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

JANUARY 15, 16, 17, FEBRUARY 3, 4, 13, 24, 25, MARCH 31, APRIL 2, AND MAY 18, 1925

PART 14

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SELECT COMMITTEE ON INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

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INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

THURSDAY, JANUARY 15, 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 Tuesday, January 13, 1925.

Present: Senator Couzens (presiding).

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; V. Simonton, Esq., attorney; and Mr. James M. Doran, head industrial alcohol and chemical division, Prohibition Unit.

Mr. PYLE. Senator Ernst is still out of the city.

The CHAIRMAN. I think Mr. Britt wanted to finish his statement.

Mr. BRITT. Yes, Mr. Chairman; shall I proceed?

The CHAIRMAN. Yes; if you please.

Mr. BRITT. Resuming on page 13 of my written statement:

In W. A. Gaines & Co. *v.* Moore, Collector, decided by District Judge Faris for the eastern district of Missouri, it is stated:

These statutes—

Referring to the penalty statutes—

in my opinion, lead to the conclusions that while the tax of $2.20 per gallon applies 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 sold it for exportation as that they sold it to be used locally for beverage purposes.

It is true that in these cases the whisky was stolen and there was no proof of collusion or participation on the part of the distiller. However, in the cases of United American Co. *v.* Hamilton and E. J. Wiley *v.* Hamilton, barrels of distilled spirits in the possession of the distillers had been gauged and found to contain certain definite quantities, all diversions occurring later in bottling, while the spirits were still in the hands of the distillers. The department assessed the beverage tax of $6.40 as to such liquors. The distiller paid the tax and sued for its return on the ground that no beverage use

had been established. The demurrers interposed were overruled, and in the absence of such proof, and in view of the decision in Hamilton *v.* Kentucky Distilleries & Warehouse Co. and W. A. Gaines *v.* Moore, no appeals were taken by the Department of Justice.

There is another consideration which influenced the bureau in the decision in this case, to wit, the fact that the offenses committed were committed at the various agencies of the Fleischmann Co., and not at the place of business of the principal, with the possible exception of two deliveries at Peekskill to Birigibus and Delorey on the order of Agent Kirk at Bridgeport. It should be borne in mind that the businesses of these various places were carried on by agents of the Fleischmann Co.; that the alcohol was tax paid at the distillery of the principal, and removed to the various agencies, and the removal therefrom effected by forged permits. While it is an accepted principle of law that the principal is responsible for the acts of his agent, when performed within the scope of his authority, yet all who have tried suits of this character in the courts know that where a principal disclaims knowledge or responsibility of the unlawful acts of his agents, or that they have exceeded their authority, or where the principal has not only shown his disapproval and disavowed the improper acts, but has separated such agents from his business, and particularly when he aids in their punishment, it is the policy of courts and juries to make considerable allowances in such cases, and treat such matters as in extenuation of damages. I, of course, can have no opinion as to what would have been the view of a jury in these cases in this respect, but I do know that it is a generally and commonly accepted fact that, where responsibility for the unlawful act can be placed upon the agent, and proof is adduced that it was done without the principal's knowledge, consent, or connivance, such facts and circumstances go a long way with juries in mitigation of damages, or in the direction of a verdict for the principal. I am not saying what should be in such cases, but the question is what, under the usual circumstances, is done therein——

The CHAIRMAN. At this point, if you do not object, I would like to ask if you had all of the evidence in this case that might have been introduced in a procedure in court?

Mr. BRITT. I think the revocation hearing drew out all or the principal part of the evidence that the Government would have depended upon for conviction and for fastening liability. We have brought along the reports of the hearings, thinking that you might want to put them in the record. I think they should go in.

The CHAIRMAN. Did you have this evidence before you when you settled the civil case?

Mr. BRITT. You are referring to this immediate evidence?

The CHAIRMAN. Yes.

Mr. BRITT. As I have previously said, I did not read all of the evidence in the case, nor go into all of the facts of the case. My attention was directed particularly to the chance of recovery of the civil liability, from what I understood the facts to be, and, as I was assured later on, of what they were.

The CHAIRMAN. Would it not be your opinion that, in matters that are of such vital interest to the Government and to the public, these facts would be better known if they were presented to a court than if they were simply dealt with by the officials of the bureau?

Mr. BRITT. Generally speaking, these facts and all like them would be better sifted in the courts than by the bureau.

The CHAIRMAN. Would it not have been of greater value and more in the public interest if you had done that, rather than to have it done behind closed doors—and I do not refer to it in that way as intending to cast discredit upon the bureau, but because of the influences that frequently exert themselves in such cases.

Mr. BRITT. If the case as a whole demanded that it be brought into a court for adjudication, the facts would be better brought out in a court than in a bureau, generally speaking.

Mr. Simonton reminds me, and the reminder is pertinent, and I know the committee will be glad to have it considered, that the statute lays upon the bureau the duty of considering a proposal in compromise when it is made. That duty, of course, would be inescapable under the statute.

It is also apparent that although these various persons started out as the recognized agents of the principal, they, nevertheless, eventually appeared to have become contractors or purchasers of alcohol from the prinicpal, which alcohol they sold as their own, and upon such terms as they chose, dealing with it as their own property. This would also tend to render the question of liability doubtful.

The CHAIRMAN. Does anyone here know how the alcohol was disposed of after the abolition of these agencies?

Mr. BRITT. I do not. Do you know, Mr. Simonton?

Mr. PYLE. Only 2 barrels, I believe.

Mr. BRITT. This is Doctor Doran, Senator. He was about to offer to answer your question.

Mr. DORAN. If it referred to the Fleischmann Co., Senator, they ceased manufacturing alcohol at Peekskill, and only manufactured a very small amount at Langdon. That is their distillery in the District of Columbia.

The CHAIRMAN. I understood that all of this alcohol was a by-product and had to be manufactured?

Mr. DORAN. No.

The CHAIRMAN. And that there was no limitation.

Mr. DORAN. It can be extracted, or the beer, so called, which is formed by the growth of the yeast, can be run down the sewer. As a matter of fact, it is my understanding that the Peekskill plant of the Fleischmann Co. at present recovers only such portion of the alcohol from their beer in the shape of low wines that they can use in their vinegar factory, and they produce no product which could be termed commercial alcohol. It is not necessary to recover it, if that answers your question, Senator.

The CHAIRMAN. So, as a matter of fact, all during the time that these large shipments were being made from the distilleries to these agencies they were doing that because they chose to do it and not because it was a necessary by-product of the yeast business?

Mr. DORAN. Yes, sir.

Mr. BRITT. There is another matter of consideration. I refer to the ultimate establishment of the proof of the counterfeiting of the permits in question. While there can be to me no doubt of the fact that they were counterfeits and that the spirits were withdrawn upon them, they were excellent imitations of the genuine, and it is the

experience of the Prohibition Unit that invariably in such cases the plea is made to juries and courts that the counterfeit could not be distinguished from the genuine, and, as a matter of fact, as proved in some instances, the difference is impossible of determination, even by the agents of the service. This would likely be the case in those instances where some form of confirmation or return receipt was produced, while it would not obtain in those cases where no confirmation or form of receipt could be produced by the permittee. In any event these things are sufficient to cause a doubt in the case and add to its general confusion.

And it is proper that I say here that in some instances—I think in the bulk of the instances—there was no confirmation or receipt produced.

The CHAIRMAN. Why was there not?

Mr. BRITT. I mean that they had produced no form of confirmation or registry receipt to show that they had verified the fact that these were——

The CHAIRMAN. Was not that incumbent upon the agents?

Mr. BRITT. It was.

The CHAIRMAN. How did they escape that responsibility during this great period of time?

Mr. BRITT. They simply failed to do it. The matter of the discovery of their having failed awaited the finding of the officer, of course.

The CHAIRMAN. The point I am trying to get at is, how could this go on; that is, the lack of confirmation being discovered by the bureau?

Mr. BRITT. That was gone over here the other day, and I review it in this way: The permits were issued in staggered blocks, as Mr. Simonton told you. That means irregular blocks, etc., and they bore serial numbers. The director who issues these blocks, of course, kept either a complete record of the serial numbers which he distributed or a duplicate of the numbers—I assume a duplicate of the numbers; and as soon as these permits that were counterfeits were in somewise caught up with or exposed so as to make a comparison with the genuine by numbers, then the knowledge of their existence would become apparent. Now, how long that would be, in the shifting about and in various changes and in the absence of officers from that particular field or the infrequency of visits, I would not know, but it would depend upon those things.

The CHAIRMAN. As I understand it, these false or fraudulent permits started to be used in May, 1921, and it was in November, 1921, or later before these were discovered. During all of this time the Fleischmann Co. or their agents failed to comply with the rules and regulations of the bureau, and I ask, therefore, why it took so long for the bureau to discover that the Fleischmann Co. was not complying with the rules and regulations?

Mr. BRITT. What I have just now said is the answer I would give. Perhaps Mr. Simonton can add something to it briefly.

Mr. SIMONTON. Of course, inspection only will develop that fact. At that time, though, as I stated the other day, the department was more gullible with reference to large concerns. No one imagined that the Fleishmann Co., with millions at stake, would dare to enter

into a business of this kind, and the department, with its 1,700 agents and 130,000 permittees, besides its enforcement work, was endeavoring to catch the people who were in the business of bootlegging liquor, when their attention was drawn to the fact. When these big corporations dared to enter that business then a more strict check of their records was made.

The CHAIRMAN. I see. That is sufficient.

Mr. BRITT. And I think it should be observed here that the total number of field officers was less than 2,000 over the entire country and territories, which must necessarily make official visits infrequent.

There is another consideration, one of more or less delicacy, which may have influenced the administrative officers in their decision in so far as a dependence upon a jury verdict was concerned. I refer to the fact that in the jurisdictions of the State of New York and Philadelphia the experience of the unit and bureau was then, and is now, that it is very difficult to get a verdict of any great consequence in either civil or criminal cases relating to prohibition matters. A number of very excellent cases, cases well supported, that would ordinarily be sufficiently strong, have been lost in each of these jurisdictions, embracing both civil and criminal cases. This is illustrated by the case of Kirk, one of the offenders here, one of the agents, who was tried and acquitted at Bridgeport, Conn., although the case was exceedingly strong. He was acquitted by the jury if, indeed, the case did not go off on some sort of a prior formal plea.

Mr. PYLE. May I interrupt you there, Judge Britt?

Mr. BRITT. Yes.

Mr. PYLE. Would a case involving an appeal from a tax imposed by the commissioner go to a jury trial or to a court of equity?

Mr. BRITT. They go to jury trial.

Mr. SIMONTON. Yes; they go to jury trial. They sue for a return.

Mr. BRITT. Yes; they demand that.

In this case, this agent, as you will recall the facts, Mr. Chairman, did actually buy a carload of spirits from him. It seems to me that the proof was conclusive, and yet we failed of conviction. In the State of Pennsylvania, where the officers had something to do with it, or at least the cases were analogous, we had the same unfortunate result. I regret to say this, but I feel it is in justice to the committee and the department that I should say it. It is a fact well known throughout those communities.

No doubt, Mr. Chairman and gentlemen, these considerations had more or less effect upon the minds of the administrative officers in determining the fact that it would be better to take $75,000 in compromise of all the civil liabilities than to risk the result of a suit, particularly in the jurisdictions referred to. Most of them were given weight by me in the legal advice I gave. I do not recall that I gave any advice in the matter of trying cases in the jurisdiction. I was not informed about it at the time.

I do not flatter myself that the Commissioner of Internal Revenue made the settlement upon my advice, as his principal and official adviser was the Solicitor of Internal Revenue, with whom he no doubt conferred in regard to this case, but I am constrained to say that, if he was to any degree governed by the advice given by me,

I still adhere to the views then entertained, and that, in my judgment, if it was settled by the commissioner on the considerations which I have given, it was settled upon a basis which was justified both in law and in reason. Should the committee desire the views of the present Solicitor of Internal Revenue, or of the commissioner himself, I have no doubt but that their service will be cheerfully placed at its disposal.

There is another matter along that line, and I have added it to my previous statement. It is very brief.

I now submit the following summary of the grounds of action on the part of the Bureau of Internal Revenue in the compromise settlement of the civil liability of the Fleischmann case now under consideration by the committee:

First. There was at no time any thought or purpose on the part of the bureau to attempt to compromise the criminal liability of the company under the national prohibition act, and the records and files of the bureau, as placed in the record of these hearings, clearly and definitely negative any intention so to do.

Second. The alcohol which was unlawfully removed from the various agencies of the company on forged and counterfeit permits had been lawfully removed from the distilleries of the principal and the lawful tax of $2.20 per gallon paid thereon at the time of withdrawal, the said tax aggregating the sum of $995,632.80, as calculated by the bureau, and I am not quite sure whether that exactly harmonizes with the deductions Mr. Storck made; but I am sure that the figures are reconcilable.

Third. That although the various agencies referred to were the agents of the company and operating under its permits and bonds given by it, it nevertheless appears that in so far as related to the spirits in question they were sold by the company to the agents at a stipulated price, which price is set forth in the hearings, the price being as follows, a total of $4.58 per gallon, made up of the following items: $4.18 for tax; 8 cents for cooperage; and 32 cents, the price charged by the company. The agents paid the freight.

The CHAIRMAN. Can you state how that $4.18 was arrived at as the tax? I did not get that.

Mr. BRITT. Yes. It was this way: The law prescribes the rate of tax on distilled spirits, and distilled spirits in this sense includes alcohol and what we ordinarily call spirituous liquors, brandies, etc. The tax is reckoned upon the basis of the proof gallon and is counted at $2.20 per proof gallon, and as the proof increases above 100 there would be an additional fraction of the $2.20 to the $2.20, making the aggregate tax.

The CHAIRMAN. In other words, if this was 100 per cent, then the tax would have been $4.40?

Mr. BRITT. Yes, sir. It is not pure alcohol. If it had been pure alcohol, it would have been $4.40.

The CHAIRMAN. Yes.

Mr. BRITT. Say it is 190. If we multiply that 190 by $2.20 we would get the tax, or, suppose it would drop down to 160. It would be 160 by $2.20. That is the rule of calculation. I am glad you brought that up.

Fourth. That from the 26th day of February, 1919, to the 23d day of November, 1921, there was no taxing statute giving authority

for the collection of any differential tax or penalty from any person other than the distiller or importer of the spirits at the time and place of withdrawal.

Fifth. That the spirits in question were, as previously stated, tax-paid by the distiller at the place of withdrawal and at the rate then provided by law.

Mr. PYLE. At the nonbeverage rate?

Mr. BRITT. At the nonbeverage rate.

Sixth. That, under the language of the statute, and as interpreted by the courts in decisions previously cited in my statement, even when the differential tax of $4.20 is authorized by law, it can not be assessed and collected against any person whatever, unless it is made to appear that the spirits, however unlawfully they may have been removed, were in fact devoted to and used for beverage purposes.

I say once again that that seems to be not what it should be, but it seems to me to be clearly what is.

Seventh. That from the 16th day of January, 1920, to the 23d day of November, 1921, the penalties previously prescribed by the internal revenue laws for beverage liquors were swept away by the national prohibition act, and during that period there was a cessation of authority to collect such penalties by virtue of such omission or withdrawal of legal authority, and the Volstead Act did not include among any of the penalties the differential tax of $4.20.

Eighth. That, even if there has been authority of law authorizing the assessment and collection of such penalties, and they had been assessed and collected over the protest of the taxpayer—that is the way these taxes are collected—suit would most certainly have been brought for their recovery from the Government, which would have resulted in a jury trial in the States of New York, Pennsylvania, and New Jersey, wherein the offenses were committed, and the experience of the bureau and the unit at the time and since is that it is generally practically impossible to obtain a favorable jury verdict of any serious consequence in cases involving prohibition questions, this being particularly true at that time, which fact is illustrated in the case of United States *v.* Kirk et al., one of the agents in the case from whom a carload of spirits was directly and unquestionably bought by prohibition agents, and despite this there was an acquittal in the criminal courts in the State of Connecticut.

Ninth. The difficulty of establishing in a court responsibility for allowing withdrawals on forged permits has been experienced by the unit, and it is stated that, although there is abundant moral evidence, because of the similarity between the genuine and the false permits, it is difficult to impress a jury that responsibility lies for an open and intended use for these permits.

Tenth. All who have tried lawsuits know how difficult it is to tax the principal with the acts of his agents in instances where he disavows such acts and where it is doubtful whether their acts are within the scope of their authority, and where they are not directly under the supervision and control of such principals, although the principle of law is that they are responsible, yet these various circumstances are always shown in mitigation of damages in such cases.

The CHAIRMAN. Is it not obvious that the principal in this case must have known that the agent was disposing of these spirits?

Mr. BRITT. Well, I think it is not obvious, Mr. Chairman, that the principal must have known before it was done, but it is not impossible that the principal knew that it was being done.

The CHAIRMAN. That may be true.

Mr. BRITT. Yes.

The CHAIRMAN. But when the principal shipped this stuff to the agent he knew that the agent did not consume it, and therefore he must have disposed of it.

Mr. BRITT. He knew the amount and presumed that he would dispose of what was left, which he could do, of course. I think you would be better justified in placing upon him the presumption that he knew it was illegally disposed of.

The CHAIRMAN. Yes; but as long as they were operating under the responsibility of the principal, was there not some responsibility on that principal to see that the agent was legally disposing of it?

