal agents, but it is not uncommon that the Federal prohibition director may, in good faith, and for good reasons, as far as he knows, and as far as the agents know, approve an application. I am speaking now more particularly of renewal applications, but the operations of the permittee are nation-wide. They reach throughout the country, and the operations of a permittee may have been in violation. His permit may be in the State of Texas. That fact may have been made known to the general agent's office by reason of some general agent in Texas, and when we have information of that kind we return it to the State director or ask the general agent of the district in which the permittee resides to conduct a further inspection.

Mr. BRITT. State to the committee whether in practice we do not often make several inspections in order to satisfy the unit of the fitness of the applicant?

Mr. LOVELAND. Well, that becomes necessary occasionally, but that is not a frequent occurrence. We do try in every way possible and within the least possible time to determine whether the applicant is entitled to the permit or not.

The CHAIRMAN. For the record I would like to have a short description of the business engaged in by applicants whose basic permits are granted?

Mr. LOVELAND. Well, sir, as I started to say a while ago, there are a great many different kinds of permits. They are designated by letters of the alphabet.

Senator ERNST. He wants those to which you grant basic permits.

Mr. BRITT. Just commence with A and explain them to the committee.

Mr. LOVELAND. There are so few that use them that I have made a memorandum, anticipating this question, lest I might overlook some.

The A permit is a permit to manufacture. That is used most generally in wineries.

The CHAIRMAN. Manufacturers of what?

Mr. LOVELAND. Manufacturers of wine or distilled spirits of any character. They are not of course, manufacturing whisky now, but if a permit would be issued to a distillery it would be issued under the A classification.

Senator ERNST. That is class A?

Mr. LOVELAND. That is class A; yes, sir.

Mr. BRITT. It includes all manufacture?

Mr. LOVELAND. It includes all original production. It is classified under the letter A as A permits.

Mr. PYLE. Does it include the alcohol?

Mr. LOVELAND. Yes, sir.

The CHAIRMAN. What comes under that?

Mr. LOVELAND. A permit to manufacture wine is as close an illustration as we can get.

Mr. BRITT. It goes beyond that.

Mr. LOVELAND. We can take that as an illustration.

The CHAIRMAN. I would like to have you put in the record a complete list of what they cover.

Senator ERNST. Let your attorney give that, Mr. Loveland.

Mr. BRITT. An A permit is the designation of the permit given to all manufacturers of distilled spirits of any and every sort, including brandies, whisky, alcohol, and wines and all, without exception.

The CHAIRMAN. Mr. Loveland has said that they were not manufacturing whisky any more.

Mr. LOVELAND. They are not.

Mr. BRITT. For the time being they are not, because the supply is now held to be legally equal to the demand; but when the supply is consumed they will manufacture, they will be A permittees, as they were before this suspension.

The CHAIRMAN. You say it is conceded that there is enough whisky without manufacturing any new whisky; is that correct?

Mr. BRITT. The statute itself says that the commissioner shall not authorize the manufacture while the supply is sufficient, and that has been deemed to be the condition since the passage of the Willis-Campbell Act.

The CHAIRMAN. If a distiller disposes of his whisky, so that he is out of a supply, then he is out of business until his competitor has disposed of his stock; is that correct?

Mr. BRITT. He is out of business, if he has disposed of his supply, until the country has come back to a deficient supply. That is in the statute.

The CHAIRMAN. Then a distiller who had a great volume on hand at the time the prohibition act became effective is at a great advantage in supplying the needs of the country, while his competitor may have to stand by for 10 years and wait for the supply to be absorbed before he can again engage in that business?

Mr. BRITT. Of course, if his competitor desires to continue the business, he is in the condition of being without a supply while his competitor has a supply.

The CHAIRMAN. The law prevents him from getting any more with which to compete?

Mr. BRITT. That is it.

Senator KING. The fact is that, by reason of the heavy taxes which have been imposed annually and the restrictions which have been imposed upon these distillers who had large supplies, like some in Kentucky, they have become practically bankrupt in many instances.

Mr. BRITT. I think they are the great losers in the end. In the first place, their spirits are diminishing naturally by evaporation, leakages, etc. They are also being subjected to heavy cost for storage.

The CHAIRMAN. Not the distiller, is he?

Mr. BRITT. He is the owner of the whisky in his warehouse, after suspending his distillery, and now, generally speaking, but not always, he is removing it from his distillery warehouse to concentration warehouses under the law, but not all of it is so removed. He is still subjected to his heavy charges for storage and for bottling, etc., and still subjected to his lossage by leakage, evaporation, etc.

Senator WATSON. What I mean to say is that such permits—

Mr. BRITT. Pardon me. Is that a complete answer about the A permits?

The CHAIRMAN. I think that covers it.

Mr. BRITT. I believe it was understood that B permits included the wholesale liquor dealers until the opinion of the Attorney General put them out of business in 1921.

Senator KING. For my own information, is it not a fact that some of these persons, like the old liquor dealer who had liquor on hand when the prohibition law went into effect, have been compelled to pay annually a very heavy tax, which really has destroyed the value of his property?

Mr. BRITT. You mean a State tax?

Senator KING. No; a Federal tax.

Mr. BRITT. Well, they would not pay a Federal tax until they withdrew their spirits. They would pay the commodity tax on spirits when they withdrew them, but they do pay a State tax as a property tax. They do not pay any tax to the Federal Government except the \$2.20 a gallon when they withdraw it.

Senator KING. I know of a number of persons who have been here seeking some relief from Congress. That was before I was a member of the Finance Committee, and I only know it from hearsay. Their contention was, as I have been told, that their whisky was diminishing by reason of evaporation.

Mr. BRITT. Precisely.

Senator KING. And they were compelled to pay a heavy revenue tax.

Mr. BRITT. A State tax. They pay the State tax, for instance, in the State of Kentucky.

Senator KING. Yes; I understand that.

Mr. BRITT. And in all other States, as far as I know.

Senator KING. They complained that they were compelled to pay very heavy annual revenue tax to the Government, and they were unable to dispose of their liquor under any circumstances; it was a loss on their hands, and they did not know what to do with it. What is the fact with regard to that matter?

Mr. BRITT. I think there is some truth in that allegation, Senator, and many who have given it thought think the Government ought to take it over absolutely. I, for one think that, and have said so publicly and privately. I had hoped that suggestion might gain some force, but it has not. The eighteenth amendment, of course, came suddenly, with the approval of all people who think as I do, but my opinion has nothing to do with a question of sheer justice. Spirits are now continually subjected to loss in various ways. My own view is that, both in the interests of prohibition and in justice to the holders, the Government should issue some sort of certificates or bonds, which would ultimately not cost it a penny, to take over the

product and protect the holders, since it has taken charge of the disposition of it.

Senator ERNST. I want to say that I think that is the solution of the question.

Mr. BRITT. I think it is.

Senator KING. To what extent have the banks held, as security, these liquor certificates?

Mr. BRITT. To some extent as security for loans. They sometimes ask the Prohibition Unit for instruction as to how they can be saved from loss or relieved from their risks by way of making loans to these certificate holders.

Senator ERNST. Mr. Britt, I would like to ask you this: Is there any reason why these men who have the whisky in bond can not put it in bottles, so as to prevent that evaporation that is constantly going on while in the barrel?

Mr. BRITT. No. When they put it in bottles—and they do, of course—that contemplates marketing; that is a step in getting ready for the market. The bottling costs something, and they keep their spirits in barrels until they can get orders. Most of it now comes in bottles. Recent Treasury requirements specify that it must be bottled in the interest of public health, but still some quantity of it is handled in barrels.

Senator ERNST. Do you not think it would be much better for them in the long run in order to prevent evaporation to bottle it now?

Mr. BRITT. To undertake to bottle a great quantity of it would be such an undertaking that they could not do it at once, but they can bottle a good deal of it; and they are beginning to do it, more now than formerly.

Senator WATSON. It can not be sold to a druggist unless it is bottled?

Mr. BRITT. No; not for medicinal purposes.

The CHAIRMAN. Is there any speculation in warehouse certificates of liquor? I got the impression somewhere that these certificates of ownership of liquor in warehouses were traded in: that they were bought and sold.

Mr. LOVELAND. Bonded whisky, it may be; yes, sir.

Mr. BRITT. They are more evidences of title.

The CHAIRMAN. I am asking whether there is any speculation in the sale or transfer of the certificates? Are they traded in for investment or speculative purposes?

Mr. BRITT. I was coming to that. When I first came into the service, three years ago, as it was reflected to me there was a good deal of transfer of these certificates; of course, always with some idea of profit. Since the storage costs have become considerable I think that it is more quiet. That is a commercial matter, however, about which I have no figures.

The CHAIRMAN. The reason I asked that question is that I have heard complaints—and I think the complaints are well founded, because I think the people purchased these certificates for speculative purposes, and therefore they are not justified under the law in getting any protection from the Government: in other words, they are not innocent holders of the liquor, such as you described awhile ago, when you spoke about the holders of the liquor when the country went dry. In other words, I see a difference in the

person who had the liquor innocently when prohibition became a law and the man who bought it afterwards for speculative purposes.

Mr. BRITT. Yes.

Mr. PYLE. I might state in that connection as to their value, that a manufacturer of patent medicines asked me some time ago about taking up with the department the getting of a permit to manufacture a patent medicine or a proprietary medicine, using whisky as one of the ingredients, with the idea of buying the certificates, paying the tax, and using the liquor. I asked him where he could get them and what he would have to pay for the certificates, and he said he could get all he wanted for \$25.

Mr. BRITT. \$25 for what?

Mr. PYLE. For a certificate, per barrel. That is his statement.

Senator WATSON. Of alcohol?

Mr. PYLE. No; whisky.

Senator WATSON. Where can he get it for \$25 a barrel?

Mr. PYLE. He can not get it for \$25 a barrel. He can get a certificate for a barrel for \$25, but he can not get the barrel then. The department, as I understand it, frowns upon letting the whisky out in barrels, and it is only done in very few cases; where it can be bottled it is required to be bottled. A few manufacturers have permits by which they can get it in barrel lots, but that has rendered the certificate almost valueless for the reason that the storage rates in these warehouses are high and they eat up the value of the whisky. Then the whisky to be removed for most purposes, except the very limited quantities that I have stated, must be bottled. This bottling must be done by a distiller and they fix their own price on that. The result is that the whisky certificate is more of a liability than an asset.

For example, the Pittsburgh papers periodically will have one or two pages of legal notices of whisky to be sold to permit holders for storage charges, and it is rapidly passing into the control of distillers, in their name and title, under the State laws for warehousemen's liens.

The CHAIRMAN. I have had complaints to the effect that no one can bid in those whisky sales except the distiller, because he has all the advantage of having possession in his warehouse, and therefore the owner of the liquor has really no competition or receives no bids for his liquor, because, as I say, there is no bidder except the warehouse man or the distiller.

Mr. PYLE. No one else can afford to buy it. The man who has these storage charges against it can practically take it in, because no one else would think of bidding against him, paying for it, and then taking over a barrel of whisky that he could not use or get.

The CHAIRMAN. That is what I mean. The distiller has a monopoly because he is the only one who has an opportunity to get the liquor, and therefore the owner of it is almost prohibited from getting any value for this liquor at all, because the warehouseman bids it in for his storage charges.

Senator KING. Is it not the situation, then, that these men who were the owners of liquor and who had it in their own warehouses at the time the prohibition law went into effect have lost the entire value of it through taxes and insurance, and in some instances they

have had to pay Federal taxes, a Federal license, especially if they wanted to dispose of it?

Mr. PYLE. I believe that came from a misconception. There seemed to be an opinion about the time of the passage of the prohibition act prevalent that you could get all the whisky you wanted on certificates, and leave it in the Government warehouse, and have it sent to the basement when you wanted it. That was the impression that was prevalent. The courts, soon after the passage of the prohibition act, held that that could be put out for beverage purposes.

Most of the certificates were purchased with the idea of having that whisky sent out to the cellar when wanted.

Senator KING. What I am trying to get at is that those who owned the liquor have practically lost the value of it.

Mr. PYLE. Those who owned it in that way. A man who can use it in a proprietary medicine can get his value out of the whisky on the certificate, and only those who can use it in the bulk state; and those who resell it, such as druggists, and that is practically the entire consumption of whisky to-day—sales by druggists—have to have it bottled. They can not receive it in bulk.

Senator KING. I know there have been persons who have come to Congress asking for relief from the payment of taxes upon liquor which they had on hand at the time of the passage of the law. I know that Senator Stanley took the matter up here some time ago in connection with the claims of some people in Kentucky; they had the liquor; they could not dispose of it, and they were compelled to pay some Federal tax.

Mr. BRITT. May I explain that to the Senator?

Senator KING. Yes, sir.

Mr. BRITT. That is a very interesting subject, and I am glad to see the committee developing it.

For instance, as to this requirement of bottling; that has been the rule since 1823. It was one of the few regulations in which the distillers fully concurred, for the reason that, as they said, it would protect them against the makers of spurious synthetic liquors. The Government thought it would be both in the interest of prohibition and of the public health. So, if they had liquors for medicinal purposes, they would be pure liquors, and generally aged liquors. That is the fact as to that. The distillers have not complained about that.

As Mr. Pyle says, the great bulk of it is required to be bottled, but hospitals may still get it in barrels, and that is true in a few other isolated instances.

But, to answer Senator King's question, I think I can say with certainty—and I would not want to say anything is certain about which I did not have at least pretty good knowledge—the stocks of liquor of the former distillers, who are now owners of it, are in a state of constantly waning value.

Senator EANSER. Constantly what?

Mr. BRITT. Constantly waning value, beyond doubt. I do not mean in constantly waning selling price at all, but in reference to the loss of the spirits, the diminution of the quantity, and the other unfavorable considerations—that the stocks of whisky which they had are in a state of waning value all told.

Senator WATSON. How do you distinguish between value and price?

Mr. BRITT. I beg your pardon.

Senator WATSON. You would not say that they were constantly waning in price, but that they are constantly waning in value.

Mr. BRITT. I mean the value as a whole. When they have a chance to sell what they have on hand they no doubt get a good price for it.

Senator WATSON. Yes.

Mr. BRITT. I speak of value as compared with what it was when prohibition began.

Senator WATSON. That is, they have no chance to sell it?

Mr. BRITT. They do not sell it; but not so much, of course, and they are constantly losing their stock, Senator.

Senator WATSON. Yes.

Mr. BRITT. To continue with that a little further: What Senator King had in mind, as reflected from Senator Stanley's bill, with which I happen to be familiar, because the Senator consulted me about the preparation of it, and I made certain suggestions as to its provisions. The war tax on all nonbeverage liquors—that is, not alcohol, of course—was \$6.40, and it is now \$2.20, and has been since just after the close of the war.

A great many owners of whisky, anticipating a market and ready sale, tax-paid large quantities and removed it into what they call their free warehouse; that is, they took it out of the Government warehouse and put it into their own free warehouse, intending to remove it soon. Suddenly the tax was reduced to \$2.20 per gallon, and, of course, they who paid the \$2.20 tax had an advantage of \$4.20 a gallon over the people who had paid \$6.40 tax and had not yet released their spirits. So Senator Stanley, for those who had that class of whisky, proposed to introduce a bill by which the Government would refund the differential tax to those so situated. He came to talk with me more than once about it, and I approved the point of view as a matter of justice. I said I thought an appropriation should be made. I discussed it, as I said, with my superior officers, and it was agreed that it would be a proper measure. I suggested in the formulation of the bill that the tax be refunded to them in case the spirits had not gone out into the market, but were still in their free warehouses. Of course, if they could make a claim for it after it got out into the market there would be thousands of spurious claims. If I may be pardoned for expressing an opinion about a legislative measure, I think that it is a just measure.

Senator JONES of New Mexico. If this whisky has no marketable value—

Mr. BRITT. I did not say that, Senator.

Senator KING. Well, has it, in most instances?

Mr. BRITT. Oh, yes. It has not a ready market, Senator, but there is a market for it along, according to the nonbeverage demands. As I said before, I assume that when they do sell it they get a fair price for it. I do not know what the price is.

Senator JONES of New Mexico. That is just the point I want to get at.

Mr. BRITT. Yes. I do not know what price they get.

Senator JONES of New Mexico. That raises the question that we had under discussion here the other day, that whisky for medicinal purposes is sold at a very high price.

Mr. BRITT. Yes.

Senator JONES. Then, that must be brought about because this whisky to these certificate holders would not be utilized by them for that purpose.

Mr. BRITT. I do not know as to that.

Senator JONES. Why should not something be done which would make that available, so that these druggists could get it at a price which is somewhat commensurate with the value of these certificates, in order that, for medicinal purposes, it could be furnished to the sick people of the country at a reasonable price?

Mr. BRITT. We were discussing the advantages and disadvantages to the owner of the spirits, Senator, and now I will try to answer your question.

As I say, I assume when they sell it to the wholesale and retail druggists for medicinal purposes they get a fair price for it. I would not know what price, nor would I know what "fair" is. We were talking about their loss up to that time; that is, Senator King and the others. Now, I am not sure but that much of the complaint about which you speak lies with the retail druggist, in that he charges a high price for the medicinal liquors which he dispenses.

The CHAIRMAN. Does he pay a high price for it?

Mr. BRITT. As I said, I think he must pay at least a fair price for it.

The CHAIRMAN. The inference from your statement is that the high price of it was caused by the retail druggist; is that correct?

Mr. BRITT. The inference that I wanted drawn from my statement is that I think the retail druggist often charges a price incommensurate with the price that he pays. He charges a price too high compared with the price that he pays.

Mr. PYLE. Do you know what he pays?

Mr. BRITT. No; I do not. I have heard many statements about it, but I would not like to state anything as a fact.

Mr. PYLE. I would say in that connection that the price generally runs from \$25 to \$30 a case, depending on the quality.

The CHAIRMAN. Whisky or alcohol?

Mr. PYLE. Whisky.

Mr. BRITT. A case of—

Mr. PYLE. Twenty-four pints.

Mr. BRITT. A case of three gallons?

Mr. PYLE. Yes; that is the general market price in the Pennsylvania district.

Senator KING. Is that price paid to the distiller or to the owner of the whisky?

Mr. PYLE. That is what the druggist pays the distiller and the wholesale liquor dealer or the wholesale druggist.

The CHAIRMAN. What is the margin between what he pays for it and what he sells it for, so far as you know, Mr. Pyle?

Mr. PYLE. The sales price seems to vary. I made inquiries the other day and I learned that in Washington \$3 a pint is the druggist's retail price.

Mr. BRITT. That tends to verify the Senator's statement.

Senator JONES of New Mexico. Personally I have never had the experience; I have never had the occasion to buy whisky for medicinal purposes, but I have heard a good many complaints. A secretary of mine had a relative in the hospital here and, according to his statement, he had to pay \$2 for a prescription and then \$4.50 a pint for the liquor.

Senator WATSON. It would look as though somebody was getting a rake-off somewhere.

Senator JONES of New Mexico. That is the way I was impressed about it.

Senator WATSON. I would not know who it was or where.

Senator KING. It would look as though prohibition enforcement was in the interest of the retail druggist.

Senator JONES of New Mexico. I was wondering whether something could not be done to enable people to get it at a reasonable price for legitimate uses. It appears here that these certificates are practically worthless, for barrels of whisky.

Senator WATSON. Well, they are worthless because they can not withdraw it. The only way they can withdraw it is to sell it to druggists, and the druggists charge what they please.

Senator JONES of New Mexico. But why can not the druggist buy these certificates and thus create a market, really, for those certificates?

Mr. LOVELAND. They do do it.

Senator JONES of New Mexico. And in that way the trade—

Mr. LOVELAND. They do do it. The wholesale druggists do buy certificates.

Mr. BRITT. Yes.

Senator JONES of New Mexico. Then, I would like to know if you can get a certificate for a whole barrel here for \$25—

Senator ERNST. No; that is not a barrel.

Senator KING. Yes.

Senator JONES of New Mexico. Yes; a barrel.

Mr. PYLE. Yes; but on that barrel there are storage charges, and there is a substantial Government tax which has to be paid.

Senator ERNST. Just figure that out for us.

Senator WATSON. \$2.20 a gallon.

Mr. PYLE. A 50-gallon barrel will probably contain at this time around 30 gallons.

Mr. BRITT. That is about right.

Senator WATSON. That would be \$75.

Senator KING. I understood you to say that a barrel when filled had 50 gallons. Would it now only be 30 gallons?

Mr. PYLE. It would contain about 30 gallons at this time, because of evaporation.

Senator KING. Then there would be 20 gallons out of the 50 that had evaporated?

Mr. PYLE. Yes; there would probably be about 30 gallons in the barrel at this time. On that there would be a tax of \$2.20 a gallon.

Senator WATSON. That would be \$90.

The CHAIRMAN. I would like to ask at this point, Mr. Britt, if there is any hope of reducing the price of medicinal liquor? In view of the fact that this liquor has been in the warehouses for years and years, and with the evaporation as testified to as being enormous,

and coupled with that you have the local taxation, the insurance, the warehouse charges, and the bottling charges, are not all of those things going to tend to continue to raise the price of medicinal liquor.

Mr. BRITT. It seems to work inversely, Mr. Chairman. Take the distiller who was referred to a moment ago, and who is now only a warehouseman and an owner. I think we have described his condition as one that is continually growing worse, on account of the loss of his spirits, and, as the Senator says, lack of market; but it seems to me that when the retail druggists does buy the spirits, which he, of course, does to the extent of the public needs, he pays, according to Mr. Pyle's statement, \$25 a case, that is, \$25 for 24 pints, which is just a little more than \$1 a pint, and, according to Senator Jones's information, he is selling it at around \$4 a pint on a doctor's prescription—

Senator KING. Pardon me. Are you right in saying that he only pays a dollar a pint?

Mr. BRITT. According to Mr. Pyle's statement, that he pays \$25 a case of 24 pints.

Senator KING. Oh, I thought it was a barrel.

Mr. PYLE. No; we are talking about case lots here

Senator ERNST. That is what I stated a moment ago. You were in error about that.

Senator KING. That is what I meant, \$25 a barrel.

Mr. PYLE. No; as I say, the certificates are well nigh useless in the Pittsburgh market. I was told by a manufacturer—

Senator KING. How much does a certificate cover?

Mr. PYLE. A certificate covers a barrel.

Senator KING. Yes.

Mr. PYLE. It covers the right to pay the tax on a barrel of whisky, pay the storage, and get it out, if you have a permit. You also have to pay a high rate for bottling.

Senator KING. If you bought a certificate, that would give you ownership of the barrel that was represented by that certificate, would it not?

Mr. PYLE. That would give you title to the barrel.

Senator KING. The legal title?

Mr. PYLE. Yes.

Senator KING. Suppose that was 30 gallons. Then that would cost you less than \$1 a gallon.

Mr. PYLE. For the equity in the barrel.

Senator KING. Then what do you have to pay in addition?

Mr. PYLE. You have to pay your tax.

Mr. LOVELAND. \$4.40 a gallon; that is a wine gallon, bulk measure.

Mr. PYLE. Yes. Then you have to pay the bottling charge. I have not verified that. There are some letters that have come in here complaining that they are charging \$9 a case for bottling. That seems excessive to me.

Senator KING. I have heard of many cases of excessive charges for bottling.

Mr. PYLE. In that case that would be added to the total cost, with the \$4.20 on top of that, and the price of \$90 still added to that, plus whatever storage charges you have paid which had accumulated on this barrel. That is what you pay to get the barrel, and then it is only worth on the market \$25 a case after the permit formalities have

been gone through with. In other words, the profit on the certificate would be arrived at by subtracting the market price from the various expenses that you go through, which would leave the certificate practically valueless.

Senator ERNST. I do not see why, for our benefit, we can not have a list of these various expenses made up here, and calculate it then on the basis of 30 gallons to the barrel. When you get that you will find where it will leave you.

The CHAIRMAN. May I suggest that Mr. Pyle be permitted to put in a statement of that situation at a later meeting, in complete form?

Mr. PYLE. I would rather get data from experts on it. I would prefer to get positive figures from the distillers' books and records.

Senator KING. It seems to me there are so many evils or injustices in past legislation, or in the method of administering the law, that the committee ought to direct its attention to a consideration of this matter.

Mr. PYLE. We can get figures on the various costs that they charge for bottling, storage, and the amount that has gone back into the hands of the distillers' warehouse. We will have that data prepared and submitted at a later date.

Senator KING. I think these hearings ought to be public, for the reason that those who are the victims, or who have been injured, could furnish us some information which we might desire.

Senator WATSON. Well, everybody knows about it, anyway, especially those who have anything to do with it. Mr. Pyle, have you any recommendation to make as to how that could be changed?

Mr. PYLE. No, sir; not yet. I have not studied that phase of it enough. The evidence is not complete yet. I think it would be very well, in that connection, to permit various parties in position to be able to inform you to appear before this committee at a later date and state their exact views. I think, if this is becoming a monopoly in the hands of a few, who can fix their own prices without competition, that ought to be brought out.

The CHAIRMAN. I think you will find that that is the case.

Senator WATSON. Of course, because they are buying up these certificates. These certificates merely represent the stocks in the warehouses.

Senator JONES of New Mexico. As I see it, the price of a whole barrel is finally represented only by about 3 gallons. That is the way it works out here. A case is sold to the druggist at \$25, you say, and here is a certificate for a whole barrel, and that is only \$25.

Senator ERNST. But he has to pay these other charges.

Senator JONES of New Mexico. I understand that; but we ought to find out just where all of that comes in here.

Senator ERNST. That is what I wanted to have stated by Mr. Pyle.

Mr. PYLE. In other words, you gentlemen desire a financial statement of this whisky from the distiller to the consumer.

Senator WATSON. That is right.

Mr. PYLE. Covering the various charges on it?

Senator WATSON. Yes.

Senator KING. And what the profit is, and where it is.

Mr. PYLE. I will prepare that for you, gentlemen, and will lay it before the committee at a later date.

Senator KING. I would like to know how many gallons are still supposed to be in existence in these distillery warehouses and storage places, and how much has been taken from them surreptitiously or legally—

Senator ERNST. Oh, we can not find that out.

Senator KING. Wait until I get through, Senator. [Continuing:] Since prohibition. And that could be ascertained, of course, by determining or learning what was on hand at the time the prohibition act was enacted and what is on hand now. The difference is representative of what has been withdrawn.

Mr. BRITT. The Prohibition Unit keeps the audit figures of the production and the final ownership of the spirits. It also has a correct record of what was put into the warehouses. It knows what the legal allowances by evaporation are, and less those and less the authorized withdrawals you ought to have what is there; but, as the Senator has observed, nobody can tell how many empty barrels may now be in the warehouses. Nobody can tell how much may have gone out surreptitiously.

Senator ERNST. You can not tell a thing about it, Senator King.

Senator KING. But you can tell, Senator, what was reported to be on hand at the time prohibition went into effect, and you can tell what is reported to be on hand now.

Senator ERNST. You asked him what is on hand and not what is reported to be on hand, and there is all the difference in the world on that.

Senator WATSON. It was reported that in certain warehouses night after night they withdrew the whisky from the barrels and filled the barrels with water.

Senator ERNST. That is going on all the time.

Mr. BRITT. But he is correct in saying that we can not get those figures.

Senator ERNST. You can get figures, but we want facts.

The CHAIRMAN. I think Senator King is asking for the record, and we can get it.

Mr. BRITT. We can get it, Senator.

Senator ERNST. But we want to get facts, if we can, and I am telling you that it is impossible at the present time to get them.

Senator KING. I want to know what the Government contends is still on hand in the warehouses.

Senator WATSON. Mr. Haynes said the other day 30,000,000 gallons.

Senator ERNST. He said two-thirds of the whisky now in the United States is in Kentucky in bonded warehouses.

Mr. PYLE. Mr. Loveland, this same class of permits, class A, also is what is issued to distilleries to manufacture alcohol?

Mr. LOVELAND. Yes, sir; branch warehouses. If a Kentucky distiller wants to have a branch warehouse in New York for convenience, we issue a warehouse permit in the A classification.

Mr. PYLE. Now, if you please, Mr. Loveland—

Mr. LOVELAND. Just let me finish this.

The CHAIRMAN. Mr. Pyle, please let him finish his statement before you interrupt him.

Mr. PYLE. The issuance of class A permits for alcohol distilleries is handled by whom?

Mr. LOVELAND. Doctor Doran, of the industrial alcohol division.

Mr. PYLE. By the Prohibition Unit?

Mr. LOVELAND. By the Prohibition Unit.

Mr. PYLE. The Internal Revenue Service handles the alcohol distillery matters?

Mr. LOVELAND. Yes, sir. I have nothing to do with that, however.

Mr. PYLE. You are not familiar with that phase of it?

Mr. LOVELAND. My division has nothing to do with it.

Mr. PYLE. Is the procedure for the issuance of these so-called alcohol permits, class A manufacturers' permits, the same as for the issuance of some others?

Mr. LOVELAND. I assume so. I can not say that it is positively, because I am not familiar with the internal workings of that division.

Mr. PYLE. A manufacturer working under a class A permit has to receive a permit to purchase from the director before he can let this out to any vendee; he has to have his vendor copies and the others?

Mr. LOVELAND. He is the vendor. He obtains his A permit to manufacture. Until he produces he has his product on hand. Then these 1410 permits are made against him as vendors.

Mr. PYLE. What he puts out is checked against the amount that he shows to have on hand?

Mr. LOVELAND. Yes, sir.

Mr. PYLE. Now, the class B permit—

Mr. LOVELAND. Wholesale druggists.

Mr. PYLE. That is for handling what?

Mr. LOVELAND. That is for handling alcohol, wine, gin, rum, or liquor of any character whatever.

The CHAIRMAN. Just a minute. Why should he have a permit to use wine and rum for medicinal purposes?

Mr. LOVELAND. This is all, I suppose, for medicinal purposes; that is the theory of it, to manufacture and use it in any way that the law allows liquor to be used.

Senator WATSON. Does that include wine for sacramental purposes?