Mr. BRITT. A high moral responsibility, but the extent of the legal responsibility is an open question. I do not know whether this was a precautionary step or not, but to prove that the purchase of the spirits by the agent was an unusual thing in my experience with such matters, and I assume that it is unusual to the other officers; but it did furnish a seeming means of escape by the principal, where they actually went through what seems to be a bona fide form of purchase, price and all.

The CHAIRMAN. Then, it seems to me, in view of this situation, there should be some effort made in a court of law to ascertain the real responsibility for carrying out the privileges granted permittees.

Mr. BRITT. Precisely; and if this had been a case which under the statute could have come to trial, of course the effort of the Prohibition Department and the district attorney would have been to fasten responsibility upon the principal as well as the agents

The CHAIRMAN. What would have been the penalty prescribed by law had the principal been found guilty, in a court of law, of having violated his permit?

Mr. BRITT. That depends upon what the character of the violation was. Many of the violations of the privileges of a permit are specifically and expressly made criminal offenses.

The CHAIRMAN. That would have meant that the officers of the Fleischmann Co. would have been subject to fine and imprisonment?

Mr. BRITT. If they had been convicted of the things that the agents are charged with.

The CHAIRMAN. If they had been found guilty of violating their permits—not what the agents did, but the manner in which they themselves violated their permits.

Mr. BRITT. Of course, if the principals themselves had been found guilty of violating their permits, they would have been liable to punishment criminally.

The CHAIRMAN. But no attempt was made to fasten that through a court?

Mr. BRITT. There was no civil trial and no criminal trial and no criminal indictment of the principal.

The CHAIRMAN. And no attempt made to get one?

Mr. BRITT. Well, the reports were furnished to the district attorney, as is shown here.

The CHAIRMAN. Yes; but so far as you know, there was no attempt on the part of the district attorney to do it?

Mr. BRITT. Other than in those two cases. Am I correct in saying that, Mr. Simonton?

Mr. SIMONTON. I might, if you will permit me——

The CHAIRMAN. I am not talking about that. I am talking about the attempt to get the officers of the principal indicted or punished for not carrying out the provisions of the law, so far as their permit was concerned.

Mr. SIMONTON. Mr. Britt has told you about furnishing the reports. If you wish it, I will tell you what was done to bring the facts to the attention of the United States attorney.

Mr. BRITT. He handled that matter.

The CHAIRMAN. I think that has been testified to in the past, but I was asking now whether, so far as you know—and you can not testify to what you do not know, of course—there was any attempt made on the part of the district attorneys to get an indictment of the officers of the Fleischmann Co.?

Mr. SIMONTON. No attempt at all.

Mr. BRITT. So far as I know, there was no attempt.

These, Mr. Chairman, are the reasons which controlled the Bureau of Internal Revenue in the settlement of this case. They are also the reasons which personally controlled me in giving the legal advice which I gave and which has been set out in these hearings. The case was compromised by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; the final settlement had not only my own approval, as chief counsel of the Prohibition Unit, but the approval of the Prohibition Commissioner, Mr. R. A. Haynes; Mr. Carl A. Mapes, then Solicitor of Internal Revenue, who, as I have said, was official legal adviser to the commissioner; and Mr. James M. Young, chief of the division of audit in the Prohibition Unit, all of which officers, with the exception of Solicitor Mapes, are now in the service; and if it is desired that any of them, or all of them, shall appear before you, I am satisfied that they will be glad to do so, and I shall cheerfully request them at your instance.

These are the considerations which controlled in the matter; no one connected with them has any reason to make any change in or any apology for what was done; they are submitted candidly and honestly for your consideration.

I would like to ask a question of Mr. Storck. As you will recall, I did not cross-examine him.

The CHAIRMAN. Before you do that, let me ask you if you have any idea why the agents of your bureau recommended a penalty of some $2,750,000, in addition to what you have stated about the statutes.

Mr. BRITT. That was done by the assessment division of the unit, under the idea that there would follow an effort to make collection under this $4.20 differential, or some other differential, for which, as I have said, it was afterwards determined authority did not exist; there was no authority.

The CHAIRMAN. Then, the officials of the bureau who recommended this ass ssment did not know that there was no statute permitting them to do this?

Mr. BRITT. I assume that they knew the law as it was, and let me add just a word here. The assessment division is a distinct division. They take cases as they appear before them, propose the assessm nts. In many instances, the assessments are not finally made, and in other instances they have to be scaled or changed; and I assum - -although I have no personal knowledge of it, myself—that it was done in the regular course in that way, upon the presumption that penalties might be assessed.

The CHAIRMAN. And yet the penalties could not have been assessed under the law at that time.

Mr. BRITT. They could not have been ass ssed.

Mr. Storck, may I ask you if, in your examination of the records or files of the Prohibition Unit in the Fleischmann case, they were furnished you according to your request, or whether they were withheld from you in any way?

Mr. STORCK. Yes; all of the files were furnished me as I requested them. I was courteously and cordially treated, and I was afforded every assistance. I was given a room to work in. In fact, they offered me stenographers to work with while there.

Mr. BRITT. I do not wish to ask any further questions. Have you any, Mr. Simonton?

Mr. SIMONTON. There was this matter that I would like to put in the record: Reference has be n made to the fact that assistance was furnished the United States attorneys after the reports were made. I would like to dilate on that just a little by giving a few names of agents.

When Kirk's purchase was first entered into, ag nts from Washington, four in number, Saul Grill, Linton Evans, Charles Scandalus, and Morris Wein, were sent to Bridgeport by the chief of the general prohibition agents, and, with marked money there, made a purchase of a carload of alcohol from the Fleischmann Co. r presentative.

When the case came to trial before the United States commissioner, Mr. H. W. Orcutt, chief of the interpretation division, Washington, was sent up to personally conduct the examination of the witnesses, and had the agent of the Fleischmann Co. and the several bootl ggers involved bound over for the grand jury.

Subsequently, Mr. Orcutt was in consultation on many occasions, with the United States attorney, Smith, at Hartford, Conn., and at the trial of Kirk and others, attorneys from the unit, Mr. Patrick Finn and Mr. C. R. Burgess, were sent up and assisted the United States attorneys at the trial in court.

At this time all of the facts in regard to the Fleischmann Co.'s operations in Connecticut were laid before the United States attorney personally by our representatives from Washington.

In the trial of the McConnell case in Philadelphia Special Intelligence Agents Lucas and Wilson, operating from Washington, and Federal Prohibition Agents Connor and Quigley, operating from Philadelphia, laid before the United States attorney, Coles, and his assistants the facts which were dealt with in the reports of the agents in the Fleischmann case, and on these facts two of the

department's former representatives, Messrs. Slater and Benner, were indicted. All the facts were brought out at the trial that involved the Fleischmann Co. operations; they were well known to the United States attorney, and they were presented to him and urged upon his attention.

At Cincinnati George Doremus was tried. Agents of the department developed the case for the United States attorney, and they were used in the trial of the case to develop the evidence in regard to the diversions from the distillery of the Fleischmann Co., known as the Riverside Distillery, at Cincinnati. In this trial Mr. H. W. Orcutt, chief of the interpretation division of the legal unit, presided daily for three weeks in the presentation of this evidence.

At that time also the entire operations of the Riverside Distillery were placed in detail before the United States attorney.

At New York, in the trial of Hart and others, which involved Reddy, whose name is on permits in this case, special intelligence agents operating from Washington, whose names I have not at present, went fully into the matter with United States Attorney Hayward and his assistants, and he was fully conversant with all the facts with regard to the Fleischmann Co. operations in that city and in Brooklyn.

The CHAIRMAN. In view of the fact that this was such an enormous case and one which involved one of the big corporations, and, as you have testified, it was not being examined very closely at that time, was any action taken by the heads of the bureau with the heads of the Department of Justice to endeavor to make a case on these great violations?

Mr. BRITT. Do you refer to the Secretary or the bureau officers?

The CHAIRMAN. I refer to the Prohibition Commissioner and the Commissioner of Internal Revenue taking up the matter with the Attorney General of the United States, perhaps.

Mr. BRITT. The efforts which were made, which have been described by me and Mr. Simonton, were at the instance of the Commissioner of Prohibition, who himself is under the control of the Commissioner of Internal Revenue. They certainly did make efforts in that direction.

The CHAIRMAN. However, they apparently let the case drop because the subordinates of the Attorney General failed to go through with it, or at least it appears, so far as the evidence is concerned, that they failed to go through with any attempt to indict the Fleischmann Co. Do you not think that they were justified in taking it up with the head of the Department of Justice?

Mr. BRITT. I agree with the chairman that it was a case of importance and of magnitude, although one of a great many of equal magnitude, probably. We have had other cases that have had the consideration of the officers of the bureau and the unit to an equal degree, in so far as they have come to my knowledge. Just how far the higher officers of the department feel that they should go in insisting upon the certain duties by a coordinate department would be a thing about which I would not have an opinion.

The CHAIRMAN. In view of the admission on the part of the bureau that they were gullible during this period of time, do you not think it was incumbent upon the head of the Prohibition Enforce-

ment Unit to get an opinion from the Attorney General of the United States as to the desirability of going the limit in this case, when it was shown that the bureau could not rely upon these big corporations?

Mr. BRITT. Well, as I have just now said, that would be a question of administrative judgment. I do know, as has been detailed here, that the case was followed up diligently in the way described.

The CHAIRMAN. Oh, yes; I understand that, but it seems you did not get any results that way.

Mr. BRITT. There were no great results of a criminal kind.

The CHAIRMAN. So you just laid down and you did not attempt to get any opinion from the Attorney General as to the possibility of getting indictments in these cases?

Mr. BRITT. So far as I know there was no request for an opinion from the Attorney General; there never is in such cases; he gives the authority and makes it the duty of the commissioner to compromise cases.

I want to offer, Mr. Chairman, for the record, and in connection with this testimony, the office files, showing the official transactions, showing the offer, acceptance, etc.

I also wish to offer this testimony. It can be printed or held as an exhibit, at your opinion, as you desire. This is the testimony which was taken at the revocation hearing. I felt that the committee would feel at some stage that that would be important testimony.

The CHAIRMAN. I have no objection to those matters being attached to the record, but I see no necessity at the moment of having them printed. If it later seems desirable to have them printed, that may be done.

Mr. BRITT. We offer them for your disposition so that you will have the advantage of everything we have.

Mr. PYLE. I would suggest, if there are some particular points in that transcript they should be placed in the record, and in that way they would better be made available for any Member of the Senate who desires to follow it through.

Mr. BRITT. Counsel for the bureau here offers the testimony taken in the revocation hearings for such disposition as the committee may desire to make of it, to be copied in the record, or to be held by the committee as an exhibit for its use, and subsequently returned to the department.

The CHAIRMAN. That will be done. It will be held without printing for the moment.

(The documents referred to by Mr. Britt were thereupon filed with the committee.)

Mr. BRITT. As far as I know, this is all we have in connection with this case at this time, Mr. Chairman.

I have requested Doctor Doran, chief of the division of chemistry and industrial alcohol, to come up, for the reason that Mr. Pyle has suggested that he would like to have an account of the operations of the unit in the matter of industrial and denatured alcohol.

Mr. PYLE. I would like to ask a question or two, if I may, regarding this Fleischmann statement that was made.

Mr. BRITT. Yes.

Mr. PYLE. The question has been gone into very thoroughly as to the offer of compromise and the rejections. I do not believe anything new can be put in in that connection. The record seems to show rather conclusively that the Prohibition Unit considered that the Fleischmann Co. was violating the law or its permit, either to the corporation itself or its agents, and that they made considerable effort to revoke their permits. The record also shows very conclusively that a corporation, a legal corporation, in the course of a very few months, was able to place upon the market unlawfully, either through their own action or gullibility, nearly half a million gallons of alcohol on these forged permits. That, to my mind, raises the question, How can it be done? Why is it it can not be prevented? Has the unit any suggestion to make or any explanation why that commodity can be placed upon the market, presumably for beverage purposes, having been unlawfully obtained, and the persons who put it on the market escape with comparative immunity?

I would like to have an expression from the Prohibition Unit as to how that condition can be prevented?

The CHAIRMAN. I think, Mr. Pyle, that you ought to introduce more testimony to indicate that it has not been prevented, because the bureau has already stated that they were gullible at that particular time and were not checking up these big corporations. I think that is conclusive on that. Now, if you have some other testimony to introduce to the effect that this is still being done or has been done since, in view of their statement that they are not so gullible now, then I think it would be proper to ask Mr. Britt that particular question.

Mr. PYLE. I believe the gullibility feature came in only on a point in response to your question why these were not suspected and checked up.

The CHAIRMAN. I understand that. That was a part of my question, but unless you can show the committee that this is still going on or have evidence that this is still possible, I would not spend any time on it. If you have any evidence to that effect, then the committee will be glad to have you introduce the evidence. At that time, I think, it would be perfectly proper to take up the time of the committee to find out whether there is any possible remedy in sight.

Mr. PYLE. Very well, sir.

Has there been any substantial change in the law or regulations, Mr. Britt, since the fall of 1921, when these various amounts of alcohol that we have already discussed were diverted?

Mr. BRITT. There have been changes of regulations, of greater or less character from time to time.

Mr. PYLE. Have there been changes which would tend to substantially reduce the possibility of such diversions?

Mr. BRITT. Yes, sir; immediately after this conference—I am not sure but that it was there in contemplation, but certainly soon thereafter—regulations were made by which by definite terms, by such regulations, and by special injunctions and stipulations put in the regulations, the principal was held to full responsibility for the acts of the agent in this particular, whatever they were. Am I correct about that?

Mr. SIMONTON. Yes; and they were forbidden to sell to the agents.

Mr. BRITT. Yes; and they were forbidden to sell to the agents, as they did in this case.

For my own part, and considering the results that have followed, I think that is a very important step forward, but I do not say that I think either it or anything else or everything else has been sufficient to prevent diversion of alcohol.

The CHAIRMAN. Do you know of any wholesale diversions that have taken place since this particular date?

Mr. BRITT. Yes, sir; there have been instances of strong, if not conclusive, proof that diversions have occurred, but none through agencies of this character.

The CHAIRMAN. Let me understand that, because you have said that you prevented that through regulation. Can you describe to the committee how these diversions take place since these regulations went into effect?

Mr. BRITT. I will ask that the committee hear Doctor Doran, who deals with that branch of it entirely. If there is anything else that you want to ask me, I will finish now, and then let Doctor Doran take that matter up.

Mr. PYLE. What regulations have been formulated, if any, since this took place, that would render it impossible or more difficult to obtain intoxicating liquor upon forged withdrawal permits?

Mr. BRITT. A new series of imprints of permits was gotten out. Assistant Commissioner Jones, as I recall—I do not know whether it covers this particular case or not; I think it does, but Doctor Doran will speak about that when he comes on—went to great pains to see if we could not get an imprint of a series that was practically impossible of imitation and reproduction, and as it was brought to my attention, I though it had been measurably remedial for awhile.

Later on, I have heard of and have known of a great many cases of counterfeiting, notwithstanding that, but there is one bit of legislation that I am constrained to suggest, that so far as I know of now, there is no statute in existence that makes counterfeiting of these permits a crime. In its effect on the community this counterfeiting is as criminal and as damaging to society as to counterfeit a bond or currency; but there is no statute that makes it an offense. It seems to me that that should be attended to, and I recall distinctly assisting Assistant Commissioner Jones during the last Congress in preparing a bill to that effect. But I am not advised as to what action, if any, was taken.

The CHAIRMAN. I would like to know if the bureau at any time has received any information as to who counterfeited these permits?

Mr. BRITT. In this instance?

The CHAIRMAN. In any instance.

Mr. BRITT. I think we have.

Mr. SIMONTON. I told you of that the other day, Mr. Chairman, in the Guckenheimer case. In that case we had Harry Cohen, who admitted that he was the forger of permits, and he identified the forged permits on the stand in the Guckenheimer case.

The CHAIRMAN. Was there anyone found who printed or signed these fraudulent permits in the Fleischmann case?

Mr. SIMONTON. No sir.

The CHAIRMAN. Was there any effort made to find out who that was?

Mr. SIMONTON. Oh, yes, sir. Very extended investigations were made covering that whole operation of forged permits, and finally Harry Cohen was discovered and apprehended, and finally became a Government witness.

The CHAIRMAN. Was he interested in these fraudulent permits of the Fleischmann Co.?

Mr. SIMONTON. No; he operated after the Fleischmann case, but he operated in Philadelphia, and was one of a crowd apparently, and we would find permits in Philadelphia the same as in Chicago, having the same numbers. The special intelligence unit worked for a year or more to uncover the people who were doing this. Of course, it only came out when they were used in the distilleries, and then it was hard to trace them back because the distiller bought them from somebody else, and somebody else bought them from somebody else, and so on down the line.

The CHAIRMAN. Then you really never did find out where they were printed?

Mr. SIMONTON. No.

Mr. BRITT. We have Mr. Conwell here, of the special antelligence unit. Perhaps he can tell you.

Mr. CONWELL. I personally found four packs of forged permits in the private bank of Blitzstein Bros., at Fourth and Lombard Streets, in Philadelphia, that had been sent there from Germany. I do not know who printed them in Germany, of course.

The CHAIRMAN. But you were satisfied that they were printed in Germany?

Mr. CONWELL. They were printed in Germany, because they were mailed from Germany.

Mr. SIMONTON. Give your full name and occupation for the record, Mr. Conwell.

Mr. CONWELL. John A. Conwell, special agent of the intelligence unit.

Mr. PYLE. Mr. Britt, what is the burden at the present time that is placed upon a person furnishing intoxicating liquors under a withdrawal permit as to authenticating the permit or identifying the person to whom he is furnishing the liquor?

Mr. BRITT. Permit to purchase, as has been previously testified to, runs for a limited time. That is issued by the director in the directorate or State where the request for the permit is made. That permit is a request for permission to purchase the liquor from a named vendor.

The CHAIRMAN. Is there any limitation given to the purchaser of the vendor that he may purchase from?

Mr. BRITT. No; there is no choice.

Mr. SIMONTON. No.

Mr. BRITT. Then the vendor, when he receipts for his request, can not accept it on its face. He is required to verify it—to prove it.

The CHAIRMAN. Has that been done since the Fleischmann case?

Mr. BRITT. No; that was in existence before.

Mr. SIMONTON. One change has been made since the Fleischmann case in that regard:

At that time the permittee was required to do that only in the case of permits calling for above a barrel or 15 cases. Subsequent to the Fleischmann case that requirement was made in all cases. In addition to that, at the time of the Fleischmann operations, they permitted them to pay in cash for the liquor. Now we require that they get a certified check on some bank in the community in which the alcohol is purchased.

The receipt contains Mr. Britt's statement with this modification: The request is made for confirmation or verification in the manner that Mr. Britt has described by registered mail. The distiller or vendor is required to keep the white post-office receipt for the registered letter. When the registered letter reaches the director's office it is recorded by the registry clerk, who records not only what the envelope shows on the outside but what is contained in it.

That was done because we found that at that time distillers and vendors would send in requests for a copy of the regulations, or requests for advice, and would register them. Then they would keep these white slips attached to a permit and say, "That is where I got my confirmation." As a matter of fact, they had not asked for any confirmation at all. They had merely done that to get the evidence of their authenticity.

The CHAIRMAN. The distillers are pretty tricky, then, are they not?

Mr. SIMONTON. It runs down all through the whole scale to everybody who was operating that way.

Then to combat that we had all the registered mail come to one person, and she or he records the contents of that letter opposite the registry number, and we at any time identify any registered letter that comes into the director's office from this record.

The CHAIRMAN. Then during the Fleischmann operations the vendor did not secure any confirmation of the permit, did he?

Mr. SIMONTON. He had a confirmation of the permit, but it was forged, and often where he had registered mail receipts they were forged, too. At times we find registered mail cards, the yellow slips, that comes back from the addressee, which will be found in the possession of distillers. It is their evidence of authenticity before a jury, eventually, including the post-office stamp appearing on that registered return receipt.

Mr. PYLE. Would that be forged?

Mr. SIMONTON. That would be forged. We proved that in the Guckenheimer case. So if you will go down to a distillery and pick up their records you will find a permit and a copy of their request for verification with a white slip, and apparently a post-office slip, and in most cases it was because they would send in some letter that did not have anything to do with the case and use that slip. We would find forged registered return cards, and at times we would find genuine registered return cards with the name of the man in the office who receipted for them forged upon the cards sent through the post office. Then you would find that a confirmation, apparently, on the letter head of the department stating that the permit is all right.

The CHAIRMAN. In the Fleischmann case did that condition exist?

Mr. SIMONTON. In some cases it did; yes, sir.

The CHAIRMAN. And these forged postal receipts and all were the result of the work of the agents in that case?

Mr. SIMONTON. The agents; yes, sir. So that the agent might go down and he might examine the record, and he could not tell from the record but that it was an authentic record of the transaction, unless Mr. Quigley, who had been a printer and who was capable of detecting a forgery when he saw it.

The CHAIRMAN. Then when did they compare it with the——

Mr. SIMONTON. Then when they compared it with the records in the office of the director there would be no question about its counterfeit character.

The CHAIRMAN. No question about what?

Mr. SIMONTON. Its counterfeit character.

The CHAIRMANN. Yes. There is where I think the weakness exists in the whole thing, that there is not a proper check between the distiller and the office of the director.

Mr. SIMONTON. I will go into that for a moment.

As I explained before, we had a regulation to meet that situation, which required the storekeeper-gauger to either telegraph or telephone to the director when the permit was brought in, and if it was O. K. he was required to put out in the corner "O. K., J. W. B.," or whatever his initials were. In the Guckenheimer case they switched the telephone calls on him somewhere in the building. He picked up the telephone and asked for the director in Philadelphia, and he got the Walton Hotel.

The CHAIRMAN. Well, that is possible; but an agent checking up that transaction would have discovered that very rapidly if it had been a case of forgery.

Mr. SIMONTON. Oh, yes; if you sent down a man who had checked it up and brought back the papers or kept a list of them, as we do at present of these prescriptions for liquor—if the men go down and find thousands of forged prescriptions, they go back and check them against the records.

The CHAIRMAN. Have you any estimates of the transactions of any kind that occurred between the bureau and the permittees in any specific period of time?

Mr. SIMONTON. Do you mean forged transactions?

The CHAIRMAN. Oh, no; all transactions. How many legitimate transactions are there between the bureau, its agents or directors, and permittees in a year or in a month?

Mr. SIMONTON. I could not tell you that. There are 130,000 permittees. They are all entitled to quarterly allowances, and they draw all of those quarterly allowances in one allotment, or they may draw them in 10, and you can multiply that to get the number of opportunities. If they drew them all in one, there would be 130,000 transactions a quarter, and so on up.

The CHAIRMAN. What I am trying to get at is the magnitude of the job of checking up on each of these transactions.

Mr. SIMONTON. It is a job of great magnitude; and, in addition to that, in the inspection work, in smuggling, and everything else, we have 1,700 agents to do it.

The CHAIRMAN. Has the bureau prosecuted any of the bondsmen in the cases of this practice?

Mr. SIMONTON. We have sued bondsmen for recovery; yes, sir.

The CHAIRMAN. Have you recovered in any case?

Mr. SIMONTON. Yes, sir; we have decisions for and against us.

The CHAIRMAN. What kind of bondsmen are these—surety companies?

Mr. SIMONTON. Surety companies.

The CHAIRMAN. In all cases?

Mr. SIMONTON. Not in all cases. They require a cash bond or collateral, which is Liberty bonds.

The CHAIRMAN. With whom do they put up the cash and the Liberty Bonds?

Mr. SIMONTON. They deposit them with the director.

The CHAIRMAN. Does he have full possession of those?

Mr. SIMONTON. He is required to place them in a Federal bank, I think, in a lock box. I do not remember the regulations, but that is my recollection. In any event, they have always been carefully safeguarded. There has never been any trouble about that.

The CHAIRMAN. That procedure would prevent the payment of the premium on the bonds?

Mr. SIMONTON. Oh, yes; we give them the option of putting up the collateral or giving the surety.

The CHAIRMAN. Have you any idea of the magnitude of the cash and Liberty bond securities in the possession of agents of the bureau?

Mr. SIMONTON. No; but it is more or less minor.

The CHAIRMAN. More or less minor?

Mr. SIMONTON. Yes, sir.

The CHAIRMAN. In most of the transactions they have surety bonds?

Mr. SIMONTON. Yes.

I think I have finished the description as to how the permit to purchase operates.

Mr. BRITT. I am at your further service if you have not finished with me.

Mr. PYLE. I believe at this time, in connection with the alcohol distilleries, it would be very well to have, for the purposes of the record, a discussion as to the denaturing of special alcohol, and the restrictions placed upon it, and that will develop a little later into the diversions. I think we should have first in the record a statement showing the process and the regulations by which that is accomplished.

The CHAIRMAN. I understand Doctor Doran will testify as to that?

Mr. BRITT. Doctor Doran is head of that department. He can discuss it more intelligently, perhaps, than anyone else in the unit.

STATEMENT OF MR. J. M. DORAN, HEAD INDUSTRIAL ALCOHOL AND CHEMICAL DIVISION, PROHIBITION UNIT

Mr. DORAN. I am a chemist, Mr. Chairman, so I hope you will pardon any misstatements that I may make about legal matters.

The CHAIRMAN. Tell us how long you have been with the bureau?

Mr. DORAN. I have been with the bureau since 1907.

The CHAIRMAN. As what?

Mr. DORAN. As a chemist. My present assignment is head of the industrial alcohol and chemical division in the Prohibition Unit of the Bureau of Internal Revenue. This division maintains and con-

ducts the main chemical laboratory of the bureau in Washington and the nine branch laboratories throughout the United States. It also through an industrial-alcohol section administers that part of the national prohibition act known as Title III, in so far as it relates to the production and distribution of industrial alcohol and the use of tax-free alcohol, which includes denatured alcohol and alcohol withdrawn for the use of the States, the United States, colleges, hospitals, and sanitariums.

The CHAIRMAN. Have you been in the bureau ever since its organization?

Mr. DORAN. No, sir; I was appointed in 1907.

The CHAIRMAN. I mean the organization of the Prohibition Unit.

Mr. DORAN. Oh, yes. I have been assigned to it ever since the Prohibition Unit was organized.

The CHAIRMAN. You may interrogate him, Mr. Pyle.

Mr. PYLE. I would like to take up the manner of denaturing, the special denaturing, and the way that is handled, together with the substance of the formula. I would like to bring out especially the manner of diversion by recovering special denatured alcohol. I have seen newspaper articles from time to time with statements from your department as to diversion. I would like that discussed, too.

Mr. DORAN. I think I understand, Mr. Chairman. I will try to cover that.

All alcohol is produced in registered industrial-alcohol plants, which were formerly known as registered distilleries.

There are in attendance at those plants at all hours of the day and night Government storekeeper-gaugers.

Mr. PYLE. They have no connection with the Prohibition Unit?

Mr. DORAN. They are assigned on the recommendation of the collector, but the records of their assignments are kept in the Prohibition Unit.

The CHAIRMAN. Does the Prohibition Unit have any authority over them?

Mr. DORAN. They have, on the recommendation of the collectors. The collector is the man who really actually makes the assignment from plant to plant. It is confirmed later in the bureau.

The CHAIRMAN. The bureau does not have any real contact with these men?

Mr. DORAN. Only through the collector of internal revenue, Mr. Chairman.

The CHAIRMAN. In other words, they have no authority over him except through his own boss?

Mr. DORAN. They may direct the collector to change assignments, if thought necessary, or to assign additional men, or to cut down the force.

The CHAIRMAN. But I mean they have no disciplinary control of the men?

Mr. DORAN. Only through the collector.

The CHAIRMAN. Then, the collector is his superior officer?

Mr. DORAN. He is really his immediate superior officer; yes, sir.

The CHAIRMAN. He is not under your jurisdiction, is he?

Mr. DORAN. No; the collectors' offices are under the immediate jurisdiction of the deputy commissioner in charge of accounts and collections.

The CHAIRMAN. Then, if the revenue collector does not agree with the instructions received from the Prohibition Unit, he may disregard them; is not that correct?

Mr. DORAN. Well, he might, Mr. Chairman, but I do not know of any such case. He has no direct supervision of the Prohibition Commissioner, though.

The CHAIRMAN. If he were negligent in his actions and in looking after the interests of the Prohibition Unit in these distilleries, there is no discipline that you could use against him, is there?

Mr. DORAN. That would be under the deputy commissioner of accounts and collections.

The CHAIRMAN. Then, those men would be better off directly under the bureau than where they are?

Mr. DORAN. Well, Mr. Chairman, that is an organization matter. I think it is good business to have all matters relating to one subject matter under one head. Whether that would produce the results we would all like to see. I do not know, but I would say, as a general proposition, that it would be obviously better, as an organization matter.

The industrial plants are so constructed under the law and regulations 61 that they are a locked, Government-controlled operation. The apparatus is so constructed that from the time the fermented mash or beer enters the still and the alcohol vapors arise from the beer through the process of heating, there is no opening through which access may be had to the condensed alcohol that is not covered by Government locks, the keys of which are at all times in the possession of the storekeeper, and may not be given up by the storekeeper unless he turns them over to another officer authorized to take them.

That, in brief, is the manner in which the alcohol is produced under control of the storekeeper-gauger.

The CHAIRMAN. Does that regulation apply, too, when alcohol is a by-product, as in the Fleischmann case?

Mr. DORAN. It is absolutely the same. After alcohol is produced and deposited in the bonded warehouse, before which time it has been accurately gauged as to the number of gallons produced——

The CHAIRMAN. When those gallons are produced, are they recorded by volume or by wine or proof gallons?

Mr. DORAN. They are gauged now, Mr. Chairman, by weight, and they are recorded daily in the number of proof gallons or the number of wine gallons, and the proof stated. For example, the daily alcohol production would read like this: "5,000 wine gallons at 190 proof, or 9,500 proof gallons." I believe that is the proper arithmetic.

The CHAIRMAN. What would that be in volume?

Mr. DORAN. In volume that would be 5,000 measured liquid gallons. The proof gallons is a fiction, so far as the alcohol business goes. It has to do with the tax. It is a theoretical matter. The actual measurement is in ordinary gallons, just the same as gasoline.

The CHAIRMAN. By volume?

Mr. DORAN. By volume, wine gallon. The tax on that is $4.18 at 190.

The alcohol, after being deposited in the bonded warehouse, and recorded, can then only be removed pursuant to some form of permit provided by law.

If the distiller conducts a denaturing plant, he may transfer a certain portion of the pure alcohol to the denaturing plant for denaturization. That transfer is made in closed lines and under the supervision of the storekeeper-gauger.

Mr. PYLE. In the same building or in a separate building?

Mr. DORAN. Usually a separate building. It may be a completely partitioned off part of the same building, under the same roof. As a rule, in the large plants, it is a separate building. If the proprietor of the industrial alcohol plant desires to sell tax-paid alcohol, he may apply to the Collector of Internal Revenue for the requisite number of internal-revenue stamps, paying the fixed price per gallon. After affixing these stamps to the packages which he wishes to tax-pay, the stamps are cancelled by the storekeeper-gauger and the alcohol may then be sold on a permit to purchase of the character just discussed in the Fleischmann case.

The CHAIRMAN. You do not mean "of the character," do you?

Mr. DORAN. No, no; according to that procedure—in that manner. If he has an order from the United States or a State or a municipality or a hospital or a college, he may ship the alcohol without payment of the tax, but under proper marks and brands, provided he is in possession of the permit, duly issued to the hospital, the United States, etc. No alcohol may be removed from the bonded warehouse except in the presence of the storekeeper-gauger and not until he has had exhibited to him the permits or papers upon which the proposed removal is to proceed. The denaturing plant through which passes at present about 90 per cent of the total alcohol produced in the United States is under the charge of a storekeeper-gauger.

The CHAIRMAN. Separate from the distillery?

Mr. DORAN. Separate from the distillery. As a rule, at these operating plants, Mr. Chairman, there are three or four storekeeper-gaugers on duty in various parts.

The CHAIRMAN. What salary do they usually get?

Mr. DORAN. They, by law enacted in 1876, receive $4 per day, but I am very glad to state that under the reclassification act and the opinion of the comptroller, which was issued in the early part of January, it is possible to adjust their salaries.

The CHAIRMAN. On what basis?

Mr. DORAN. My understanding is that the Personnel Classification Board has allocated them in grade 3 of the clerical and fiscal service, which, as I understand it, runs from $1,500 to $1,860.

The CHAIRMAN. You may proceed with your statement.

Mr. DORAN. The alcohol in the denaturing plant is kept locked in storage tanks, the keys of which are held by the storekeeper; and when the denaturer has an order, which is in the shape of a permit, for specially denatured alcohol or an order for completely denatured alcohol he advises the storekeeper that he proposes to denature a certain lot of alcohol, according to any one of the 72 prescribed formulas. It is the duty of the storekeeper-gauger to see that the requisite amount of alcohol is conveyed to the mixing tanks, that the proper amount of the specified denaturant is added, and that

the contents are thoroughly mixed. After the mixing it is drawn off into packages for shipment and is properly marked and branded, according to the formula and contents.

The CHAIRMAN. As I understand it, there are 72 of these formulas?

Mr. DORAN. There are. There are 7 formulas for completely denatured alcohol. The balance, 65, are for specially denatured alcohol.

The CHAIRMAN. Is there any general formula that is used more than others, or which is generally used?

Mr. DORAN. Yes.

The CHAIRMAN. What formula is that?

Mr. DORAN. The most popular formula for completely denatured alcohol, from a commercial standpoint, is complete No. 5.

The CHAIRMAN. What are the ingredients of that formula?

Mr. DORAN. The ingredients are wood alcohol, kerosene, and pyridine.

The CHAIRMAN. Does the use of that formula make the alcohol poisonous?

Mr. DORAN. If you drink it without treatment, it is liable to do you harm. The regulations require that the packages of completely denatured alcohol of 5 gallons and less, which any consumer might come in contact with, be marked "Completely denatured alcohol; poison," with skull and crossbones and the statement that the alcohol contained in the package is completely denatured alcohol, and it can not be used externally nor internally without serious results.

The CHAIRMAN. Not even externally?

Mr. DORAN. No, sir; it is not fit for external use.

The CHAIRMAN. What is there about it that prevents it being used externally?

Mr. DORAN. It is very disagreeable. It is the character of alcohol you use in your automobile radiators in the antifreeze solutions. I do not know that the use of it externally on an unbroken skin would do any physical harm, but it would be very disagreeable.