Mr. LOVELAND. Wine for sacramental purposes.

The CHAIRMAN. Do they ever use rum for sacramental purposes?

Mr. LOVELAND. No, sir.

The CHAIRMAN. Do they make rum for medicinal purposes?

Mr. LOVELAND. Well, they are not manufacturing it now. There is a sufficient quantity, I presume, to meet all demands.

Senator WATSON. When wine is demanded for sacramental purposes, are those permits issued here in Washington or by the local authorities?

Mr. LOVELAND. By the State director.

Senator WATSON. By the State director?

Mr. LOVELAND. Yes, sir.

Senator ERNST. Do I understand you to say that they are not manufacturing rum now?

Mr. LOVELAND. No, sir.

Senator ERNST. They have enough on hand?

Mr. LOVELAND. Yes, sir; I know of no manufacturing permits outstanding. At least, I do not recall any, except alcohol and wine. In other words, wine and alcohol are now being produced.

I think, perhaps, before we drift too far away, the committee would be interested in knowing that retail druggists who are limited to selling bottled-in-bond whisky on prescriptions only, may sell what we call bulk whisky or barreled goods, in addition to selling bonded whisky on prescriptions.

Senator WATSON. How can they sell that?

Mr. LOVELAND. They sell that for hospitals, Senator, and physicians.

Senator WATSON. Is that withdrawn from the bonded warehouse in bulk, in barrels?

Mr. LOVELAND. It may be so; yes, sir.

Senator WATSON. And the druggist then gets a whole barrel?

Mr. LOVELAND. He may; yes, sir.

Senator WATSON. Then he sells it to hospitals?

Mr. LOVELAND. He may.

Senator WATSON. Is that on prescription?

Mr. LOVELAND. No, sir. The hospital is given a permit to purchase a specific quantity. Generally that quantity is in accordance with its requests, and after having a permit of that character it can purchase this liquor on 1410 application form, through the State director, of a retail druggist.

The CHAIRMAN. Then the hospital also must purchase from the retail druggist?

Mr. LOVELAND. No, sir; they do not have to.

Senator WATSON. Where else would they purchase it?

Mr. LOVELAND. They can buy it direct from the distiller.

Senator WATSON. They can?

Mr. LOVELAND. Yes, sir.

Senator WATSON. On permits?

Mr. LOVELAND. Yes, sir.

Senator WATSON. Issued by local authorities?

Mr. LOVELAND. Yes, sir; or they can purchase from the wholesale druggist. They can purchase where they please.

Senator ERNST. Sometimes whisky in possession of the owners for which they have no other use is given directly to hospitals?

Mr. LOVELAND. Yes, sir; that is true. We have given that permit. Then they have another market for what they term bulk goods, outside of bottled in bond, and that is that they can sell to physicians. There are 55,000 physicians in the United States who hold permits to prescribe. They may have 6 quarts of whisky a year, and the retail druggists may supply that. They may sell that. There is another demand that they may have for bulk.

There is still another market which the retail druggist has for whisky, other than bonded. There are about 30,000 permittees in the United States who have permits to manufacture medicinal preparations under label; that is, under special formula, in which whisky is very commonly used, but not always.

The CHAIRMAN. What is the maximum percentage of liquor that is allowed in these proprietary medicines?

Mr. LOVELAND. I could not give you that.

The CHAIRMAN. Who handles that matter in the bureau?

Mr. LOVELAND. We handle that in our bureau, but I can not give you the figures.

The CHAIRMAN. If you do not know, then you need not answer.

Mr. BRITT. Let me see if I can answer that, Senator.

The CHAIRMAN. Yes.

Mr. BRITT. These proprietary medicines, cosmetics, hair tonics, and divers and sundry things in which alcohol is used are made under a formula which is authorized by the Commissioner of Internal Revenue. That formula prescribes the denaturants, the amount of alcohol that may be used per ounce, per bottle, or per pint, etc., of the compound, or whatever it is, and the necessary medication or denaturants that are necessary to make it unusable as a beverage. In some instances the alcoholic strength is 50 per cent.

The CHAIRMAN. How can you denature whisky that goes into a proprietary medicine?

Mr. BRITT. It is the medication that denaturizes it. The other ingredients, of course—the spirits—are put into it with the purpose of acting as solvents and preservatives, and I suppose somewhat as flavoring matter. The other constituents—that is, the medications—prevail to such a degree that they render it incapable of use, as a matter of physical taste and physical effect. For instance, it might serve as a purgative, for one thing, or it may have a terrible bitterness, or other qualities, but not being a chemist or physician, I would not know the names. I know only in a general way how it is done; but the percentage of alcohol may be as much as 50 per cent and more.

The CHAIRMAN. But the department is insistent that it shall not be of good taste?

Mr. BRITT. No; the department, under the law, is not to allow it to be made in a form susceptible of beverage use. That is forbidden by law.

Senator ERNST. Take listerine, for example. How do they get the large quantities of alcohol that they have to use in listerine?

Mr. BRITT. They get it in this way. The alcohol used is denatured alcohol, of course, and we have authorized alcohol-denaturing plants, and denatured-alcohol sellers. People who manufacture these articles have, as Mr. Loveland has said, a manufacturer's permit, and they also have a formula, such as I have just attempted to describe to the Senator, and that formula requires the putting into the article, whatever it is—listerine in your case—the proper medication.

Senator ERNST. I did not know that it was denatured alcohol.

Mr. BRITT. Well, it is sometimes raw alcohol. That may be true, but generally it is denatured alcohol.

Senator WATSON. Completely denatured?

Mr. BRITT. No; specially denatured.

Senator KING. I think the listerine that we get in the drug stores is principally water.

Mr. BRITT. To give you an off-hand answer, this manufacturer of listerine buys denatured alcohol from a denaturer or seller, upon permit to purchase it, in the way that Mr. Loveland has described here.

The CHAIRMAN. Is this an appropriate time, Mr. Pyle, to ask how they are handling this denaturing, or is that a subject by itself?

Mr. PYEE. That is a very big subject, really, and one that should be taken up and gone into pretty thoroughly. It can be touched on at this time, but I have no evidence ready to go into the matter thoroughly.

The CHAIRMAN. I just wanted you to keep it in mind with these denaturing plants.

Senator ERNST. Gentlemen, it is 10 minutes to 12, and I would like to have an executive meeting for a few moments.

Senator KING. You spoke of persons who are authorized to manufacture medicines, hair tonics, etc. Do you permit those persons, especially if they are wholesalers, to manufacture their own alcohol for these medicinal preparations or other preparations?

Mr. LOVELAND. No, sir; not to manufacture alcohol. There is not a wholesale druggist who is manufacturing medicinal preparations who is permitted to manufacture alcohol. The industrial-alcohol plants have a distinct permit for that purpose.

Senator KING. I am not speaking about industrial alcohol; I am asking you now whether you permit manufacturers of proprietary medicines to manufacture their own alcohol?

Mr. LOVELAND. No, sir.

Senator KING. Do you require them to buy their alcohol at any particular place?

Mr. LOVELAND. No, sir.

Senator KING. Do any of the proprietary medicines have whisky as the base in contradistinction to alcohol?

Mr. LOVELAND. Yes, sir.

Senator KING. Do you permit them, then, to buy their whisky from persons who have been permitted to manufacture it since the law went into effect?

Mr. LOVELAND. I do not exactly understand the question.

Senator KING. Well, you permitted the manufacture of some whisky, did you not, for a little while, under permits, after the law went into effect?

Mr. LOVELAND. Not to my knowledge; not since I have been in the service. Since July, 1921, we have not.

Senator KING. Is there any effort made by the department to try to furnish a market for liquor which is on hand, legitimately on hand, so that persons who have it may get something for their stocks as soon as possible before the taxes and losses by evaporation practically destroy the value?

Mr. LOVELAND. There is no effort made, Senator, to sell this whisky for a distiller, but we have very frequently supplied distillers and wholesale druggists with the names of permittees to whom they may sell. That is done as a matter of accommodation.

Senator KING. What I am trying to get at is whether or not, with this large stock of whisky on hand, you were permitting the manufacture of other liquors and alcohol that ought not to be manufactured until that whisky which is on hand has been disposed of.

Mr. LOVELAND. No, sir; we are not giving any permits to manufacture whisky.

Mr. BRITT. I think I can clarify that by your leave, Mr. Chairman. It is a very important question.

When Mr. Loveland says that we are not permitting, he, of course, means the statute is not permitting the manufacture of any distilled spirits of that kind. That should be made clear.

In further answer to the Senator's question, which has an important public bearing, the bureau does not undertake to encourage the use of liquors so as to result in a sale by the owners, because that, of course, is not properly a function of the Government.

Senator KING. I agree with you.

Mr. BRITT. And if it were, it would be one that could not be discharged impartially; therefore it should not be undertaken at all, and it is not undertaken at all. But in a way there is always an indirect encouragement, Senator. Of course, it has a legal use, and the people who are authorized to use it would receive allowances liberal to that end. In that way there may be some encouragement, but it is very slight.

Senator KING. I was prompted to ask that question because of statements made to me that there were some distillers in Kentucky who had several barrels of whisky on hand. There have been obstacles put in the way of their disposing of that, and there is some whisky being manufactured that is taking the place of theirs, while they can not sell a quart.

Mr. BRITT. That could be true in this way: Under the law it has been held that these manufacturers of articles requiring alcohol as a constituent, that where the statute authorizes the use of distilled spirits—that has been construed to mean either distilled spirits in the sense of potable liquor—and those manufacturers who can use that sort of alcohol can get an advantage, because it can be withdrawn without paying any tax at all. They, of course, would get the alcohol and use it in the making of their products, to the disadvantage of the man who had liquor to sell. I have no doubt that that is true to a degree in many places.

Senator JONES of New Mexico. Mr. Loveland, I understood you to say that you furnished the names of these permittees to the warehouseman, so that they may know who their legitimate customers may be.

Mr. LOVELAND. That is right, sir.

Senator JONES of New Mexico. Now, I would like to know just how that is managed.

Mr. LOVELAND. It is a rare occurrence, Senator, but we do have occasions. I do not know of any distiller, but I do know of wholesale drug houses that will ask us to give them the names of consumers of liquor, large wholesale or retail concerns and manufacturers who purchase large quantities of liquor, and it is stated in the regulations that the Federal prohibition directors may furnish a list of customers or a list of manufacturers. That is a matter of courtesy, that is all. It does not confer any right or enhance any privileges that they have.

Senator JONES of New Mexico. Of course, you have all doubtless observed that my purpose in this is to find out whether or not, under the regulations as they exist, there might be favors shown to some owners of liquor which are not shown to others.

Mr. LOVELAND. Certainly not to my knowledge, Senator.

Senator JONES of New Mexico. Do you, as a matter of fact, upon request of any person who has a supply of liquor on hand, furnish a complete list of possible purchasers?

Mr. LOVELAND. I do not think we would hesitate to give that information.

Senator JONES of New Mexico. What is the practice?

Mr. LOVELAND. It is generally bonded whisky, and they can transfer title; but they have to pay a tax of \$4.20 a wine gallon and have to pay about \$3 a gallon for bottling, together with the cost of the whisky, and then an indefinite amount of storage charges, which is a matter which is not regulated by the Government. Storage charges, as I understand it, are a matter of agreement between the owner of the liquor and the warehouse or the distiller, and we do not regulate that.

Senator JONES of New Mexico. Should it not be regulated?

Mr. LOVELAND. That is another thing that I could not give you an answer on. I could give you my opinion, of course.

Mr. BRITT. It is not regulated by statute, Senator, nor by regulation; nor do I think it is susceptible of either. But it is regulated in a way. That comes under concentration administration entirely, and I am witness to the fact that the Commissioner of Internal Revenue has had distillers before him again and again on complaints of excessive charges. He has required them to submit statements of their charges, and in some instances it has seemed that the charges were too high. In some instances they have been reduced considerably. The charges seemed excessive, and they have been adjusted in an administrative way.

Senator WATSON. These concentration warehouses are established by the Collector of Internal Revenue?

Mr. BRITT. Yes, sir.

Senator WATSON. Can he not fix the price of storage?

Mr. BRITT. I doubt, Senator, whether he would be prepared to fix the price after the manner of the Interstate Commerce Commission. I doubt whether he would even be authorized by law and to right what seemed to be an apparent wrong.

Senator WATSON. Of course, that is all there to it.

Mr. BRITT. That is all there is to it.

Senator WATSON. That is to say, does he fix a maximum in any instance?

Mr. BRITT. No he does not fix a maximum. Let us take as an illustration of owners in the State of Kentucky, because it has been spoken of here. He is taxed on the barrel; there is a charge for storing; there are other charges. Those items of expense are not uniform in the States?

Senator WATSON. Of course, the tax.

Mr. BRITT. The Federal tax is.

Senator WATSON. You mean the State tax.

Mr. BRITT. The State tax and other charges. The commissioner will have an exhibit of those charges made and brought before him. Then, if he thinks that that rate is excessive, he will say that it should be cut down, and this has been done in some instances.

May I add a word about furnishing the lists? Under the internal revenue laws the special tax register is required to be kept by the

special taxpayers exposed in the collector's office, so that a person can go in and see the list. The wholesale liquor dealers and all other classes are on that list; but there is nothing in the law requiring it as to permittees. So it is left to regulation, and it is a matter of some concern. Of course, I only advise about these things and know about them in a general way, while other gentlemen, like Mr. Loveland, know more about the practice, but I remember very distinctly advising on that point that I thought the unit should not undertake to copy and give lists at all.

The CHAIRMAN. Would it not be perfectly proper if those lists were published and the bonded warehouses given a copy of those lists?

Mr. BRITT. That would apply under the internal revenue law, but it does not apply to prohibition. The list is not exposed at all. I think this is a sound principle, but, under the director's supervision, an interested person may make his own copy and not take the attention of a clerk.

Let me read that:

Records on Form 1411 shall be open to inspection only as provided in sections 170 to 174, inclusive—

I am reading from regulations 60—

except that a permittee shall be entitled to inspect the cards covering the other permittees to whom he is authorized by his permit to sell liquor, if any.

That is to say, a distiller who is authorized to sell would be authorized to see the lists of retail and wholesale druggists.

Directors will, therefore, so far as possible, without interference with the work in the directors' offices, allow persons entitled to make such inspection, not only to inspect, but to copy names and addresses from cards, Form 1411.

Really, I had forgotten that, among our multitude of regulations, that was specified. I knew it was the principle. It leaves him to help himself, and that should not do any harm.

The CHAIRMAN. I think we had better adjourn here until Monday morning at 10.30 o'clock.

Mr. BRITT. Thank you.

(Whereupon, at 12 o'clock p. m., the committee adjourned until Monday, January 12, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

MONDAY, JANUARY 12, 1925

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE THE
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment of Saturday, January 10, 1925.

Present: Senators Couzens (presiding), Jones of New Mexico, and King.

Present also: John S. Pyle, Esq., of counsel for the committee, and George W. Storck, Esq., examiner for the committee.

Present on behalf of the Prohibition Unit of the Bureau of Internal Revenue: James J. Britt, Esq., counsel; Mr. V. Simonton, attorney; and Mr. W. H. Kennedy, assistant chief, general prohibition agents.

The CHAIRMAN. Please note in the record, Mr. Reporter, that Senator Ernst is absent on account of the death of his brother, and Senator Watson has advised that he can not be here this morning.

Senator KING. Mr. Chairman, I wanted to move this morning, as I have heretofore indicated, that these sessions be open.

The CHAIRMAN. The chairman is in accord with the Senator, but we can hardly do it this morning, while the other Senators are absent.

Senator KING. I think these hearings ought to be open to the public. There is a general interest by the public in the Prohibition Unit, and the friends of the unit and its enemies, are entitled to know what its conduct is—its friends, so that they may get information to enable them to strengthen the unit, and its enemies, to enable them to take such course as they may deem proper. I can not see any reason in the world why the public should not be advised of the conduct of these hearings.

Mr. BRITT. May I make an observation along that line, Mr. Chairman?

The CHAIRMAN. Yes, Mr. Britt.

Mr. BRITT. So far as the publicity is concerned, I wish to assure the committee, on behalf of the Prohibition Unit, that so far as the inquiry relates to it it has no objection whatever to the public character of the hearings. The only thing that those above me have mentioned in that connection is the unfortunate erroneous statements that get into the press concerning what was actually disposed of. I suppose the Prohibition Unit is not very different from the other departments of the Government in that particular. They all suffer

from that. I do know that a great many news statements have gone out, and I do not refer particularly to this hearing, but I am speaking generally now. That is the only aspect of it to which I feel that we should offer any objection on behalf of the Prohibition Unit. Of course, so far as the disclosures are concerned of what has been done or has not been done, and what is or is not, we will have no objection whatever to that.

The CHAIRMAN. In that connection, Mr. Britt, I would say that after the hearings have been transcribed I have handed to the reporters in my office a copy of the transcript.

Mr. BRITT. Yes.

The CHAIRMAN. And anything that they have said or written has been obtained from the records, or from their own imaginations—not from anything that I have said.

Mr. BRITT. Yes, Senator. The use of the imagination is inescapable. That is my experience.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. Mr. Chairman, last week we devoted the time to a discussion of the organization, the divisions and subdivisions of the Prohibition Unit, their various duties, and their manner of operation. At several times, we also touched upon the fact that there were great leaks of liquor which were allowing liquor of various kinds to get upon the market. Smuggling was touched upon as one source; the distillery warehouse robberies as another; moonshining as another; but the consensus of opinion as it came out seemed to be that the big leak was through the alcohol distilleries, and they were the hardest to handle.

Now, for the purpose of allowing the committee to see just how this operates, how a man manufacturing alcohol under a permit can get it on the market or through others taking advantage of him can get it on; at any rate, how it gets on the market for beverage purposes, that should be gone into. The best way, I believe, to show that will be to take the history of a typical alcohol plant, showing the output and the manner in which that output gets onto the market.

As you will recall, it has been brought out here once or twice by statements of counsel, that whisky is made of alcohol by a process of dilution, coloring, and flavoring.

For that reason I think it would be well to go into details, and we have selected one of the larger plants as a typical example. I think it would be well to follow the history of that case here and one or two others.

We have for the initial exhibit of this sort of transaction the Fleischman Co., which we have worked out from the files of the Prohibition Department. The original files are very voluminous, containing all the records pertaining to the activities of the Fleischman Co., and this is worked out from those records in the Prohibition Unit.

Mr. Storck, investigator for the committee, has devoted some time to going through these files and comparing them as he works out historical data as to the activities of the company, as shown by the records of the Prohibition Unit. Any statement that Mr. Storck makes will not be made at this time from matters that he has learned in the field, or from inquiry of various persons in the field; but I am going to ask him to-day to go over the records as shown by the

Prohibition Unit's own records, showing the operations of the company covering their permit activities, the efforts to revoke that permit, what became of them, and the amount diverted and used for beverage purposes of the product of the various branches of this company. Mr. Storck has had many years' experience in investigating work and as an accountant, and I believe you will find his statements to be correct in every particular, but if there is any point, Judge Britt, where you think a question should be raised, you are at perfect liberty to raise the point, and the matter can be determined by access to the files.

As points come up about which there is any question it is our purpose to have the various persons from outside, in the field, who are familiar with the exact facts, to appear before the committee for questioning as to the conditions in the field at these various plants.

I might say in opening this that the Fleischman Co. is a producer of yeast. They have two plants for that purpose, one at Peekskill, N. Y., and one at Langdon, D. C. They formerly had one at Cincinnati, but that is reported to have been sold. They also had a number of branches at such places as Scranton, Yonkers, New York City, Philadelphia, Brooklyn, Jersey City, Cincinnati, Bridgeport, and Peekskill, and one at Cambridge, Mass.

Senator KING. At all of which yeast was produced?

Mr. PYLE. No. The yeast was produced at the distilleries.

In the manufacture of yeast, alcohol is a by-product. It would be hard to determine which would be the by-product, but they go together. In the manufacture of yeast, alcohol is produced, and in the manufacture of alcohol, yeast is used or produced. So they had two distilleries at which alcohol was produced, and this was marketed through a number of branches, as I have enumerated them, in various parts of the country. They had one base permit, I believe, covering all. Is that correct, Mr. Britt?

Mr. BRITT. I think so, sir.

Mr. SIMONTON. An agency permit at each agency.

Mr. BRITT. They are not manufacturing plants; they are distributing branches only.

Mr. PYLE. They are distributing branches only, but it was all handled under the name of the Fleischman Co.

Senator KING. Distributing agencies of yeast?

Mr. PYLE. No; of alcohol. I presume they handled yeast, but that has not been taken up in the files of this department.

I will ask Mr. Storck to relate to the committee the history of the Fleischman Co. as it relates to prohibition, as he found it in his investigations, taking up the various times that alcohol is known to have left their plants for beverage purposes on forged permits and otherwise, giving the amounts and the circumstances, so that the members of the committee may be able to see and visualize just how this alcohol from such a plant is diverted to beverage uses.

**TESTIMONY OF MR. GEORGE W. STORCK, EXAMINER FOR THE
COMMITTEE**

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Give your full name and address to the reporter, Mr. Storck, and also tell us where you worked before you came here.

Mr. STORCK. Yes, sir. My name is George W. Storck. I am a certified public accountant, with the title of expert bank accountant, in the Department of Justice. I have been there for the past 16 years. I have made investigations and have testified in courts all over the United States. You do not want me to give you any particular cases, do you?

The CHAIRMAN. I think that is enough to proceed with.

Senator KING. Mr. Storck, I fancy that much of your testimony will be based on the details, and, speaking for myself, I would not care to have you go into those details unless they are very material.

Mr. STORCK. Yes. It is my purpose, unless the committee wants me to go into them further, to talk on generalities.

Mr. BRITT. Just a moment. Of course, I am not going to interrupt at all, unless it is important to develop something, but does the committee desire that I shall withhold my questioning until the close of Mr. Storck's testimony?

The CHAIRMAN. I think it would be better to do that. Then we would get Mr. Storck's statement consecutively in the record.

Mr. BRITT. And I will ask questions only at the close.

Mr. STORCK. There are 15 agents who made the investigation of the Fleischman plants.

Senator KING. Extending over what period of time?

Mr. STORCK. My investigations state at the beginning of 1921, and they extend down to 1924, the date that I was there.

Senator KING. Did you, yourself, make a personal investigation of the plant or plants?

Mr. STORCK. No, sir.

Senator KING. You just examined the accounts and the books?

Mr. STORCK. No, sir. My investigation consisted of the examination of the files in the office of the Prohibition Unit here in Washington. My statements are built up from the reports of those agents.

Senator KING. Did you examine the files of the Fleischman Co.?

Mr. STORCK. No, sir. I was not at the Fleischman Co.'s office at all.

Senator KING. I presume that some of those files contain statements made by the Fleischman Co.?

Mr. STORCK. Yes, sir; the files contain revocation hearings and the findings of the presiding officer, the opinions of counsel on hearings held before Mr. Blair, and hearings held before the various presiding officers.

The first plant that I will take up will be that of the Fleischman Co., 226 Flushing Avenue, Brooklyn, N. Y., in which one J. Vincent Labete was agent.

The CHAIRMAN. You mean the department agent?

Mr. STORCK. No; agent for Fleischman.

Senator KING. May I interrupt you right there to ask Mr. Pyle to what extent would the hearings before the commissioner or other branches of the service upon application for the Fleischman Co.

for reinstatement or upon motion to revoke their permit, reveal all of the facts, delinquencies and transgressions, if any there were, of the company?

Mr. PYLE. That would bring out exactly the same facts as will be brought into a court involving the matters in question.

Senator KING. Yes.

Mr. PYLE. The Government would introduce those agents, who would testify to their best knowledge and belief, and their testimony actually is very adverse to the Fleischman Co. They are under oath in a formal hearing.

Senator KING. I understand all that, but what I am asking is, do not those hearings reveal all of the facts?

Mr. PYLE. They do.

Senator KING. Of the alleged transgressions?

Mr. PYLE. They do.

Senator KING. And violations of the law?

Mr. PYLE. They do.

The CHAIRMAN. That is what I understand Mr. Storck is going to tell us about, Senator. He has gone through all of that.

Senator KING. All right.

Mr. PYLE. So extensively that the committee should at least have a summary placed before them.

Senator KING. Will that include the findings of fact by the officials who heard these cases?

Mr. PYLE. Yes, sir.

Senator KING. And their conclusions and decrees?

Mr. PYLE. There were several findings, the original findings being reversed. Those facts will all be brought out in this record.

Senator KING. Will they reveal the fact that the reversal occurred over the protest of Mr. Simonton and others?

Mr. PYLE. They will not show that it occurred over his protest, but they will show that that occurred contrary to his opinion and judgment.

Senator KING. All right.

Mr. STORCK. Between September 13, 1921, and September 14, 1921—

The CHAIRMAN. What is that, again?

Mr. STORCK. Between September 13, 1921, and September 14, 1921; that is, the various dates there are not in rotation, but I am giving you the first file dates.

Alcohol was obtained on forged permits in the Brooklyn agency to the extent of 550 barrels, or 51,300.05 proof gallons.

In connection with that investigation one Andrew A. Quigley, a general prohibition agent, made the investigation. I am not going into all of the details, unless you gentlemen wish it, but I am going to show you how a forged transaction goes through.

Mr. PYLE. May I interrupt you a moment in this connection? The Prohibition Unit has been asked to have Agent Quigley and his associate in that investigation present, but I am informed that he is held by grand jury proceedings as a witness and can not be here until to-morrow.

Mr. SIMONTON. That is my information.

Mr. PYLE. To testify first hand as to the conditions he found.

Mr. BRITT. He will be here as soon as he can be made available from the Philadelphia investigations by the grand jury.

Mr. STORCK. We will take the transaction of September 13, 1921, reported to be for the Mealey Wholesale Drug Co., of Nesquehoning, Pa., serial No. 42736, for 125 barrels of alcohol.

There was a counterfeit vendor's copy No. 42736 permit to purchase found in the possession of J. Vincent Labate, agent for the Fleischman Co., New York, as shipping 11,415.47 proof gallons of alcohol, 125 barrels, to Mealey Wholesale Drug Co., at Nesquehoning, Pa., on September 13, 1921. There was a confirmation of the permit, which was a forgery. There is no registered card; no letter asking for confirmation; no registered envelope. Mealey never received the goods.

The office records show genuine vendor's copy of permit No. 42736 as issued to Davis Drug Co., 1537 South Street, Philadelphia, Pa., who was the holder of permit I, 490-B, on August 22, 1921, for 5 gallons of alcohol and 5 gallons of whisky from Shumaker & Busch, Philadelphia, Pa.

Mr. PYLE. That was the actual permit in the director's office?

Mr. STORCK. That was the genuine one; yes, sir.

Mr. PYLE. Of the same number on which the alcohol was obtained from the Fleischman branch?

Mr. STORCK. Yes, sir. The original vendor's copy in the possession of Shumaker & Busch, who shipped 5 gallons of alcohol and 5 gallons of whisky to Davis on October 21. The permit, according to their records in the State director's office at Philadelphia, was disapproved on the 14th day of March, 1921. Basic permit B-189, purported to be the number on the permit of the Mealey Wholesale Drug Co., is held by Thomas B. Lynch, Sayer, Pa. This permit purports to be rubber stamped in the name of A. McKean, signed with the initial "R," and is dated August 25, 1921, calling for 125 barrels of alcohol. A. McKean resigned as State director on July 15, 1921, 20 days before this permit was purported to have been issued to the Mealey Wholesale Drug Co.

Senator KING. Is there any question but that he was a party to the forgery and procuring of the permit?

Mr. STORCK. I do not know, sir, but I might state that McKean has since been indicted. That was in 1924, was it not?

Mr. BRITT. Yes; McKean was indicted.

Senator KING. He was the Pennsylvania State director?

Mr. STORCK. Yes, sir.

Senator KING. Was his appointment a political one, Mr. Britt?

Mr. BRITT. I am sorry, Senator, but I do not know. All of this occurred before I came into the service, so I could not tell you the character of the appointment.

Mr. SIMONTON. Let me call your attention to the fact that this does not purport to have been issued by Mr. McKean. It purports to have been issued by Mr. McKean per "R," who would be Mr. Rutter.

Senator KING. Was he his subordinate?

Mr. SIMONTON. No, sir; he was a general prohibition agent sent to Philadelphia at that time to take over things in the Philadelphia office; so that Mr. McKean's rubber stamp does not purport to have been put on there by Mr. McKean but by Mr. Rutter.

The CHAIRMAN. He was the official agent?

Mr. STORCK. These are not all issued by the director himself.

The CHAIRMAN. He used the rubber stamp, because he was still the prohibition director?

Mr. STORCK. Yes, sir; he was still the official of the Prohibition Unit, the prohibition director.

The CHAIRMAN. And he used a rubber stamp?

Mr. STORCK. Yes, sir.

The CHAIRMAN. But he was superseded, in fact, by Rutter?

Mr. SIMONTON. Yes; and I do not mean to say that Rutter did this, but this purports to have been done by Rutter.

Senator KING. Was this done in such a manner that Fleischman & Co., if there were no conspiracy to which they were a party, would have been warranted in responding with the permit, and to part with that number of barrels?

Mr. SIMONTON. That was their defense.

Senator KING. If Fleischman were not a party to any conspiracy, if they were innocent of any wrongdoing, would they be justified, upon that permit or order which was sent there, signed "R," in fulfilling the demands of the permit?

Mr. SIMONTON. Not alone on the permit itself; they must have a confirmation, and they must have their registered return cards and their registered letter.

Senator KING. They had neither of those?

Mr. SIMONTON. They had neither of those, but they accounted for that by saying that they had been taken up. Whether that was true or not, I do not know.

Mr. STORCK. May I proceed?

The CHAIRMAN. Yes.

Mr. STORCK. Transaction of Joseph A. Fierman, 1605 South Street, Philadelphia, Pa., 140 barrels of alcohol—

Mr. PYLE. That was supplied by the Fleishman Co.?