Mr. PYLE. It will actually burn a tender skin.

Mr. DORAN. Yes; I have seen that.

The CHAIRMAN. In order that it may be in sequence in the record, I wish you would put in now two or three of the formulas for special denaturization.

Mr. DORAN. The system of special denaturization was inaugurated coincidentally with the passage of the first denatured alcohol act in 1906. It is not a product of prohibition whatsoever. It followed, in general, the combined practices of England and Germany, who, as you know, were leaders in the use of industrial alcohol long before the United States.

The principal technical formula of such denatured alcohol is known as formula No. 1, in which the denaturant used is 5 per cent of wood alcohol. The uses for which this is employed run into the hundreds, but generally speaking it is used for shellacs, for varnishes, and for all industrial extraction processes in which alcohol is employed as a solvent, and in which the alcohol does not appear in the finished product.

The CHAIRMAN. Then, as I understand it, completely denatured alcohol will not be successfully used in the case of shellac and varnishes.

Mr. DORAN. It is used, Mr. Chairman, in low-grade shellacs and varnishes, but the kerosene is objectionable in that it will not completely dry, and the pyridine blackens the shellac and varnish and will not make a high-grade product.

The CHAIRMAN. That No. 1 formula is only 5 per cent by volume of wood alcohol?

Mr. DORAN. Yes; it is similar to the product that the English know as industrial methylated spirits.

The CHAIRMAN. The use of 5 per cent by volume of wood alcohol in grain alcohol would not contain sufficient wood alcohol to be poisonous, then?

Mr. DORAN. I think it would, Mr. Chairman. Some people have an idiosyncrasy for wood alcohol, and I would not say it would not be poisonous. It has a selective action on the optic nerve, as you probably know, resulting in paralysis and blindness. Some individuals are much more susceptible than others.

The CHAIRMAN. Even with as small a quantity as 5 per cent?

Mr. DORAN. Even with as small a quantity as 5 per cent, it could hardly be said to be nonpoisonous.

The CHAIRMAN. As I understand it, there is a way of extracting that so that it can be reduced to almost pure alcohol.

Mr. DORAN. There is a chemical process by which it may be done. If given time and the means, it could be removed by an oxidation process, but the ordinary distillation will not remove it, its boiling point being very close to ethyl alcohol, and thus the resulting vapors of the two substances pass over at almost the same boiling point and condense together.

This special formula No. 1 is used very largely in extraction processes, where it subsequently vaporizes off into the air. For instance, in the extraction of crude drugs a great quantity of special denatured alcohol, formula No. 1, is so used, the potent constituent of the drug being dissolved in the alcohol, and thus separated from the residue or marc or woody matter. The potent drug, which is in solution in the alcohol, is then purified by driving the alcohol off by means of heat, leaving the purified drug extract, which may later be used in tablets or fluid extracts, tinctures, or what not.

I have before me an alphabetical list of some of the authorized uses of formula No. 1, the first one of which is acetanilide, which is one of the coal-tar products. It goes down the line through shoe polish, soldering flux, stains, inks, and even watches. It probably covers as wide a field in the ordinary manufacturing industries as any formula. That is the principally used commercial formula.

Now, we have next in importance formulas 13–A and 32. These formulas are mixtures of ethyl alcohol and ether. Ether is used as a denaturing material. Ether, likewise, is difficult to separate from ethyl alcohol on account of the boiling point property. These formulas find their main use in the manufacture of ether and in the manufacture of artificial silk. That last-named industry has developed very rapidly in this country in the last four years. The theory there is to add to the ethyl alcohol some chemical substance that will denature it and render it unfit for use as a beverage, but

still not add any extraneous material that will in any wise interfere with the subsequent industrial use of that alcohol.

That is the aim and object of every special formula.

The CHAIRMAN. Is there any formula that denatures the alcohol the least and makes it, therefore, more usable for beverage purposes?

Mr. DORAN. I think I can answer that question and make it very plain, Mr. Chairman.

All of these formulas denature the alcohol to the extent that the mixture is wholly unfit for use as a beverage, but I would not say that any formula produces a product less unfit as a beverage than any other formula, but certain formulas, on account of the nature of the industries for which they are devised, are of an odorless character, and hence are more susceptible of recovery, and offer a more fit material upon which the illicit distiller can operate.

The CHAIRMAN. I asked that question because I was wondering whether or not some of these formulas can be eliminated, and thereby reduce the amount of special denatured alcohol that would be diverted to beverage purposes?

Mr. DORAN. I think I can answer that in this way, Mr. Chairman, and give a picture of why these formulas came out and what function they fill, and what would happen if they were done away with.

At the time of the case which has been taken up by the committee, the Fleischmann case, there was a great quantity of pure alcohol used in commerce, in various industries—not drug stores, but in various industries.

The CHAIRMAN. What, for example?

Mr. DORAN. And for which denatured alcohol was not available. The general perfume or cosmetic industry was the chief one. That includes everything in the category of cosmetic articles, from hair tonic to the highest grade of perfume manufactured, and lotions and liniments, and a wide variety of things that are generally placed before the public in department stores and drug stores.

The CHAIRMAN. Before prohibition was that sold without being denatured?

Mr. DORAN. Yes; there was no denaturing formula available at that time. Nothing had been devised that could meet the necessities of the industry.

The CHAIRMAN. So that all of these formulas were devised so as to aid in the enforcement of prohibition?

Mr. DORAN. Yes. The formulas for the perfume industry were devised in order to do away with the necessity of the commercial movement of this large quantity of pure alcohol, which, at the time of the Fleischmann case, referred to, was the chief trouble with which the bureau was then dealing. It required merely the addition of water, and easily obtained imitation bourbon or rye flavor and caramel coloring, to make whisky. It made five-minute whisky, so to speak, that being the common term used at the time. It was the thought in the mind of the bureau to provide a denaturing substance that would render this alcohol wholly unfit for beverage purposes, and to make it impossible to make five-minute whisky by dilution with water, and still be useful to the industries concerned, which were legitimate, and, in addition, reduce the problem to one of moonshining, and then control that.

The CHAIRMAN. Is there any tax on this denatured alcohol for industrial purposes?

Mr. DORAN. No, sir; the law provides that it may be removed to the denaturing plants free of tax.

The CHAIRMAN. Then, from the denaturing plant to the consumer?

Mr. DORAN. No further tax is levied.

The CHAIRMAN. Why did the Fleischmann Co. pay this $2.20 tax? What did they assume that it was going to be used for?

Mr. DORAN. Well, it was tax paid at $2.20 and sent to the agents, presumably, for a subsequent sale to any permittee who might apply, whether a drug store, a flavoring-extract manufacturer, or a cosmetic manufacturer.

The CHAIRMAN. But in that case it would not have to be denaturized?

Mr. DORAN. No; these formulas were devised subsequent to this period.

The CHAIRMAN. Then, in that period, it would be perfectly all right for a permittee to withdraw pure alcohol?

Mr. DORAN. Yes.

The CHAIRMAN. And there was no attempt at denaturizing it for cosmetics?

Mr. DORAN. No.

The CHAIRMAN. Or flavoring extracts, or anything of that sort?

Mr. DORAN. That is correct. We were working on the problem in the laboratories at the time, attempting to devise some way to avoid the use of pure alcohol in such large quantities.

The CHAIRMAN. I think you have fairly well covered that, but I would like to ask you whether your experience has been such as to indicate how much of that alcohol has been removed from denaturing plants illegitimately.

Mr. DORAN. My knowledge of that, Mr. Chairman, comes only from such reports as I see. I believe some has been removed illegitimately. A number of charges against denaturing plants have been made involving that character of violation, where the alcohol was transferred to the denaturing plant in the presence of the storekeeper, was recorded as being denatured, but was later discovered not to have been denatured.

The CHAIRMAN. That was not the fault of the permit, but was due to the dishonesty of the employees?

Mr. DORAN. It was not the fault of the permit; absolutely not. It was due either to dishonesty or——

Mr. BRITT. Collusion.

Mr. DORAN. Yes; collusion. It is conceivable that a man might be called to another part of the plant in an emergency and when he would return he would be told, "Well, I put the wood alcohol in," and he would take his word for it. It might happen that way, and it might be put over on him; but I do not think it can happen to any great extent without collusion.

The CHAIRMAN. Then, when that procedure is gone through with, no further test of the volume is made to determine whether it has really been denatured or not?

Mr. DORAN. Only such as may be made by the agents in ordinary inspection work. They from time to time will test barrels as they find them on the market.

I might say, in going back to the process of denaturization—and I think you will be interested in this, Mr. Chairman—that all of the denaturants of a liquid character which are being used must be sampled and examined by a designated chemist to see that they come up to specifications which the bureau has imposed, be it kerosene, wood alcohol, benzol, or acetone, and a denaturant may not be used until the chemist has made his report to the collector that it is of the specified grade.

The CHAIRMAN. Your No. 1 formula is wood alcohol?

Mr. DORAN. Wood alcohol.

The CHAIRMAN. In what numbered formula do they use kerosene?

Mr. DORAN. In completely denatured alcohol kerosene is used in formula No. 1.

The CHAIRMAN. I understood you to say that wood alcohol was the only one that is used in formula No. 1.

Mr. DORAN. That was special No. 1.

The CHAIRMAN. But in complete denaturization you use kerosene and other products?

Mr. DORAN. Kerosene is used in complete No. 1, in complete No. 3, in complete No. 5, in complete No. 6, and in complete No. 7. I want to say about the completely denatured alcohol that the law was passed in 1906; I came with the bureau in 1907, and they were just getting the administration going.

The CHAIRMAN. Pardon me. This is not exactly relevant; but was that passed upon at the instigation of the automobile manufacturers for the use of internal-combustion engines?

Mr. DORAN. That was one of the big things. It was pointed out that Germany had reached quite an advanced stage along certain industrial lines and due in large part to tax-free alcohol. There was considerable talk of the farmer utilizing his potatoes for power alcohol, as you will recall, thus escaping the petroleum manufacturer. There were a lot of reasons advanced. I never took a great deal of stock in its availability for practical farm use, but it did have a very great industrial application.

The CHAIRMAN. Was there not also a threatened scarcity of gasoline at the time?

Mr. DORAN. There was at that time and still is.

The CHAIRMAN. But it is mostly a threat for the purpose of maintaining prices, is it not?

Mr. DORAN. I am not a gasoline man, Mr. Chairman.

The two formulas that we first—and I mean the bureau when I say "we"—started out with were formula No. 1, which followed the English formula, in which the principal denaturant was wood alcohol and kerosene, and the formula No. 2, which was the German formula, in which the content of wood alcohol was only 2 per cent as against 10 per cent in formula No. 1; but the denaturing substance was pyridine, which is of a very offensive odor. It is rather interesting to note that the English formula relied on a real poison as the denaturant and the German formula on a bad smell.

As various industries found that they could use alcohol free from tax, the bureau was confronted from time to time with requests to authorize additional formulas for special processes; so that this whole program has been one of gradual development since 1906.

The CHAIRMAN. It was started for the ostensible purpose of avoiding a tax; is that correct?

Mr. DORAN. Yes; it was designed to build up industry and relieve the industries using alcohol industrially from the very high beverage tax. As you can see, alcohol costs 40 or 50 cents to produce, the raw alcohol, and the tax is $4.18. That is a commodity tax of ten times the value of the commodity itself, which of course is exorbitant.

The CHAIRMAN. I think it is entirely justified, and I am not saying it in criticism that it was to avoid the tax. I think the whole movement was entirely justified. It was for industrial purposes?

Mr. DORAN. It was for industrial development; yes. I do not know whether I have answered your question.

The CHAIRMAN. I think so, unless Mr. Pyle has something further to ask.

Mr. SIMONTON. You might trace the handling of the denaturants after it is analyzed.

Mr. DORAN. I was discussing more the plant matters and production this morning, and have not gone into those outside matters.

Mr. BRITT. He will be subject to the call of the committee if there is anything further desired of him.

Mr. DORAN. Yes.

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

Mr. PYLE. Not along that line at this time, but I want to bring out later on the special denaturants, under 39–A and 40, as those are the ones, as I understand it, which are most used in the making of intoxicating liquors.

Mr. DORAN. Yes, sir; they are most susceptible.

Mr. PYLE. Does the chairman wish me to go into that element of it at this time?

The CHAIRMAN. Yes.

Mr. PYLE. In 39–A, for instance, what is the special denaturant?

Mr. DORAN. 39–A has added to it 1 per cent of either acetone or isopropyl alcohol. It also has as a denaturant substance 60 ounces of quinine, or one of the cinchona alkaloids, cinchonidine or quinine sulphate.

Mr. PYLE. That is to give it a bad taste?

Mr. DORAN. Cinchonidine or allied alkaloids. It gives it a very bitter taste.

The CHAIRMAN. To what volume is the 60 ounces applied?

Mr. DORAN. That is to 100 gallons. That is at the rate of 2 grains of the alkaloid per fluid ounce, and the quinine alkaloids dissolved in pure alcohol without any other sugar substance are intensely bitter.

The CHAIRMAN. Do I understand that those are quite readily extracted?

Mr. DORAN. I think I can explain that, Mr. Chairman. Let us get at it this way:

If I take specially denatured alcohol, formula No. 39–A, and wish to recover it, so to speak, illicitly, if I wish to moonshine it, I place it in a still and apply heat, and the quinine, the bitter denaturing substance, not being volatile, remains behind in the still pot. The alcohol and the acetone pass over and are condensed in the distillate. It is the distillate that is employed for the illicit manufacture of liquor. The purpose of using the acetone and the isopropyl alcohol is this: It does not denature the distillate to the extent that would prevent its use for beverage purposes; but if a sample of the distillate is secured on the market and seized or brought into one of our laboratories, we can tell by the presence of that quantity of isopropyl alcohol or acetone that it was probably recovered from a specially denatured alcohol, and thus assist the agent in getting at the possible source.

The CHAIRMAN. When that process has been gone through with it is then all right for beverage purposes—physically, I mean?

Mr. DORAN. Yes; it can be used. Sometimes that acetone gives it a little off taste.

Mr. PYLE. And odor, does it not?

Mr. DORAN. A little odor; yes.

Mr. PYLE. Is that what is known as poisonous liquor, that you class in your reports as poisonous liquor?

Mr. DORAN. We are not responsible for the use of the term poison liquor, which appears from day to day in the press. We have stated this, that of all the samples examined in our laboratory but 1 per cent, in fact much less than 1 per cent, are genuine aged in the wood whiskies. The balance of over 99 per cent consists of liquors such as we are discussing here—wood-alcohol concoctions; that is, where they have been prepared from completely denatured alcohol, ordinary moonshine, liquors of smuggled origin, made with raw alcohol and creosote, in semblance of genuine Scotch, and so on down the line. We have not stated that 99 per cent was poisonous. We have stated that they are not genuine good whiskies.

Mr. PYLE. It appears that they are so quoted.

Mr. DORAN. Oh, yes; I know that.

The CHAIRMAN. As a matter of fact, they are dangerous?

Mr. DORAN. They are. They are, Mr. Chairman, for the reason that you do not know which one of the 99 you are going to get.

The CHAIRMAN. Some of the 99 may be all right.

Mr. DORAN. Some of the 99 may be all right, but others may not be all right.

Mr. PYLE. I think that covers 39–A very nicely. Now, take the famous 39–b.

Mr. DORAN. That is one of the most widely used, and I think the most widely abused of the special formulas. The denaturing substance is diethylphthlate. Diethylphthlate is a heavy colorless liquid, somewhat of the same viscosity as glycerin. It is used in formula No. 39–b in the proportion of 2½ gallons per 100 gallons of pure ethyl alcohol.

No. 39–b alcohol is wholly and absolutely unfit for use for beverage purposes. I do not believe there is a single specially denatured alcohol formula that is more undrinkable. It has a numbing effect on the tongue. It is intensely bitter and nauseous. It also has an astringent action in the mouth. I believe I told one of the

Senators on one of the other committees that it was like taking a bite of a green persimmon. That somewhat describes it

Diethylphthalate is a substance produced by a combination of phthalic anhydride and ethyl alcohol. It has been used in the perfume industry for many years as a fixative and as a solvent for the various odors and extracts that go to make up perfumery. It then is a substance that is ordinarily used as a constituent in the perfumery business. It has been used in Germany and France for a great many years, and also in this country. It is odorless, and hence it does not impart to any perfumery or toilet article in which the alcohol is used an unpleasant odor. Likewise, being a normal constituent of perfume mixtures, it does not produce any chemical reactions. I consider it a chemically ideal denaturant.

This formula being odorless does offer a field for illicit distillation, and it may be recovered in the manner somewhat as I have described in relation to formula No. 38-a.

There is this difference, however, that in order to get a completely satisfactory recovery or a distillate fit for making liquor that can be sold illicitly—bootleg whisky—it must be treated chemically in the still. Otherwise a certain substantial portion of the diethylphthalate will pass over in boiling with the ethyl alcohol and the distillate be contaminated decidedly. We have not found it possible—that is, we do not believe it is possible from a chemical standpoint—to so treat alcohol formula No. 39-b that the distillate will not show a chemically detectable quantity of the diethylphthalate. Hence it acts not only as a denaturant, but if subjected to recovery acts also as a key for the chemist to determine the origin of the liquor from his analysis of the distillate.

The CHAIRMAN. Mr. Pyle referred to this as "the famous formula 39-b." What has made it famous? Because it has been used freely?

Mr. DORAN. Mr. Chairman, it is merely this, that a good many of these permittees who have been abusing their permits for pure alcohol found that they could manipulate this 39-b, and also that it did not have the presence of such a constituent as acetone or isopropyl alcohol, and from a cost basis—and costs enter into this business the same as any other business, I assume—it is somewhat cheaper than 39-a—substantially cheaper.

The CHAIRMAN. After it has gone through this process of distillation is it then objectionable as a beverage?

Mr. DORAN. It may be, Mr. Chairman.

The CHAIRMAN. You have not tasted it to try it?

Mr. DORAN. I have tasted many samples in the laboratory that I think have been made from 39-b. Sometimes it is detectable and it is objectionable. At other times if it has been sufficiently removed it is not detectable to taste.

The CHAIRMAN. What percentage of this denaturant goes over in the process of distilling?

Mr. DORAN. In an ordinary sample pot-still distillation about one-third will pass over. In that case that would be a sufficient quantity to render the distillate very objectionable for use in bootleg whisky, because it would impart a very bitter taste. If, however, the substance before distillation is chemically treated with an exact quantity of alkali it is possible to hold back, so to speak, the main portion of

the diethylphthalate, and the distillate in that case is reasonably clear of the denaturant.

Mr. PYLE. I have heard a great many rumors about the recovery of the special denaturant being accomplished through the use of lye. Would that be the use of the alkali that you speak of?

Mr. DORAN. That is the use of lye in the still before distilling. There is no formula of special denatured alcohol that does not require a moonshine still to put it in shape to be used for illicit liquor. It is a moonshine proposition.

Mr. BRITT. May I ask a question there? Suppose one desires to distill out the denaturants to the extent of alcohol denatured under formula 39-b, would one single distillation remove most of the denaturants?

Mr. DORAN. It would if treated with the proper amount of alkali, as Mr. Pyle suggests.

I want to make this point: There is no formula of special denatured alcohol that may be used for liquor by merely an addition of some substance.

The CHAIRMAN. It all has to be distilled?

Mr. DORAN. It has to be distilled.

The CHAIRMAN. What is the difference between the old well-known moonshine that used to be made in wet days and the proceeds of this alcohol that has been denatured and then distilled?

Mr. DORAN. Well, the constituents are somewhat different, Mr. Chairman. The old moonshine that you refer to was merely unrefined or unrectified spirits distilled from a grain mash or sugar mash or raisin mash, and on account of that fact that it was never passed through the alcohol rectifying or purifying columns it retained all the odorous substances that came from the grain.

The CHAIRMAN. That was not poisonous at all?

Mr. DORAN. Well, some people didn't think so. They used to drink plenty of it down in the mountains out of a tin cup.

The CHAIRMAN. As a matter of fact, do you know of any case where it was poisonous?

Mr. DORAN. Yes. If a person would drink what are called heads, or some of the stuff as it first passes over, it would be liable to injure him very seriously.

The CHAIRMAN. What would that contain?

Mr. DORAN. Well, that contains some of the products of fermentation, other than ethyl alcohol, the exact nature of which I do not know, and I do not know as they are known chemically, but they are very injurious, and it was the practice of the legalized distiller to carefully separate the heads and the tails, retaining only the so-called middle runnings, and then to redistill that. Of course, they held that in the barrel for a certain number of years before they thought it was fit to drink.

Mr. BRITT. Is that done now?

Mr. DORAN. There is no whisky produced now since the passage of the Willis-Campbell Act.

Mr. BRITT. I mean when whisky was last produced?

Mr. DORAN. Yes; that was the practice.

The CHAIRMAN. This moonshine is still being made?

Mr. DORAN. Our laboratory samples show that it is still being made in all parts of the country. It is not confined to the mountains.

The CHAIRMAN. No.

Mr. PYLE. This formula 39-b is authorized, according to this formula book, for use in the manufacture of perfumes, toilet waters, alcoholic barber supplies, and lotions. What is the quantity withdrawn for that purpose? Do you have the figures on that for several years?

Mr. DORAN. They are in the annual report. Last year it was 7,000,000 gallons.

The CHAIRMAN. That was withdrawn under formula 39-b?

Mr. DORAN. No. 39-b.

Mr. PYLE. How much?

Mr. DORAN. It was about 7,000,000 gallons. That is in the commissioner's annual report.

Mr. PYLE. In the preparation of these various perfumes, toilet waters, alcoholic barber supplies, and lotions it is again diluted with water, is it not?

Mr. DORAN. It is in some instances and in some it is not. It is also used in quite a number of articles not specified in the regulations; that is, it is not confined entirely to those four items.

The CHAIRMAN. I think that is a sufficient answer to this question.

Mr. DORAN. I have that here somewhere.

Mr. PYLE. That is close enough for our purposes.

Mr. DORAN. I would like to say that there was produced last year. tax paid, I believe, less than 10,000,000 gallons of pure alcohol. There was that amount of pure alcohol sold in commerce. When we tackled these special denaturing formulas for the commercial industries we were dealing with an annual movement of over 30,000,000 gallons of pure alcohol.

The CHAIRMAN. You mean by that that on account of the fact that you have devised these special denaturants you have reduced that?

Mr. DORAN. We have reduced it, we think. In fact, we know we have.

The CHAIRMAN. You have reduced the production, which production, it is assumed, was used for beverage purposes; is that right?

Mr. DORAN. That was the aim and object, and I believe it has been partly accomplished, but not wholly.

Mr. PYLE. Nos. 39-c and 39-d, from your knowledge or from your analyses and other sources, are not used for the same amount of diversion as 39-b, are they?

Mr. DORAN. No. 39-c was a later formula and its use is limited to a particular, specified product. Hence it was very much restricted in its field.

Mr. PYLE. That is, the fact that it was not so much used was due to the efforts made in the unit in the granting of permits?

Mr. DORAN. Yes; we specified for 39-c that it could be used only in a certain quality of products and by people who had certain laboratory facilities to control it. It had the effect of almost restricting it to some of the old high-grade perfumers. That is the way it worked out.

Mr. PYLE. I have heard that this formula 40 is also diverted to quite an extent. Do you know whether that is correct?

Mr. DORAN. I believe that is true. I believe there is some diversion in formula No. 40.

Mr. PYLE. How elaborate a process would the recovery of that be?

Mr. DORAN. A similar process would be used to recover 40. The denaturant in 40 is brucine. Unfortunately in one of the hearings before one of the other committees of the Senate last week the press reported it as being strychnine. Strychnine is not used and never has been used. Brucine is intensely bitter, a nonpoisonous substance. I want to say this further, if you will permit me: These formulas for denaturization were not devised for any one of these particular industries that we are discussing, but were devised after very careful study in the laboratory and by consultation with the leading chemists and technically trained men in the industries. They were quite carefully worked out.

Mr. BRITT. Do you think they are the best that could be made for the purposes?

Mr. DORAN. I think they are the best that could be devised at the time. We have not had any suggestion from chemists as to any method of improvement. Of course, if we could find a way to improve them, we would wish to do so. We are always giving thought to them, and we are open to suggestions.

There was a statement that appeared in the public press yesterday, given out by somebody, inferring that the Bureau of Internal Revenue should devise a very simple, harmless denaturant, such as the Navy Department uses.

Now, the Navy Department uses croton oil for alcohol for use in torpedo work. Just exactly how it is used, I do not know; but we conferred with the officials of the Navy Department when they prescribed this. They did that for the reason that, under the law, they would procure alcohol free of tax and pure. They desired the denaturant for the alcohol used in this particular work that they thought would be effective for their purpose.

Now, croton oil may do well for very little use of alcohol by a certain small portion of the Navy Department, but it is wholly inapplicable to practically the entire industrial field covered by our formulas. We have considered croton oil, like many other substances, for years. We have experimented in our laboratory to see whether it could be made applicable, because I think the public is generally informed as to the effects of croton oil, but we have found that it would be of no avail for commercial uses.

Mr. PYLE. You made a very significant statement a few moments ago, that this industry was a matter of cost, the same as any other industry. Now, I would like to go into that just a little. The comparative cost of recovering, say, 39-b or 40, or any of those formulas, as compared with the tax on grain alcohol, is such that the tax, as I understand it, would be about $4.40 a wine gallon on alcohol, is it not?

Mr. DORAN. $4.18 for 190° only.

Mr. PYLE. Per wine gallon. The recovery of that and the redistillation would come to a much lower figure than that, would it not, in the cost?

Mr. DORAN. I believe so, Mr. Chairman, and the tax on pure alcohol is at such a high figure that, in my judgment, it invites manipu-

lation of tax-free alcohol. That is just a personal notion I have. It is not an expression of the department's views, and I hope you will not consider it as anything but my personal view.

Mr. PYLE. I might state here that it has been suggested to me twice recently, once by the director for the State of Pennsylvania and once by Mr. Jones, the assistant commissioner, that a tax on this specially denatured alcohol would remove a great deal of the difficulty in handling it and would prevent to a large extent the recovery of it. What would be your opinion on that?

Mr. DORAN. It would make it easier to control; but it is a strange thing how the supply and demand conditions control them in this matter. It pays in some sections of the country right now to take alcohol treated with benzol and attempt its recovery, and lose at least half of the treated product. It pays them to do that.

Mr. PYLE. You mean legally?

Mr. DORAN. No, no; illicitly.

Mr. PYLE. Illegally.

Mr. DORAN. In other sections it would not pay at all.

The CHAIRMAN. Just why is it different in different sections?

Mr. DORAN. Well, up and down the eastern seaboard, Mr. Chairman——

The CHAIRMAN. It is in greater demand?

Mr. DORAN. It seems to be the fact that there is more alcohol available; and I want to say that a great portion of this illicit alcohol in the market does not come from any domestic operation, as has been testified to before other committees, and I think our Coast Guard seizure figures will so indicate. It has had the effect of maintaining a less price for bootleg liquor in the East than out in the Middle West.

That goes to answer your question. The imposition of a tax on special denatured alcohol, with its attendant stamps and marks and brands and better facility for tracing its movements in commerce, would, in my judgment, assist materially in its control.

The CHAIRMAN. Could you indicate any figure that, in your opinion, would be a reasonable tax in that connection?

Mr. DORAN. I prepared a memorandum to Mr. Jones several weeks ago, which I think he was considering, and thought it out along these lines, Mr. Chairman. Understand, I am not an expert either. I do not known anything about the actuary business.

If completely denatured alcohol were taxed somewhat like gasoline is taxed, at the nominal rate of 2 cents per gallon, it might furnish some little revenue, which would assist in the payment of officers. It would better earmark the product. It would give the Bureau of Internal Revenue that added advantage that comes with the following of a taxable article, whereas at present they have no means under the law of following completely denatured alcohol after it is produced at the plant.

Mr. BRITT. Why make the tax so nominal?

Mr. DORAN. For the reason that that particular kind of denatured alcohol is used in an industrial way in competition with other industrial solvents on which no tax is levied, such, for example, as benzol and acetone and isopropyl alcohol and high-test gasoline. In my opinion, it would be wholly unfair to tax alcohol fitted for

competitive industrial use with these other solvents at such a figure as to put it out of the market.

Now, as to specially denatured alcohol, as you can see from my statement, some of it is used in purely technical industrial processes that are a public necessity, and on that portion of specially denatured alcohol, I believe the tax should also be nominal. It may be more than 2 cents a gallon—5 or 10 cents, say. As to that specially denatured alcohol used in these products that are sometimes referred to in the class of luxuries, that is, not public necessities, as we group some products, a larger tax might be imposed; say, 25 or 50 cents a gallon. That would produce quite a substantial revenue.

As to pure alcohol, my judgment is that the present tax is too high. I think it operates almost as a protective wall behind which illicit operations may be cloaked.

I want to illustrate that in this way: We have had a very great deal of trouble in the last two years from the standpoint of pharmaceuticals and flavoring extracts, in which tax-paid alcohol is legally required to be used. These extracts and pharmaceuticals have been sold at a price that is below cost, which shows conclusively that the alcohol used—and they contained the requisite amount of alcohol—could not have been tax paid.

We believe that alcohol is of three sources of origin—smuggled, diverted from denaturing plants, undenatured, or recovered from denatured. These products are in themselves lawful, and it is believed that people will buy and sell these standard pharmaceuticals to give their operations a cloaking of legitimacy, to make it appear that they are in business, in the flavoring extract or pharmaceutical line, and they buy and sell these goods in order to cover up their other illegal operations, which may be a vending of illicit alcohol. That has produced a very annoying situation in the trades themselves. It tends to demoralize prices, and it has been one of the most irritating things that the trades have had to deal with. We have discussed the situation with them from time to time, and I believe that the high nonbeverage tax enters into that situation and aggravates it. It does not create it; I think it aggravates it.

The CHAIRMAN. I would like to ask you, Mr. Pyle, what you propose going on with to-morrow?

Mr. PYLE. There are several cases of distilleries in which diversions have occurred. There are also some of these denaturing processes that I wish to run over rather hurriedly, not in detail, though. The Fleischmann case is one in which I propose to show the details of the transaction. In the others the details will be about the same. There are several of those distillery cases.

The CHAIRMAN. We will adjourn, then, until 10.30 to-morrow morning.

(Whereupon, at 12.55 o'clock p. m., the committee adjourned until to-morrow, Friday, January 16, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

FRIDAY, JANUARY 16, 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 Bureau of Internal Revenue: James J. Britt, Esq., counsel; V. Simonton, Esq., attorney; and Mr. H. W. Orcutt, division of interpretation, Prohibition Unit.

The CHAIRMAN. Mr. Pyle, you may finish the matters that you started to present to the committee on yesterday.

Mr. PYLE. Yesterday we had a very interesting discussion of the various denatured alcohols, with a statement as to the manner in which they could be, and at times are, converted into beverage alcohol. But we have not as yet discussed the illegal aspects of that, as to the control that the department has over the special denatured alcohol; that is, from the time of its denaturing on to its ultimate use.

Will you explain to the committee, Mr. Britt, or Mr. Simonton, the control the department has over special denatured alcohol? As I understand it, the totally denatured alcohol can be eliminated from discussion, because it can not be diverted into beverage purposes, but these special formulas can. In that connection it will be important for us to understand what control the department has or what is needed in order to control this recovery of the special denatured alcohol for beverage purposes.

Mr. BRITT. Mr. Doran explained the manufacture of pure alcohol at the distilleries yesterday.

There are two ways in which the original production may be withdrawn from the distillery. One is by the payment of the fixed rate of tax at the distillery warehouse at the time of the withdrawal, which payment is evidenced by tax-paid stamps obtained from the collector. The other is to make application through the collector for the privilege of withdrawing alcohol from the distillery warehouse for denaturation, without the payment of any tax at all. That, as was discussed here yesterday, came about, as the chairman stated,

in the interest of extending the use of alcohol at a cheap rate by getting rid of the payment of tax in a lawful way.

Now, the way in which the denatured alcohol is withdrawn and the different stages through which it passes are, in outline, these:

The denaturer may be either a distiller or a person not a distiller, and the Prohibition Unit has very much desired to be able to construe the law that nobody could obtain a permit to denature except the distiller, for the reason that that serves as a check and as a safeguard. A good deal of dispute has arisen about that. There have been some delays in the issuance of permits because of that. The question is not yet well settled. The courts have come in and pretty generally they are holding, and have held, that under the statute the Commissioner of Internal Revenue is without power to deny a permit to a denaturer simply on the ground that he is not a distiller.

It now seems that we shall have to be governed by that understanding under the present law, and, as I have just said, we have been called upon for action upon some applications that have not yet been acted upon but have been held pending a better understanding of that view.

The denaturer must establish a plant with the requisite buildings, equipment, apparatus, and vessels, and with experts to do the denaturation; so that the Bureau of Internal Revenue, in its tax right, and the Prohibition Unit, in its enforcement right, may have such checks as will satisfy them that the alcohol was, in fact, withdrawn for denaturation without the payment of the tax, in good faith, and that after it was withdrawn it finally went into nonbeverage uses.

At the denaturation plant, there is a storekeeper-gauger. So far as I know—that is an administrative matter, however, he is one of the general class of storekeeper-gaugers that might also be assigned back to the production plant at the distillery. It is his business to keep a record of what is received for denaturation and of the fact that it was, at a given time, denatured and put into the containers, which containers, of course, must be properly labeled, marked, and branded.

There are two recognized modes of denaturation.

The first is by special denaturation formulas, and the other is by total denaturation formulas.

Where the alcohol is specially denatured, there are put into it certain chemical constituents which were described here yesterday, by a chemist—which I am not—which render it unfit for beverage use, and that is the object and care of the Prohibition Unit, to see that it is rendered unfit for beverage use, in the interest of prohibition law enforcement.

Those constituents, as Mr. Doran said, are not necessarily individually poisonous, but they are, as I understand it, more or less toxic, and have certain more or less numbing effects, and influence the human body unfavorably in various ways; so that to drink any appreciable quantity of an article which contains denatured alcohol—alcohol denatured in this way—would so injure the human body, or would be likely so to injure it, that it, in effect, renders that article unfit for use for beverage purposes, and that is the object of the denaturation. Otherwise, from the prohibition enforcement point of view, it would be seen that they would use pure alcohol, and if they used pure alcohol, as a matter of fact it could be made one

part water and the remaining part alcohol and be susceptible of use in a rough and unpalatable way.