Mr. STORCK. I am speaking now of the Brooklyn branch.

The CHAIRMAN. Just let him finish, Mr. Pyle, and we will get it.

Mr. PYLE. All right.

Mr. STORCK. I might say that what I am testifying to now is the Flushing Avenue branch, where Labate was agent—140 barrels of alcohol on permit 39844, of August 18, 1921.

There was a counterfeit vendor's copy, No. 39844, permit to purchase, found in the possession of J. Vincent Labate, shipping 140 barrels, 13,286.86 proof gallons of alcohol, to Joseph A. Fierman, 1605 South Street, Philadelphia, on August 18, 1921. Confirmation is a forgery. No registered mail asking for confirmation. Fierman never received the goods. Office records show genuine vendor's copy serial 39844, issued to Thomas B. Love, Nineteenth and York Streets, on July 8, 1921, to purchase 3 gallons of whisky from the Monticello Distillery, Baltimore, Md.

Senator KING. What connection does that have with the case?

The CHAIRMAN. I think he is showing the difference between the genuine permit and the forged permit.

Senator KING. Yes; but a permit to Love would seem to have no relevancy to the forged permit to Fierman.

The CHAIRMAN. It has the same number, you see.

Mr. STORCK. It has the same identical serial number.

Senator KING. I see the point.

Mr. STORCK. When a serial number is issued, the genuine serial number is recorded on a 1502 card. This form will not be recorded on any card, but it will have the same identical number. One will be for 3 or 5 gallons, while the counterfeit one will be for a thousand gallons.

Senator KING. Those cards are in the office of the Prohibition Unit?

Mr. STORCK. Yes, sir. In connection with that transaction, Andrew A. Quigley was the general prohibition agent who made that report.

The transaction of William Berkowitz, 38 South Church Street, Allentown, Pa., 45 barrels of alcohol, serial No. 39634.

Counterfeit vendor's copy for No. 39634, permit to purchase, found in the possession of J. Vincent Labate, agent for Fleischman Co., New York, as shipping 45 barrels, 4,129.22 proof gallons, of alcohol to William Berkowitz, Allentown, Pa., on July 27, 1921.

There was a confirmation with it, which was a forgery. He had no registered card, no letter asking for confirmation, and no registered envelope. I have an affidavit from William Berkowitz that he never received the goods.

The office records show genuine vendor's copy No. 39634 was issued to Adam V. Walter, Main Street, Brownstown, Pa., on July 7, 1921, to purchase 2 gallons of tincture of cardamon, and 3.80 gallons of alcohol from J. A. Miller & Co. on July 7, 1921. Original vendor's copy in the possession of J. A. Miller & Co., who shipped the goods to A. V. Walter on July 14, 1921. Director's copy and conformation are on file in the office, listed on 1502 card of Walter's. Permit of Berkowitz disapproved on the 19th day of May, 1921.

Here you have a shipment in July, and the permit was disapproved in May.

The CHAIRMAN. I would like to ask you at this point, Mr. Storck, if, as we go through this testimony, you are going to tell us how these forged permits were made out, with the serial numbers of legitimate and proper permits, or can you tell us that now, so that we can probably understand how these permits had the same serial numbers, and were issued under the same conditions as legitimate permits?

Mr. STORCK. Only through connivance with somebody in the director's office in Philadelphia or in New York, in this case.

The CHAIRMAN. In other words, it is only through connivance by these people who make out these forged permits with somebody in the bureau, that they can get these serial numbers and the figures on which to make the forged permits?

Mr. STORCK. Exactly. If you gentlemen wish to see the forged permits, they are here. They are right here now.

Mr. BRITT. May I interrupt a moment?

The CHAIRMAN. Yes.

Senator KING. I would like to see one of the forged permits and one of the original ones.

Mr. STORCK. You may not see the original, Senator.

Mr. BRITT. Of course, they could be obtained, and are obtained, in the way the witness has indicated, but they could, of course, be

obtained in other ways. They could be stolen outright, or they could be purchased originally without the connivance of any officer at all.

The CHAIRMAN. They could be stolen, could they?

Mr. BRITT. They could be stolen, or they could be obtained, as I say, without connivance. They could be stolen as other things are stolen.

The CHAIRMAN. Could they be stolen out of the bureau? Do you mean to say that they are not properly protected and they could be stolen?

Mr. BRITT. I do not say they were stolen, but I understood the witness to say that they could only be obtained by connivance with officers. They could be obtained in that way, beyond doubt, but they could be obtained in other ways.

Senator KING. In this instance they were not stolen, it would appear, for the reason that the originals were issued and were found in the possession of those entitled to them.

Mr. BRITT. I am only addressing this remark to the possible ways in which they could be obtained.

Mr. SIMONTON. One of the most frequent ways in which a number is obtained is by simply going and looking at another number. They could go into a store with which they had dealings, or with whom they may be in collusion, and they might find that the number 19864 was issued to John Smith. Then they could take the 19000 series.

The CHAIRMAN. Do they have to print these?

Mr. BRITT. Yes, sir.

The CHAIRMAN. The forged permit?

Mr. BRITT. Yes, sir; and they are past masters in it.

Mr. STORCK. They even duplicate the Government's watermark.

Mr. SIMONTON. To get a number would not require any connivance at all. It is the simplest thing in the world to walk down the street and get 10 numbers in five minutes.

Mr. STORCK. I have mentioned three forged permits only in connection with the Flushing Avenue branch. There were six. If you wish me to give you any further information on the other three, I will do that.

The CHAIRMAN. I do not think that is necessary.

Mr. STORCK. This will give you a general idea of it.

Mr. PYLE. You might give us the total amount withdrawn in those six cases.

Mr. STORCK. Five hundred and fifty barrels; 51,300.05 proof gallons.

The CHAIRMAN. You have already testified to that.

Mr. STORCK. Yes, sir.

The CHAIRMAN. Are not the same permits issued by the department here to their officers? I mean the same character of permits?

Mr. SIMONTON. The same character of permits, but they are in staggered numbers. We might send to South Dakota 118000, to Florida 119000, and Maine 120000. Of course, if a man wants to know the number, then he tries to find out the number in the jurisdiction that is being used. There is a separate serial for each lot. They are in thousand lots and in separate series—118000, 120000. It runs by the hundreds. If you send to Florida 118000 and to North

Dakota 1190, the forger in that jurisdiction, who makes up the whole document, must know what the number is that is being used in North Dakota; so he simply gets somebody's application for a legitimate permit.

Senator KING. The legend and the coloring are the same on all permits, whether for North Dakota or for Florida?

Mr. SIMONTON. Exactly.

Mr. BRITT. They are made up in series of thousands and sent out promiscuously.

Mr. STORCK. The next group of transactions will cover the Fleischman agency, at 203 Fulton Street, Brooklyn, N. Y.

In this connection there were 12 forged certificates, aggregating 640 barrels, 60,192.20 proof gallons.

The prohibition agent who made the investigation of this agency was Leo A. Connor.

Transaction of Vincento Sperandeo, 417 East Broadway, Brooklyn, N. Y., July 4, 1924, for 20 packages, permit No. 130616.

Serial No. 130616, counterfeit vendor's copy, found in possession of agency of the Fleischman Co., 203 Fulton Street, Brooklyn, N. Y., showing delivery of 20 barrels of alcohol, 1,841.15 proof gallons, to Vincenzo Sperandeo, 417 Broadway, Brooklyn, N. Y., on September 12, 1921. Fleischman produced forged confirmation; had no registered card or envelope, and entry does not appear on daily record nor on Sperandeo's 1502 card in director's office, New York City.

Senator KING. Did you give the name of the Fleischman agent or principal in charge of this office?

Mr. STORCK. No, sir. That is a man by the name of Davis. I will give you the initials later.

The records in the director's office in New York show genuine permit, Serial No. 130616, issued to W. H. Cook, 223 Caffeen Street, Watertown, N. Y., on August 21, 1921, to purchase alcohol, 174.96 proof gallons from Joseph A. Webb & Sons (Inc.), 50 Stone Street, New York City. The original vendor's copy of No. 130616 is on file in the office of the Webb Co., showing that they shipped 174.96 proof gallons, Watertown, N. Y.

The CHAIRMAN. Is that a sample of the whole 12 transactions?

Mr. STORCK. Yes.

The CHAIRMAN. There is no use in going through the whole 12 and putting them in the record.

Senator KING. They were all within a comparatively short period of time, and in 1921?

Mr. STORCK. Yes, sir.

Senator KING. The first date you gave was in August?

Mr. STORCK. In this connection, between July 4, 1921, and July 20, 1921. When I said August that was for the correct permit.

Senator KING. Yes. Then these forged permits were issued substantially a month before the genuine permit was issued?

Mr. STORCK. No. This is the only transaction in which I mentioned August.

The CHAIRMAN. I think they must be issued after the original permit was issued. Otherwise they could not get the serial number.

Mr. STORCK. I will state this, you may have a permit to purchase and they are good for 90 days, I believe.

Mr. BRITT. Yes; they are. They are good for 30 days, 60 days, or 90 days.

Senator KING. I know that; but the date when the permit was issued would be stamped on the permit?

Mr. STORCK. This was the date of the filling of the order. This one was filled on August 28, 1921. It belonged to a man by the name of Cook and was filled by Webb on August 28, 1921.

Senator KING. Before these forged permits can be issued the originals must have been issued.

Mr. STORCK. Surely.

Senator KING. So that the forged ones correspond to the originals.

Mr. SIMONTON. Pardon me. I think you have a wrong impression there.

Senator KING. Then let us get this straight. I do not understand how they get the serial number if the permit has not been issued.

Mr. BRITT. There is nothing showing when they were printed. Access in some way might have been gained and the number obtained from the print of the block before the original was issued to anybody by the directors, as you can see. Whether it was or not, I do not know, but that could be.

Mr. STORCK. The next proposition here is a block of serial certificates known as the 136000 block. The original permits were sent to the Hawaiian Islands on February 23, 1921. The forged permits were purported to have been signed by one T. M. Reddy, of the New York office of the prohibition director. Reddy was tried and acquitted, and the handwriting experts—I recall this distinctly, because I was there—stated that it was not his handwriting. This block, known as the 136000 block, consisted of 40 permits, which were obtained on these forged permits, aggregating 785 barrels, or 73,756.66 proof gallons. In this connection most of them went to, or supposedly went to, this man Vincenzo Sperandeo.

Senator KING. Was he a fictitious character?

Mr. STORCK. I do not know whether he was, but he did have a basic permit at one time.

In connection with this 136000 block, the witnesses in that case, or the agents who made the investigation, were Leo A. Connor and Agent Overback.

The CHAIRMAN. The 136000 block were used in getting out alcohol from the Fleischman Co.?

Mr. STORCK. Yes, sir; from the Brooklyn agency.

The CHAIRMAN. All right.

Mr. STORCK. The next is the Bridgeport, Conn., agency, in which one Kirk was agent. In connection with that agency there were 11 forged permits.

The CHAIRMAN. All in 1921?

Mr. STORCK. 1921; yes, sir; beginning on September 9 and ending in December. There were 790 barrels obtained, aggregating 69,515.22 proof gallons. Do you wish me to explain one or two of the transactions on that?

The CHAIRMAN. Not if they are similar to the others.

Mr. STORCK. They will be similar.

The CHAIRMAN. I think we understand how that is.

Mr. PYDE. There was a criminal feature in connection with that case, was there not?

Mr. STORCK. Yes. Kirk was arrested, tried before a jury, and acquitted.

Senator KING. So that there was no successful prosecution growing out of any of these cases that you have called our attention to?

Mr. STORCK. No, sir.

Senator KING. There were only two transactions, so far as you know, initiated, and in both of those cases the defendants were acquitted?

Mr. STORCK. Yes, sir.

Mr. BRITT. Unless the officers were prosecuted in connection with these cases. As to that point I am not advised.

Senator KING. You mean the officers of the Fleischman Co.?

Mr. BRITT. No; I mean the prohibition officers in Philadelphia. Were they not prosecuted in this connection?

Mr. STORCK. I have not gone into Philadelphia as yet.

Mr. BRITT. I see.

Mr. STORCK. That man's name was Frederick L. Kirk.

Senator KING. He was the Fleischman agent?

Mr. STORCK. At Bridgeport.

Senator KING. At Bridgeport.

Mr. STORCK. Right there is his memorandum. I found it in the files and I think I ought to read it to you gentlemen. The memorandum is dated June 13, 1924, and is without signature. It states:

Fred L. Kirk was acting as an ostensible agent for the Fleischman Co. (Inc.), at Bridgeport, Conn., in disposing of alcohol which constituted the principal by-product made by them in manufacturing yeast. It appears that the Fleischman Co. had an arrangement with Kirk similar to their arrangements made with all their other agents located in various parts of the country whereby he became the purchaser of the liquor disposed of by him. The report states that the defendant's agency began early in November, 1921, at the termination of the agency held by Harry Cohen at the above-mentioned city.

I might state right here that Cohen was the former agent, the one before Kirk, and his transactions were so bad that they had to get rid of him, and Kirk was placed in charge.

Senator KING. That is to say, the Fleischman Co. got rid of him?

Mr. STORCK. Yes, sir. [Reading:]

The total quantity of alcohol shipped to this agency and disposed of as shown by 52-B-

That is the form that the distillers have to keep in connection with Government regulations—

to various alleged persons totaled 69,990.22 proof gallons.

Senator KING. During what period?

Mr. STORCK. I am reading the memorandum now.

Senator KING. Yes; I understand.

Mr. STORCK. I can not give you the period. I have to read it just as it states it here.

Senator KING. Go ahead.

Mr. STORCK (reading):

It is further asserted that this party was not the holder of a permit investing him with authority to engage in business as a wholesale liquor dealer.

It is very clear that the sales made by the defendant were not made by him in the capacity of an agent for the Fleischman Co., inasmuch as title to the

spirits sold by him was not vested in the Fleischman Co. (Inc.), but the defendant, at the time of sale.

In the lower left-hand corner of that memorandum appears the initials "P. H."

Mr. BRITT. There is no official signature, is there?

Mr. STORCK. There is no official signature; no, sir.

The CHAIRMAN. Do you know who "P. H." is, Mr. Britt?

Mr. BRITT. I do not at this moment, sir. There are so many clerks, lawyers, and employees that I could not recall that, Mr. Chairman.

Senator KING. That would be a very unfair memorandum, in my opinion, for an official to put into the record after a case is closed. It is not a part of any hearing. It might do very grave injustice, even to a criminal.

Mr. BRITT. I had no knowledge of the existence of that memorandum, and I turned to Mr. Simonton and asked him if he knew anything about it. I know nothing about it, but I will be glad to make such inquiry as can be made about it. Even the initials strike me as strange just now.

Senator KING. It was not in the files of the hearing and as contemporaneous with the hearing?

Mr. STORCK. No, sir. It just appears from the actual files of the Fleischman Co. matter. You will find it right there.

Senator KING. But it is not a part of the hearing?

Mr. STORCK. Oh, no.

Senator KING. Nor of the same date as the hearing?

Mr. STORCK. No.

Senator KING. So that it could not be a part of the decision of the official who was hearing the case?

Mr. STORCK. And who wanted that memorandum placed in the files—

Senator KING. No; no; you do not understand my question. Was it a part of the hearing in the case and of the same date as the hearing?

Mr. STORCK. Oh, no. I just found that memorandum in the files, and I think it has some bearing on Mr. Kirk's connection with it.

Senator KING. The files may contain something besides the hearing?

Mr. STORCK. Oh, yes.

Senator KING. And I am interested in knowing whether that is a part of the hearing per se?

Mr. STORCK. No, sir.

The CHAIRMAN. Have you got that memorandum here?

Mr. STORCK. There are 15 folders there.

The CHAIRMAN. Can you identify the particular folder that that is in?

Mr. BRITT. No; I can not.

Senator JONES of New Mexico. What is the significance of that memorandum?

Mr. STORCK. Some one wanted to tell who Kirk was, and that he was not actually an agent of the Fleischman Co.

The CHAIRMAN. And yet he was prosecuted?

Mr. STORCK. He was prosecuted as an agent of the Fleischman Co., and acquitted.

Mr. BRITT. I will undertake to promise the committee what the record shows about it, and all the information I can get on it. It strikes me as it does you, and I will get you all the information on it that I can.

The CHAIRMAN. Proceed, Mr. Witness.

Mr. STORCK. Fleischman Co., distillery, Cincinnati, Ohio.

In connection with agency, the Cincinnati agency, there were seven forged permits on which alcohol was obtained, to the extent of 18,055.71 proof gallons. The transactions were similar; so we will pass that.

Senator KING. Did you give the agent's name in that connection?

Mr. STORCK. No; in connection with that investigation, there were several agents, Messrs. Green, Whitehead, and Copeland.

The CHAIRMAN. When you say they are agents, I wish you would say whether they are agents of the Fleischman Co. or of the Government.

Mr. STORCK. These are Government agents who made the investigation, Senator. They are not the agents of the Fleischman Co.

The CHAIRMAN. The agents who dealt with this case?

Mr. STORCK. Who dealt with this case. There is no agent mentioned excepting the Fleischman Co. distillery.

On February 9, 1922, a report was made by Agents Whitehead and J. J. Green in connection with this distillery. That is another report on the same distillery.

The CHAIRMAN. What is the significance of that report?

Mr. STORCK. Confirming these forged permits.

Fleischman Co., New York agency, 434 Eleventh Avenue, New York City—

Mr. BRITT. This is a whisky distillery that you are talking about now, Mr. Storck, not alcohol?

Mr. STORCK. It is a whisky distillery.

Mr. BRITT. Yes.

Mr. STORCK. That is the Fleischman Co. that I am speaking of.

Mr. BRITT. Yes; but it is a whisky distillery.

Mr. STORCK. I found an affidavit in the files relative to the New York agency of the Fleischman Co., made by one Louis Dinetz, jr., dated September 16, 1921, which is sworn to. [Reading:]

Louis Dinetz, jr., 638 Hillside Street, Brooklyn, N. Y., county of Kings, being duly sworn, deposes and says that on September 16, 1921, between 9 and 10 a. m. he called at the agency of the Fleischman Distilling Co., Eleventh Avenue and Thirty-fourth Street, New York, N. Y., county of New York, and paid to the bookkeeper of the Fleischman Distilling Co., at that address, \$1,150 in cash, for which he received 2 barrels of alcohol and for which he presented no withdrawal papers whatsoever.

Further, deponent says that he is the driver of a 2-ton G. M. C. car, said car being the property of his father, Louis Dinetz, sr., Greenpoint, Brooklyn, N. Y., county of Kings, and that said 2 barrels of alcohol were to be delivered to a Mr. Schwartz, who conducts a saloon and restaurant, corner of Varick and Humboldt Streets, Brooklyn, N. Y., county of Kings.

That is the only transaction of the Fleischman New York City agency that is mentioned in the files, and in that case the 2 barrels of alcohol were paid for in cash, without any withdrawal papers whatsoever.

Jersey City, N. J., agency: In connection with this investigation, the agent making said investigation was Andrew A. Quigley, general prohibition agent. It appears that there was only one transaction on a forged certificate, being for 100 barrels of alcohol, approximately 9,400 proof gallons, serial No. 35604. The transaction is similar to those shown already, so we will pass that.

Senator KING. There was no prosecution in that case?

Mr. STORCK. No, sir.

Yonkers, N. Y., agency of Fleischman Co.: The investigation was made by Andrew A. Quigley. In this connection, they found no violations, but there was a theft of 21 barrels of alcohol. The files state in regard to the theft that they had been informed by Mr. Tritell, the agent, that the men had been indicted and were under \$10,000 bail. They report a memorandum signed by M. Overpeck and John Whitehead, general prohibition agents, and the result of the investigation made by them is as follows:

We have examined the transcript record of 52-B.

And they show a designation of 1,050 cans of alcohol. A comparison of the serial numbers shows that the same were found at the residence of William B. Cady at K Street NW., Washington, D. C. Bill Cady and his brother are two well-known bootleggers of Alexandria and Washington.

Senator JONES of New Mexico. They are well-known bootleggers? Are they in jail?

Mr. STORCK. I do not know, sir; but I know they are bootleggers here in Washington. It is common knowledge, as to the Cady brothers of Alexandria and Washington. Probably I had better read that to you:

The serial numbers found at Cady's place, Nos. 8509, 8502, 8508, 8558, 8577, August 3, to Fred. A. Borelli, of 186 Water Street, New York, 400 cans, 3,800 proof gallons. Tax stamp numbers for the same shipment, 60298, 60260, 60253, 60259, 60300. All of the above tax-paid stamp numbers are included in 60151 to 60400 and 60426 to 60600.

Mr. BRITT. Those were cans?

Mr. STORCK. Yes, sir.

Mr. BRITT. Were the cans filled or empty?

Mr. STORCK. Well, I am just reading the report made by Mr. Overpeck.

Mr. BRITT. Yes.

Mr. STORCK (reading):

September 8, serial Nos. 10458, 10485, 10484, 10527, 10452, 10451, 10352, 10432, to the Dill Co., Washington Street and McKinley Avenue, Norristown, Pa., 250 cans, 23,752 proof gallons.

September 8, serial Nos. 10764, 10765, to the Dill Co., Washington Street, Norristown, Pa.

Senator KING. I do not quite understand that. They found those serial numbers or papers in the possession of the Cadys?

Mr. STORCK. Yes, sir; I am going to explain that to you. In the Philadelphia agency, of which one Samuel Lazarre was agent, you are going to find a number of forged permits, purporting to have gone to the Dill Co., Borelli, and others in various places. Those forged permits were obtained. Now, some of those same serial numbers containing those cans are found in this bootlegger's place in

Washington, the same identical serial numbers and tax stamps, whereas they were purported to have gone to one Borelli and one Dill Manufacturing Co. They did not go there. When I come to those transactions under the Philadelphia agency I will pull those out and show you that the Dill Manufacturing Co. never received the goods, and they are reputable concerns in Norristown.

The CHAIRMAN. What is the significance of reading this into the record now, if at some later time in your testimony you are going to refer to these serial numbers? Is that the fact?

Mr. STORCK. Yes, sir.

The CHAIRMAN. Then you ought to put it in consecutively, so that we will have it all together.

Mr. STORCK. The next one will be Philadelphia, sir.

Senator KING. We would not want any impression to go out of here that the Dill Manufacturing Co. was engaged in rather a reprehensible transaction, and I do get that impression from your testimony.

Mr. STORCK. No, sir; I do not want to give you that impression, either, sir; but, as I will show you, there are forged permits, and they have gone to the Dill Manufacturing Co.

The CHAIRMAN. I understand that, but you want to get it straight, so that we will not get a wrong impression from your testimony.

Mr. STORCK. Very well. We will now take up the Philadelphia agency.

Senator KING. Did that mean that these people here had gotten those cans of alcohol at some time?

Mr. STORCK. Yes, sir.

Senator KING. And at some place?

Mr. STORCK. At some place, that this man Cady had gotten these cans. They were supposed to have gone to Borelli in New York and to Dill in Norristown.

The CHAIRMAN. These cans were actually found in the K Street place?

Mr. STORCK. Yes, sir.

The CHAIRMAN. Cans of alcohol?

Mr. STORCK. That is, say empty cans.

The CHAIRMAN. Then say "empty cans," so that we will get it straight.

Mr. STORCK. I have not got to that place yet where I can show that.

Senator KING. How do you connect that up with the Fleischman Co.?

Mr. STORCK. Simply because they were forged permits issued on the Philadelphia office, and it was purported to have gone to a man by the name of Borelli.

The CHAIRMAN. You have said that a number of times, but why do you give us the tail end of the story before you give us the first part of the story? You have told us all of this.

Mr. STORCK. Very well, sir. [Reading:]

All of the above serial numbers shown as found at the residence of William Cady were entered on record 52-A of Samuel Lazar, Philadelphia, Pa., except a block of 150 cans which were contained in the 400 cans consigned to Fred A. Borelli, 136 Water Street, New York, serial numbers of which (150 cans) are 8494-8649.

All the above serial numbers of cans, corresponding tax-stamp numbers, were entered on record 52-B, Samuel Lazar, agent Terminal Storage & Transfer Co., Philadelphia, Pa., showing consignment of 550 cans to New York City and 500 cans to Norristown, Pa., amounting to 9,975 proof gallons.

It appears from the above investigation and tabulation that the serial numbers of cans and tax stamps of same found at the residence of William Cady, K Street NW., Washington, D. C., had either been sent to Philadelphia and returned to Cady or that they had been delivered to him direct from Langdon, D. C.

It may be shown at this time that when the stamps and the pieces of stamps were found at the residence of William Cady that several empty 5 and 10 gallon cans were also found. From one of these cans a small quantity of alcohol was taken in a bottle securely sealed, labeled, and marked for identification and sent to the industrial alcohol and chemical division of your bureau for analysis, report of which under date of November 23, 1921, was forwarded to you under laboratory No. 97156, agent's No. 1, showing alcoholic volume of 85.70 per cent high-proof ethyl alcohol.

M. OVERPECK,
JOHN WHITEHEAD,
General Prohibition Agents.

Mr. STORCK. Fleischman agency, Philadelphia, Samuel Lazarre, agent: In this connection, alcohol was obtained on 24 forged permits, consisting of 1,560 packages of 147,180.10 proof gallons.

Senator KING. Can you give us the date, please?

Mr. STORCK. From June 27, 1921, to October 12, 1921.

I will now take up that Dill transaction.

Transaction, September 17, 1922, Dill Medicine Co., Norristown, Pa., 146 packages, permit No. 43251, for 9,385.94 proof gallons.

Vendor's copy of permit to purchase, serial 43251, basic permit No. 10900, purported to have been issued to the Dill Medicine Co. for shipment of 101 barrels alcohol. Counterfeit copy of vendor's permit No. 43251 was found in the possession of the Fleischman Co., covering the shipment of 100 barrels alcohol, 9,385.94 proof gallons, to the Dill Medicine Co., on September 24, 1921. Confirmation a forgery.

No registered cards or envelopes; no letter asking for confirmation. Genuine vendor's copy, serial No. 43251, office records show, was issued to George A. Merkle on August 30, 1921, who is the holder of permit H-5077 to purchase 4.57 gallons of alcohol from C. A. Dimon Co., 2132 Arch Street, Philadelphia. Vendor's copy now in possession of Dimon Co., who shipped the 4.87 gallons to Merkle. Vendor's copy of 43251 is a forged document at page 43 at testimony after examination claims permit 43251 is a genuine document.

Now, there was that Dill transaction.

Senator KING, The Dill Medicine Co. did not get it?

Mr. STORCK. No, sir.

Senator KING. Let me ask you this—I do not know whether you are competent to answer it, and if not, you can say so quickly: Are examinations made sufficiently often of the Fleischman Co. or other manufacturers' records in their own offices to enable the Government, if it did its duty, to determine that there was a lot of liquor going out from the Fleischman Co. directly or from its subsidiary companies to other companies for which no genuine permits were issued?

Mr. STORCK. I can not answer that, excepting to state that there were various examinations made by various agents, several agents going back and back again. One man would make an examination, and then they would send Quigley and Connor. Quigley and Connor seemed always to be sent whenever there was a forgery.

The CHAIRMAN. The Senator wanted to know if there was a systematic check of this?

Mr. STORCK. I can not answer that.

Senator KING. It would seem to me, in connection with these large sales of liquor or alcohol, that the Government, knowing what permits it gave the manufacturer and knowing what permits it issued, ought to have been able to have determined or to have discovered these illegitimate transactions.

Mr. STORCK. It would appear that way to me.

Senator JONES of New Mexico. Well, they did discover them, as I understand it, from these reports.

Senator KING. Long after the transaction had taken place, but what I was trying to get at was whether there are frequent examinations made to determine that. If these transactions happen in June or July, say, then the agent comes along and looks those over, and it is presumed that he would have examined the records of the prohibition director, and then he could determine very quickly whether there were more sales there than were authorized by the director, and for which bona fide permits had been issued.

Mr. STORCK. I do not know how often they examine them. I have not any idea.

Senator KING. Mr. Pyle, I hope you will remember that.

Mr. BRITT. I will go into that when the witness is through. I do not want to interrupt the witness.

Senator KING. All right.

Mr. STORCK. The total summary of these transactions, as taken from the files, shows that the total number of gallons diverted was 434,374.94.

Senator KING. Between those two dates?

Mr. STORCK. Between those dates that I gave.

Mr. BRITT. Read those figures again, please.

Mr. STORCK. Four hundred and thirty-four thousand three hundred and seventy-four and ninety-four one hundredths gallons.

The CHAIRMAN. All in 1921?

Mr. STORCK. Yes, sir. A tax was proposed on that of \$6.40 per gallon, on the 434,000 proof gallons, as required by section 60, paragraph A, Title VI, revenue act, of \$2,779,999.62.

Senator KING. Did not the Fleischman Co. report the manufacture of those 434,000 gallons, which they improperly sold; did they not report that to the Government as a part of their manufactured product?

Mr. STORCK. Yes, sir; and it appears on their 52-B card.

Senator KING. Had they not paid the Government the tax on it before they discovered the forgery?

Mr. STORCK. That I do not know. Evidently not.

Mr. SIMONTON. May I answer you?

The CHAIRMAN. Yes.

Mr. SIMONTON. It was still in the hands of the company; it was in the hands of their agents.

Senator KING. The goods could not have been there after the agency had sold them.

Mr. SIMONTON. I am speaking now of the tax. It is in the hands of the company up to the time it is withdrawn, and when it was

withdrawn for denaturing there is no tax to be applied to it. If it is withdrawn for use as such, pure alcohol, then the tax of \$2.20 was applied to it at the time it was withdrawn from the agency.

Senator KING. What I am trying to get at is, did they pay the tax upon these illegal withdrawals at the time they were withdrawn?

Mr. SIMONTON. If it was withdrawn for denaturization, no tax was due.

Senator KING. But was the tax paid on these 434,000 gallons when they were withdrawn on these forged certificates?