Now, to follow the denaturation, a denaturer, after denaturing the alcohol in the way that I have described, in dilution, either as a special denaturation or total denaturation, the latter of which is supposed to, and, as I understand, it, does, in fact, render it entirely unsusceptible of use——

Senator WATSON. It never can be restored?

Mr. BRITT. It never can be restored.

Senator WATSON. But if it is special denatured, it can be restored?

Mr. BRITT. It may be restored; yes.

Senator WATSON. Yes; it may be revivified.

Mr. BRITT. So it will be seen that the more of the alcohol that is withdrawn for denaturation, that is completely denatured, the better the situation in relation to prohibition enforcement.

I have never quite understood just why we have so much complaint about the use of certain articles that are made under these formulas and made of this denatured alcohol—complaint that they are used for beverage purposes. My observations and inquiries, so far as I have made them—and they have not been very extensive—have shown that they have been used only by a rather exceptional person here and there who seems to be quite willing to take a risk on almost anything that seems to smell of drink.

For instance, in my own town, which is Asheville, N. C., there is a very reputable old-fashioned merchant who has sold, in his right, bay rum. On one of my visits home he came to see me at once and said that he had been arrested for selling bay rum and that, so far as he knew, it was the bay rum that he had been selling practically all of his business life. His reputation is A–1 as a citizen and as a merchant. He was really distressed and wanted to know why. He wanted to know if I could tell him what was the matter and the way out. I told him that I would see that a little inquiry be made, which I did in a sort of informal way, and, according to the best information I could get, this was just the ordinary bay rum; but evidently some brutal man had simply drunk a heavy glass of the bay rum, and, in a way, it seemingly intoxicated him. He was arrested for the intoxication, and a warrant was sworn out for the seller, who was, in my judgment, perfectly innocent of any intended wrong.

Now, I think a good many of the complaints that come——

Senator KING. Well, was the man guilty?

Mr. BRITT. How is that?

Senator KING. Was that an infraction of the law to sell that bay rum?

Mr. BRITT. No; it was not, but he was brought up distinctively in that way.

I think a good many of the complaints that come from alleged use of these articles manufactured in that way arise in that particular manner and are given a great deal of notoriety. They do not exist to the extent that they are reputed. However, that is only an opinion and these field officers know more about it.

To get back to the checks, if checks there are, this denaturer can sell his denatured alcohol to any permittee who is authorized to buy

in the way that has been described here. The transporter of that denatured alcohol is not required to have a transporter's permit, for the reason that that which he is transporting, in the form in which he is transporting it, is understood to be a harmless thing, in so far as the internal revenue laws and the prohibition laws are concerned; but the transporter of pure alcohol, being a carrier of a thing which is itself susceptible of beverage use, is required to have a transporter's permit, whatever form of carrier he may be.

When the denatured alcohol is sold to the manufacturer of various articles who uses it, so far as the Prohibition Unit is concerned, its troubles begin.

This manufacturer, who has what we call an H permit, or the S. D. A. permit, which means special denatured alcohol permit, manufactures one or more articles, toilet articles, cosmetics, hair dyes, barber supplies, and whatever they may be, and he has one of the formulas which Mr. Doran explained here yesterday, to authorize him to make the article which he makes. He makes it, and then the question is whether he makes what he says he makes, or records what he says he records, and sells to the person that he says he sells to or whether it is pretense.

In the last two years we have had this difficulty, which the committee will understand and which I will explain in a few words:

A makes an application for an H permit, or an S. D. A. permit, usually to manufacture one or more of these articles that I have just now described. He is inspected as to his fitness to have a permit, and sometimes the inspections are repeated. The commissioner is satisfied of his character as a permittee and satisfied with the equipment with which he proposes to make what he manufactures, and he is given a permit to use denatured alcohol to manufacture these articles.

Mr. PYLE. He is given the permit by the Prohibition Unit?

Mr. BRITT. Yes; he is given the permit by the Prohibition Unit.

Senator KING. In Washington?

Mr. BRITT. Yes, sir; from the central office here.

Senator KING. If a man wants to manufacture toilet articles or barber supplies down in San Antonio, Tex., he has to set machinery in operation that would bring him into contact with the Prohibition Unit here in Washington, and he could only get the permit here?

Mr. BRITT. Yes, sir; he makes his application through the State director. It finally comes here.

Mr. Simonton reminds me, and I am glad he does, that this original user's permit is made through the collector. I am glad that has been brought out.

Then, the amount of alcohol he gets is fixed by the month or by the quarter by the Prohibition Unit, the central unit here, after he obtains this basic permit through the collector. It is obtained through the collector, is it not, Mr. Simonton?

Mr. SIMONTON. Through the collector; yes.

Mr. BRITT. But the allowance of alcohol that he is allowed under the authority of this basic permit is fixed by the Prohibition Unit and is fixed by the courts, at so much per quarter.

Senator WATSON. What officer do you designate as collector in your service?

Mr. BRITT. We refer to the collector of internal revenue. We have no collectors in our prohibition service.

Senator WATSON. Yes; but what has the collector of internal revenue to do with these things?

Mr. BRITT. He is charged, under the law, with the duty of seeing that the spirits, whether alcohol or whisky, in his district in the warehouse is not removed without the payment of the tax, unless it is removed after denaturation. The law puts that duty upon him, and he gives a bond. That is why he gives this permit, which I lost sight of for the moment.

Mr. PYLE. What connection does the Prohibition Unit have in the granting of the basic permit to use special denatured alcohol?

Mr. BRITT. That is very important. It has not any connection or really any statutory or regulatory authority or anything more than what it interposes. We do now, through the directors, by a sort of understanding, assist in making inquiries, and insist upon having something to say, wherever we can conveniently, although it is strictly the collector's matter, as a safeguard, because, ultimately, the enforcement of prohibition is much more with the Prohibition Unit than it is with the collectors, as you can readily see. But Mr. Simonton's observation is correct, that the initial act of granting that permit rests with the collector—that is, the S. D. A. permits.

Mr. PYLE. That is to say, the collector's duty does not include seeing that this is not used in violation of the national prohibition act, but only to see that the tax is properly paid upon it; is not that true?

Mr. BRITT. That is his principal function.

Mr. PYLE. Then the duty of the Prohibition Unit, which has no powers really in granting the permit, is to see that it is not used for beverage purposes?

Mr. BRITT. Precisely.

Mr. PYLE. In other words, it is a divided responsibility?

Mr. BRITT. Yes.

Mr. PYLE. In connection with the special denatured alcohol?

Mr. BRITT. Yes; and, as I have already said, the Prohibition Unit has endeavored, through its directors, to intercede and have something to say about a permittee, where it could. Really, it is a sort of obtrusion.

Mr. PYLE. In the same connection, Mr. Britt, is this division of responsibility created by law or by regulations and instructions of the Commissioner of Internal Revenue?

Mr. BRITT. It comes about primarily by law, Mr. Pyle.

Mr. PYLE. The division of authority?

Mr. BRITT. Yes; in this way—and not directly by expression, but by implication and extension, I might say. The duty of holding and protecting and seeing that the taxes are collected on the spirits belongs by law—by express law—to the collector. That is the basis of the thing, and if he lets the spirits out in any other way than after the taxes have been paid he must let them out under this denaturation, and, as you can readily see, it would seem to be proper that he should see, or have the opportunity of seeing, that it went out in a lawful way, and he grants that permit.

Senator WATSON. I would like to ask you this question right there, as I am not clear on this delimitation of the spheres of authority: Suppose a man wants to manufacture barber supplies in Indianapolis, Ind. He has to get a permit; he has to apply for a permit. Who has anything to with that from the time he starts that until it is finished and the process is completed?

Mr. BRITT. He is going to use denatured alcohol in the manufacture of that article?

Senator WATSON. Yes. Say he makes bay rum, for instance?

Mr. BRITT. He obtains that basic permit to use denatured alcohol; that annual basic permit he obtains from the collector in his district.

Senator WATSON. From the collector of internal revenue?

Mr. BRITT. Yes, sir; from the collector of internal revenue.

Senator KING. Does he file his application with him?

Mr. BRITT. Yes, sir.

Senator KING. Does he state the number of gallons that he wants?

Mr. BRITT. No; that may be stated basically, and that is where this dual administration comes in. Then, it comes up through the director, as I have said.

The CHAIRMAN. When you say "director" I wish you would specify what director you refer to.

Mr. BRITT. The State director.

The CHAIRMAN. Of the Prohibition Unit?

Mr. BRITT. Yes, sir; the State prohibition director. There is one in each State.

Senator WATSON. When this man makes his application does he make it to the director of prohibition enforcement of the State or to the collector of internal revenue?

Mr. BRITT. Those applications come through both sources.

The question now is when the applicant for this basic permit to use denatured alcohol makes his application to the collector, does he not also go through the director's office now?

Mr. SIMONTON. For investigation.

Mr. BRITT. For investigation.

Senator KING. Who sends it there?

Mr. BRITT. The collector of internal revenue.

Mr. SIMONTON. Yes; the collector.

Senator KING. Is the collector bound to send it through before he acts on it or can he act on it independently and reverse the Prohibition Director?

Mr. BRITT. That is a sort of understanding or administrative regulation—trying to see if we can not get a better qualified permittee or find out a better situation through both arms of inquiry than merely by one.

Senator WATSON. I want to see whether there is any regular way of doing it, or whether it is just done in haphazard fashion.

Mr. BRITT. No; that is the regular way.

Senator WATSON. If a man makes an application for so much special denatured alcohol he then makes his application directly to the collector of internal revenue of his district?

Mr. BRITT. That is true.

Senator WATSON. And at the same time the regulatory provision provides that he shall also refer it to the director of prohibition enforcement of that State?

Mr. BRITT. The collector forwards it to the director, not the applicant.

Senator WATSON. The collector refers it to him?

Mr. BRITT. Yes, sir.

Senator WATSON. Then, what does he do? Can he turn it down or reject it?

Mr. BRITT. It is done as a matter of mutual consideration. In practice I know of no instance where either one has persisted that a permit shall not be granted, that has been granted, and it is an additional safeguard and an additional aid in determining the fitness of the permittee.

Senator WATSON. Does the collector have anything to do with the fitness of the permittee? All that he has to do with it is to see that it is properly tax paid. Does his authority go any further than that?

Mr. BRITT. Yes; his authority does go further than that.

Senator WATSON. Under the law?

Mr. BRITT. No; not in the expression of the law. He would not grant a permit to one who was known to be a bootlegger or a blockader.

Senator KING. Has he any discretion under the law?

Mr. BRITT. He makes his inspection through the deputy collectors.

Senator KING. Does he have any discretion under the law?

Mr. BRITT. If he found a man was unfit, that he had the reputation of being a bootlegger or blockader, he would exercise his discretion and not give him any permit.

Senator KING. Does the law give him any authority?

Mr. BRITT. No.

Senator KING. He is simply, then, usurping authority.

Mr. BRITT. No; it is not that.

Senator KING. Is not that something that all of these organizations do under administrative regulations instead of statutory law?

Mr. BRITT. I do not call that a usurpation, Senator. There is a small zone of discretion that belongs to all administrative officers, without any statutory expression of that fact.

Senator KING. Do not argue that, because that is unsound. Congress has the right to say what is law and what is not, what the duty of the men shall be and what they shall not do. I am not speaking of the morality of the thing. I am talking about it as a legal proposition.

Senator WATSON. And you are entirely right about it. If it is not fixed by law, it should be fixed by law. The idea of having two men with twilight-zone authority and acting wholly as a matter of discretion, without any legal sanction, is not tolerable.

Mr. BRITT. Well, I want to answer that, Senator, by saying that there is a discretion, recognized from the beginning of the Government until now, and justly so, that where there is an applicant for a right, and that person's character is known to be such as to use that right against the public, that discretion does lie, and it is exercised, and, in my judgment, it should be exercised.

Senator WATSON. It might, as a matter of prohibition enforcement, but is should not be up to the collector to determine it. All the collector has to do is to see that it is properly tax paid. He can

not take it upon himself to find out whether the man who wants it is an Episcopalian minister or a back-alley bootlegger. That is not his business. His business is to see that it is properly tax paid. Now, you have some sort of arrangement by which he might refer that to the Prohibition Unit for your investigation and report back on his character. When a man is seeking a permit, you might have some sort of joint action to get somewhere.

Mr. BRITT. I have just said we do that.

Senator WATSON. You do that, but not as a matter of law.

The CHAIRMAN. Go back to the time before the prohibition act became a law. What was the collector's discretion then?

Mr. BRITT. Of course, before the prohibition act became a law there was no question of prohibition. Then it was purely a tax question, and incidentally police protection. The whole basis of the thing was widely different.

The CHAIRMAN. Then, in that case, an applicant presenting his application to the collector of internal revenue was sure to get his permit, because there was no discretionary power with the collector; is that correct?

Mr. BRITT. You see, the matter——

The CHAIRMAN. Well, is that correct?

Mr. BRITT. Yes; the matter of the denatured alcohol had no place then.

The CHAIRMAN. The question I am trying to get an answer to is whether the collector of internal revenue, prior to prohibition had to use any discretionary power in the granting of the permit?

Mr. BRITT. Very little, if any, in my judgment; but permits then were a special tax license.

Mr. SIMONTON. May I say a word about that situation, Mr. Britt?

Mr. BRITT. Yes.

Mr. SIMONTON. The act provides that "alcohol lawfully denatured may, under regulations, be sold free of tax, either for domestic use or for export."

Mr. BRITT. You had better state what you are reading from now.

Mr. SIMONTON. I am reading from Title III of the national prohibition act, section 10.

There is where the collector's authority ends—when it is lawfully denatured; so it is just at that point that special denatured alcohol comes in as to its use. When the collector still has it under his authority, he must see that it is denatured and properly sent out.

Senator WATSON. Does the collector have it under his authority during the process of denaturation?

Mr. SIMONTON. Yes, sir; the storekeeper-gauger is in the plant, and he has to see at the time it leaves the premises that it shall be lawfully denatured, because, otherwise, he would collect the tax.

Senator WATSON. Up to that time, then, the Prohibition Unit has nothing to do with it.

Mr. SIMONTON. Up to that time the Prohibition Unit has not had anything to do with it at all, except the general supervisory power to prevent diversion for beverage use.

I would like to show you how this statute——

Senator WATSON. Wait a minute. As to that general supervisory power, is that statutory or assumed?

Mr. SIMONTON. That is statutory, to prevent diversion to beverage use. From the time it first comes into existence until the time it goes into consumption we have specific statutory authority to prevent diversion to beverage use, under the national prohibition act.

Mr. PYLE. But the preliminary step is under the revenue law?

Mr. SIMONTON. The collector has authority down to the point at which it is denatured.

Senator WATSON. Suppose the prohibition enforcement director would say, "John Jones is not a fit man to have this permit granted to him." The collector would say, "He is a fit man to have it granted to him." Who is running the thing?

Mr. SIMONTON. I will get to that in a minute, Senator, if you will permit me.

Senator WATSON. All right.

Mr. SIMONTON. Now, we have the collector in charge of the denatured alcohol, who, the statute says, shall be in charge of it for taxing purposes. The national prohibition act then comes in and carries a provision to this effect—and this is the only provision by which we get authority over special denatured alcohol; in fact, it reduces it to one word, and I am reading now from Title II, section 4:

> The articles enumerated in this section shall not after having been manufactured and prepared for the market, be subject to the provisions of this act if they correspond with the following descriptions and limitations, namely, (*a*) denatured rum produced and used as provided by law and regulations now or hereafter in force.

The word "used" in there gives us our control over the special denatured alcohol users.

Now, bear in mind that the Commissioner of Internal Revenue has a dual function. He has to collect the tax and he has to enforce the prohibition law. If an application comes in from a man who wants to use or get special denatured alcohol under this authority the commissioner has issued regulations, and he has said that the collector is the person who shall issue these permits, and the person who shall pass upon the qualifications of the permittee.

I will read that to you from the regulations, and I am reading now from regulation 61, article 110, page 84:

> Upon receipt of applications for permit, the collection shall at once detail an officer to inspect the premises, and if he finds a storeroom or storerooms properly located and constructed, he shall report to the collector. The collector, if satisfied that a permit should be issued, will indorse his approval on the application and forward the same to the Commissioner of Internal Revenue, together with the bond, etc.

Senator WATSON. Then he has full authority in the issuance of the permit?

Mr. SIMONTON. Yes; full authority.

Senator WATSON. And nobody can interfere with that authority?

Mr. SIMONTON. Except the Commissioner of Internal Revenue.

Senator WATSON. Yes; I understand.

Mr. SIMONTON. Yes; the Prohibition Unit can not.

Mr. PYLE. In connection with that question of discretion, Mr. Britt, have there not been several recent cases which have practically held, in effect, that the only ground for the exercise of discretion and investigation is to determine whether the applicant has

been guilty of violating the national or State prohibition acts within one year?

Mr. BRITT. Yes; I have seen decisions tending to that point, strictly.

I started to give an instance where there is much violation, which I want the committee to have.

This permittee, who has obtained his permit in the way just now described, from the collector, his quarterly allowance being fixed by the Prohibition Unit, but the withdrawal of it authorized by the collector, as Mr. Simonton says, proceeds to make the articles for which his formulas authorize the use of the alcohol, and he keeps a record of the amount of alcohol which he receives and the disposition of the alcohol in the manufactured articles. Then he keeps a record of the persons to whom he sells the articles. In many instances he sells all or practically all to a jobber or wholesaler. This jobber or wholesaler is not a permittee under the national prohibition laws, and the prohibition officers have no right to inspect his place—no lawful right. We have found, greatly to the detriment of the service, although the permittee was seemingly all right to start with, his records now are false and his claims are false, and that this other person to whom he claims to have sold was in many instances only another form of himself—somebody he has an understanding with, that has no business place or no business appearance, and that the alcohol, instead of being used in manufacture and disposed of to these persons as he claims, was never manufactured into anything at all but was diverted and redistilled. These places of the wholesaler or jobber take the name of "cover-up houses" in prohibition parlance, and we are not authorized to inspect them at all.

We have disclosed the fact that in instances there have been large diversions in that way, but the moral fact which has appeared in some cases, and which was overwhelming, was that vast amounts are removed in that way, and we are practically, under the law, without a remedy.

I suggested to the commissioner that we prepare a sort of cooperative regulation and get the permittee to agree that when he sold to these so-called wholesalers or jobbers he would put a stamp on the invoice that said, "This article is sold after having been manufactured under a formula authorized by the Commissioner of Internal Revenue, with the understanding that the purchaser shall allow inspection of it by prohibition officers or internal revenue officers."

Of course, I think that, legally, that could not be enforced, because it requires one person to be, to a little degree, responsible for the act of a third person, and all lawyers know that that does not go well. But this was a cooperative thing, in the interest of all. We urged it as far as we could, but the permittees would not agree to it, and we had to withdraw it for the reason that it was exceedingly annoying and disagreeable and at least of doubtful legal authority.

So that to-day we have no right to inspect these places, but we have, in some instances, gone far enough to show that these big jobbers or wholesalers consisted of one or two rooms, merely an empty office and a clerk or two; that they had no business at all; and the fact could be established, although it is difficult to establish it

legally, that they did not manufacture at all and did not have anything to make that he could use with his alcohol.

Senator KING. Would this be grain alcohol or denatured alcohol?

Mr. BRITT. Denatured alcohol.

Mr. PYLE. Special denatured alcohol?

Mr. BRITT. Special denatured alcohol. Let me stand corrected that way.

Senator KING. After you get the denatured alcohol, can you introduce into it again the vital spirit?

Senator WATSON. When it is only special denatured, but when it is completely denatured you can not.

Mr. BRITT. Yes, sir; they can redistill it and take the denaturants out of it, practically entirely out of it, and make a drinkable liquor.

Senator KING. And have your alcohol left?

Mr. BRITT. Yes.

Mr. PYLE. As I would gather from this discussion, Mr. Britt, from the time the special denatured alcohol leaves the distillery or denaturing plant, then really all control over it by the Government ceases? You have no more control over it than you would have over flour or salt?

Mr. BRITT. No more control, unless something comes up thereafter, but no more direct or continuous control.

Mr. SIMONTON. You can after it leaves the hands of the bay-rum manufacturer?

Mr. PYLE. You can follow such denatured alcohol to the hands of the man that uses it.

Mr. SIMONTON. Yes; but after he makes his bay rum or toilet article, or whatever it is, then our authority over it ceases.

Mr. BRITT. That is what I said.

Now, taking up the matter of constructive meanings—and, of course, I deal with the problems more from the larger legal aspects, while these gentlemen who deal with the regulations in the actual practice will be able to correct me on some of these points and I hope they will—that is one of the greatest difficulties confronting the prohibition enforcement, internally speaking—that is, by not taking into account the rum running or importation problems. I think it is by far the greatest problem. I do not think the control of the whiskies and other spirituous liquors in the warehouses and the distribution in the country to-day amounts to any very great difficulty; nor do I think that any very large violations are committed in that way. There are no doubt some, but the great bulk of the violations, in my judgment, come through the channels of special denatured alcohol.

The CHAIRMAN. As I recall it, Mr. Pyle, you told me that that was your viewpoint. Is that correct?

Mr. PYLE. Alcohol is the problem, as I see it, and it divides into two phases here.

The CHAIRMAN. Yes; but did you not tell me that?

Mr. PYLE. Diversions at the distilleries——

The CHAIRMAN. Yes; I understand that. I understood you to say that one of the greatest difficulties was the special denatured alcohol, just as Mr. Britt has said.

Mr. PYLE. The special denatured, after it leaves the control of the Prohibition Unit and the Revenue Service, and the grain alcohol

and ethyl alcohol diverted at the distilleries, I think are two of the biggest problems before the department.

Mr. BRITT. On that point let me say that, as reflected to me through the counsel's office, there has not been a great deal of evidence, relatively speaking, of diversion at the base of pure alcohol.

The CHAIRMAN. You mean that you have stopped it substantially after the Fleischmann case; is that what you mean to infer?

Mr. BRITT. No; I did not mean to say that, Senator. Of course, there have been cases all along of greater or less magnitude, but speaking generally, as part of the whole problem, it has not impressed me that at the base, at the distilleries of the pure alcohol, the biggest end of the problem has been; but Mr. Pyle is certainly correct in saying that is a problem. However, as it is reflected to me, the bulk of the problem is the use of denatured alcohol.

The CHAIRMAN. Does not that all go back to the point that we discussed the other day, that your real job in regard to the enforcement of this law is at the sources rather than after it has gotten out onto the market?

Mr. BRITT. That is quite an important suggestion, Senator. The object is to try to prevent the violation at the source; but the department lawfully authorizes the denaturation and denatured alcohol sold, but violations can continue and do continue.

Senator WATSON. Does it take a change in the law to stop that, or a more effective administration of the existing law?

Mr. BRITT. Senator, in the matter of administration we have devised the best means we could, and we have forced them sometimes to the breaking point, almost. I think there must be legislation.

Senator WATSON. What?

Mr. BRITT. Just what would be a matter for determination, but one thing recommended would be a continual oversight, and I say that unqualifiedly. I believe there ought to be a continual authorized and enforced official control to the extent that is not the law now.

Senator WATSON. Well, if a barber down here in the barber shop buys a gallon of bay rum, some one would have to go in there every day to see that somebody does not drink it?

Mr. BRITT. No; it does not go quite that far.

Senator WATSON. I would like to know just how far you would expect it to go.

Mr. BRITT. I think violations of that particular sort are practically negligible.

Senator WATSON. Then how far do you think you ought to go with legal regulations?

Mr. BRITT. We ought to make it a lawful authority to control this situation that I have just now described, where an immense quantity comes in to A, seemingly lawfully, but which is unlawfully used by A to the extent that he makes a lawful thing and sends it over to B, but we can not go inside the doors of B.

Mr. PYLE. There is an interesting paragraph here in the case of——

Senator KING. Just before you do that, is the fraud with A or with A's vendee, carrying out your illustration?

Mr. PYLE. Generally it is a collusive fraud, Senator,

Senator KING. Is A responsible for taking the denaturized alcohol and revivifying it, to use Senator Watson's expression, or is B the one?

Mr. BRITT. A is the one who is responsible for the unlawful acts.

Senator KING. Which one does it?

Mr. BRITT. A; and, as I say, B is possibly a collusive violator.

Senator KING. Is the alcohol in A's plant brought back into a condition where it can be used for beverage purposes?

Mr. BRITT. Yes.

Mr. SIMONTON. It is either one or the other, Senator. It is either converted by the bay-rum manufacturer without any denaturing and charged to B, who is a friend or "cover-up house," and who never gets it, and distributed right straight to the trade as alcohol, or it is specially denatured and diverted to the bootleg trade.

Mr. PYLE. This paragraph in the files in the case of the Ethyl Solvents Corporation, of Philadelphia, Pa., is a very good illustration of that. This is the report of the agents concerning the Standard Sales Co. The Ethyl Solvents Corporation has a denaturing plant in Philadelphia. They state:

All the product of the denatured alcohol sold by the Ethyl Solvents Corporation is purchased by one concern in Philadelphia, namely, the Standard Sales Co., No. 308 Victory Building. This concern maintains an office in the Victory Building, and the sole owner is one Meyer Benedict. Upon investigation of this sales company Benedict refused to allow Federal Agent Williams to take any notes of the conversation between myself and Benedict; he refused to tell us where or to whom he sold the denatured alcohol; he positively refused to show his books or sales record, and we could get no information whatever from him. It is our belief beyond a reasonable doubt that a great amount of denatured alcohol that is sold to the Standard Sales Co. is delivered as pure nonbeverage alcohol and further disposed of illegally.

In other words, this is a concrete example of the same thing, that the denatured, or presumably denatured alcohol, gets into the hands of the man who resells it, but who is not compelled to give any records or to make any accounting, other than on his own income tax. That is the only possible accounting that he has to make.

Senator KING. Is that the special denatured, or is it so denatured as to make it absolutely impossible to ever use it again?

Mr. PYLE. This was presumably denatured in this case.

Mr. Britt, can you discuss some of the markings on the barrels, showing the identification of these various alcohols?

Mr. BRITT. Yes. At the place of original production, the distillery has a number, in the collection district, and that is entered on the barrels. Then the barrel itself has a serial number. That is entered on the barrel. The name of the distillery is on the barrel, and the name of the article, alcohol, or whatever it is, and the contents of the cask. They put the original contents on. I will not deal with that, and I do not know whether that is now required, but it is required that complete identification marks and brands be put upon the cask. Some of the gentlemen who deal with that in the field can give you the exact details of it.

Mr. SIMONTON. I can give it to you from the records here showing what goes on the special denatured-alcohol packages. After it reaches the alcohol user, he can not use these barrels again unless

he scrapes off the internal-revenue markings. Then he has to put the markings on all of his articles.

Regulations 61, article 102, page 8, contains this provision:

All packages containing denatured alcohol filled at a denaturing plant must be numbered serially, commencing with No. 1, at each plant, and must have branded or stenciled upon the head the name of the denaturer, the registered number of the plant, the district, and the States, contents in wine gallons and apparent proof, and in conspicuous letters of not less than 1 inch in length the words "Completely denatured alcohol" or "Special denatured alcohol," as the case may be. All packages containing denatured alcohol will also have marked thereon the formula number * * *. All marks and brands on denatured-alcohol packages must be completely obliterated when the container is emptied.

The CHAIRMAN. I would like to ask whether anyone here knows whether the process of denaturation is a profitable business undertaking?

Mr. BRITT. I can answer that as it is reflected to me. The withdrawals for denaturation and sale of alcohol seem to be a profitable business.

The CHAIRMAN. What I was trying to get at is, what is the difference in the value of the alcohol before denaturation and after it? In other words, it seems that some of these concerns simply do the business of denaturing.

Mr. BRITT. Yes.

The CHAIRMAN. Is that a profitable business practice?

Mr. BRITT. I should like to ask Mr. Conwell to deal with that. He can answer that.

Mr. CONWELL. I talked with Mr. W. H. Stevenson, who is the Philadelphia agent for the American Distilling Co., last week about that, and Mr. Stevenson told me generally that he knew of cases wherein these denaturing plants had bought alcohol, denatured it, and subsequently sold it, or claimed to have sold it, cheaper than they had bought it for in the original instance, as pure alcohol.

The CHAIRMAN. That is what I am trying to get at. Are these denaturing plants in the business in order to make a legal profit or are they in the business for illegal purposes?

Mr. CONWELL. Well, as a matter of opinion, my own opinion is that they are not in the business for legitimate purposes.

The CHAIRMAN. In other words, in this particular case the denaturer sold the alcohol after it had been denatured at a lower price than he originally paid for it?

Mr. CONWELL. That is the case that Mr. Stevenson told me of, although he did not cite any particular instance.

Senator KING. He could not long survive at that rate in the business, could he?

Mr. SIMONTON. Not unless he was moonshining.

Senator WATSON. Not unless he could get something on the side.

Mr. BRITT. The question is whether it was finally denatured or whether it was stored and redistilled and drinkable liquor made of it in that case.

Senator KING. Whether it was denatured or made into beverage consistency, if he sold it cheaper per gallon than the price he paid for it, he soon would go into bankruptcy.

The CHAIRMAN. There might have been collusion in that case.

Mr. BRITT. If he parted with it in the way the Senator says, of course it would be impossible to make any profit at all.

The CHAIRMAN. Unless he was in collusion with the man that he sold it to.

Mr. BRITT. Exactly.

The CHAIRMAN. In other words, what I was trying to bring out is whether these denaturing plants may not be set up as stools for the purpose of getting the liquor for assumed legal purposes, and that they would make no money in the process of denaturing. I have had in mind that this denaturing process was not a process that would invite anybody into the business to do it legitimately.

Mr. BRITT. My opinion agrees with that of Mr. Conwell, that the great bulk of it is illegal and intended to be illegal. Of course, I would not want to go so far as to say it is all illegal, but I think there is undoubtedly a tremendously large part of it that is not legal.

Senator KING. Do not some people who have permits to manufacture alcohol also have denaturing plants in connection with the plants for the manufacturing of the alcohol and do the denaturing themselves?

Mr. BRITT. They have.

Senator KING. So that they may sell the grain alcohol and sell the special denatured alcohol or the completely denatured alcohol?

Mr. BRITT. They may have a denaturation plant immediately about their distillery, or they may have one elsewhere, separated from it, and they sell both the pure alcohol and the denatured alcohol of their own denaturation.

Senator KING. Would it not be better—and I am just asking for information—if that could consistently and legally be done, to require those engaged in the denaturing business to be manufacturers?

Mr. BRITT. I wanted to cover that, and I am glad you mentioned it. It is a most important question.

We have endeavored to construe the statute, if we could, so as to hold that only distillers were entitled to denaturation permits, and we had a regulation prepared to that effect, but inquiry was made into it as fully as could be, and we came to the conclusion that under Title III of the national prohibition act others than the distillers were entitled to denaturation permits. That would be a very great help to prohibition enforcement for the reason that the alcohol distiller is a business man on a very large scale with a great deal of capital invested and of course that fact in itself should beget caution; and the problem would be infinitely easier to handle if the denaturation plants were by law limited to the distiller, and limited to his distillery premises so that he could not distill in Kentucky and have a denaturation plant in New York. The present statute in my opinion can not be so construed as to deny them a permit in that way. Is that your view of it?

Mr. SIMONTON. Yes, sir.

Mr. PYLE. You would recommend such an amendment?

Mr. BRITT. I would, most heartily.

Mr. PYLE. In these denaturing plants, does the Commissioner of Internal Revenue keep a storekeeper-gauger to watch the process of denaturization?

Mr. BRITT. Yes, sir.

Mr. PYLE. I am going over this case out of several instances where it is presumed that alcohol went out without being denatured, when it was presumed to be denatured. That could not be done without the collusion of the storekeeper-gauger, could it?

Mr. BRITT. No; it could not be done without his collusion, unless he was flimflammed or in some way deceived. That is not important; but, generally speaking, it could not be done without his collusion.

Mr. SIMONTON. He might be in some other part of the building.

Mr. BRITT. Yes, sir.

Mr. PYLE. Yes.

Mr. BRITT. Some of these businesses are very large and there are a great many employees, and they are seemingly hurrying and scurrying about. I am not sure but that it would be just to say that alcohol might be diverted without the collusion or the knowledge of the storekeeper-gauger, but generally——

Senator WATSON. Are the denaturing plants connected with the distilleries or separate from them?

Mr. BRITT. The majority of them, I think, are separated from the distilleries, though I am not certain of that.

Senator KING. Do any of you gentlemen know what is the fact about that?

Mr. CONWELL. With respect to Philadelphia, there are only two distilleries that I know of there, and I know, offhand, of six denaturing plants.

Mr. BRITT. I will get the exact figures, if you desire them.

Senator KING. How many distilleries are there in the United States?

Mr. CONWELL. That I could not say.

Senator KING. How many denaturing plants are there in the United States?

Mr. CONWELL. I am not in a position to answer that.

Senator KING. I think you ought to have that information.

Senator WATSON. Yes; that would be a good thing to have.

Mr. BRITT. I will get that for you.

Senator KING. I wish you would put in the record the number of gallons or barrels distilled annually, the State in which the distillation occurs, the number of gallons or barrels of special denatured alcohol authorized, and the completely denatured alcohol authorized by the department.

Mr. BRITT. I get your idea.

Senator KING. Let us have all of those figures, so that we may see the quantities that might be illegally used and reconverted and revivified for beverage purposes.

Mr. BRITT. May I say that, since it seems to be the purpose to find constructive suggestions—which, of course, is highly desirable—I have two constructive suggestions arising from the discussion this morning which I have given careful thought. One is the limitation of the denaturation plants to the distilleries and to distillery premises. The other is statutory provision for the complete oversight of the denatured alcohol until it goes to the consumer.

Mr. PYLE. To whom would you give that power of supervision, to the Prohibition Unit or to the collector's office?

Mr. BRITT. As it is now everything, of course, is given to the Commissioner of Internal Revenue, for he is charged with enforcing prohibition. There is scarcely anything at all in the statute about the Prohibition Unit.

Mr. PYLE. In actual practice would you say that is a part of the collector's duties or of the Prohibition Unit?

Mr. BRITT. In actual practice it would be part of the duties of the prohibition-law enforcers.

Mr. PYLE. As an actual fact, Mr. Britt, could not a great deal of this divided responsibility for denatured alcohol be corrected by legislation, under the present law, so as to make one unit entirely responsible for it?

Mr. BRITT. "Corrected by legislation." Do you mean that exactly?

Mr. PYLE. I say, would it need legislation to get that all under the control of one unit, or could it be handled by departmental regulations under the present law?