The CHAIRMAN. He said no, Senator, because if it was withdrawn for denaturization there was no tax.

Senator KING. Yes; but this was not for denaturization.

Mr. PYLE. The Senator is raising now the differential of the tax, if you could explain that.

Mr. SIMONTON. Certainly.

Mr. BRITT. I think, if you will allow me, it would be best to let the witness get through, and then we can take up all of these things on cross-examination.

Senator KING. But I want this question answered myself. Do you recall whether the tax was paid on that 434,000 gallons?

Mr. BRITT. My understanding is—and I will search the records—

Senator KING. If you do not know it, just say so.

Mr. BRITT. My understanding is that it was not withdrawn for denaturization, without the tax, but I will make a search for that in the records.

Senator KING. Well, he said there was a tax levied—

Mr. STORCK. No; I did not say "levied." It is proposed.

Senator KING. It is recommended.

Mr. STORCK. A recommendation.

Senator KING. So that they avoided both taxes in the first instance?

Mr. STORCK. Yes; they paid no tax.

Senator KING. All right, then.

Mr. STORCK. The company is cited for revocation and to show cause why their permit should not be revoked because this alcohol was illegally withdrawn.

Senator KING. When were they cited?

Mr. STORCK. I am going to tell you exactly. Would you wish me to read the citation?

Senator KING. I would like to know when.

The CHAIRMAN. If there is no objection, I would like to have you read the citation.

Senator KING. All right.

The CHAIRMAN. Read it all to us.

Mr. STORCK. The citation—

Mr. BRITT. What is the date of it?

Mr. STORCK. It is the citation of S. F. Rutter, presiding officer at hearings of Fleischman Co. [Reading:]

The citation to which I referred before, a copy of which has been introduced and marked "Exhibit A," charges the Fleischman Co. (Inc.) with the matter of the revocation of permits Pa. B-782, Pa. B-830, N. Y. 5, N. Y. 6, N. Y. B-126, N. Y. H-3018, N. Y. F-203, N. Y. B-1619, N. Y. G-10420, N. Y. B-1616, N. J. B-238, Conn. B-167, Md. K-1, Md. K-2, Md. H-117, Md. H-118, Mass. B-108, D. C. 2, D. C. 3, D. C. H-194, Ohio B-8, and Ohio B-62.

Those were all the permits that the Fleischman Co. had. [Reading:]

In that the Fleischman Co. (Inc.), had not in good faith conformed to the provisions of the national prohibition act and regulations promulgated thereunder, for the reason that between the dates of May 1, 1921, and October 30, 1921, and at divers dates between those two dates, it failed to keep proper records of receipts and dispositions of distilled spirits in violation of section 10, Title II, national prohibition act, and regulations 60, article 19, section 58, paragraph E, promulgated thereunder; kept and maintained false records of receipts and dispositions of distilled spirits in violation of section 29, Title II, national prohibition act, and section 3318 R. S. U. S., as amended; sold distilled spirits on forged permits and without permits to purchase in violation of section 3, Title II, of the national prohibition act, and also of sections 11, 29, and 35 of that act, as well as section 15, Title III, thereof, and regulations issued pursuant thereto; it did not qualify as a wholesale liquor dealer, as required by section 3244, R. S. U. S., as amended, subsection 4, and Treasury Decision No. 3208, paragraph B, issued August 3, 1921.

Permit N. Y. B-1658, issued to the Fleischman Co. (Inc.), at one of the New York agencies was revoked and canceled on November 4, 1921, on the ground that alcohol had been diverted to beverage purposes; failure to file transcripts of records 52-A and 52-B in the office of the collector of internal revenue, Philadelphia, Pa., in violation of section 3318 R. S. U. S., and sections 10 and 29, national prohibition act; unlawfully transported distilled spirits in violation of sections 3 and 29 of the national prohibition act and Treasury Decisions 3212, issued August 11, 1921, and 3228, issued September 8, 1921, and regulation 60, article 16, section 84.

Diverted nonbeverage spirits to beverage purposes in violation of sections 3 and 29, national prohibition act, and regulation 6, promulgated thereunder; neglected and refused to file returns of receipts and dispositions of distilled spirits in violation of section 3172, R. S. U. S., as amended; sold and transported distilled spirits in interstate commerce in violation of the Webb-Kenyon law (act of March 1, 1913, ch. 90, 37 Stat. 690) and the Reed amendment (act of Mar. 3, 1917, ch. 102, par. 5, 39 Stat. 1069), all of the above having been done on divers dates between May 1, 1921, and October 30, 1921.

The CHAIRMAN. I am somewhat familiar with this case, but for the benefit of the other Senators I would like to get it into the record chronologically, if I can, from the point where you said that some \$2,350,000 taxes was recommended to be collected.

Mr. STORCK. Yes, sir.

The CHAIRMAN. From that point on, so that we will have it together, for the benefit of the other Senators, just tell us what was finally accepted in settlement of that.

Mr. STORCK. Yes, sir.

Revocation—

The CHAIRMAN. Have you the record there, or are you trusting to memory?

Mr. STORCK. I am talking from memory now.

The CHAIRMAN. All right.

Mr. STORCK. Permits were revoked, or recommended to be revoked, and that a tax assessment should be placed upon it. Then offers of compromise were made. The first offer was \$25,000.

The CHAIRMAN. By the Fleischman Co.

Mr. STORCK. Yes, sir. Mr. Britt was called upon for an opinion. He rendered an opinion and said that the least the Fleischman Co. should give was \$100,000. Then the offer was increased to \$50,000. It then went up to \$75,000, and then it was taken out of the hands of the presiding officers.

The CHAIRMAN. Who were the presiding officers?

Mr. STORCK. In this case Mr. Orcutt and Mr. Rutter. Then Mr. Blair reviewed the matter, and he rendered an opinion, which we have here. Finally the \$75,000 was accepted in settlement of all criminal and civil liabilities.

Mr. BRITT. No, no; not the criminal.

Mr. STORCK. Pardon me just a moment there.

Mr. BRITT. Yes.

Mr. STORCK. In settlement of criminal and civil liabilities. I then requested from the Prohibition Department whether any criminal prosecution had been instituted, and they told me no, that no criminal prosecution has been instituted up to this moment. It was settled for \$75,000.

The CHAIRMAN. Can you tell us, Mr. Storck, how this \$2,750,000 was arrived at?

Mr. STORCK. Yes, sir.

The CHAIRMAN. How?

Mr. STORCK. As a tax of \$6.40 upon the 434,000 and odd gallons.

The CHAIRMAN. And that was based on the law, which required that \$6.40 per gallon tax when it was used for beverage purposes?

The CHAIRMAN. And it was concluded, when this recommendation was made, that all of this that had been illegally removed had been used for beverage purposes?

Mr. STORCK. Yes, sir.

Senator JONES of New Mexico. Was the price at which this was sold ascertained by any of the agents?

Mr. STORCK. The price of that which was diverted, you mean?

Senator JONES of New Mexico. Yes.

Mr. STORCK. No, sir; that is, the reports do not state it.

Senator JONES of New Mexico. They do not state it?

Mr. STORCK. No, sir.

Senator JONES of New Mexico. Was any attempt made to ascertain the price which the Fleischman Co. received for this alcohol?

Mr. STORCK. That I could not tell you, Senator. I am only giving you here what their reports in the files show.

The CHAIRMAN. I think that is very pertinent and I am glad the Senator raised that point. I will ask Mr. Britt if he can find out from any source what the price was that was charged for that alcohol.

Mr. BRITT. I will be glad to find that out, Mr. Chairman. I have no present knowledge of it.

Senator KING. You might cooperate with the Income Tax Unit of the Bureau of Internal Revenue to find out whether they made any return upon the sales of that liquor.

Mr. BRITT. I will get what information I can, Senator.

Mr. PYLE. You might call their attention to that case in the New York branch.

Mr. STORCK. Yes, sir; that is what I was going to say. I should correct my testimony there when I said I did not know at what price, because there were 2 barrels at \$1,150.

The CHAIRMAN. Was that whisky or alcohol?

Mr. STORCK. That was alcohol.

The CHAIRMAN. Will you figure out what these 2 barrels sold for per gallon, by figuring \$1,150 for the 2 barrels?

Mr. STORCK. They contained approximately 50 gallons to the barrel. That would be 100 gallons altogether at \$550, and they received \$5.50 per gallon.

Mr. PYLE. \$11 per gallon.

Mr. STORCK. Yes; about \$11 per gallon.

The CHAIRMAN. They sold those 2 barrels at about \$11 per gallon?

Mr. PYLE. \$11.50. Alcohol as sold in the market around Pittsburgh ran from \$225 to \$250 for a 50-gallon drum.

The CHAIRMAN. That is about \$5, approximately?

Mr. STORCK. I might say, Mr. Chairman, that I asked Mr. DeAtley, who was connected with the litigation of this claim, while I was working there, if he could get me the quotation on alcohol, and he did. He said a wholesale druggist here had given him a quotation of \$4.18. That was about the 1st of November.

The CHAIRMAN. Last year?

Mr. STORCK. 1924—\$4.18 a gallon.

The CHAIRMAN. That would indicate that they were getting an exorbitant price for this alcohol.

Mr. STORCK. I also saw it mentioned in the files that the Fleischman Co. was known to have the best alcohol in the country. It is mentioned somewhere in the records that the value of the alcohol was \$6.50 per gallon.

Senator JONES of New Mexico. This price here would seem to indicate a market price of the alcohol plus the revenue of \$11 and something a gallon.

The CHAIRMAN. I think that is about correct. When you take the \$4 plus \$6.40 it works out to just what it would come to, approximately, as what they got per gallon for those two particular barrels.

Senator JONES of New Mexico. Yes; the regular price for the alcohol and the \$6.40 a gallon revenue.

I would like to know on what basis that \$25,000 was suggested, and the \$75,000, and the \$100,000 by way of compromise.

The CHAIRMAN. May I ask at this point whether the \$2.20 was paid at any time?

Mr. STORCK. I do not know.

The CHAIRMAN. Does Mr. Britt know?

Mr. BRITT. I do not know whether this was withdrawn as raw alcohol, but if it was withdrawn for the purpose of denaturation no tax was paid. I will get that fact for the record.

The CHAIRMAN. In other words, you participated in that conference wherein \$75,000 was accepted; is that correct?

Mr. BRITT. I just participated to the extent that I was asked by the Commissioner of Internal Revenue to look into the case and give him my opinion of what would be the least amount that could be taken, taking the risk of a court settlement and every other condition all together.

The CHAIRMAN. In other words, you recommended \$100,000?

Mr. BRITT. Yes, sir; not less than \$100,000 for the civil liability only. On the contrary, I specifically emphasized, as Mr. Storck may have seen in the records, that no compromise could comprehend any settlement of the criminal liability.

The CHAIRMAN. Yes; that was not the point at issue. When you arrived at that figure of \$100,000 as the minimum, did you have in

mind that this alcohol was removed for industrial purposes or for beverage purposes?

Mr. BRITT. The impression that I have of it at this time—it has been three years now, almost—as I now recall, is that it was not withdrawn for denaturization. I remember that I had that impression.

The CHAIRMAN. Was there anything in the records to give you that impression?

Mr. BRITT. As I say, the records will determine that. I have not seen the record or examined it. That decision was made in the summer of 1922, and of course I would not want to make a statement of fact on any matter without knowing it.

The CHAIRMAN. I think Mr. Storck's statement perhaps was based on the fact that there was no criminal prosecution as yet.

Mr. BRITT. Yes.

The CHAIRMAN. And he had a right to assume that it was settled.

Mr. BRITT. Yes. I do not think he intended to say that it was all settled by that compromise.

The CHAIRMAN. You state that the criminal liability was compromised?

Mr. STORCK. I said the \$75,000 was accepted in settlement of the civil and criminal liability.

The CHAIRMAN. You say that because there has been no criminal prosecution?

Mr. STORCK. Yes.

The CHAIRMAN. In other words, that is an assumption of yours?

Mr. STORCK. Yes.

Mr. BRITT. But the terms of the settlement specifically negated any settlement of the criminal liability.

The CHAIRMAN. I understand. Of course, you are speaking from a technical standpoint?

Mr. BRITT. Yes.

The CHAIRMAN. And the witness has made that statement because there has been no prosecution started as yet.

Mr. PYLE. I believe, in answer to Mr. Blair's request, you gave him your opinion on July 7, 1922?

Mr. BRITT. Yes.

Mr. PYLE. And in your letter, a copy of which is here, and it may be advisable to attach it as an exhibit to the record, you recommend among other things:

I have, therefore, to advise:

That the commissioner consider a settlement in compromise of all civil and criminal liabilities of the Fleischman Co. (Inc.), exclusive of criminal liabilities arising under the national prohibition act, on payment by the company of a sum of not less than \$100,000.

Or, upon default of settlement by compromise, that proceedings, both civil and criminal, be instituted at once against the company and its agents.

The CHAIRMAN. What conclusion can we reach, Mr. Britt, when you say that unless they can settle or compromise, proceedings, both civil and criminal, will be started?

Mr. BRITT. Let me make that clear. Mr. Chairman, I am entitled to it, and I desire to do so.

The CHAIRMAN. Certainly; you may be permitted to make your statement.

Mr. BRITT. Under the internal revenue laws we could settle both the civil and criminal liability, you understand?

The CHAIRMAN. Oh, they could? They could settle the criminal liability?

Mr. BRITT. Oh, yes; they could, under the internal revenue laws. If any part of it related solely to the question of diversion of liquor in violation of the national prohibition act, there is no criminal liability that can be settled, and I specifically said so.

There is another memorandum, Mr. Pyle, also made by me. Will you please put both in? At this stage I would like to have both of those memoranda in the record. They are very brief. The other is a very short memorandum.

Under the internal revenue laws, as I have said, if it merely related to the internal revenue laws, and not to the national prohibition act, both the civil and criminal liability could be adjusted; but under the prohibition law no criminal liability can be adjusted, and the form of acceptance which was offered and finally accepted in this case specifically negatives the settlement of the criminal liability at all. My impression was that they were proceeding with, or were going to proceed with, indictments. There was nothing that occurred at any time, or that was ever said in my presence, that left the impression that they were not proceeding with the criminal liability here, or going to proceed.

The CHAIRMAN. When you say "they" were going to proceed, whom do you mean by "they"?

Mr. BRITT. The only connection that I had with the case was this cursory review at the request of the Commissioner of Internal Revenue for this opinion, which I gave. We have also discussed it incidentally, in talking from time to time about the case.

The CHAIRMAN. Who is the "they" that you refer to, that you thought were going to proceed to criminally prosecute?

Mr. BRITT. I thought, of course, the district attorney would proceed with the criminal part of it.

The CHAIRMAN. Was the district attorney in on those negotiations?

Mr. BRITT. The district attorney did not have to be.

The CHAIRMAN. But would the district attorney get the opinion with a request to proceed?

Mr. BRITT. The district attorney would get information through the reports of agents, which I assume were in his hands. The instructions are to furnish the district attorneys in the districts with copies of the findings. I assumed that that was being done, and I believe yet that it was done, and I assumed at every stage that the district attorney would proceed with the prosecution. Nothing was said in my presence to the contrary at any time, and at no time did I see or do any act that indicated the settlement of criminal liability in this case on the prohibition side.

The CHAIRMAN. You do not say that in your opinion.

Mr. BRITT. Yes, sir; I do; and that is the meaning of it absolutely.

The CHAIRMAN. You distinguish between the revenue laws and the prohibition act?

Mr. BRITT. Yes, sir; that is what I do.

The CHAIRMAN. Well, here is what you said:

That the commissioner consider a settlement in compromise of all civil and criminal liabilities of the Fleischman Co. (Inc.), exclusive of criminal liability arising under the national prohibition act—

Mr. BRITT. Yes, sir; I specifically excluded it.

The CHAIRMAN (continuing reading):

on payment by the company of a sum of not less than \$100,000.

In the negotiations for this compromise was there any evidence that this alcohol was removed or sold for denaturization?

Mr. BRITT. The negotiations were not made with me, Mr. Chairman. My part was, what I have already indicated, an advisory part. My impression is it was not made for denaturization; but, as I say, I can not recall what the record shows in that particular. But that was not relevant, Mr. Chairman. Here is the basis of my views: The statute says that you can not collect the differential tax unless the spirits are withdrawn for beverage purposes, and the Court of Appeals of the Eighth Circuit has held that before you can attach the differential tax at all you must prove that it was actually diverted to use for beverage purposes.

It was that consideration of the law that made me believe, and makes me still believe, Mr. Chairman, that in a court where they reduce us to that proof we could not prove anything at all. Of course, the moral inference is—and your belief and mine would not differ about that—that since they drew it out on forged permits it apparently went to beverage and unlawful purposes.

The CHAIRMAN. There was no object in withdrawing it under forged permits unless it was for an unlawful purpose.

Senator JONES of New Mexico. Is not that the only inference that can be drawn from it?

Mr. BRITT. Yes; exactly.

Senator JONES of New Mexico. The only inference that could be drawn from it is that they were doing it to use it in an unlawful way.

The CHAIRMAN. If it was withdrawn for denaturization there would not be any permits.

Mr. BRITT. But the court says that we must actually prove that the consumer diverted it.

Senator JONES of New Mexico. I think that could be proved before any jury in the country, when it was withdrawn on a forged permit, and there is no necessity for forging a permit to withdraw it for denaturization. I think any jury in the world would be likely to render a verdict on the instant that it was done for beverage purposes.

Senator KING. And the case would be fortified by showing the connivance of the agents of the Fleischmann Co. so that there would be no trouble in establishing it.

Mr. BRITT. Oh, yes, there would be; I beg your pardon. There would not be in my mind or yours. The court has held just the contrary, and we will produce the case here.

Senator KING. I do not think it would come within the four corners of this case.

Senator JONES of New Mexico. At this point I would like a citation of that case in the record. I would like to know whether the Supreme Court of the United States has held that, broadly—

Mr. BRITT. No; I did not say the Supreme Court of the United States. I said the Circuit Court of Appeals of the Eighth Circuit.

Senator JONES of New Mexico. Well, whatever court it was.

Mr. BRITT. Yes, sir. I would like to have Mr. Simonton rise and state the relevant considerations that entered into that decision, and then put the decision in the record.

Mr. SIMONTON. The circumstances differ in this case and in the cases that I am about to refer to, from the circumstances in the Fleischman case. In the two decided opinions, in which they have the court's views stated in the decisions, they were both cases of thefts from distilleries.

Assuming that the theft could only be for beverage purposes, the department assessed the \$6.40 tax, and not the \$2.20, as a beverage tax.

In both of these cases, one of which is Hamilton, Collector of Internal Revenue, *v. Kentucky Distillery & Warehouse Co.*, 288 Federal Reporter, 326, and the other the case of *W. A. Gaines & Co. v. George H. Moore*, as Collector, in which the decision was rendered by a Federal Judge Faris, the department defended by showing that this was a theft, and that the tax would be due at the rate of \$6.40, assuming that there could not be any difference of opinion on the subject, because no one would think that they had stolen this to sell it to druggists.

The CHAIRMAN. Why not?

Mr. SIMONTON. No one would think morally that they had done so.

The CHAIRMAN. That has a property value, and they steal property under all circumstances.

Mr. SIMONTON. Would they want to sell it to druggists for non-beverage uses or to bootleggers for beverage uses?

The CHAIRMAN. I think you are quite correct in saying that these are not analogous cases at all.

Mr. SIMONTON. Well, if you will permit me to finish, we followed the transaction with Cady, and that is the transaction with Dinetz referred to by Mr. Storck. There was no actual proof of beverage use. There was the disappearance of the alcohol and forged permits left in its place.

In this case that I am quoting to you there was stolen alcohol, stolen by bootleggers from the distilleries, and in the latter case we assessed a tax of \$6.40.

The court in this Gaines case, Judge Faris, in a very clear statement of the law, which is the same in both cases, said:

These statutes, in my opinion, lead to the conclusion that while the tax of \$2.20 per gallon applied to the whisky here in question, and that so much of this tax became due when the spirits were distilled, yet the additional tax of \$4.20 per gallon, which was collected here and for which plaintiff is suing, did not become due or payable until the whisky was removed for beverage purposes. Since, therefore, such whisky could not at the time it was stolen be legally removed for beverage purposes, it never became liable for the additional tax of \$4.20 per gallon herein exacted, for it can not be said that the thieves who stole it used it for beverage purposes or stole it for such a purpose. I mean by that that in the absence of proof no presumption can

exist touching the manner of disposal by the thieves, for the presumption (absent proof or allegation) may as well be indulged that they stole it for exportation as that they stole it to be used locally for beverage purposes.

In other words, he placed the burden upon the Government to actually prove beverage use, and it had the same result in these cases.

There are two other cases—the American Co. v. Elwood Hamilton and E. J. Wild v. Elwood Hamilton—in which the court followed these opinions in another situation.

In these cases there was an actual aging of the whisky in the distillery. In bottling it there was a loss. We had no evidence as to just how that loss occurred. It disappeared right in the hands of the distiller. We assessed the \$6.40 tax and the court said:

You have not proved any beverage use, which the statute requires you to prove, and that therefore, regardless of the fact that in the hands of the distiller it has disappeared, you can not collect more than the \$2.20 tax.

That is the theory of these cases.

Senator JONES of New Mexico. Why did they say you could collect the \$2.20?

Mr. SIMONTON. Because the \$2.20 tax goes on when it comes into existence. The \$4.20 goes on when it is withdrawn.

Senator JONES of New Mexico. What about the alcohol?

Mr. SIMONTON. Alcohol the same, except when it is withdrawn for denaturization.

Senator JONES of New Mexico. That is, \$2.20 on alcohol?

Mr. SIMONTON. Yes, sir.

The CHAIRMAN. Not when it is withdrawn for denaturization.

Mr. SIMONTON. No. Then it is withdrawn tax free. In this case the court said we may collect the \$2.20 tax.

Senator JONES of New Mexico. Why did they permit that to be collected?

Mr. SIMONTON. Because that goes on when it comes into existence, and unless relieved by law, and the only place where it is relieved is where it is withdrawn for denaturization, it must be paid, regardless of whether it is stolen or burned or what.

Senator JONES of New Mexico. Does that apply in the same way to alcohol?

Mr. SIMONTON. Yes, sir.

Senator JONES of New Mexico. That \$2.20 a gallon would have amounted to how much?

The CHAIRMAN. \$995,624.86.

Mr. BRITT. Assuming that that is withdrawn.

Senator JONES of New Mexico. You were entitled to collect that much, as I understand it, unless it was withdrawn for denaturization purposes?

Mr. SIMONTON. That is right, sir.

The CHAIRMAN. Did they prove that?

Mr. SIMONTON. No such proof—

Senator JONES of New Mexico. Why did you not insist upon the \$900,000?

Mr. SIMONTON. It was not withdrawn for denaturization.

Mr. BRITT. Then, I stand corrected.

Senator JONES of New Mexico. Was not the burden put upon them to show that it was withdrawn for denaturization and they did not do it? Why could you not insist on the \$900,000?

Mr. SIMONTON. Of course, that was a matter that was referred to Mr. Britt and Mr. Blair when they handled the matter. I had nothing to do with that. I can not tell you.

Senator JONES of New Mexico. Did not, in this case, the inspector decide they were liable for the \$900,000?

Mr. SIMONTON. Unquestionably. So far as these cases go, they were liable for the \$900,000.

Senator JONES of New Mexico. Yes.

Mr. SIMONTON. There is, of course, another angle to the statute that is still to be taken into consideration, and that is this: This tax was assessed without a hearing. It was a pure penalty tax assessed on the basis of an unlawful act at the time that the withdrawals occurred. The Supreme Court has held since, and I think it was held at that time, or just about that time—

Mr. BRITT. May 20.

Mr. SIMONTON (continuing). That no taxes of this kind might be assessed without a hearing; so that the tax which was assessed was not worth the paper it was written on.

Senator JONES of New Mexico. Oh, but you could very promptly have initiated proceedings.

Mr. SIMONTON. Yes.

Senator JONES of New Mexico. And started it de novo.

Mr. SIMONTON. Yes; but of course that was at a time when the basis permits had not been revoked, after hearing, and the tax was to be assessed against the corporation. It had to be a penalty, not for a violation of the law, though.

Senator KING. Who were the men who recommended the \$2,000,000 plus assessment?

Mr. STORCK. Agents Green and Whitehead. They were the agents that worked on the case. They recommended that, and then these hearings were held before Mr. Rutter. You have his findings there.

Senator KING. What did he recommend?

The CHAIRMAN. On the matter of this hearing—I mention this because it was brought out when the Senator was not here—tell us why this hearing was not held as an open hearing, so that the public would know about it.

Mr. SIMONTON. What hearing are you thinking of?

The CHAIRMAN. The hearing when the settlement was made.

Mr. SIMONTON. The compromise?

Mr. BRITT. There were two classes of hearings. One was on the revocation proceedings, and I do not know anything about that. I assume that those were open, and that lawyers were there. All I did, of which I have knowledge, Mr. Chairman, was simply to be called to the commissioner's office, where the matter was discussed openly in that office, as all matters are, and I remember that on one occasion Mr. Wise, who represented the Fleischmann Co., was present. I submitted the view that I have submitted here, "If we can show that the spirits were diverted, you ought to pay \$6.40 on every gallon that was diverted." I submitted that view there.

The CHAIRMAN. Yes; but one of the things that I do not understand is that this enormous settlement, in which there was a reduc-

tion from \$2,700,000 to a final compromise on the basis of \$75,000, was done without any public hearing whatsoever.

Mr. BRITT. There was no public hearing called for, Mr. Chairman. It was transacted just as all items of that sort are transacted. Of course, there was no public hearing called on the question. There was none denied, of course. The commissioner's office is open, as is the prohibition office. Anybody can come in at any time and hear any discussion that goes on.

The CHAIRMAN. Do you mean to say that a newspaper man could have walked into Mr. Blair's office and have heard this discussion?

Mr. BRITT. I most emphatically do, as far as I know. I have never heard an intimation to the effect that anybody would be excluded at all. Of course, I assume that the commissioner, like all other public officials, will have to divide his time and make appointments to hear people on public business. I do not assume that the office is open for everybody to step in at all times.

Let me say most emphatically that I have never heard any superior direct that any hearing be held in private, and I can say emphatically that I, myself, regard it as a matter for chastisement if anybody in my office is known to have a secret conference about public business, or permit anybody to talk to him in confidence, or talking to anybody in confidence, about public business.

The CHAIRMAN. But neither the public nor the newspaper men would be advised of the fact that a matter was under consideration; that this matter was going on, or that this compromise was being discussed.

Mr. BRITT. This was not a hearing. It was a mere administrative calling up of the case, so far as it affected me. No; there was no secrecy about it. I would like to make that very emphatic, because that is in justice to all concerned. Whatever other deductions you may make from the facts let this be put upon just grounds. But I would like to negative any inference that there was any secret about it. Nothing like that occurred, to my knowledge.

The CHAIRMAN. I can accept that at its face value, Mr. Britt, but is it not a fact that the commissioner, as you said a while ago, must divide his time, and he only admits the people interested in a particular case when that is up, and no other people are admitted while it is under consideration?

Mr. BRITT. Senator, that is the rule throughout all the higher administrative offices.

Senator JONES. And, in effect, that amounts to what the chairman has chosen to call a secret hearing?

Senator KING. I have gone to the Treasury Department and the Commissioner of Internal Revenue, and have asked to see him, and they would say, "He is engaged just now; please wait a few moments." I have sat in the outside office as much as a half hour, and would leave, because I had no opportunity to see him. I did not know what was going on in the next room. It was secret so far as I was concerned.

Mr. BRITT. But you were not excluded in any way. You simply did not get an admission; that is all.

The CHAIRMAN. That is a very narrow line.

Senator KING. There were two or three men at the door, and I would have had to pass by them. They told me the commissioner was engaged and I could not see him for the moment.

Mr. BRITT. On that point, I think that is the rule, but I have told my secretary that when a Senator or Representative, no matter who he is, calls, he should send in his name, because his time is valuable.

Senator KING. Suppose it was not a Senator, but just an ordinary man; undoubtedly, if you were engaged he would have to wait outside until you had gotten through. I am not criticizing.

Mr. BRITT. It would inevitably be very much—

The CHAIRMAN. We are not finding fault with it. What I am trying to imply is that a matter involving so much money and with such a great public policy involved should have been set for a public hearing where the public could have been present. I do not find fault with the commissioner for having to divide his time and to separate these cases, but I believe that when such large amounts of money are involved the case should be set for a hearing and the public advised, so that the public may know what is going on in these big transactions.

I want to say in this connection that newspaper men have complained that for weeks they have tried to get the history of the Fleischmann Co. case out of your bureau and have been unable to do so; so, in effect, the findings were secret.

Mr. BRITT. Senator, on that point I want to say this: When a private citizen comes to us and says, "What is the status of A's case or B's case?" Of course it is forbidden by the rules to give private information, for the reason that it may go to his income tax.

The CHAIRMAN. We are not talking about the income tax. We know that that is secret under the law, but this is not secret under the law.

Mr. BRITT. But there has never been any secrecy at all at any time, to my knowledge, and I want to put that statement in this record.

The CHAIRMAN. Oh, I think that is an evasion as to what we are trying to get at. I do not like to charge it, but I think that is an evasion. That statement means nothing. It is not a secret between you, but it is a secret, in fact, between the public and the bureau.

Mr. BRITT. Of course, the public is not present.

The CHAIRMAN. Certainly not, and therefore it is a secret.

Senator JONES of New Mexico. Of course, the definition of secrecy as applied to a discussion—

Mr. PYLE. In connection with these tax matters, I have attached to the record the formula of the offer in compromise made by Fleischman, the first offer being for \$50,000—

The CHAIRMAN. I understood the first offer was \$25,000.

Mr. PYLE. Under the formula the first offer would seem to be for \$50,000, dated April 24, 1922. There is another offer of \$25,000 additional, dated September 8.

The CHAIRMAN. 1922?

Mr. PYLE. 1922; yes. Abstract and statement, Treasury Department, recommendation of Commissioner Haynes to Commissioner Blair:

The offer is submitted in compromise of all liability incurred, excepting criminal liability under the national prohibition act.

I recommend rejection; minimum amount to be given favorable consideration if submitted in compromise of all civil liability incurred, including forfeiture, liability of bonds, \$100,000.

That is signed by R. A. Haynes, Prohibition Commissioner.

Now, there is a memorandum at the bottom saying:

First offer, March 24, 1922, \$50,000.

Second offer, September 8, 1922, \$25,000—

That is additional—

Total, \$75,000—

And then at the bottom there is a notation:

Collector Bowers reported over long-distance telephone that an additional offer of \$25,000 has been submitted. I recommend acceptance of \$75,000.

Senator KING. Who made that recommendation?

Mr. PYLE. That was made by Mr. Haynes also.

Here is a letter dated September 9, 1922, R. A. Haynes, Prohibition Commissioner, to the Fleischmann Co. (Inc.), 701 Washington Street, New York, N. Y., which reads:

GENTLEMEN: The Commissioner of Internal Revenue has considered the offer of \$75,000 submitted by you on September 8, 1922, through the collector of internal revenue at New York, N. Y., in compromise of civil and criminal liabilities incurred through alleged violation of the internal revenue laws, and civil liabilities incurred through alleged violation of Title II, national prohibition act, and has decided, with the advice and consent of the Secretary of the Treasury, to close the case by the acceptance of your offer, as follows: \$75,000 in compromise of civil and criminal liabilities under the internal revenue laws and of civil liabilities under the national prohibition act, including bond liabilities. This action shall not be construed as affecting any criminal liability under the national prohibition act.

That is dated the 9th day of September. In other words, apparently, the matter was considered by the department on the 7th of July, and Judge Britt recommended the acceptance of not less than \$100,000, which was concurred in by Commissioner Haynes, his chief, by notation made on the required forms of the Revenue Service, also demanding not less than \$100,000; but on September 8 an offer of \$75,000 was made and accepted, and notice sent out on the 9th.

Senator KING. Accepted by Commissioner Haynes?

Mr. PYLE. Accepted by Commissioner Haynes. Now, as I understand it, an acceptance and offer in a compromise of that sort is never binding until it has been accepted by the Commissioner of the Internal Revenue, with the approval of the Secretary of the Treasury?

Mr. BRITT. That is correct.

Mr. PYLE. That is so whether it is the largest case or just a little routine saloon case?

Mr. BRITT. That is correct.

Mr. PYLE. So that in this matter here Commissioner Haynes is speaking for the Commissioner of Internal Revenue, the authority to handle the liquor tax having been delegated to him, and his notice to the Fleischmann Co. was their official notice?

There are some other papers that I think it would be well to attach to the record in connection with the Prohibition Department's knowledge of the activities of the Fleischmann Co.

I hesitate to place in the record the entire findings of Mr. Rutter, who held the revocation proceedings, and who gave his decision on March 2, 1922, but I think I will ask to have it attached to the record. It is rather voluminous. His conclusion is this:

In the light of the abundant evidence contained in the record, showing absolute bad faith on the part of the Fleischmann Co. relative to conforming with the provisions of the law and regulations and terms of the several permits, I recommend that the following permits be revoked and canceled:

Pa-B-782, NY-B-1619, NY-B-1658, NJ-B-238, Ohio-B-8, Ohio-B-62, Conn-B-167, NY-B-126, NY-5, NY-6, DC-2, DC-3, Pa-B-830, NY-B-1616, NY-B-1699, Mass-B-108.

Those were practically all the permits of the Fleischmann Co.

That was a review, practically, of the evidence Mr. Storck, the witness, has placed before you.

Senator JONES of New Mexico. Were those permits all revoked?

Mr. PYLE. I will get to that in a moment, Senator, if I may proceed.

These hearings went on at a later date, and Mr. Simonton, who was present at the hearing, I believe, was called upon to give a memorandum of the case for Mr. Britt, and I might state that it is the most concise and apt statement of the evidence we have found in the rather voluminous matter in the record. I would like to read that, if I may. It is several pages, but it is a very concise summary. It is headed Treasury Department, Bureau of Internal Revenue, Washington, and is dated July 6, 1922.

Memorandum for Judge James J. Britt, counsel of Prohibition Unit.

Investigations conducted by general prohibition agents and agents operating from the several directors' offices in Pennsylvania, New York, Connecticut, Massachusetts, and Ohio, developed proof of the following violations of the national prohibition act and internal revenue laws by the Fleischmann Co. (Inc.), and its agents:

(1) That the company sold, sight draft against bill of lading, alcohol to its agents in the following quantities, without such agents having qualified as wholesale liquor dealers (sec. 3244 R. S.) and without having obtained basic permits and permits to purchase (secs. 3 and 6 national prohibition act): Philadelphia, 262,288.45 proof gallons; New York City, 77,437.94 proof gallons; Brooklyn, 386,192.02 proof gallons; Jersey City, 105,861.33 proof gallons; Bridgeport, 69,835.72 proof gallons; Yonkers, 26,774.70 proof gallons; Cambridge, Mass., 6,402.90 proof gallons.

(2) That of this alcohol 151,560.56 in Philadelphia, 42,000 in New York City, 133,978.86 proof gallons in Brooklyn, 100 barrels in Jersey City, 69,500 proof gallons in Bridgeport, were between the months of May, 1921, and January, 1922, falsely charged on records 523 to persons who did not exist or who had never received the same (sec. 3318 R. S. and secs. 10 and 29 national prohibition act.)

(3) That to account for such dispositions the agents produced forged and counterfeited permits (1410's) and confirmations (secs. 11 and 29 national prohibition act), the authentic originals of which fraudulent permits are now in the hands of bona fide permittees.

(4) That the agent at Bridgeport conspired with certain bootleggers, including Edward Deregibus and Michael Delory for the sale of a carload of alcohol from the Peekskill plant of the Fleischmann Co. to prohibition agents who represented themselves to be bootleggers. The agent and the other conspirators are now under indictment in Connecticut. (Sec. 37 P. C. and secs. 3 and 6 national prohibition act.)

(5) That the agent at Brooklyn received after office hours and supplied alcohol on permits issued from the New York director's offices under circumstances indicating their fraudulent character, from officials now under indictment, and freely admitted the fact that he would willingly fill fraudulent permits if issued from the director's office. (Secs. 37 and 332 P. C. and secs. 3 and 6 national prohibition act.)

(6) That by the agent in New York City a sale was made direct to bootleggers and charged on his books to Philadelphia. The liquor was seized while being delivered to a saloon in New York City. (Sec. 3318 R. S., sec. 37 P. C., and secs. 3 and 6 national prohibition act.)

(7) That the Fleischmann Co. sold to George Doremus, of Cincinnati (who has since been sentenced to the penitentiary for three years), then and now a nationally known "bootlegger," the Riverside Distillery, and the whisky therein, and on December 23, 1921, while still retaining ownership, its representative acting under a power of attorney from the company, withdrew from the distillery 91 barrels, and Doremus bootlegged 90. (Secs. 37 and 332 P. C., sec. 3451 R. S. and secs. 3 and 6 national prohibition act.)

As to the knowledge of the company of such transactions, item (1) requires no comment. As to the other items, as the company is a corporation and as its agents were authorized by it to deal in alcohol, it is legally chargeable civilly and criminally with the acts of such agents. Apart from this rule, however, I am of the opinion that knowledge may be charged to the officers of the company. Legal knowledge is, of course, as you are aware, either actual or constructive; provable (1) either by admissions or direct evidence, or (2) by evidence of the disregard by the officers of the company of facts from which prudent men would draw but one conclusion. Evidence is available in the latter regard to prove:

(1) That one Schlobohm, Washington representative of the Fleischmann Co., was charged by one Kaltenbach, vice president, with supervision of the agencies.

(2) That while the agencies were established in May, June, and July, 1921, and their illegal operations commenced almost immediately, Schlobohm did not inspect any of them until August, and then only made three written reports of about half page in length each, to Kaltenbach.

(3) That Schlobohm admitted that he merely checked up the records one against the other; did not check the alcohol in the warehouses; never attempted to determine whether the alcohol had ever reached its destination; and that it took about one hour to conduct such inspections.

(4) That Schlobohm admitted that he held the same opinion as the Brooklyn agent, and would fill a fraudulent permit if it came from a director's office.

(5) That Kaltenbach and Schlobohm admitted that when the alcohol was sold by the agents the profits were those of such agents and if loss were sustained such loss would be borne by the agents.

In view of this attitude by the vice president and the supervising agent of the company it was not at all strange that—

(a) The parent plant should honor orders from its agent at Bridgeport to deliver alcohol on his permit to Deregibus and Delory (not then under indictment, however) who had no permits to purchase, which alcohol was diverted into illegal channels.

(b) That the officers of the company should ignore the reputation of Doremus in Ohio and merely protect themselves with indemnity bonds; and that

(c) Schlobohm should make no inquiry into and should ignore the facts.

(1) That the records of the agencies showed shipments in large quantities of alcohol by truck (an impossible commercial transaction) from Philadelphia to New York, and vice versa, and from Bridgeport to Philadelphia, when the company had agencies in all three cities.

(2) That the records at Bridgeport showed the sale of alcohol to the Brooklyn agency, which the latter denied.

(3) That while at the Youkers and Cambridge agencies the records contained the registry receipts and registry return cards all in proper form, at the agencies in which the illegal diversions occurred no such proof of the authenticity of the permits and confirmation was available.

(4) That of the 69,990.22 gallons of alcohol received at the Bridgeport agency but 490.22 gallons were disposed of in Connecticut, and to bona fide permittees, and that the balance was shipped to persons who are residents of other States and who had no permits or did not exist.

This summary is made from my recollections of the testimony introduced at the revocation hearing, and while I will vouch for its correctness as far as it goes, there are undoubtedly additional facts and circumstances disclosing the unlawful character of the operations of the Fleischmann Co. and its agents which an exhaustive examination of the record of the revocation hearing will develop.

V. SIMONTON.

Now, the Prohibition Unit, based on the finding in that case, issued an order by Commissioner Haynes, under date of March 2, 1922, in which the permits—all permits of the Fleischmann Co.—were revoked. A hearing was demanded—

Senator KING. Actually were revoked?

Mr. PYLE. They actually were revoked by Commissioner Haynes, based upon the findings of Agent Rutter, who conducted a hearing, at the recommendations of his counsel. The matter was then reviewed by the Commissioner of Internal Revenue, Commissioner Blair, and an appeal was granted on the said order of the Commissioner of Internal Revenue. A hearing was held thereon on the 7th and 8th days of March, 1922, and upon the basis of those hearings Commissioner Blair found as follows:

An order or citation having heretofore issued directing the above-named permittee to appear and show cause why the permits issued to it should not be revoked, such order having been returned and a due hearing held thereon, it was ordered, under date of March 2, 1922, by Roy A. Haynes, Prohibition Commissioner, under authority conferred upon him by regulations No. 60, that permits Nos. NY-5, NY-6, DC-2, DC-3, Pa-B-830, NY-B-1616, NY-B-1309, Pa-B-782, NY-B-1619, NY-1658, NJ-B-238, Ohio-B-8, Ohio-B-62, Conn-B-167, NY-B-126, Mass-B-108, issued to Fleischmann Co. (Inc.), be revoked and canceled.

An appeal was granted from such order to the Commissioner of Internal Revenue and a hearing thereon was held before me on the 7th and 8th days of March, 1922. Upon the basis of this hearing I find as follows:

1. That the Fleischmann Co. (Inc.) maintains at Peekskill, N. Y., and Langdon, D. C., industrial-alcohol distilleries for the purpose of manufacturing yeast; that such plants furnish between 80 and 90 per cent of the total amount of yeast manufactured in the Continent of North America; that in the manufacture of such yeast alcohol is a by-product, but is obtained in large quantities; that in the distribution of such excessive quantity of alcohol it was found necessary to permit the establishment of agencies under the provisions of Treasury Decision 3208; and that many such agencies have been established with the knowledge and consent of and under permits duly issued by the Prohibition Unit of the Bureau of Internal Revenue.

He touches on many of these points—

Senator JONES of New Mexico. Just read all of it.

Mr. PYLE. I do not want to burden the committee with reports, any more than is necessary.

2. That Treasury Decision 3208 provides that in the establishment of an agency for the sale at wholesale by manufacturers of alcohol that "the agent may be the proprietor of an independent business, but the responsibility for the conduct of the business of such agency in conformity with the law and the regulations shall always be upon the manufacturer. Title to liquor in the hands of an agent shall remain with the manufacturer until title is transferred to the purchaser having a permit to purchase"; that the Fleischmann Co. (Inc.), acting in accordance with its interpretation of the aforesaid Treasury decision, caused the agent to pay for the alcohol furnished to it prior to delivery at a stipulated price, which price was fixed at a sum to permit the agent to resell at the then prevailing market price; that the agent then sold the alcohol and received no commissions or salary, but was compensated by the retention of the profits obtained from the sale of such alcohol.

3. That the agencies established by the Fleischmann Co. (Inc.) held no basic permits to purchase and only operated under permits issued to such company, which authorized such agents to receive and sell; that such permits to receive and sell were issued upon application by and to the Fleischmann Co. (Inc.), Henry J. Kaltenbach, treasurer-agent, and that a bond for the observance of the law and regulations of the Treasury Department was furnished to the United States by such company.

That bond, gentlemen, is in the sum of \$350,000, as disclosed in other parts of the record.

4. That the method of agency distribution employed by the Fleischmann Co. (Inc.) was in violation of Treasury Decision 3208 as construed by the department, but was adopted in good faith and, according to the uncontradicted testimony of witnesses, with the full knowledge and consent of certain officials of the Prohibition Unit who have since resigned or been transferred from that unit.

5. That the agents of the Fleischmann Co. (Inc.), at Philadelphia, Pa., Brooklyn, N. Y., and Bridgeport, Conn., diverted the alcohol produced by such company and forwarded to such agents for distribution to unlawful purposes; that such alcohol was diverted to such unlawful purposes; that certain other alcohol was released by such agents and by the agency at Jersey City, N. J., on forged permits.

6. That there is no evidence to show that the unlawful diversion of alcohol by the agents of the Fleischmann Co. (Inc.), was known to such company or its officers or that such officers connived or conspired with their agents in such unlawful diversion, but it is established that such officers were negligent in the inspection of the agencies of such company and did not use due care in supervising such agencies.

7. That the records kept at the distilleries of the Fleischmann Co. (Inc.) were proper and correct and in accordance with the law and regulations issued thereunder.

8. That the evidence discloses that at none of the agencies of the Fleischmann Co. (Inc.) had the full amount of alcohol been received from the parent plants of the said company that was authorized by the maximum amount set forth in the various permits of such agencies. Records of all withdrawals of alcohol by such agencies were kept daily and forwarded to the prohibition directors of the proper State and the Prohibition Commissioner at Washington, which was notice of such officials of all transactions involving the disposition of alcohol.

9. That the following permits included in the order of the Prohibition Commissioner have expired by limitation of law:

NY-B-1616. The Fleischmann Co. (Inc.) (Henry J. Kaltenbach, treasurer); Henry Treitel, agent, 66 Main Street, Yonkers, N. Y.

NY-B-1619. The Fleischmann Co. (Inc.) (Henry J. Kaltenbach), 203 Fulton Street, Brooklyn, N. Y.

NJ-B-238. The Fleischmann Co. (Inc.) (H. J. Kaltenbach); Louis Gross, agent, 19 Newark Avenue, Jersey City, N. J.

Ohio-B-8 and Ohio-B-62. The Fleischmann Co. (Inc.) (Julius Fleischmann), Cincinnati, Ohio.

Conn-B-167. The Fleischmann Co. (Inc.) (H. J. Kaltenbach); Fred L. Kirk, agent, 1357-1369 Seaview Avenue, Bridgeport, Conn.

NY-B-126. The Fleischmann Co. (Inc.) (H. J. Kaltenbach), Charles Point, Peekskill, N. Y.

Mass-B-108. The Fleischmann Co. (Inc.) (Paul W. Fleischmann); The Suffolk Co., agents, 128 Sydney Street, Cambridge, Mass.

Pa-B-782. The Fleischmann Co. (Inc.) (H. J. Kaltenbach); Samuel Lazar, agent, Green Street and Delaware Avenue, Philadelphia, Pa.

10. That the following permits included in the order of the Prohibition Commissioner have never been in effect:

Pa-B-830. The Fleischmann Co. (Inc.) (H. J. Kaltenbach); Max Dettner, agent, 600 West Linden Street, Scranton, Pa.

NY-B-1609. The Fleischmann Co. (Inc.) (H. J. Kaltenbach), 701 Washington Street, New York, N. Y.

11. That the following permit included in the order of the Prohibition Commissioner had been revoked previous to such order:

NY-B-1658. The Fleischmann Co. (Inc.) (H. J. Kaltenbach); La Bate & Pincus, agents, 402 Eleventh Avenue, New York, N. Y.

It is therefore ordered: That no permits shall be issued to the Fleischmann Co. (Inc.) for the sale of alcohol by an agent except as provided by Treasury Decision 3300, and that no further operations shall be allowed under any permits which have expired.

It is further ordered: That any alcohol at present in the possession of any agent of the Fleischmann Co. (Inc.) shall, within 30 days, be returned to the

distillery premises at either Peekskill, N. Y., or Langdon, D. C., under special permits which will be duly issued for such purpose, or delivered to any such new agent of the Fleischmann Co. (Inc.) as may be appointed under Treasury Decision 3300. But in the event that such alcohol is not returned to either Peekskill or Langdon with 30 days, or turned over to an agent authorized to act as such under the provisions of Treasury Decision 3300, then it shall be forfeited to the United States in accordance with the law.

It is further ordered: That the order of Roy A. Haynes, Prohibition Commissioner, dated March 2, 1922, be modified to conform thereto.

Dated this 10th day of March, 1922.

DAVID H. BLAIR,
Commissioner of Internal Revenue.

Approved:

A. W. MELLON,
Secretary of the Treasury.

Then there is a notice of service. That disposed of the matter as to prohibition. The permits were not revoked, according to that. Is that correct, Mr. Britt?

Mr. BRITT. I will have Mr. Simonton answer that.

Mr. SIMONTON. The permits were revoked, I understand, and the effect of it was this, that the Peekskill and Langdon permits remained as they were; all the rest were swept away.

The CHAIRMAN. Were what?

Mr. SIMONTON. They either had been revoked or expired, so that the only permits that were left were the two main permits at the parent plants.

The CHAIRMAN. Are those two permits now in existence?

Mr. SIMONTON. I have had nothing to do with the case since then.

The CHAIRMAN. Do you know?

Mr. STORCK. No, sir; I do not.

The CHAIRMAN. As a matter of fact, do you know whether these other agencies are operating now?

Mr. STORCK. I know that it is assumed——

The CHAIRMAN. I am not asking you that. I asked you if you know that these agencies are now operating?

Mr. STORCK. Mr. Chairman, I have never been around the Fleischmann Co.'s office.

The CHAIRMAN. I say, do you know whether these other agencies are operating?

Mr. STORCK. No, sir; I do not.

The CHAIRMAN. Does anyone here from the bureau know whether these agencies at Brooklyn, Bridgeport, and New York are operating?

Mr. BRITT. It is clear to my understanding that they are not operating, but I will verify that, and have not since been operating.

Senator KING. Mr. Simonton, is it not a fact that in the hearings before Mr. Blair, either when he announced his decision or before, you were present?

Mr. SIMONTON. Yes, sir.

Senator KING. And you protested against the attitude which he was taking, or the conclusions which he reached, and you were peremptorily ordered to be silent?

Mr. SIMONTON. No, sir. I was given——

Mr. BRITT. State what did occur.

Mr. SIMONTON. I was called down prior to the time that Mr. Blair rendered his decision to make a statement, as the prosecuting attorney, we may say, who had presented the evidence before Mr.

Rutter, as to what the situation was. I was given free opportunity to present it, and talked at length on it, and I think the record shows that probably I talked at too great length on it. I did not know at that time what Mr. Blair had at all. He did not disclose his mind to me until later on, when he rendered his decision. Then I saw it through the decision.

There was a little altercation occurred there which was more or less aside from the main issue, but which, if the committee wishes, I will tell them about.

The CHAIRMAN. No; if it does not relate to the main issue.

Mr. SIMONTON. It related to the challenge that I made as to the credibility of another attorney. I challenged the truth of his statements, and that altercation arose out of that.

Senator KING. Was there anything said in any of those hearings or after Mr. Haynes made his ruling, or Mr. Blair made his, urging the prosecution of any persons criminally? Why was the possibility or probability of prosecution dropped so suddenly?

Mr. SIMONTON. Of course, I did not have anything to do with the case after this hearing before Mr. Blair. I was rather of the opposite opinion, and the record shows that, I think.

Senator KING. Yes.

Mr. SIMONTON. So I was not consulted, of course, as to the major's opinion, as to how it should be carried out.

Senator KING. But the fact is that, so far as you know, no steps were taken by Mr. Blair, Mr. Haynes, Judge Britt, or yourself, or by anyone entitled to initiate criminal prosecutions against the Fleischmann Co. or any of its agents?

Mr. SIMONTON. Oh, yes; steps were taken.

Senator KING. After this decision?

Mr. SIMONTON. No, sir.

Senator KING. I am speaking about after this compromise.

Mr. SIMONTON. No steps were taken except that the reports went to the United States attorney. That is done in every case, and the United States attorney is given full information on which he may base a criminal prosecution; but, to answer your question specifically, I know nothing of the case after I finished my argument.

Senator KING. As you have already explained, you have attorneys, you draw indictments for the district attorneys, and you aid district attorneys in prosecuting these cases. Now, take a matter which is under consideration by the department, where a compromise was reached, assuming that it was only with respect to civil liability and the criminal features under the revenue law, not under the prohibition law, are not involved, would not the district attorney wait upon the Prohibition Unit before he would proceed with the case?

Mr. SIMONTON. That is true in some cases, but it is not true in other cases.

Senator KING. At any rate, so far as you know, after this compromise, no steps were taken to bring about any prosecution of the Fleischmann Co. or any person connected with it?

Mr. SIMONTON. With the exception that there was a prosecution of Kirk in Bridgeport.

Senator KING. Yes.

Mr. SIMONTON. And Reddy was in the prohibition office in New York.

The CHAIRMAN. Do you want to make a statement, Mr. Britt?

Mr. BRITT. Yes; I did want to make one.

Senator KING. I want to ask one more question, Mr. Chairman. I want to ask Mr. Simonton or Judge Britt whether there was any effort made in this hearing to ascertain whether the \$2 tax or any tax whatever had been paid by the Fleischmann Co. upon this alcohol which had been improperly disposed of?

Mr. SIMONTON. I can not remember now whether we did or not, but, of course, that was not the issue in this hearing. I can speak only of the hearing I attended, and that was the revocation hearing. The matter of the compromise is not a matter that I had anything to do with at all. The matter did come up at the revocation hearing, and I think the tax of \$2.20 was paid. I will have to check that up, though. But it is not in issue in a question of whether a man shall have his permit or not or an unlawful withdrawal, as to whether he had paid his tax or not.

Senator KING. Did the question come up on the hearing on the revocation as to the reason why the sales ostensibly were made to these agents in all of these various towns?

Mr. SIMONTON. Yes; the question did come up.

Senator KING. Just as explained by Mr. Blair in that report?

Mr. SIMONTON. Yes; their statement was that certain former agents had told them that certain provisions of Treasury decision 3208 meant that they might sell it to their agents.

Senator KING. Was there anything in those hearings to indicate whether, after these alleged sales were made by the Fleischmann Co. to their agents, Fleischmann Co. sought to ascertain the prices and the amount the agents sold for, to whom they sold and the profit they made, or whether the agents were called upon to make further payments to Fleischmann Co. for alcohol which they had obtained?

Mr. SIMONTON. The testimony was that after they had sold to their agents they were not interested in the price that the agent obtained, because it was not a matter over which they had any control.

Senator KING. You do not know whether the books of Fleischmann Co., if they had secret books or open books, revealed an additional price paid for alcohol sold to their agents?

Mr. SIMONTON. I do not know, except the testimony that is in the case, that they only received the market price for the goods sold to their agents.

Senator JONES of New Mexico. What market price?

Mr. SIMONTON. I will have to refer to the record for that, sir.

Senator JONES of New Mexico. Right in that connection, did the Fleischmann Co. pay the \$2.20 tax when they sold it to their agents?

Mr. SIMONTON. I will see as to that, sir. You want the market price and whether the price was paid?

Senator JONES of New Mexico. Yes.

Mr. SIMONTON. I will have to look into that.

Senator KING. Was any explanation made at the hearing of which I have been talking as to the remarkable coincidence of those

agencies having been opened up at the same time, or approximately contemporaneously, in so many different places?

Mr. SIMONTON. I do not remember, sir; but I think it occurred after the wholesale liquor dealers' decision by the Attorney General. At one time the distribution of this alcohol was made through wholesale liquor dealers. Assistant Attorney General Adams rendered a decision to the effect that the wholesale liquor dealers could not do business any more; that it had to be either the distiller, the wholesale druggist, or the retail druggist. Then the distillers obtained, through Treasury Decision 3208, permission to establish branch agencies in the large cities, which took the place of the wholesale liquor dealer, and at the time or just about the time of the issuance of Treasury Decision 3208 these agencies were established, so as to be able to compete in the market themselves rather than to go through the wholesale druggists.

Senator KING. Did the evidence show whether they established the houses or whether the individuals did to whom they claim to have sold the liquor?

Mr. SIMONTON. In establishing the houses the Fleischmann Co. put up a bond and received equipment.

Senator KING. They would go and select the place?

Mr. SIMONTON. And the individual to look after it.

Senator KING. And the individual to look after it?

Mr. SIMONTON. Yes, sir.

The CHAIRMAN. It is after 1 o'clock, and I think we might as well adjourn here until 10.30 o'clock to-morrow morning.

Mr. PYLE. There is just one other matter that I think fits in here very appropriately. It will not take a minute. It is a memorandum from Commissioner Blair to Mr. Haynes under date of November 22, 1921.

It seems, in perusing the record, that shortly before that it had been the practice of the Fleischmann Co. to consider them not really as agents, but simply as customers. The Prohibition Unit had forbidden the Fleischmann Co. to sell alcohol to these so-called agencies who did not have permits to purchase, but who were working under the Fleischmann Co. When it was discovered that they were not a part of that company this suspension order was issued.

This is the memorandum of Mr. Blair to Mr. Haynes under date of November 22:

After carefully studying the attached file in connection with the alleged irregularities of the Fleischmann Distilling Co., I am of the opinion that the Prohibition Unit is not proceeding strictly in accordance with the law. Under date of November 14 the Fleischmann Co. was advised that it could make no further shipments of tax-paid alcohol to any of eight agencies. This has been construed by the directors as prohibiting the shipments of tax-paid alcohol from the distilleries as well.

If the Fleischmann Distilling Co. has violated its permit, that permit is subject to revocation. It would seem to me that in the light of the facts that this bureau has it would be proper to proceed to revoke the company's permit. This should, of course, be done in the manner prescribed by section 9 of Title II of the national prohibition act. The company should at once be cited to show cause why its permit should not be revoked.

That was heard in March and was issued probably a month before that.

I do not find that there is any authority in the law for interfering with the right which a taxpayer has under his permit prior to its revocation. Please see to it that the order of November 14 is immediately revoked.

Senator JONES of New Mexico. What year is that?

Mr. PYLE. 1921. That was the authority for the Fleischmann Co. to continue selling to agencies which did not have permits under the national prohibition act.

Mr. SIMONTON. My impression was that the parent plants could continue to sell direct to the trade, but that they may not sell to the agencies.

Mr. PYLE. Yes.

Mr. SIMONTON. Your statement would indicate that they were still selling to the agencies.

Mr. PYLE (reading) :

Please see to it that the order of November 14 is immediately revoked.

That was the Prohibition Department order.

Mr. SIMONTON. Yes, sir; as applied to the main plants.

Mr. PYLES. Yes.

Mr. BRITT. Mr. Chairman, I want to ask, when you open your next session, that I be permitted to make my statement regarding this matter, so that it will all appear consecutively in the record.

The CHAIRMAN. Have you anything further that you want to submit in connection with this case, Mr. Pyle?

Mr. PYLE. There will be a great many things; yes.

The CHAIRMAN. In this particular case?

Mr. PYLE. I think there will be some more matters to put in the record on that.

The CHAIRMAN. You can finish that, Mr. Pyle; and then, Judge Britt, you can make your statement.

Mr. BRITT. All right. Thank you.

The CHAIRMAN. We will adjourn now until 10.30 o'clock to-morrow morning.

(Whereupon, at 1.05 o'clock p. m., the committee adjourned until to-morrow, Tuesday, January 13, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

TUESDAY, JANUARY 13, 1925

UNITED STATES SENATE,
SELECT COMMITTEE TO INVESTIGATE THE BUREAU OF
INTERNAL REVENUE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Watson, and King.

Present also: John S. Pyle, Esq., of counsel for the committee, and George W. Storck, Esq., examiner for the committee.

Present on behalf of the Prohibition Unit of the Internal Revenue Bureau: James J. Britt, Esq., counsel, and Mr. V. Simonton, attorney.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. Mr. Chairman, it will be recalled that on yesterday the evidence considered was largely concerning the Fleischmann Co. Evidence was introduced from the records of the Prohibition Department, showing that at the various plants and branches of the Fleischmann Co., in the period of a few months in 1921, there were diversions on forged permits amounting to 434,374 and a fraction gallons which were gotten out on 118 forged permits. As I say, this all occurred in a short period of time, in various scattered places where they were doing business.

The CHAIRMAN. In your examinations, have you found out how those forged permits were first discovered?

Mr. PYLE. They will be discovered by check-ups by the various agents of the director's office at a later time, in every case.

The CHAIRMAN. When was the first discovery made in this case, do you know?

Mr. PYLE. I can not give you that date, Senator, at this time.

The CHAIRMAN. Does Mr. Storck know? Do you know, Mr. Storck, when they were first discovered?

Mr. STORCK. I can give you the date of the agent's reports; yes, sir.

The CHAIRMAN. Was that the time when they first discovered the forged permits?

Mr. STORCK. This is when the agents reported in to the Prohibition Unit.

The CHAIRMAN. When they did what?

Mr. STORCK. When they reported in to the Prohibition Unit, they sent five copies of their reports. One copy goes to the local office, and the balance go to the Washington office here.

Mr. PYLE. The report of this—

Senator WATSON. That is very interesting. Are you going on to make a complete report about it?

Mr. PYLE. Not at this time. I was just summarizing.

Senator WATSON. Did they ever catch any of the forgers?

Mr. PYLE. No.

Senator WATSON. They never found out who forged these permits?

Mr. PYLE. No.

Senator WATSON. Did they ever trace the liquor, to know what became of that?

Mr. PYLE. No.

Senator WATSON. What was it, whisky or alcohol?

Mr. PYLE. Alcohol.

Senator WATSON. It was taken from different places?

Mr. PYLE. It was taken from various plants. The only whisky which was ultimately traced and found was two barrels, which barrels were sent to a saloon in New York.

Senator WATSON. How many gallons did you say were involved, in the aggregate?

Mr. PYLE. The total withdrawals on forged permits, as shown by the records, were 434,374.93 gallons.

Senator WATSON. That is an amazing quantity to be taken out on forged permits.

Mr. PYLE. Now, the report, Senator Couzens——

Senator WATSON. And nobody was ever apprehended in connection with those forged permits?

Mr. PYLE. There have been no criminal prosecutions in connection with them, excepting of two men, who robbed one of the plants and were caught in the act of robbery.

Senator WATSON. Yes.

Mr. PYLE. The reports of the agents who were assigned to investigate the Fleischmann Co. at Langdon, D. C., and Peekskill, N. Y., is dated December 1, 1921.

The CHAIRMAN. I did not understand how Mr. Storck could have gone all through these records and not have found out when the bureau had the first intimation that these forged permits were being used.

Mr. STORCK. Mr. Chairman, I will give you the dates when the agents reported. That is what I am going to get for you.

Senator WATSON. May I ask a question there? When a permit is forged, it goes through the same process, of course, as if it were regular, does it?

Mr. PYLE. It goes through the identical process, so far as the man selling the intoxicating liquor is concerned.

Senator WATSON. Yes. Now, how is the forgery first discovered?

Mr. PYLE. It is discovered when the agents of the Prohibition Unit—if it was unlawful it would first be discovered when the agents of the Prohibition Unit checked up on this plant, branch, or distributing agency. They will find certain copies of these permits in their possession to account for the alcohol.

Senator WATSON. Yes.

Mr. PYLE. The records of the director's office for that State will not contain a corresponding copy, which will show the fraudulent

nature, and then an examination of the papers will indicate their fraudulent nature.

Senator WATSON. Did all of these forged permits have the same name signed to them?

Mr. PYLE. Yes, sir. We have some of those forged permits here that are involved in this case.

Senator KING. My recollection of the testimony of yesterday is that some of these forged permits were based upon the Honolulu or Hawaiian Islands numbers?

Mr. PYLE. Yes.

Senator KING. Some were based on numbers which had been issued to the Prohibition Unit in New York, some in Pennsylvania, and some in New Jersey, so they would not all have the same signature. Therefore you are wrong, it seems to me, Mr. Pyle, or else I am in error.

Mr. PYLE. No alcohol would be permitted, or intoxicating liquors, as I understand the law and regulations, to be withdrawn from any place without the signature of the director of the State wherein it is.

Mr. BRITT. That is true.

Senator KING. But Senator Watson asked you if all of these permits had the same signature. I suppose he meant of the prohibition officer. That is not true, because some purport to bear the signature of the Honolulu man, some of the director for Pennsylvania, and some the director for New Jersey, and some the director in New York.

Mr. PYLE. That would depend upon where the plant was located.

The CHAIRMAN. You gave an incorrect answer to Senator Watson, Mr. Pyle, when you said that they all bore the same signature when it was withdrawn.

Mr. PYLE. At each plant. If the plant was in New York it would have to have the New York director's final confirmation.

Senator WATSON. I want to know whether or not all of these 400,000 gallons that were withdrawn on forged permits bore the same signature?

Senator KING. No; because they were in a number of States.

Mr. SIMONTON. The purported signature, as far as Honolulu was concerned, was not the signature of the director there. The purported signatures of the New York and Philadelphia directors were on permits that had a Honolulu number. They were using in Philadelphia and New York numbers that they had sent to Honolulu, but the purported signature was that of the director of that jurisdiction.

Mr. PYLE. Outside of the department no one would have any means of ascertaining where these blocks were sent, presumably.

Mr. SIMONTON. Oh, yes; certainly.

Mr. PYLE. In what way?

Mr. SIMONTON. Whenever a permit is issued in any jurisdiction, anyone who sees that permit knows the number of the block that is in that jurisdiction.

Senator WATSON. What do you mean by "the block"?

Mr. SIMONTON. They issue them in blocks of thousands.

The CHAIRMAN. They are in a pad?

Mr. SIMONTON. They are all in a pad, and they run consecutively, 218, 220, 221, and so on; so, assuming that I am a bootlegger, and I

have bootlegger friends with permits, I would simply go down to see you, assuming that you were a bootlegger, too, and see what number is now being used. You would say 118000. Then I would simply use that series; that is, for that jurisdiction. That is the way they find out the numbers in that jurisdiction. When they first start out on a case like this they do not use the numbers in Honolulu and Hawaii any more. It has dropped out on that. When they started out on this case they used those numbers, consecutive numbers, running 119, 120, and so on. They discovered afterwards that we had staggered them. Then they were very careful to always get the number that was within the jurisdiction in which they were doing business.

Mr. PYLE. Now, to continue, a summary of the evidence shows that these 118 forged permits in various States were used to get that amount of alcohol from the plants of the Fleischmann Co.

The record further shows that no criminal proceedings had been instituted, that the revocation of the Fleischmann Co.'s permits was not ordered, that a \$3,000,000 tax was proposed, which was later settled on the basis of \$75,000, a basis of about 2½ cents on the dollar. That raises a number of questions which I believe are all pertinent for consideration.

First, there is the matter of criminal prosecution, or what was done by the unit in that connection. Second, the matter of revocation; how it happens that revocation will not be ordered in those cases; third, in the matter of tax, whether or not, this being apparently a matter for legal determination, that tax was due, there being no question, I believe, as to the financial rating of the Fleischman Co.; whether or not it is a proper matter to determine a tax in that manner. In other words, if the Government was entitled to the tax, was it entitled to the \$3,000,000? If it was not entitled to that tax, was it entitled to a cent? Another question is whether it should be compromised in that manner. Those are the questions which I suggest.

Mr. BRITT. You are stating those as questions arising on the case?

Mr. PYLE. Yes.

The CHAIRMAN. Let me say in that connection that I do not understand that this \$75,000 was computed on the basis of so much per gallon. It was not a tax at all, but was rather in the nature of a fine.

Senator KING. A penalty.

The CHAIRMAN. A penalty—not the assessment of a tax, but a fine for the violation of the rules of the department or a violation of the statutes.

Mr. PYLE. It is a fine and penalty, the penalty being in addition to the tax, where the act performed is forbidden. That is the purpose of the penalty, I believe, and it is all assessed as a tax and collected as a tax.

The theory of the compromise, as I understand it, is this: The Government says, "We have so much tax; we are assessing it." The investigators decide that for some reason they can not collect all of that tax. It is then collected like you would collect a bad debt, Senator—if you can not get it all, you get what you can.

That is the theory of the form of compromise, as I understand it.

Yesterday Mr. Britt stated that at the conclusion of the Government's evidence he desired to be heard on this matter. Before he does that I would ask permission to insert in the record as an exhibit a copy of the report of these agents—Overpeck, Whitehead, and W. D. Smith. This is the report of December 1, 1921. It is rather a general report of the conditions that they found in the Fleischmann plant, and covers the same ground that was taken up yesterday in the evidence.

(The report referred to was received as a part of this record, and is attached hereto.)

Senator WATSON. I would like to ask a question there before Mr. Britt begins. You spoke about a \$75,000 compromise. Evidently that matter came up yesterday, when I was not present.

The CHAIRMAN. Yes.

Senator WATSON. What was that—a fine?

Mr. PYLE. The tax proposed.

Senator WATSON. Against the Fleischmann Co.?

Mr. PYLE. Against the Fleischmann Yeast Co.

Senator WATSON. I see.

Mr. PYLE. For those four hundred and thirty-four thousand and odd gallons, amounting to something over \$3,000,000.

The CHAIRMAN. I understood it was about \$2,750,000.

Mr. PYLE. There was a little discrepancy in the figures there; but assuming it was \$2,750,000, that was proposed as their tax and penalty for not having handled it in a regular manner. This was taken up by the department and the first recommendation as a compromise was made by Judge Britt at \$100,000. The first offer by the Fleischmann Co. was \$25,000, then \$50,000, and then \$75,000, finally, which was accepted, and as I understand it, it was paid.

Senator WATSON. Were they held as being responsible for the forging of these permits?

Senator KING. It was their agents who parted with the alcohol. They accepted the forgeries.

Senator WATSON. They accepted the forged permits?

Senator KING. Yes; and there is much evidence to show that they did not get cards or make a recheck, asking for the verification as is required by law from the prohibition agent who had issued the permits. The evidence thus far shows that there was fraud—gross fraud—on the part of the Fleischmann agents. To what extent the corporation per se was liable—that is, that knowledge can be imputed to it—there may be some ground for dispute; although there is not in my mind, it might be a subject for dispute.

The CHAIRMAN. I might say for Senator Watson's benefit that this alcohol is a by-product of the yeast company. It was shipped to the agents of the yeast company in the respective States, with bill of lading attached. The agent bought the alcohol; the title was transferred from the Fleischmann Co. to the agent; the agent resold the alcohol, and whatever profit he made was his, or whatever loss he took was his. Therefore, the title to the alcohol left the yeast company and went into the agent's hands. To that extent that is an argument in favor of the yeast company.

Senator WATSON. Yes.

Senator KING. However, they established all of these agencies, and had a man, an assistant superintendent of theirs, to visit them.

He did not visit them until August of that year, and within a very few months more than 400,000 gallons were illegally sold by the agents of the Fleischmann Co., undoubtedly for beverage purposes.

The CHAIRMAN. If it had not been for beverage purposes, there would have been no necessity for forging the permits.

Senator WATSON. Of course.

Senator KING. If I am licensed to sell whisky and the law prohibits the sale to minors and my agent sells to a minor, I am responsible.

Senator WATSON. Not without knowledge.

Senator KING. Oh, yes, indeed. The law——

Senator WATSON. Conclusively presumes knowledge?

Senator KING. Yes, indeed, with respect to these matters. You will find that, under the statute, the burden rests upon the alleged offenders to determine in advance those questions.

Senator WATSON. Let me ask you, Mr. Pyle, what remedy have you proposed to tighten up that system, so that these forgeries can not take place?

Mr. PYLE. I believe, Senator, it is a little early to make a recommendation in that connection.

Senator WATSON. All right.

Mr. PYLE. There will be other evidence to be introduced.

Senator WATSON. That is all right.

Mr. PYLE. This case was brought out for the purpose of showing that it is possible for a single concern to put out this much without severe penalties being imposed, restrictive penalties. Now, that may lie in the regulations of the Commissioner of Internal Revenue. The responsibility may be up to the Prohibition Unit, with its power and manner of functioning, or it may be in the law itself. I believe that is a matter that Mr. Britt will take up before you. The fact remains that it can be done, because it has been done.

Now, what I believe would be an interesting matter for the committee to learn is why it can be done, and those having most intimate knowledge can, perhaps, discuss that better than I can.

Mr. BRITT. Mr. Chairman, yesterday I requested that my statement on the matters raised should have some sequence with what was said then. You will recall that certain matters arose about which I did not have definite knowledge. This necessitated some inquiry yesterday, and on account of the interest in the matter I thought it best to dictate my statement and present it in writing. I did so yesterday evening and this morning. It is not quite off the type yet, but it will be here in a little while, in a half hour or so, and I will proceed with it at that time, with your permission.

I have brought Mr. R. A. Kipp, assistant head of the division of industrial alcohol, along, as Mr. Pyle had indicated that he would like to have some information from that division. If you can occupy the time with him until my typewritten statement is delivered to me, I would appreciate it, because I thought it important to present these things in a written statement to you.

The CHAIRMAN. I understood yesterday that Mr. Simonton was to furnish certain information to the committee. Maybe he can give us that now.

Mr. BRITT. Yes, sir; that is ready.

Mr. SIMONTON. I have secured the information asked for.

Senator Jones asked for the price of the alcohol charged by the Fleischmann Co. to its agents. I have that information now. I got it from the record of the revocation hearing.

The CHAIRMAN. That is, during the period that was under examination?

Mr. SIMONTON. Yes. The price that the Fleischmann Co. obtained was 32 cents per gallon. The Fleischmann Co. obtained from its agents 32 cents per gallon. In addition to that they charged the agents 8 cents per gallon cooperage and the tax of \$4.18 per gallon. This is on the wine gallon, of course. That makes a total of \$4.58 per wine gallon.

The CHAIRMAN. What would that be for the ordinary gallon, as we understand it?

Mr. SIMONTON. That is the ordinary gallon.

The CHAIRMAN. That is the wine gallon.

Mr. SIMONTON. The proof gallon is half water. The wine gallon is almost pure alcohol and pays a double tax. The tax on the proof gallon would be \$2.20. That is 50 per cent alcohol. The tax would be \$4.18 for the wine gallon, or the natural gallon of alcohol. In addition to that there was 8 cents cooperage and 32 cents to the company, the agent paying the freight.

The CHAIRMAN. I understand that at the time the Fleischmann Co. shipped this alcohol they did pay \$2.20 a proof gallon tax?

Mr. SIMONTON. Yes, sir; I was coming to that. That reduced Mr. Storck's figures by \$955,624.87, leaving, roughly, a balance of \$1,824,374.75 tax. In other words, the tax was only the differential tax.

The CHAIRMAN. Yes.

Mr. SIMONTON. The \$4.20 tax.

Senator KING. Then, as I understand you, the Fleischmann Co., at the time they shipped this alcohol, paid the Government the \$2.20 tax.

Mr. SIMONTON. Yes, sir; \$2.20 per proof gallon.

Senator KING. Yes.

Mr. SIMONTON. Or \$4.18 per wine gallon of alcohol. The whisky tax is \$2.20. Whisky is half alcohol. The alcohol tax is \$4.18. That is almost 100 per cent alcohol.

Senator KING. Was it \$2.20 or \$4.18 that they paid?

Mr. SIMONTON. It depends entirely on how you want to call it—\$2.20 a proof gallon and \$4.18 a wine gallon.

The CHAIRMAN. They paid that?

Mr. SIMONTON. They paid that.

Senator KING. Suppose they had sold this legitimately, under a permit, to a druggist, who, in good faith, needed liquor, and they understood it was to be used for beverage purposes, so far as medicinal purposes may be called beverage, what tax would they have paid?

Mr. SIMONTON. \$2.20 per proof gallon and \$4.18 per wine gallon. In other words, the exact tax that was paid was the nonbeverage tax here. That was the tax that was paid, because only nonbeverages were permitted. Therefore the nonbeverage tax only was paid and only a nonbeverage use was contemplated. Then when they diverted and used it unlawfully or for a thing that was forbidden, there was a penalty in the way of a tax.

Senator KING. How much was that?

Mr. SIMONTON. \$4.20 a gallon.

Senator KING. In addition?

Mr. SIMONTON. In addition to that when they withdrew it for beverage purposes.

Senator KING. Is that per wine gallon or proof gallon?

Mr. SIMONTON. Per wine gallon, and they doubled it on the proof.

Senator KING. That would be—

Mr. SIMONTON. \$8.40 on the wine gallon, but you will have to double your figures here. In other words, the 434,744 would have to be cut in half. That is half alcohol, approximately. Therefore, if you base your figures on the wine gallon you would have to cut that in half. That \$8.40 is arrived at in the same way. It is doubled and multiplied by \$4.20.

Senator KING. Was that proof alcohol?

Mr. SIMONTON. No; it was natural alcohol.

Senator KING. Wine gallons?

Mr. SIMONTON. Wine gallons, but figuring it under the statute we figured on the basis of the proof gallon.

Senator KING. That is 100 per cent alcohol?

Mr. SIMONTON. This includes half of what Mr. Storck says was shipped, which was actually shipped on the basis of the wine gallon. We will say 434,000 is the actual wine gallons; when we base it on the proof gallon we double it, because 50 per cent of it is water.

Senator KING. As I understand it this was 100 per cent, the whole 434,000 gallons?

Mr. SIMONTON. No, sir! that is 50 per cent; that is the proof gallon.

The CHAIRMAN. In volume it is the same, Senator.

Senator KING. Oh, yes; I understand that.

Mr. SIMONTON. Half of that would be the actual wine gallons.

Senator KING. Then, coming down to it, these 434,000 gallons were not pure alcohol?

Mr. SIMONTON. That is the basis of figuring; that is not pure alcohol; no.

The CHAIRMAN. In volume it was just half of that?

Mr. SIMONTON. Yes.

Senator KING. And the other half was what?

Mr. SIMONTON. It would be water. It was really whisky.

The CHAIRMAN. In actuality it was not water; it was only about 217,000 gallons in volume?

Mr. SIMONTON. But in order to figure it on the statute you had to put it in proof gallons and multiply it by \$4.20.

Senator WATSON. In actual quantity of liquor the proof gallon and wine gallon are the same?

Mr. SIMONTON. No, Senator.

Senator WATSON. What is the difference?

Mr. SIMONTON. If you have the pure alcohol—

Senator WATSON. I understood you to say that the proof gallon was 50 per cent alcohol and the wine gallon was 100 per cent alcohol?

Mr. SIMONTON. Yes.

Senator WATSON. But I thought in actual gallon content they were the same.

Mr. SIMONTON. Yes; if you take it that way that is true.

Senator WATSON. Yes; a gallon is a gallon.

Mr. SIMONTON. To get these figures you must double it.

The CHAIRMAN. I think, perhaps, we are getting a little confused. The real situation is that when the man went to buy all of this stuff, he went to buy it all at one time, and in volume it was actually about 217,000 gallons.

Mr. SIMONTON. That is right; \$2.20 was paid on that number of proof gallons, which takes out of the \$2,779,990.62, as Mr. Storck's first figure, \$955,624.87. This is my own figuring, and these amounts may not be exactly accurate—leaving \$1,824,374.75. That would make the penalty tax of a withdrawal for beverage purposes.

Now, there was one other point—

Senator KING. Mr. Simonton, before you leave that, upon what basis did you recommend, as I understood yesterday you did recommend, the collection from Fleischmann Co. of more than \$2,000,000?

Mr. SIMONTON. I did not recommend it at all, sir.

Senator KING. Did you not approve of the findings of Mr. Rutter?

Mr. SIMONTON. Mr. Rutter, in the revocation hearings; yes, sir.

Senator KING. Yes; on the revocation hearing?

Mr. SIMONTON. Of course, the assessment came about a year or two after that.

Senator KING. Then you had nothing to do with it?

Mr. SIMONTON. I had nothing to do with it.

Senator KING. At any time?

Mr. SIMONTON. At any time.

Senator KING. Did you ever make any recommendation as to what ought to be paid under the evidence adduced?

Mr. SIMONTON. No, sir; absolutely not.

Senator WATSON. Let me get at the proceedings, please, if you are through, Senator.

Senator KING. Go ahead.

Senator WATSON. What do you mean by revocation—a revocation hearing?

Mr. SIMONTON. That was all gone into yesterday.

Citations were issued revoking the permits of all of these agencies, and the yeast company. I was appointed to produce the evidence before Mr. Rutter, who was the presiding officer or hearer. Mr. Rutter examined the evidence I introduced from all of these agencies; agents came in and he examined them all, and Mr. Rutter revoked all of the permits of the Fleischmann Co., including the parent plant, and Major Haynes approved it.

Senator WATSON. That is what you mean by revocation?

Senator KING. By the way, those revocations did not become effective, did they?

Mr. SIMONTON. In the actual sense, they did not. They were sent out, but no action was taken under them.

Senator KING. And they continued manufacturing just the same?

Mr. SIMONTON. They sent out the revocations with the announcements, etc., and almost simultaneously the matter was taken up and reviewed; but it actually never went into effect.

Senator WATSON. Was it explained yesterday why that was so?

The CHAIRMAN. Yes; they had a hearing before Commissioner Blair, and Commissioner Blair reversed Mr. Haynes.

Mr. SIMONTON. To the extent of letting the parent company have its permit.

Senator KING. Mr. Haynes's final decision was that the permit should be reinstated, and that any act of revocation should be nullified?

The CHAIRMAN. Only after review by Mr. Blair, however. Mr. Blair ordered him to do that; is not that correct?

Mr. SIMONTON. That is correct.

Senator KING. I understood from the statement yesterday that Mr. Haynes expressed satisfaction with the settlement.

The CHAIRMAN. Oh, that is the settlement; that is not the revocation. He expressed satisfaction with the settlement but not with the revocation.

Senator KING. How long after the revocation and the reinstatement of the permits, if they were ever revoked, was the settlement made?

Mr. SIMONTON. The revocation was ordered in the summer of 1921. The assessment matter came up in the summer of 1922.

The CHAIRMAN. That statement can not be correct, because the report was not made of these violations until the fall of 1921.

Mr. SIMONTON. Oh, I beg your pardon. That is right. The hearings were started on January 12, 1922, and finished some time in February or March. Shortly thereafter the permits were revoked and reinstated to the extent of the two parent plants. Then, in the summer some time—July or August—the matter of the assessment came up. I beg your pardon; I had those dates mixed.

Senator KING. Do you mean to say that this action recommending revocation was set aside before any payment was made or any settlement?

Mr. SIMONTON. Before the assessment was made; yes, sir.

Senator KING. But who set aside the recommended revocation?

Mr. SIMONTON. I did not have anything to do with it; but I have seen the order. I believe that file is here. That is Mr. Blair's decision.

Senator KING. But did not that revocation carry with it a settlement, too?

Mr. SIMONTON. Oh, no, sir. The assessment, the criminal action, the bond liability, were all separate from the permit liability.

Now, there was one other matter—

Mr. PYLE. May I ask you a question in that connection?

Mr. SIMONTON. Yes.

Mr. PYLE. Yesterday it was stated that those figures were cut down by that action. We have a copy of the papers, furnished by the department, which would indicate that \$3,485,426.59, which was proposed, was the differential tax proposed.

Mr. SIMONTON. Doubled, under section 35, Title II, of the national prohibition act. It was the \$4.20, doubled.

Mr. PYLE. Yes.

Mr. SIMONTON. Mr. Storck's figures were based on \$6.40 a gallon, basic, from which must come the \$2.20, leaving \$4.20.

The CHAIRMAN. He read from the report of the agent.

Mr. SIMONTON. I copied down here the figures given by Mr. Storck yesterday as the basis of the investigation.

Mr. STORCK. I might state that those are not my figures. They are from the reports of the agents.

The CHAIRMAN. Yes; that was perfectly clear. They were read into the record yesterday from the report.

Mr. SIMONTON. There was one other matter that came up. Mr. Storck read into the record a memorandum which he said he found in the files, initialed "P. H." I remember that Senator King commented upon it, and I investigated the matter. On looking into it I find that it relates to Fred L. Kirk, the agent at Bridgeport of the Fleischmann Co. You will recall—it is very clear to our minds now—that there was an actual sale by the parent company to the agent. Therefore when the agent resold he must have qualified as a wholesale liquor dealer under the internal revenue laws. Otherwise he must have paid the sum of \$100 for a wholesale liquor dealer's stamp. No such thing was done. It started out as an agency, and notwithstanding the sales to them it continued to operate as an agency of the Fleischmann Co. Nevertheless, under the law each individual agency became liable to a wholesale liquor dealer's tax.

Senator KING. Assuming that that was a sale in good faith and that it was not a mere pretense.

Mr. SIMONTON. Yes; they sold and resold. The agents became principals, and being principals they had to pay the tax, not as an agent but as principals, in making their resales.

Senator KING. Did any of those so-called principals or agents get a license from the Government?

Mr. SIMONTON. They did not. They operated under the permit of the Fleischmann Co.

Senator KING. And were known as Fleischmann Co. agents?

Mr. SIMONTON. They were known as Fleischmann Co. agents; yes, sir.

Senator KING. Occupying places of business rented by the Fleischmann Co.?

Mr. SIMONTON. I do not know whether it was exactly that, but they undoubtedly were the agents. Some of them were corporations; some of them were individuals. I believe in Brooklyn they had the Eagle Manufacturing Co., or something of that kind.

To get back to this proposition, as each one of them entered into the business on his own account they in that way became liable to the tax. In the tax section a clerk by the name of W. T. Williams, under date of June, 1924, in receiving this file and going over it, found that situation, and so he proposed a tax against Fred L. Kirk individually as a wholesale liquor dealer. To explain that tax to his superiors, the file being so big, he prepared a little memorandum which he attached to his proposal to tax that man, and in his memorandum there is this statement, which will show his purpose:

Fred L. Kirk was acting as an ostensible agent for the Fleischmann Co. (Inc.), at Bridgeport, Conn., in disposing of alcohol which constituted the principal by-product made by them in manufacturing yeast. It appears that the Fleischmann Co. had an arrangement with Kirk similar to their arrangements made with all their other agents located in various parts of the country, whereby he became the purchaser of the liquor disposed of by him. The report states that the defendant's agency began early in November, 1921, at the termination of the agency held by Harry Cohen at the above-mentioned

city. The total quantity of alcohol shipped to this agency and disposed of as shown by 52-B to various alleged persons totaled 69,000.22 proof gallons.

It is further asserted that this party was not the holder of a permit investing him with authority to engage in business as a wholesale liquor dealer.

It is very clear that the sales made by the defendant were not made by him in the capacity of an agent for the Fleischmann Co., inasmuch as title to the spirits sold by him was not vested in the Fleischmann Co. (Inc.) but the defendant at the time of sale.

There is nothing mysterious about that memorandum. It states exactly the basis on which the clerk proposed to assess Mr. Kirk for his own individual activities. It is absolutely a true statement from the record.

Senator KING. Well, there should have been stronger indications as to the person by whom it was prepared.

Mr. SIMONTON. Well, it is attached to Mr. Williams's proposed memorandum, written by "P. H.," the same stenographer, and it is right in back of it; and I am sure the slightest inquiry would develop that fact, as it did with me.

Senator KING. I want to inquire at this point whether the evidence clearly showed that the Fleischmann Co. actually, in good faith, parted with the legal title to the liquors which their agents acquired in these various cities and towns?

Mr. SIMONTON. There is not any question at all that they parted with the title. There is not any question at all that they received full compensation in parting with the title. The only evidence that I can discover against the Fleischmann Co., which would throw any light upon their good faith, was their neglect to follow up these transactions to find out what their so-called agents were doing with the article.

Senator KING. That is the point in my mind. If there was an absolute sale, what duty was there resting upon them to follow it up?

The CHAIRMAN. Because, Senator, they were acting under the permits.

Mr. SIMONTON. The transaction of the sale was forbidden by the regulations and was entered into by them without the knowledge of the department until it developed at this hearing.

Senator KING. But the point I am trying to get at is, was the sale a bona fide sale or a mere pretense?

Mr. SIMONTON. If you will strike out the "bona fide," I will say it was an absolute sale and no mere pretense. They received the money and delivered the goods. Now, as to what connection the corporation may have had with the operations of the agencies, there is no definite testimony at all.

Senator KING. Except that the corporation had its vice president or general manager designated to superintend these agencies.

Mr. SIMONTON. The contact man.

Senator KING. Yes.

Mr. SIMONTON. They had a contact man—a liaison officer, you might call him—whose duty it was to go down and check these places and report to the vice president.

Senator KING. Is there any evidence as to whether or not these agents, out of the profits which they made from these illegal sales, paid anything additional to the Fleischmann Co.?

Mr. SIMONTON. Nothing whatever, sir. I could not discover the slightest evidence to that effect.

Senator WATSON. What amount of tax would have been paid to the Government if all of these forged permits had been regular?

Mr. SIMONTON. \$955,000—

The CHAIRMAN. I do not think you got the question right. The Senator asked had these permits been regular, what tax would they have paid to the Government in addition to what they did? Is not that your question, Senator?

Senator WATSON. Yes.

Mr. SIMONTON. None whatever.

Senator WATSON. None at all?

Mr. SIMONTON. None whatever.

Senator WATSON. That is what I want.

Mr. SIMONTON. The tax that they are required to pay is a penalty for doing that which is absolutely forbidden by the law. That is \$4.20 per proof gallon.

Senator WATSON. Where does this \$75,000 compromise come in?

Mr. SIMONTON. That came in later on. Mr. Britt prepared a statement in regard to that, and he will take that matter up.

I think that is all you wanted of me.

Mr. STORCK. Mr. Chairman, you asked me when these investigations began by the agents.

The CHAIRMAN. No; I did not ask that. I asked when the department or when anybody first knew that these illegal permits or fraudulent permits were being used.

Mr. STORCK. These are the reports. Agent Whitehead made reports in November and December, 1921; Nitzer on December 10, 1921; and Quigley and Connor in January, 1922.

The CHAIRMAN. I understand, then, that they found that out under the ordinary methods or policy of examination?

Mr. STORCK. Yes, sir.

The CHAIRMAN. In other words, the department had no tip or no information of any kind that these fraudulent permits were being used until this particular time; is that right?

Mr. STORCK. No, sir; that is the first time it appears in those files, under those dates that I gave you.

Mr. SIMONTON. May I state the fact in regard to that, as I recall it?

The CHAIRMAN. Yes.

Mr. SIMONTON. The fact that the first intimation we had was the cans found in Cady's back yard. The Cady brothers were bootleggers.

The CHAIRMAN. On K Street?

Mr. SIMONTON. Mr. Whitehead, in his investigations, got evidence on Cady and made a raid down there. In going through Cady's stock he found these empty tins, with the numbers on them and the address of the agent in Philadelphia.

The CHAIRMAN. On just what date was that?

Mr. SIMONTON. I am giving you my recollection now, but Mr. Whitehead's report will tell you. Then, as the case developed in Philadelphia, I went up to present the evidence. We found it was a vaster or larger transaction than we at first imagined, and the attorneys entered into a stipulation that we would postpone the Phila-

delphia conclusions until the agents could go out and investigate all of these agencies and bring them back and hold one hearing on the whole transaction. The discovery of the cans in Cady's back yard was the beginning of the discovery.

Mr. STORCK. Mr. Chairman, you asked me about these forged permits. Mr. Simonton has just given me a file. Do you wish to see them?

The CHAIRMAN. Do they state when they first discovered these cans in Cady's back yard?

Mr. STORCK. No; not the forged permits.

The CHAIRMAN. I want to know when they first got wise to this.

Mr. STORCK. They are looking that up for you right now.

Mr. SIMONTON. November 2, 1921. I will read this.

The CHAIRMAN. Yes.

Mr. SIMONTON. This is on page 9 of Whitehead's, Overpeck's, and Smith's report:

In reference to the 1,540 cans of alcohol, 15,581 proof gallons, consigned to the Terminal Storage & Transfer Co. and not delivered, attention is called to the fact that 28 revenue stamps and pieces of stamps, some attached and some unattached, to parts of broken cases, for alcohol, were found in the premises of William Cady, K Street NW., Washington, D. C., by John Whitehead, general prohibition agent, on November 2, 1921.

The CHAIRMAN. All right; that answers that question.

Senator KING. Did you not have any agents along in March, April, May, June, July, August, September, and October in the neighborhood of these places where the agents were receiving and selling this liquor?

Mr. SIMONTON. Yes, sir.

Senator KING. Whose duty it was to examine the enormous sales that were being made there?

Mr. SIMONTON. Yes, sir.

Senator KING. Did they discover anything?

Mr. SIMONTON. They did.

Senator KING. When?

Mr. SIMONTON. Two of them were indicted in Philadelphia. We found, when we went to Philadelphia on John Whitehead's tip to examine the files of the Fleischmann Co., a receipt for all their permits.

The CHAIRMAN. But you do not get the Senator's question.

Mr. SIMONTON. If you will pardon me just a minute——

The CHAIRMAN. The Senator's question was:

Prior to Whitehead's discovery in Cady's yard, did the Prohibition Unit have any agents, along in the early part of the year, examine these records to indicate whether these were legitimate sales or not?

Mr. SIMONTON. If you will just pardon me, Mr. Chairman, I am coming to that very point.

The CHAIRMAN. But you do not need to tell us the whole history back of that over again to get at that point.

Mr. SIMONTON. I am very sorry if my method does not meet with your approval. They did have agents, and they went down there and took up the permits, and then left receipts for them. In the middle of this transaction in Philadelphia, they were indicted in Philadelphia in the criminal case.

The CHAIRMAN. On what date?

Mr. SIMONTON. I can not tell without the record. If you have the receipts of Slater and Benner they will give you that evidence.

Senator KING. Why did they take up the permits, Mr. Simonton?

Mr. SIMONTON. Because we thought they were needed. We indicted them.

Senator WATSON. For what?

Mr. SIMONTON. Because they were in the conspiracy. That is the way a man would destroy evidence. If there was evidence of a transaction down there that he was involved in, he would go down and take that up.

The CHAIRMAN. Was that prior to the discovery of these cans on the Cady property?

Mr. SIMONTON. The taking up of the papers was; yes, sir; by fraudulent, crooked agents.

Senator KING. You had agents in the field who should have discovered it, but they were in the conspiracy to—

Mr. SIMONTON. To purchase.

Senator KING. To bribe to keep silent.

Mr. SIMONTON. Exactly. Those transactions in the Fleischmann case were the basis of their indictment in Philadelphia with Director McConnell, which ended up in the dismissal by the court because they had too many indictments all in one case.

Senator KING. From the evidence which came to your attention, did you believe the agents and your prohibition officer there, McConnell, were participating in these offenses or conniving?

Mr. SIMONTON. Yes; these particular offenses that you are speaking about. Of course, neither Mr. McConnell nor Mr. Slater nor Mr. Benner had an opportunity to explain the matter before me. Therefore my conclusion is *ex parte*.

Senator KING. Exactly; I understand that.

Mr. SIMONTON. I had suspicions that they were.

Senator KING. Were they the only ones whose duty it was to visit all of these agencies in the various States?

Mr. SIMONTON. No; their duties did not extend to the other States.

Senator KING. Were their duties limited to Pennsylvania?

Mr. SIMONTON. Their duties were limited to Pennsylvania.

Senator KING. What about the New York agents; did they not discover these illicit sales?

Mr. SIMONTON. No, sir; they did not.

Senator KING. Did they visit these agencies?

Mr. SIMONTON. One agency; yes. There were some men who visited the Brooklyn agency and wrote on the records that everything was O. K.

Senator KING. What is the practice of the department, where you have an agency such as these, receiving hundreds of gallons of alcohol per month, as to visiting them and inquiring into their conduct?

Mr. SIMONTON. The practice now is to check them regularly. The practice at that time was not so good as it is now. The basis of that was the thought—I may be mistaken in this, as it is only my conclusion—that big companies like that were doing a legitimate business and that we would look to them as the backbone of the non-beverage business. We would not expect a big company like the Fleischmann Co., or other big corporations, to endanger their

properties or their liberties by engaging in bootlegging; but we have since reached other conclusions.

The CHAIRMAN. You say you are now inspecting them regularly. To do so regularly, you might mean once a year. How regularly do you inspect them?

Mr. SIMONTON. That is not a matter that I am in touch with, and I would have to refer you to Mr. Kennedy of the office of the general prohibition agents.

Senator KING. Why did not the unit press the prosecutions further upon separate indictments?

Mr. SIMONTON. I could not tell you that, sir. I have had nothing to do with the matter since I handled the revocation hearing.

Senator KING. Were there any convictions that grew out of these illegal sales?

Mr. SIMONTON. No. There were only three indictments of particular individuals in connection with these transactions. One was the one in Philadelphia, the indictment of Reddy.

Senator KING. Of whom?

Mr. SIMONTON. A man by the name of Reddy, who signed some of these permits, with Hart, director in New York City, which resulted in an acquittal; the indictment of Kirk, the agent for Fleischmann in Bridgeport, on an actual buy, in which the agents passed the money over, and had marked money, and he was acquitted.

The CHAIRMAN. Why was he acquitted? Was it a jury trial?

Mr. SIMONTON. Oh, yes.

The CHAIRMAN. The jury acquitted him?

Mr. SIMONTON. Yes, sir. We had evidence where the money was marked. The I was punched out with a pin, the I, in the fifty-dollar bills or the hundred-dollar bills. They took them right out of the pockets of the bootleggers, and they went down to the court and tried the case and the court found them not guilty.

Mr. PYLE. The jury found them not guilty.

Mr. SIMONTON. The jury found them not guilty.

Mr. BRITT. Mr. Chairman, I am in receipt of that statement now. If it meets with your pleasure, I should like to read the statement and answer your questions at the conclusion, in order to have greater continuity.

Yesterday, at the close of the direct testimony of Mr. George W. Storck, I requested to be heard in a statement concerning the Fleischmann case in explanation of the action taken by the Prohibition Unit and the Bureau of Internal Revenue in the case, and the advice given at the request of the Commissioner of Internal Revenue.

I noted Mr. Storck's testimony, which, as he said, was made up from the records of the Prohibition Unit as furnished on his request. I think Mr. Storck's statement was a fair and impartial summarization of the record before him, and I do not think that either the committee or the bureau can have just ground of complaint against it. His statement, however, that the compromise settlement of this case for \$75,000 was a compromise of both the civil and criminal liability was not correct, if by it he meant that there was any formal understanding that there should be a compromise of the criminal liability. But I think he afterwards made this clear by saying that his meaning was that the effect of the settlement was a compromise of both civil and criminal liability, since no criminal indict-

ments had been brought. On this point I submit my two memorandums of July 7 and 20, 1922; also the office stipulation of terms of compromise, from which it will be clearly seen that any compromise of criminal liability was definitely negatived.

Senator KING. That is as to the internal revenue laws ?

Mr. BRITT. Yes, sir; and there was no element of that in the case, although those provisions were put in to meet that possible condition.

I will now endeavor to state in some detail what was done and the reasons therefor.

I entered the unit as chief counsel on the 20th of June, 1922, after all the findings, hearings, and other transactions in this case were over, save the matter of compromise of the civil liability. I discussed the case informally with Prohibition Commissioner Haynes, at his request.

I interpolate here what I suppose is needless to mention, that in no instance is my advice offered or intruded. It is given on request only, as you gentlemen may know.

I indicated to him that I felt that although there was more or less confusion in the evidence there had, nevertheless, accrued a large civil liability, and that I felt that there should be criminal prosecutions, certainly of the agents of the Fleischman Co., and that I thought there could, and should, be convictions and punishments. It should be borne in mind that it was my duty to consider only such aspects of the case as related to the matter on which I was asked to advise, namely, the civil liability which should be demanded. I understood, and was in fact told, that the United States district attorneys had been furnished with copies of the reports of the findings of the prohibition agents in the cases, from which I thought, beyond doubt, criminal indictments would be brought.

Senator WATSON. Told by whom?

Mr. BRITT. Told by the prohibition unit officials.

This is the usual course in such cases, and I assumed that it had been followed in this case.

The CHAIRMAN. Would you mind if I interrupt you at this point?

Mr. BRITT. Not at all.

The CHAIRMAN. Why was it that with all of this great corps of attorneys you had, you did not assist the district attorneys in preparing indictments in this case, as it was testified you usually did?

Mr. BRITT. We invariably offered our assistance in all cases—in civil and criminal cases—so much so, Mr. Chairman, if I may say it, that in a number of instances our efforts have been resented as officiousness, and some friction caused with the offices of the United States district attorneys, particularly in that office at Philadelphia.

The CHAIRMAN. Can you say whether, in this particular case, any indictments were prepared and sent to the district attorneys?

Mr. BRITT. I can not, for I entered the unit many months after the cases were made.

The CHAIRMAN. Mr. Simonton, can you say whether that practice was followed in this case?

Mr. SIMONTON. If it was done, it was done after I finished my part of the case, which was the presentation of the evidence in the

revocation hearings. It was not done up to that time. I do not know what happened since.

Mr. BRITT: If such reports were furnished to the district attorneys, as I had supposed, and as I had been informed, then the duty of bringing prosecutions in the case devolved upon them, with, of course, such assistance as the office of the prohibition unit could render in the premises. I remember very clearly—and this is in answer to the question of Senator King yesterday—I remember very clearly that some time subsequent to the settlement of the case by compromise I mentioned the matter of criminal indictments to both Commissioner Blair and Commissioner Haynes when they were together, and I remember that each of them left the impression upon me that they either thought indictments were pending or would be brought.

I did not, as a matter of course, examine all the huge record in the case, but I did examine portions of it, talked with the unit officials who had charge of the record, requesting a memorandum from Mr. Vincent Simonton, who had much to do with the case, but I did not go into it in all its details.

That accounts, Mr. Chairman, if I may interpolate here, for my lack of knowledge as to these sundry dates and officials, which I never had the opportunity to get.

I think Messrs. Wise, Whitney, and Parker, of New York, attorneys for the permittees, called upon me once to discuss the case, and, as I recollect, I stated to them substantially what I am stating here, and I remember telling them that I would not for a moment think of advising the acceptance of \$25,000, which once was then pending, nor even twice or three times that amount. But, as I recall, I did not indicate the lowest amount I would advise in settlement. Commissioner Blair talked with me about the case on one or two occasions, and requested me to furnish him a memorandum of my advice in the premises as to the amount the department should insist upon in settlement, which memorandum I furnished and which has been read here. Let me say, in answer to a suggestion made here yesterday, that in the conference with him and Commissioner Haynes on the subject there was nothing different from such conferences on the hundreds of other cases in the unit and bureau on which they have asked me to advise them. There was never a suggestion in my presence of a secret conference or of any secrecy whatever about the case; no one ever suggested anything of this sort to me, nor could any official get my advice secretly about a public matter of this kind. It is true that these conferences were not public in the sense that the public was invited to be present; it is manifest that if that were required in all cases public business would be blocked entirely. But these conferences were without any executive character, and precisely like all other conferences of the kind in the bureau and unit, so far as I know. If a citizen calls to confer with an official about a public matter, although no public notice is given, this is not a secret conference, unless secrecy is designed, and there was no such design in these instances.

Now, as to the reasons for the advice given by me and the action taken by the unit and the bureau. I do not for a moment flatter myself that my advice has controlling weight in such cases, but I give it honestly for what it is worth and no more. As I have al-

ready said, I advised settlement of the civil liability for a sum of not less than \$100,000, but the civil liability was settled for \$75,000, which was done, I know, for what were believed to be just and proper reasons. The Solicitor of Internal Revenue is the commissioner's chief legal adviser, but I am not informed as to whether he advised him in this particular case.

I will add here that after I came to the unit the custom of calling in the Solicitor of Internal Revenue to advise the Commissioner of Internal Revenue and the Prohibition Commissioner was somewhat relaxed or dropped, and that burden was pretty largely put upon me, just in an informal way, without any express commission for that purpose. The solicitor was appointed by the President and confirmed by the Senate, I believe, while I was a mere bureau appointee—nothing more.

It is my invariable rule in such cases—that is, when asked to advise as to what I think the Government should demand in a particular settlement—to resolve the case upon what seems to be the Government's probability of winning a verdict in court. I have had some experience in trying cases of this kind, both as a representative of the Government and for private clients. I know something of the difficulty of the route to a favorable jury verdict in such cases. I had no doubt in my mind—and I wish this to be well understood—I had no doubt in my mind but that, as a matter of moral certainty, the spirits alleged to have been diverted, or the great bulk of them, had in fact been diverted to beverage uses. That was my conviction then and it is my conviction now. This was just as it is in hundreds of cases that come to me, cases wherein I am confident from all the attendant facts and circumstances that there has been a violation of the law. Yet such cases are found to be wholly wanting in what would be judicial proof for the establishment of the facts. But what could be established under the rules of evidence in a court where the case would probably finally land was a different matter.

That a large quantity of spirits had been withdrawn from the agencies of the Fleischmann Co. on forged and fraudulent permits was plainly apparent, but, as I then understood the law and as I now understand it and as it has often been held by the courts, there can be no recovery of a differential tax in such cases unless it is proved that the spirits, however unlawfully they may have been withdrawn, have been in fact diverted to beverage use. It seems that that ought not to be the law, yet it is the law, according to its own terms. I stated yesterday that I could not then recall whether the spirits had been withdrawn after being tax-paid at the \$2.20 rate, but I have since had the record examined and am advised that the \$2.20 rate had been paid on the spirits before they had been withdrawn. This being true, the only tax that could possibly have been recovered, and the tax constitutes the civil liability in the case, was the differential tax of \$1.20 per gallon—that is the difference between \$6.40, the beverage rate, and \$2.20, the nonbeverage rate.

Let us now examine the applicable statutes and cases on this and other points involved.

One of the considerations on which I advised the compromise acceptance was based on the fact that the assessment had been made

without a hearing. When the assessment was made the Fleischmann Co. had already been accorded a hearing for the purpose of determining whether or not its permits were forfeitable, with the result that the corporation and its officers were found not to have violated the law, and its central permits were continued. No new facts were in the possession of the department, so that if a hearing had been held on the assessment the department would have probably been compelled to confirm its previous decision in this respect.

Senator KING. Was there a specific finding, Mr. Britt, by the department that neither the corporation nor its officers knew anything about these alleged transactions?

Mr. BRITT. No, Senator. The only information that I have on that subject is what was read here yesterday by counsel, Mr. Pyle, from the report of Commissioner Blair in reviewing and in part reversing the action of the unit in that particular.

Senator KING. Have you not just stated, in substance, that at the hearing that fact was proven?

Mr. BRITT. No, sir. I have reference solely to the revocation hearing. You will keep that in mind.

Senator KING. I understand that.

Mr. BRITT. On this revocation hearing it was held that the principal's permit should not be revoked or should be restored.

Senator KING. Yes; I know.

Mr. BRITT. That is what I mean by that.

Senator KING. You stated a few moments ago in your statement that you have just read that at that revocation hearing the fact was established that neither the corporation nor its officers knew anything about these illegal sales.

Mr. BRITT. No; I did not read that, Senator. May I reread what I said? Do you desire that?

Senator KING. No; I can get that from the record. I will see in the record what you read.

Mr. BRITT. No; I did not read that.

The requirement that a hearing must be held before an assessment is made will be found in the cases of *Lipke v. Lederer* (259 U. S. 557), and the *Regal Drug Co. v. Wardell* (260 U. S. 386). In the *Lipke* case the Supreme Court said, in part—

Before reading that, when I went into the Bureau—

Senator KING. Those are the cases that Mr. Simonton called our attention to yesterday?

Mr. BRITT. Yes; I am talking about the reasons for it.

When I went into the unit they were commencing to try to prepare a machinery for holding these hearings. The machinery for holding assessment hearings was not put into effect until late in the fall of 1922 and in the early part of 1923. That is to say, at this time there was no machinery at all. All of this is not to say that subsequently a hearing in that case could not have been had.

To read the quotation in this case:

Before collection of taxes levied by statutes enacted in plain pursuance of the taxing power can be enforced the taxpayer must be given fair opportunity for hearing; this is essential to due process of law.

In *Regal Drug Corporation v. Wardell*, the Supreme Court, referring to the *Lipke* decision, said in part:

We took pains to say that "evidence of crime (section 29) is essential to assessment under section 35," and that we could not "concede, in the absence of language admitting of no other construction, that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guaranties of due process of law and trial by jury are not to be forgotten or disregarded." See *Fontenot v. Accardo* (278 Fed. 871). A preliminary injunction should have been granted.

But, to my mind, by far the greatest consideration entering into the adjustment of the civil liabilities by way of compromise was that the withdrawals had been made at a time when, according to the Supreme Court, the penalties of the internal revenue laws were repealed. As shown by the citation and revocation hearing, the offenses charged covered the period commencing in May and ending in October, 1921. Under the decisions of the Supreme Court, both in the case of *United States v. Yuginovich* (256 U. S. 450), and *United States v. Stafoff* (260 U. S. 477), penalties for violation of the internal revenue laws might not be invoked in that period for beverage violations and the penalties of the national prohibition act only were applicable.

Senator WATSON. Why was that?

Mr. BRITT. That follows right along here, Senator.

Senator WATSON. All right.

Mr. BRITT. The \$4.20 tax, known as the differential tax, and assessed under the provisions of section 600 (a) of the revenue act of 1918, upon a beverage withdrawal, is essentially a penalty inasmuch as such withdrawals are absolutely forbidden and the tax may not be paid in advance.

In *United States v. Yuginovich*, in which the United States sought to penalize the defrauding of the internal revenue tax as to a beverage violation, the Supreme Court said, in part:

Did Congress intend to punish such violation of law by imposing the old penalty * * * or as provided in the new and special provision enacted in the Volstead Act? * * *

It is of course settled that repeals by implication are not favored. It is equally well settled that a later statute repeals former ones when clearly inconsistent with the earlier enactments. (*United States v. Tynon*, 11 Wall. 88, 20 P. ed. 153.) In construing penal statutes it is the rule that later enactments repeal former ones practically covering the same acts but fixing a lesser penalty. The concluding phrase of section 35, by itself considered, is strongly indicative of an intention to retain the old laws. But this section must be interpreted in view of the constitutional provision contained in the eighteenth amendment and in view of the provisions of the Volstead Act intended to make that amendment effective.

Having in mind these principles, and considering now the first count of the indictment, charging an attempt to defraud and actually defrauding the Government of the revenue tax, we do not believe that the general language used at the close of section 35 evidences the intention of Congress to inflict for such an offense the punishment provided in section 3257, with the resulting forfeiture, fine, and imprisonment, and at the same time to authorize prosecution and punishment under section 35, enacting lesser and special penalties for failing to pay such taxes by imposing a tax in double the amount provided by law, with an additional penalty of \$500 on retailers and \$1,000 on manufacturers. Moreover, the concluding words of the first paragraph of section 35, as to all the offenses charged, must be read in the light of established legal principles, governing the interpretation of statutes, and in view of the provisions of the Volstead Act itself, making it unlawful to possess intoxicating liquor for beverage purposes, or property designed for the manufacture of such liquor, and providing for its destruction. We agree with the court below that while Congress manifested an intention to tax liquors illegally as well as those legally produced, which was within its constitutional power, it did not

Intend to preserve the old penalties prescribed in section 3267 in addition to the specific provisions for punishment made in the Volstead Act.

When subsequently at the instance of this department the Willis-Campbell Act (42 Stat. 222) was passed the internal revenue laws were reenacted both as to beverage and nonbeverage liquors. In the case of *United States v. Staffoff et al.* (260 U. S. 477) the Supreme Court, after discussing the decision in the case of *United States v. Yuginovich*, supra, among other things, held as follows—

Senator WATSON: After the passage of the Volstead Act?

Mr. BRITT: Yes; the Volstead Act was passed on the 28th day of October, 1919.

Senator WATSON: Yes.

Mr. BRITT: And became effective in 1920.

Senator WATSON: Yes.

Mr. BRITT: The Willis-Campbell Act was passed on the 23d day of November, 1921.

Senator WATSON: Reenacting the internal revenue laws?

Mr. BRITT: The old internal revenue laws, but after the violations complained of against the Fleischmann agents.

Senator WATSON: Yes; I understand that.

Mr. BRITT: Here is what the court said, referring to the case I read from a while ago called the Yuginovich case:

Since that decision and with reference to it * * * the act supplemental to the national prohibition act was passed. * * * By section 5 of this statute all laws in regard to the manufacture of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the national prohibition act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provision of the national prohibition act or this act. (But if an act violates both the former and the latter a conviction under one is a bar to prosecution under the other.) This section is not declaratory even in form. It does not purport to construe the national prohibition act as leaving in force what this court has declared to have been repealed. It could not in this way give a retrospective criminality to acts that were done before it was passed, and that were not criminal except for the statutes held to have been repealed. * * *

Of course, a statute purporting to declare the intent of an earlier one might be of great weight in assisting a court when in doubt, although not entitled to control judicial action. But that is not this case. The decision in *United States v. Yuginovich* must stand for the law before November 23, 1921. In that case, besides what we have mentioned, it was held also that the penalty imposed by Revised Statutes, section 3267; Common Statutes, section 9005 (4 Fed. Stat. Anno. 2 ed. p. 35), on a distiller for defrauding the United States of the tax on the spirits distilled by him, was repealed. * * *

But the supplemental act that we have quoted puts a new face upon later dealings. From the time that it went into effect it had the same operation as if, instead of saying that the laws referred to shall continue in force, it has enacted them in terms. The form of words is not material when Congress manifests its will that certain rules shall govern henceforth. * * * For offenses committed after the new law *United States v. Yuginovich* can not be relied upon.

Senator WATSON: Let me see if I understand that.

Mr. BRITT: Yes.

Senator WATSON: The Volstead Act, so far as it relates to this provision and the law governing this particular case, repealed, pro tanto, the internal revenue law, and that repeal was still in force when these offenses were committed. Then, after the offenses were committed, Congress reenacted the revenue laws, thus reestablishing the law as it existed before the passage of the Volstead Act.

Mr. BRITT. Under the old internal revenue law the penalties were imposed and the taxes in definite terms. Under their provisions the \$4.20 differential tax could be imposed upon the distiller or the importer if spirits were unlawfully removed; but there was no provision that this \$4.20 tax could be imposed upon other than the distiller or the importer; that is, a permittee aside from those could not pay it; but upon the passage of this act——

Senator KING. Which act?

Mr. BRITT. The act of November 23, 1921, a revival of the old internal revenue law. Under it no longer could the distiller and importer only be charged with this differential tax, but whoever diverted it could be charged, whether he was a distiller or importer or not.

Senator WATSON. I want to ask you this question while it is fresh in my mind: Suppose the Volstead Act had never been passed. There would not have been any repeal of any portion of the old revenue laws?

Mr. BRITT. Not as I understand it.

Senator WATSON. Then, where would this case have stood with reference to this law?

Mr. BRITT. The act of 1918, which anticipated the national prohibition act, made provisions for taxing beverage and nonbeverage liquors.

Senator WATSON. Precisely.

Mr. BRITT. Yes; but after the passage of that act and up to the 23rd of November, 1921, by the provisions of the old law, of the national prohibition act, those provisions were repealed, and fixing the tax in the way that I have just now stated.

Mr. SIMONTON. As to beverage liquors?

Mr. BRITT. As to beverage liquors. Thank you.

Senator KING. Is it not a fact that even under the Volstead law, assuming what you have said to be true, the Volstead Act repealed the act of 1918 or all the preceding acts relative to the sale of liquor for beverage purposes, there were in the Volstead Act provisions which would enable the Government to recover as a beverage tax upon all liquors and alcohol that was sold in violation of law, and that the Government might waive, if it wanted to, criminal prosecution and have treated it as having been a valid sale under the authority of the Government, and have obtained the differential?

Mr. BRITT. No; I think that is not correct. It is certainly correct to say that there has been no time at which, under the internal revenue laws, the tax prescribed could not be collected. That goes without saying; but there have been times of going forward and coming back in relation to this differential tax, and the period of no differential is covered by the period that I have just now named, between the act of 1918 and the passage of the Willis-Campbell Act, which remedied it.

Senator KING. Is it your opinion, then, that from 1918 until the passage of the Willis-Campbell Act sales of liquor for beverage purposes, whether legal or illegal, were subject only to the \$2 plus tax?

Mr. BRITT. No; I am talking about those other than the distiller and the importer. Senator. All of that is treated in my subsequent statement.

Senator KING. Well, you do not answer my question. You do not mean to say, then, that there was no law that was in effect in the spring and summer of 1921 which would permit the Government of the United States to recover from persons who were vending liquors for beverage purposes a tax in excess of \$2.18?

Mr. BRITT. Yes; I mean to say that in the spring and summer of 1921 the differential tax was applicable only to the distiller or the importer and did not apply to other persons than those who diverted the spirits, but that from November 23, 1921, it is made to apply to others, and applies to them now, Senator.

Senator KING. Did it not dawn upon you, if you took that view, that this was a mere subterfuge upon the part of the Fleischmann Co. in claiming that there were sales to their agencies, so that their agents might be taken out of the category of distillers, and thus avoid the tax?

Mr. BRITT. At no time did I pay any attention to the view of Fleischmann Co. My sole inquiry was: What was the law, forgetting Fleischmann Co. and everybody else. I have never seen a member of the Fleischmann Co., and I would not know them. My sole inquiry, if I may state it, was: What is the law on the subject as applicable to anybody?

Continuing from that last decision: the court thereupon decided in the three cases before it that the decision in the Yuginovich case stood as to the law with respect to liquor produced for beverage purposes prior to the date of the supplemental act, which is the situation presented in the Fleischmann case, inasmuch as the tax covered the period beginning May and ending October, 1921.

In the light of these decisions it appears to be unquestioned that the penalty to cover the situation presented by the Fleischmann case must be found in the national prohibition act or no penalty exists. Yet nowhere in that act do we find authority for assessing the tax of \$4.20 upon a withdrawal for any purpose. Section 29, Title II, of that act provides criminal penalties for illegal sales, transportation, false records, etc., and section 35 of the same title provides for double penalties, as follows:

No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance, but upon evidence of such illegal manufacture or sale a tax shall be assessed against, and collected from, the person responsible for such illegal manufacture or sale in double the amount now provided by law, with an additional penalty of \$500 on retail dealers and \$1,000 on manufacturers.

Senator KING. That was what authorized the \$2.20 tax?

Mr. BRITT. Yes, sir; that is the section.

Mr. SIMONTON. May I explain that? The Senator has been driving at that all along.

Mr. BRITT. Yes; I would appreciate it if you would.

Mr. SIMONTON. The tax in the Volstead Act is not upon a withdrawal. The tax under section 600 (a) of the revenue act of 1918 is upon withdrawal and nothing else. I might sell the entire product in my distillery and there would not be a cent of tax due, but when I withdrew it, under the terms of the act passed by Congress, I must pay two taxes, the \$2.20 on the nonbeverage withdrawal and the \$4.20 on the beverage withdrawal, which is forbidden and

illegitimate, making a total of \$6.40. I can sell it; I can do anything I want with it, as long as I do not withdraw it.

Senator WATSON. That is, you sell the certificate.

Mr. SIMONTON. You sell the certificates.

Senator WATSON. Which carries with it the title?

Mr. SIMONTON. It is an entirely different thing in a brewery. In a brewery, the law says, upon sale or removal for consumption or sale, a tax shall attach; so that if I sold the product of a brewery I would have to pay the tax. The Volstead Act does not put any tax or any penalty upon a withdrawal. It puts it upon an illegal manufacture or sale, and it puts it upon it in this way. It says, "The tax under the internal revenue laws upon illegal manufacture and sale shall be doubled under this act." It does not say that the tax on a legal withdrawal shall be doubled; but I am required to pay an occupational tax as a wholesale liquor dealer or a retailer liquor dealer. If I manufacture illegally I am required to pay a tax of \$2.20. If I withdraw, I pay another tax, an entirely different tax, based upon an entirely different set of facts and circumstances. When Congress passed the Volstead Act they did not say that where you illegally sell, illegally manufacture, and illegally withdraw liquors you shall pay double the tax under the internal revenue law. It says where you illegally manufacture and sell; so that under the Volstead Act the \$4.20 tax is based upon a specific provision of law, which requires a withdrawal.

Mr. BRITT. Continuing with my statement:

It will be noted, however, that the taxes invoked by the latter act—I am talking about this same section 35 to which Mr. Simonton has addressed himself—are not taxes on withdrawals but upon illegal manufacture or sale; consequently, if the violations must be dealt with under the national prohibition act the tax of \$4.20 may not be assessed or collected.

Another consideration which may be said to have appealed to the officials of the bureau in accepting the amount proffered was the absence of proof of beverage use. Section 600 (a) of the revenue act of 1918, in force when the withdrawals in the Fleischmann case were made—that is, from May to October, 1921—is as follows:

That there shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section 604, in lieu of the internal revenue taxes now imposed thereon by law, a tax of \$2.20 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage a tax of \$6.40) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

Please note the phrase in that section "produced in or imported into."

The CHAIRMAN. We will have to suspend at this point, and I think, in view of the fact that counsel for the committee has some little work ahead, we had better postpone any further hearing until Thursday morning at 10.30. We will do that, if it is agreeable to you, Senator King.

Senator KING. That suits me.

Mr. BRITT. And I will resume at that time.

The CHAIRMAN. Yes.

Mr. BRITT. Thank you.

The CHAIRMAN. We will adjourn here until Thursday morning at 10 30 o'clock.

(The exhibit submitted by Mr. Pyle is as follows:)

EXHIBIT

UNITED STATES V. FLEISCHMANN DISTILLING CO.

WASHINGTON, December 1, 1921.

Maj. R. A. HAYNES,

Federal Prohibition Commissioner,

Washington, D. C.

SIR: In an investigation of the Fleischmann Co., Langdon, D. C., and the Fleischmann Manufacturing Co., Peekskill, N. Y., we have disclosed numerous violations of Internal revenue law and prohibition law regulations. At this time the Fleischmann companies are operating as the Fleischmann Co., owned and managed by the following officers:

Julius Fleischmann, president; Max Fleischmann, first vice president; Henry Keltanback, vice president; J. White, vice president; J. Vehrend, treasurer; and Hugo Oswald, treasurer.

The Fleischmann Co. has been conducting a large amount of business through six agencies with addresses as follows:

Henry Treitel, 66 Main Street, Yonkers, N. Y.; permit approved April 23, 1921, for withdrawal of 200,000 proof gallons, covered by a \$50,000 bond.

Samuel Lazar, Terminal Storage & Transfer Co., Green Street and Delaware Avenue, Philadelphia, Pa.; permit approved April 22, 1921, for withdrawal of 250,000 proof gallons, and covered by a \$50,000 bond.

Louis Gross, 19 Newark Avenue, Jersey City, N. J.; permit approved June 24, 1921, for withdrawal of 300,000 proof gallons, covered by a \$50,000 bond.

Fleischmann Manufacturing Co., Wholesale Liquor Dealers' Bonded Warehouse, 203 Fulton Street, Brooklyn, N. Y.; permit approved April 15, 1921, for delivery of 200,000 proof gallons, and covered by a \$50,000 bond.

Labate & Pinaes, 561 West Thirty-fourth Street, New York City, for withdrawal of 200,000 gallons, covered by a \$50,000 bond.

No. 402 Eleventh Avenue, New York City; permit approved July 13, 1921, for 300,000 proof gallons, and covered with a \$50,000 bond.

The method of conducting business through these agencies is by obtaining a permit, Form 1410-C for each, in the name of, or by some member of the company, and securing same from the prohibition director in the State where the agencies are located. The manner of securing alcohol by these different agencies from the Fleischmann manufacturing plants at Langdon, D. C., and Peekskill, N. Y., is by the agents presenting their permits, Forms 1410-C, to one of these manufacturing plants and withdrawing the amount of alcohol desired and having this quantity and date entered on the reverse side of the permit by some one designated to make such entries.

Having given bond in the sum of \$50,000, the Fleischmann Co., on April 11, 1921, secured approval of permit, Form 1410-C, for the withdrawal of 250,000 proof gallons of alcohol to be either withdrawn from the Fleischmann Manufacturing Co. at Peekskill, N. Y., or the Fleischmann Co., at Langdon, D. C., designating Samuel Lazar as its agent, and place of delivery of alcohol as the Terminal Storage & Transfer Co., located at Green Street and Delaware Avenue, Philadelphia, Pa.

The number of proof gallons withdrawn on this permit from May 7, 1921, to August 2, 1921, amount to 110,782.89 proof gallons. The entries of this permit were shown in detail as follows:

May 7, 100 barrels, 9,281.20 proof gallons; 5819-32, 5836-5921.

May 13, 125 barrels, 11,626.22 proof gallons; 5120-34, 6090-21, 5700-5804, 6032-53, 5924-74.

May 31, 100 barrels, 9,333.88 proof gallons; 9119-9218.

June 6, 125 barrels, 11,609.62 proof gallons; 4639-4763.

June 14, 40 barrels, 3,703.15 proof gallons; 6064-6103.

June 15, 25 barrels, 2,324.53 proof gallons; 6104-28.

June 15, 100 barrels, 9,322.95 proof gallons; 6125-6228.

June 21, 100 barrels, 9,233.94 proof gallons; 6229-6328.

June 24, 100 barrels, 9,229.04 proof gallons; 5689-702, 6329-97, 6564-80.

June 29, 25 barrels, 2,337.65 proof gallons; 5643-64, 5703-95.
 June 30, 110 barrels, 2,372.84 proof gallons; 7328-7427 (note, kegs).
 June 30, 100 barrels, 9,227.80 proof gallons; 6090-6745, 6748-91.
 July 9, 25 barrels, 2,346.18 proof gallons; 7474-98.
 July 12, 150 cans, 1,425 proof gallons; 7043-7792.
 July 14, 50 cans, 950.50 proof gallons; 7910-59.
 July 21, 5 barrels, 478.62 proof gallons; 4865-69.
 July 21, 50 cans, 950.50 proof gallons, 8137-86.
 July 22, 100 cans, 950 proof gallons; 8192-8291.
 July 26, 100 barrels, 9,320.27 proof gallons; 4420-61, 4758-67, 4527-74.
 July 27, 250 cans, 2,375 proof gallons; 8400-8649.
 August 2, 250 cans, 2,375 proof gallons; 8892-9141.

Before or at the expiration of the permit mentioned above the Fleischmann Co. through its representative, Henry J. Kaltenbach, vice president, obtained a second permit, or renewal Form No. 1410-C, securing same with a \$50,000 bond, which was to cover deliveries of 250,000 proof gallons of alcohol to its agent Samuel Lazar, Green Street and Delaware Avenue, Philadelphia, Pa. The amount of alcohol withdrawn on this permit from August 27, 1921, to October 11, 1921, was 151,506.56 proof gallons. The total amount of alcohol withdrawn on both permits was 262,289.45 proof gallons, which covered a consignment from Langdon, D. C. and Peekskill, N. Y.

August 27, 125 barrels, 11,591.54 proof gallons; 8497 906, 5120 51, 9220-31.
 August 27, 6 barrels, 570.45 proof gallons; 4802-07.
 August 29, 190 cases, 1,805 proof gallons; 9863-10652.
 August 30, 100 barrels, 9,250.12 proof gallons; 9301-92, 5153-35.
 September 7, 50 cases, 475 proof gallons; 10352-401.
 September 8, 200 cases, 1,900 proof gallons; 10402-601.
 September 13, 50 cases, 475 proof gallons; 10734-83.
 September 14, 200 cases, 1,900 proof gallons; 10784-983.
 September 19, 50 barrels, 4,573.72 proof gallons; 15463-512.
 September 19, 50 barrels, 4,678.83 proof gallons; 15991-16040.
 September 20, 100 barrels, 9,397.56 proof gallons; 16141-240.
 September 21, 200 barrels, 18,751.30 proof gallons; 16366-565.
 September 22, 100 barrels, 9,205.56 proof gallons; 10217-80, 10323-31, 10291-312.
 September 27, 100 barrels, 9,201.30 proof gallons; 10332-51, 10602-42, 10645-83.
 September 30, 100 barrels, 9,209.08 proof gallons; 9437-61, 9641-71, 9680-715.
 October 3, 50 barrels, 4,746.91 proof gallons; 17266-315.
 October 4, 50 barrels, 4,720.74 proof gallons; 17316-65.
 October 5, 100 barrels, 9,445.32 proof gallons; 17516-615.
 October 5, 100 barrels, 9,276.45 proof gallons; 9468-506, 9519-41, 7552-89.
 October 6, 50 barrels, 4,738.79 proof gallons; 17716-65.
 October 7, 50 barrels, 4,735.81 proof gallons; 17766-95, 17806-915.
 October 10, 125 barrels, 11,665.48 proof gallons; 11383-424, 11479-561.
 October 11, 50 barrels, 4,625.57 proof gallons; 10994-11020, 10116-29.
 October 11, 50 barrels, 4,567.03 proof gallons; 11030-79.
 Total, 151,506.56 proof gallons.

Of this total number of proof gallons consigned to the Fleischmann Co., Samuel Lazar, agent at the Terminal Storage & Transfer Co., Green Street and Delaware Avenue, only 116,320.01 ever arrived, as shown by the Terminal Storage & Transfer Co.'s records, as follows:

May 12, 1921, 100 barrels via P. & R., B. & O., No. 171535: Delivered May 14, 40 barrels; delivered May 19, 40 barrels; delivered May 19, 20 barrels.

May 19, 1921, 125 barrels via P. R., B. & O., No. 171423: Delivered May 21, 5 barrels; delivered May 21, 50 barrels; delivered May 21, 45 barrels; delivered May 23, 25 barrels.

June 3, 1921, 100 barrels via P. M. R. P. L., No. 559864: Delivered June 3, 50 barrels; delivered June 6, 50 barrels.

June 10, 1921, 125 barrels via B. & G., P. & R., B. & O., No. 173936: Delivered June 11, 50 barrels; delivered June 13, 50 barrels; delivered June 15, 25 barrels.

June 21, 1921, 100 barrels via P. & R., Erie, No. 105468: Delivered June 20, 50 barrels; delivered June 20, 50 barrels.

June 24, 1921, 100 barrels via P. & R., B. & O., No. 171408: Delivered June 24, 100 barrels.

June 29, 1921, 100 barrels via P. & R., B. & O., No. 170904: Delivered July 6, 50 barrels; delivered July 9, 20 barrels; delivered July 11, 30 barrels.

July 18, 1921, 100 barrels via P. & R., B. & O., No. 86328: Delivered July 18, 50 barrels; delivered July 22, 50 barrels.

August 3, 1921, 100 barrels via P. & R., B. & O., No. 184774: Delivered August 4, 50 barrels; delivered August 8, 50 barrels.

September 1, 1921, 100 barrels via P. & R., B. & O., No. 193343: Delivered September 1, 50 barrels; delivered September 8, 1 barrel; delivered September 9, 1 barrel; delivered September 15, 48 barrels.

September 6, 1921, 100 barrels via P. & R., B. & O., No. 165585: Delivered September 15, 25 barrels; delivered September 26, 75 barrels.

October 18, 1921, 125 barrels via P. & R., B. & O., No. 173212: Delivered October 24, 125 barrels.

Total, 1,275 barrels, 116,320.01 proof gallons.

It will be seen by inspection of permit Form 1410-C and record of the Terminal Storage & Transfer Co. that none of the 1,540 cases, containing 15,581 proof gallons, were ever stored there.

An examination of the waybills showing consignment of 12 carloads of alcohol at the freight office, located at Willow and Noble Streets in Philadelphia, of the Philadelphia & Reading Railroad Co., to Samuel Lazar at the Terminal Storage & Transfer Co. and result compared with the car numbers of the 12 carloads of alcohol stored there proved them to be the same. These 12 cars contained alcohol amounting to 116,320.01 proof gallons. The difference between the proof gallons shown as consigned by permits Forms 1410-C to this warehouse—262,289.45 proof gallons—and the 116,320.01 proof gallons which was actually stored there, amounting to 145,969.44 proof gallons, should apparently be classed as a diversion of alcohol by the Fleischmann Co. through its agent, Samuel Lazar.

On November 16, General Prohibition Agent Whitehead and Agent Larson, of the Philadelphia office, visited the office of the Fleischmann Co., Samuel Lazar, agent, at 1420 Chestnut Street, Philadelphia, and made a transcript of Record 52-B. While inspecting Record 52-B at the office of Samuel Lazar, and assisted by Miss Edith Mowson, of the Philadelphia office, 22 permits, Forms 1410-A, were discovered, covering an aggregate of gallons to be delivered of 151,506.56 proof gallons, listed as follows:

No.	Date of issue	Vendee	Date of delivery	Proof gallons	Kind of liquor
126684	July 18, 1921	Abe Haber, New York City	Sept. 2, 1921	1,425.00	Alcohol.
43283	Sept. 15, 1921	Munyons Homeopathic, Scranton	Sept. 15, 1921	8,447.37	Do.
43308	do	Do-Far Chemical Co., Philadelphia	Oct. 12, 1921	7,001.12	Do.
43394	Sept. 6, 1921	Louis G. Broschkowsky, Reading	Sept. 22, 1921	6,938.46	Do.
39685	Sept. 5, 1921	M. Shaifer Co., Philadelphia	Sept. 20, 1921	5,538.79	Do.
43422	Sept. 6, 1921	National Perfumery Co., Philadelphia	Sept. 24, 1921	4,573.72	Do.
44125	Sept. 14, 1921	M. Shaifer Co., Philadelphia	Oct. 10, 1921	4,720.74	Do.
43459	Sept. 12, 1921	James H. Cleary, Shenandoah	Sept. 30, 1921	9,291.30	Do.
43472	do	William Bercowtz, Allentown	Sept. 27, 1921	7,355.48	Do.
43548	Sept. 16, 1921	John J. Breslin, Summit Hill	Oct. 12, 1921	7,010.56	Do.
43602	Sept. 20, 1921	Isaac Isaacs, Wilkes-Barre	do	4,676.63	Do.
33629	Sept. 21, 1921	Edw. J. Rapp, Allentown	do	8,522.62	Do.
43493	Sept. 13, 1921	American Medicinal Co., Philadelphia	Oct. 4, 1921	9,209.08	Do.
43518	do	James Good & Co., Philadelphia	Oct. 7, 1921	4,746.91	Do.
43339	Sept. 9, 1921	Hazelton Wholesale Drug & Manufacturing.	Sept. 26, 1921	9,374.00	Do.
43228	Sept. 7, 1921	John N. Bauer, Allentown	do	8,415.63	Do.
43579	Sept. 9, 1921	Shapiro Chemical Co., Lebanon	Sept. 27, 1921	7,050.23	Do.
43251	Sept. 6, 1921	Dill Co., Norristown, Pa.	Sept. 24, 1921	9,305.94	Do.
43684	Sept. 22, 1921	Cerra Angelo, Carbondale	Oct. 12, 1921	3,654.92	Do.
43264	Aug. 30, 1921	Munyons Homeopathic Co.	Sept. 9, 1921	4,665.78	Do.
43261	do	Dill Co., Norristown	Sept. 17, 1921	9,399.03	Do.
43058	Sept. 21, 1921	J. & M. Gaughan Co., Fort Griffith	Oct. 21, 1921	9,192.00	Do.
				151,506.51	

Miss Mowson, who has been inspecting and initialing permits in the Philadelphia office, pronounced these 22 permits to be forgeries. In support of this statement that the 22 permits are forgeries and that the addresses given for deliveries of the alcohol on permits are not bona fide, we submit the following:

On November 23, 1921, Agents Overpeck and Smith visited the National Perfumery Co., 522 South Sixteenth Street, Philadelphia, and obtained an affidavit from Benjamin Herman, owner and manager of the company, denying the receipt of the number of proof gallons shown on permit. (See Exhibit No. 1 attached.)

On November 25, 1921, General Prohibition Agent W. D. Smith and Prohibition Agent Jesse Butz visited the Dill Co., Washington Street and McKinley Avenue, Norristown, Pa., and secured an affidavit from E. Ledy Brendlinger, vice president of the Dill Co., denying receipt of the alcohol mentioned in permits No. 43251 and No. 43261. (See Exhibit No. 2 attached.)

On November 26 Agents Smith and Butz visited John L. Bauer, 213 North Seventh Street, Allentown, Pa., and secured affidavit denying shipment of alcohol shown on permit No. 43220. (See Exhibit No. 3 attached.)

On November 26 William Berkowitz, one of the proprietors of the D. & S. Underwear Manufacturing Co., 38 South Church Street, Allentown, Pa., made affidavit that he had not received 80 barrels of alcohol shown as delivered September 27, 1921, on permit No. 43472. (See Exhibit No. 4 attached.)

On November 26, 1921, Edward J. Rapp made affidavit to Agents Smith and Butz that 90 barrels of alcohol had not been delivered to him on October 12, 1921, as shown on permit No. 43629. (See Exhibit No. 5 attached.)

On November 27 Agents Overpeck and Butz secured an affidavit from Morris Shapiro, proprietor of the Shapiro Chemical Works, to the effect that he did not receive 75 barrels of alcohol, delivery of which was shown to be September 22, 1921. (See Exhibit No. 6 attached.)

On November 28, 1921, the place of business of J. & M. Gaughan, 1311 Main Street, Fort Griffith, Pa., was visited by Agents Overpeck and H. J. Fitzpatrick, who secured affidavit from Margaret T. Gaughan, manager of the Gaughan Bottling Works, to the effect that this company had not received 100 barrels of alcohol on October 12 as shown on permit No. 43658. (See Exhibit No. 7 attached.)

November 26, Agents Overpeck and Fitzpatrick visited Angelo Cerra, owner of the Cerra Bottling Works, 54 Fallbrook Street, Carbondale, Pa., and secured affidavit that he had not received 50 barrels of alcohol on September 22, as shown on permit No. 43684. (See Exhibit No. 8 attached.)

November 26, 1921, Agents Overpeck and Fitzpatrick visited Isaac Isaacs, owner of the Wilkes-Barre Barber Supply Co., 501 South Main Street, Wilkes-Barre, Pa., and secured affidavit to the effect that 50 barrels of alcohol had not been delivered to him, as shown on permit No. 43579. (See Exhibit No. 9 attached.)

November 21, 1921, Conrad C. Goodwin, proprietor of the American Medical Co., 147 North Third Street, Philadelphia, Pa., made an affidavit that he had not received 100 barrels of alcohol on October 4, 1921, as shown on permit No. 43493. (See Exhibit No. 10 attached.)

On November 21, 1921, M. Shaffer, 742 Passyunk Avenue, Philadelphia, Pa., made an affidavit that he had not directly or indirectly received from the Fleischman Co. or Samuel Lazar 110 barrels of alcohol, as shown on permits Nos. 39685 and 44125, delivered September 22 and October 24, respectively. (See Exhibit No. 11 attached.)

On November 28, 1921, Agents Overpeck and Fitzpatrick secured an affidavit from Bernard C. North, president of the Hazelton Wholesale Drug & Manufacturing Co., that neither he nor his company received 100 barrels of alcohol on September 26, 1921, as shown on permit No. 43339. (See Exhibit No. 12 attached.)

On November 21, 1921, Agents Overpeck and Butz secured an affidavit from Thomas F. Meehan, president and general manager of the James Good Co., 2111 to 2115 East Susquehanna Avenue, Philadelphia, Pa., to the effect that neither he nor his company had received 50 barrels of alcohol, shown date of delivery as October 7, 1921, on permit No. 43518. (See Exhibit No. 13 attached.)

On November 29, 1921, Agents Overpeck and Fitzpatrick secured an affidavit from John T. Cleary, manager of the Cleary Bottling Works, 17 to 19 Grant Street, Shenandoah, Pa., in effect that his company had not received 100 barrels of alcohol, showing date of delivery as September 30, 1921, on permit No. 43459. (See Exhibit No. 14 attached.)

On November 28, 1921, Clarence P. Wynn, secretary and general manager of Munyons Homeopath Home Remedy Co., 214-16 Lackawanna Avenue, Scranton, Pa., made affidavit that his company had not received 90 barrels of alcohol, showing delivery date as September 15, 1921, on permit No. 43283. (See Exhibit No. 15 attached.)

In reference to the permit of Louis J. Broschkowsky, which shows delivery of 75 barrels of alcohol on September 22, 1921, and location for delivery as Reading, Pa., this same entry on Record 52-B of Samuel Lazar shows the address as Philadelphia, Pa. Investigation as to this address has been made

at Philadelphia with the result that Louis J. Broschkowsky could not be found nor any address where he had previous been.

In reference to John J. Breslin, of Summit Hill, Pa., Agents Smith and Butz report that at the time of their visit they were unable to see Mr. Breslin, but his wife informed them that at no time had her husband received 75 barrels of alcohol as shown on permit No. 48546 or on Record 52-B, or 25 barrels showing delivery of June 24, 1921.

In reference to the Do For Chemical Co., as one of the permittees on one of the 22 permits, Serial No. 43308, in possession of Samuel Lazar, which shows delivery on October 12, 1921, for 75 barrels of alcohol, 7001.12 proof gallons. Agents Overpeck and Hütz made a thorough investigation in Philadelphia by making inquiries and consulting the city directory, also the telephone directory, as to the name mentioned above and location, but neither name or address could be found.

From an examination of Record 52-B, by General Agent John Whitehead and Agent Larson, kept by Samuel Lazar. It was ascertained that a great many entries showing deliveries of alcohol were made designating persons in New York City as consignees. One of these entries is covered by permit No. 126884 in the name of Abe Haber, vendee, New York City, showing delivery date of September 2, 1921, for 1,425 proof gallons. This is the only shipment of alcohol that is shown as covered by a permit. All the other 21 entries in Record 52-B, amounting to 77,494.50 proof gallons, as far as we were able to learn, were disposed of without being covered by permits.

From the above paragraph it would seem to be necessary that a further investigation should be made as to the deliveries of the 77,494.50 proof gallons in New York City, which were shown as being delivered on dates from May 22 to September 2, 1921, inclusive.

In reference to the 1,540 cans of alcohol (15,581 proof gallons), consigned to the Terminal Storage & Transfer Co. and not delivered, attention is called to the fact that 28 revenue stamps and pieces of stamps, some attached and some unattached, to parts of broken cases, for alcohol were found on the premises of William Cady, K Street NW., Washington, D. C., by John Whitehead, general prohibition agent, on November 2, 1921. The reason of Agent Whitehead going to the place of William Cady was from the fact that the police officials had raided Cady's place and found a quantity of wine stored.

Agents Whitehead and Fred Rose secured a search warrant for Cady's place and assisted by Milton Eckstein made a search of the premises and found the pieces of stamps referred to above and a great number of empty cases and cans that formerly contained alcohol.

The consignor shown on these stamps and broken cases is the Fleischmann Co., Langdon, D. C., and the consignee is Samuel Lazar, agent Terminal Storage & Transfer Co., Green Street and Delaware Avenue, Philadelphia, Pa. These stamps are tabulated as follows: 60298, 62379, 62540, 60260, 62191, 62137, 60504, 62141, 60253, 60250, 60300, 60328, 62192, 62394, 64971, 64970, 65012, 65013, 65130, 65131, 62386, 62387, 62288, 62289, 65138, 65110, 65111.

The significance of this may be seen from the fact that Record Form 1443-B, as kept by the Fleischmann Co., Langdon, D. C., shows that certain cases of alcohol were tax paid and consigned to their agent, Samuel Lazar, at the Terminal Storage & Transfer Co., as follows:

July 27, 1921, 250 cases, Serial Nos. tax-paid stamps, 60151-400.
 August 6, 1921, 250 cases, Serial Nos. tax-paid stamps, 60426-600, 62401-474.
 August 29, 1921, 190 cases, serial Nos. tax-paid stamps, 62523-350, 62101-202.
 September 8, 1921, 200 cases, serial Nos. tax-paid stamps, 62338-400, 64951-65087.

September 7, 1921, 50 cases, serial Nos. tax-paid stamps, 62288-337.
 September 13, 1921, 50 cases, serial Nos. tax-paid stamps, 65100-149.
 Total, 990 cases.

For further explanation of the above, the serial numbers, location, and condition under which they were found, see Agent Whitehead's report, which is attached hereto, marked "Exhibit 16."

A comparison of these stamp numbers entered on return Forms 1443-B, showing destinations and deliveries, with the stamp numbers on the stamps and pieces of stamps found on the premises of William Cady are shown below and cover cases of alcohol which were consigned to persons other than William Cady:

Stamp Nos. 60298, 60260, 60255, 60250, 60200, and 60238 were attached to consignment of 250 cases of alcohol (237,500 proof gallons), tax paid on July 27, 1921.

Stamp Nos. 62375 and 00604 were attached to consignment of 250 cases (2,875 proof gallons), tax paid on August 6, 1921.

Stamp Nos. 62540, 62137, and 62,141 were attached to consignment of 190 cases of alcohol (1,805 proof gallons), tax paid August 29, 1921.

Stamp Nos. 62304, 64971, 64970, 65012, 62386, 65013, and 62387 were attached to consignment of 200 cases of alcohol (1,900 proof gallons), tax paid on September 8, 1921.

Stamp Nos. 65130, 65131, 65138, 65110, and 65111 were attached to consignment of 50 cases of alcohol (475 proof gallons), tax paid on September 7, 1921.

Stamp Nos. 62288 and 62289 were attached to consignment of 50 cases of alcohol (475 proof gallons), tax paid on September 13, 1921.

In reference to these serial numbers mentioned above and as to the cases on which they were attached, attention is called to statement obtained by General Prohibition Agent Whitehead of Samuel Lazar in Philadelphia on October 14. (See Exhibit No. 16, attached hereto.)

It may be mentioned at this time that the number of cases, barrels, and proof gallons of alcohol returned on Forms 1443-B of the Fleischmann Manufacturing Co., Peekskill, N. Y., and the Fleischmann Co., Langdon, D. C., do not agree with the number of cases, barrels, and proof gallons which are shown on Forms 1410-C of both companies on which alcohol was withdrawn for the same period.

Forms 1443-B, returned by the Langdon Co., show 1,640 cases (17,006.50 proof gallons) and 1,336 barrels (124,065.10 proof gallons), and Forms 1443-B, returned by the Peekskill company, show no cases, but 1,250 barrels (116,487.10 proof gallons). For the same period which should cover the same amount of alcohol, Forms 1410-C of the Fleischmann Co., Langdon, D. C., show 690 cases (6,555 proof gallons) and 1,556 barrels (144,951.56 proof gallons). Form 1410-C of the Fleischmann Manufacturing Co., Peekskill, N. Y., shows 850 cases (9,026 proof gallons) and 1,180 barrels (101,756.89 proof gallons), the total amount shown as withdrawn from Langdon and Peekskill permits 1410-C being 1,540 cases and 2,736 barrels (containing 262,289.45 proof gallons), which is 4,730.75 proof gallons more than were returned on Forms 1443-B.

From the foregoing it would seem that the Fleischmann Co. had made in disposing of their alcohol the following specific violations by transferring 262,289.45 proof gallons of alcohol withdrawn on permits Forms 1410-C from May 7, 1921, to October 11, 1921, inclusive, from the Fleischmann Manufacturing Co., Peekskill, N. Y., and the Fleischmann Co., Langdon, D. C.; consignee, Samuel Lazar, agent Terminal Storage & Transfer Co., Green Street and Delaware Avenue, Philadelphia, Pa., and selling at least 151,506.56 proof gallons on 22 forged permits, and diverting 77,494.59 proof gallons, as shown on Record 52-B kept by Samuel Lazar, showing destination of same as New York City, which at the present time appears not to be covered by permits to purchase Forms 1410-A. Investigation at this time has not been made to show the exact number of proof gallons subject to taxation.

For failure to procure a wholesale liquor dealer's stamp as required by section 3244, Revised Statutes, as amended.

For failure to make return of Records 52 A and 52 B to collector of internal revenue, as required by section 3318, Revised Statutes, as amended.

For withdrawing from the Fleischmann Manufacturing Co.'s bonded warehouse No. 24, Peekskill, N. Y., and the Fleischmann Co.'s bonded warehouse No. 17, Langdon, D. C., on permits 1410-C, with the destination designated as the Terminal Storage & Transfer Co., Green Street and Delaware Avenue, Philadelphia, Pa. (262,289.45 proof gallons), and failure to deliver to this address, which is shown on permits Forms 1410-C (145,969.44 proof gallons), of this amount as required by section 84, article 16, regulation 60, national prohibition act.

Failure to keep a permanent, accurate record of sales of all liquors as required by section 5a, act March 3, 1917.

We recommend that the Fleischmann Co. be required to pay 100 per cent penalty under section 3176, Revised Statutes, as amended on each proof gallon of alcohol in excess of the amount required to be paid by section 600, Title VI, revenue act of 1918, when sold as a beverage, thereby committing a fraud against the Government in disposing of such proof gallons illegally; credit being given for the medicinal tax on these proof gallons at the rate of \$2.20 each.

This 100 per cent penalty is recommended from the fact that the Fleischmann Co. has seemed to knowingly and wilfully violate numerous internal revenue laws and prohibition laws.

As it appears at this time the total number of proof gallons on which the full tax has not been paid amounts to 229,001.15, at \$0.40 per proof gallon, section 600 revenue act 1918, amounts to \$1,465,607.36. Credit of \$501,802.53 paid as medicinal tax leaves \$961,804.83; 100 per cent penalty, section 3176, Revised Statutes, as amended, amounts to \$1,923,609.60.

M. OVERPECK,
General Prohibition Agent.
JOHN WHITEHEAD,
General Prohibition Agent.
W. D. SMITH,
General Prohibition Agent.

(Whereupon, at 12.05 o'clock p. m., the committee adjourned until Thursday, January 15, 1925, at 10.30 o'clock a. m.)