Mr. BRITT. Well, since everything is in the hands of the Commissioner of Internal Revenue for administration, of course, as a matter of organization and distribution of functions, I see nothing to prevent the Commissioner of Internal Revenue from organizing it according to his own notions, with the single exception that those functions which have been by law given to the collectors must still be preserved and protected.

Senator KING. This may not be germane, but it does occur to me that in the various suits which have been brought the prosecutions which have been initiated, there are many of them for violations of the regulations and administrative proclamations and ukases.

Mr. BRITT. No, sir; there are very few suits brought, and, of course, there can be no criminal action for the violation of regulations, as such, except in some very rare instances, in incidental cases, because nobody is authorized to make regulations that would fasten crime on one. But suits have been filed involving civil liability——

Senator KING. I am speaking of the criminal features.

Mr. BRITT. There has been one instance, that I would like to have Mr. Simonton tell you about.

Mr. SIMONTON. We had to face that problem in the Independent Drug Co. case in Cincinnati. We had regulations that forbade the wholesale druggists from selling more than 10 per cent intoxicating liquors of their complete sales of pharmaceuticals, so as to make them maintain their status as wholesale druggists, and not become wholesale liquor dealers. The Independent Drug Co. sold a greater quantity. That was a mere regulation. Then we were faced with the question as to how we might compel observance of that regulation. That resulted this way: The law did not provide for the violation of the regulation as a criminal offense.

Senator WATSON. You say the law does provide that?

Mr. SIMONTON. The law does not provide that.

Senator WATSON. Oh, yes; I thought I must have misunderstood that.

Mr. SIMONTON. But the law does provide that the violation of the terms of the permit is a criminal offense. We therefore charged them with a violation of their permit in not having observed the

regulations, and Judge Peck sustained the Government, and they were convicted criminally.

Senator KING. You were beating the devil around the bush there.

Mr. SIMONTON. That is a case where we had a conviction.

Senator KING. Have you a right to put into the permit any provisions that you desire?

Mr. SIMONTON. Yes. The statute says that we shall fix the permits and the conditions upon which these permits shall be allowed, and that proposition was presented to Judge Peck, as to whether or not we could compel a man to say "I will observe the regulations in operating this business," and Judge Peck said he did not think it was at all an unreasonable requirement, and that became a part of the terms of the permit.

Senator KING. Then a man might be guilty of violating one or more of the hundreds, if not thousands, of regulations, to which his attention never has been challenged?

Mr. SIMONTON. Of course, these regulations are only regulations of his own business, and he undertakes, himself, to familiarize himself with them. In this case there was no question about the drug company not knowing all about the regulations. They simply ignored them.

Senator KING. I suppose there are thousands of regulations promulgated by your department?

Mr. SIMONTON. They have recently been combined in these regulations here, Regulations 61.

Senator KING. That is a pretty big volume. How many pages are there?

Mr. SIMONTON. Two hundred and fifty-four pages.

Senator KING. And I suppose on a great many of the pages there are a good many regulations?

Mr. SIMONTON. A good many regulations.

Senator KING. Stated alternatively and conjunctively.

Mr. SIMONTON. I do not doubt that. It requires construction, though, Senator; and I might say this, that under the requirements of the permit he must observe the regulations or he will have his permit forfeited.

Senator KING. Yes.

Mr. SIMONTON. And daily we are handling administratively with permittees questions of regulations under their permits.

Mr. BRITT. That is true, that under the law and regulations it does not make any difference whether there are formal regulations or stipulations the permits must have two requisites. They must be reasonable, and they must be in line with the object and purpose of the statute. They can not be just anything. Otherwise, as the Senator has suggested, they would be unlawful, of course. It is also an accepted principle that no administrative officer can make a regulation that fastens a crime upon the citizen unless Congress has said in the act that he may make a regulation and then prescribe a penalty for the doing of the thing which is prohibited or not doing the thing which is demanded. He can not originally or of his own motion make a regulation that would fasten a crime on a citizen, however.

Senator WATSON. That would be a most dangerous thing. Then he would be all-powerful and dictatorial.

Mr. BRITT. I want to negative that right.

Senator KING. There are regulations by departments which carry penal provisions, and which are more numerous than the penal statutes.

Mr. SIMONTON. That is true, Senator, and particularly you will find a great many in the revenue statutes. For illustration, section 3451 of the revenue statutes provides—

That any person who shall simulate or offer to forge or counterfeit any document required by the internal revenue laws or regulations thereunder shall be fined and imprisoned.

It is made a penal offense, and I think the penalty is five years.

Mr. BRITT. That would mean the counterfeiting of these permits.

Mr. SIMONTON. But you do not find that in the national prohibition act.

Mr. BRITT. No.

The CHAIRMAN. Mr. Pyle, are you through with Mr. Britt?

Mr. PYLE. I think so; yes.

The CHAIRMAN. What else do you want to put on now?

Mr. PYLE. In running through the files we find a number of these distillery cases. We went into the Fleischmann case in some detail, and I am going to skim over some of these others merely to give an idea of the general procedure by which these persons operate who are unlawfully diverting, or presumably unlawfully diverting, alcohol to beverage purposes.

I would like to run briefly over the case of the Glenwood Industrial Distilling Co., of Philadelphia. The records in the department files are very voluminous. The concern has been reported for various irregularities at numerous times.

The date is 1922, and Agents Quigley and Connor, in Philadelphia, who, as you remember, are very good agents in the matter of the check-up work and on figures, in their report say:

On investigation we find that about 30 per cent of the business done by this distillery is legitimate.

Alcohol was actually found leaving the plant irregularly by these agents. The citation was heard before Mr. Aldridge, of the solicitor's office of the Bureau of Internal Revenue, and it resulted in a restoration of the permit. There was no revocation.

Senator KING. Mr. Pyle, as counsel for the committee and presumably having examined these records, do you call our attention to them for the purpose of illustrating some laxity on the part of those called upon to administer the law or to demonstrate the imperfections of the law?

Mr. PYLE. Yes, sir.

Senator KING. Or both; and if it be the former, ought you not to point out to us where the laxity was so that we may have the advantage of it in the recommendations that we make or so that we may call upon those who are guilty of maladministration to rectify their course and perhaps bring them before us?

Mr. PYLE. The purpose of bringing this before the committee is to show the present difficulty—to my mind, impossibility—of handling these situations under the law and regulations as they now exist.

The CHAIRMAN. Would you say that that is true with respect to the continuance of these permittees in business after they have been guilty of repeated violations? That is an administrative matter purely and simply.

Mr. PYLE. The administrative powers can not go beyond the statute.

The CHAIRMAN. But the statute says that where a permittee has violated the law within the year he may not have a permit. However, as I understand you to say, these permits were not revoked and the concern continued in business in spite of these violations.

Mr. PYLE. In a case of this sort the 35 barrels of alcohol left this plant on April 26, 1922. There were no marks or stamps or any indications on the barrels of alcohol, which is a violation of the regulations and the terms of the permit. At the hearing held before the department these facts were brought out, but the permit was not revoked.

The CHAIRMAN. Why?

Mr. PYLE. That I do not know. Do you have the file in that case, Mr. Storck?

Mr. STORCK. Yes.

The CHAIRMAN. I think it is up to counsel to make a complete case and to show us why.

Mr. PYLE. The fact is that after hearing the case the attorney who heard the case did not revoke the permit, the fact being brought out that this came out in violation of the regulations.

Senator KING. I would like to know whether the reason for continuing it is the fact that there was any contribution to some political campaign fund, as it is alleged there was a $10,000 contribution made by the Fleischmann Co. to the Republican campaign.

Mr. PYLE. I might say that the matter, so far as presented, covers those which have been accumulated over the last several months by Mr. Storck, investigating for the committee, and if those elements entered into his judgments that is not shown in the records of the department.

The CHAIRMAN. I still think that when you present a case like this and say the permit was not canceled you evidently have back in your mind some criticisms as to why it was not canceled, and I do not believe that in the record somewhere there is no opinion of the attorney who heard the case as to why he did not revoke the permit or continue the revocation in force. There is no use in submitting these cases to us if you do not make a complete case.

Mr. PYLE. The opinion states among other things:

> In the light of the proceedings which were had, Mr. Blair and I also am of the opinion that the Government failed to prove its charges against the Glenwood Distilling Co., and that the company should immediately be restored to all its rights and privileges under its permit or permits.

The fact of the matter is that the report of the agents establishes the fact that they seized these barrels in the distillery. Another branch of the department holds that that is not sufficient ground, that they have not proven it, and that shows a laxity—a lack of cooperation or a similar condition. We are not in shape yet to ascertain why such a decision was made further than that.

The CHAIRMAN. Then, the records do not show the statement that the case was not proven?

Mr. PYLE. Yes; that the case was not made.

The CHAIRMAN. In the face of the fact that they seized the liquor leaving the distillery?

Mr. PYLE. They seized the liquor leaving the plant improperly.

Mr. BRITT. That case was disposed of before I came into the unit; but it seems to me that it would be proper to go into the case and state such reasons as were alleged for the action.

Senator KING. Well, he is giving those. He said it was not proven.

Mr. BRITT. I mean in greater detail.

Senator KING. That is a matter for you to bring out in cross-examination, if you are not satisfied with his introduction of it.

Mr. PYLE. In the opinion by Mr. Smith, addressed to the commissioner, he makes this statement, which seems to be very pertinent to this distillery question:

I can not quite see why these alcohol distilleries are not subjected to frequent inspections, and why they are not required to keep records which shall show the quantity of molasses and other materials used, and the quantity produced by such materials. In my opinion, it is a reflection on the present administration of these distilleries that they are not under stricter surveillance.

Senator KING. That is by Smith, you say?

Mr. PYLE. This is by Mr. C. D. Smith, assistant to the commissioner, in his memorandum.

Senator KING. Is he still assistant to Mr. Blair?

Mr. PYLE. I think not.

Mr. SIMONTON. Not now.

Mr. PYLE. There are memorandums in the file that indicate that collusion was suspected, and I find this statement in a memorandum to Mr. Blair from Mr. Haynes:

No charges were preferred against the storekeeper-gauger assigned at this distillery pending the outcome of the revocation proceedings. It is hardly possible to sustain charges against the Government officer in view of the findings in this case, but a reassignment to some other distillery would be in the best interests of the service.

The indication is that collusion of a Government officer was strongly suspected, and the memorandum says that he should be transferred to another place rather than that further action be taken against him.

Senator KING. I think that is very bad morals and logic. If a man is suspected of being a crook, we ought to allow him to operate where his crookedness can be more readily discovered or else remove him absolutely. If he has gone to the extent of fouling one nest he will foul another.

Mr. PYLE. Mr. Haynes, in answer to this memorandum, says:

I agree with you that a stricter surveillance should be maintained on all industrial-alcohol plants, and for that reason a mimeograph, addressed to collectors of internal revenue, who are responsible under the law and regulations for the conduct of industrial-alcohol plants, will be prepared, etc.

Again, he says here:

These plants are visited as frequently as possible by special representatives of the bureau, but, obviously, the direct control is exercised through the office of the collector of internal revenue.

That is a point which was touched upon this morning.

There are a number of other violations that were reported to be unproven against this concern. Ultimately a report was made by Attorneys Johnson and Marshall, of the Prohibition Unit.

Mr. SIMONTON. Mr. Pyle, if I may, I would like to ask you a question there. You are going into another case now. It has been suggested, Mr. Chairman, that we might ask questions, and he is going from the first violation to the second violation, and before he goes into the second violation I would like to ask him a question about the first. Is that proper?

The CHAIRMAN. That is all right.

Mr. SIMONTON. I did not handle this case and I do not know the details of it, but Captain Orcutt here did and he knows all about it. However, I would like to ask Mr. Pyle this question:

You say 35 barrels were removed, and the agents saw the removal of the 35 barrels; is that true?

Mr. PYLE. This statement is contained in the report:

Truck contained 35 barrels pure 180-proof alcohol. There were no marks, tax-paid stamps, or brands of any kind other than tare marks.

Mr. SIMONTON. Have you read the record of the hearing on which the revocation was refused?

Mr. PYLE. I went over the record, the summary of the record. I did not read the original report.

Mr. SIMONTON. Did you note the fact that they had a witness who appeared to testify at the trial that contradicted this testimony in that regard?

Mr. PYLE. There was a discrepancy, I believe, on the description of the truck.

Mr. SIMONTON. Yes; that it came from another place entirely.

Mr. PYLE. I did not get that point. It was not in our transcript of the record.

Mr. SIMONTON. My recollection of the fact is that that is the fact, and that it then became a question of veracity between the witnesses for the Government and the witnesses for the defendant, which was decided by Mr. Aldridge contrary to the contentions of the Government.

Mr. PYLE. In other words, the agents' testimony was not accepted?

Mr. SIMONTON. It was contradicted, and then a question of veracity arose, and the presiding officer decided against the Government.

The CHAIRMAN. As I understand the report, there were two witnesses for the Government and only one against the Government; is that the fact?

Mr. SIMONTON. That is true, sir.

The CHAIRMAN. And the attorney hearing the case took the statement of the one witness against the two Government witnesses?

Mr. SIMONTON. That is true, sir. Of course, I think there were lots of other facts, and there were more witnesses than you speak of. There was one other witness who had knowledge of the case—a watchman who was in a park and who also testified to seeing it. There were certain circumstances surrounding it also that lead the Government to believe that the permit should be revoked, but the presiding officer, hearing the witnesses, and having the power, be-

lieved the witnesses for the defendant and did not believe the witnesses for the Government. I think, however, in justice to the presiding officer, that fact should be brought out and should not be left with the statement that the agents saw the 35 barrels going out and did not revoke the permit.

The CHAIRMAN. Is Captain Orcutt here?

Mr. SIMONTON. He is right here.

The CHAIRMAN. Did you hear the evidence in this case, Captain Orcutt?

Mr. ORCUTT. I represented the Government, as attorney for the Government. I did not preside.

The CHAIRMAN. Did you urge the revocation of this permit?

Mr. ORCUTT. I did, sir.

The CHAIRMAN. And you are still of the opinion that it should have been revoked?

Mr. ORCUTT. I have never changed my mind that we proved them guilty. Of course this is not the first instance in my life where the court disagreed with me. There was a lot of evidence, Senator, on both sides, which created an issue of fact. I introduced all the evidence I had or could get into the record, and the respondents introduced considerable evidence tending to combat the evidence which I submitted.

The CHAIRMAN. After the disposition of this case, did you have anything to do with any more cases of violations by this concern?

Mr. ORCUTT. No, sir; I did not. I only handled the first one.

The CHAIRMAN. As I understand you, Mr. Pyle, you are going ahead with another violation of the same permit?

Mr. PYLE. Showing the fact that here was a concern charged several times by the Government with violations, which they have been unable to restrain. In fact, the concern at the present time is operating, I believe, or was in December, 1924, still operating, through the reports, and there are a great many of them, all show irregularities and a strong conviction on the part of every agent who has come in contact with them in the field of irregularities.

The CHAIRMAN. None of them have been proven to the satisfaction of the bureau; is that right?

Mr. PYLE. Yes; one was proved to the satisfaction of the bureau and the permit was revoked in July, 1923, but an action was thereupon brought by the respondent in the United States courts, and an injunction was granted against the department restraining them from revoking the permit. The injunction, as I understand it, still holds, and the concern is not——

The CHAIRMAN. How is that a criticism of the bureau, then?

Mr. PYLE. It is not a criticism of the bureau, but it just shows that they can not seem to cope with this alcohol situation at the present time. These institutions against whom they have evidence of irregularities, and upon whom they have worked over a period of several years, are still able to go on and they are unable to put a stop to it.

The CHAIRMAN. Because of the court actions?

Mr. PYLE. Because they could not prove to the satisfaction of the court, apparently, that they had a right to revoke their permit.

Senator KING. Did these cases get into the courts, or was it merely a hearing before the commissioner?

Mr. PYLE. This was before the United States Court, and an injunction was issued.

Senator KING. And the court held that the evidence was insufficient to justify a revocation of the permit?

Mr. PYLE. Yes.

The CHAIRMAN. Apparently it did. Is that the fact, Mr. Simonton?

Mr. SIMONTON. That is a fact, and forever enjoined us from interfering against that plant again. We have three cases pending against them, and we have to ask the court to modify its order so that we may issue a citation. The fault, if there is a fault at all—and Mr. Pyle has brought out a very good case to represent it—lies with the power that we have in the bureau. For instance, we have no power of subpœna. When we introduce affidavits in the hearings, they are challenged.

Senator KING. You have no power to subpœna?

Mr. SIMONTON. No, sir; we have no power to subpœna anybody.

Senator KING. Do you mean to say that in a court proceeding——

Mr. SIMONTON. No; pardon me, Senator. I am speaking now of our power to revoke permits in an administrative way. We must entirely rely upon what the agent says. If we bring an affidavit into court, the attorneys challenge our right to use it, and they say we must bring in the witness. We can not do that, because we have no power of subpœna; so we do the best we can with the facts that the agents get and with what we can also put in in the form of affidavits. When we get to court, the courts will say there is insufficient evidence.

Senator KING. Suppose there are numerous complaints against a person who has a permit to manufacture alcohol, and he makes the department a great deal of trouble. You have investigations and hearings, and while there is much evidence to show violations, sufficient to convince you to a moral certainty, but perhaps not sufficient legally to prove beyond all reasonable doubt the commission of a crime, and he applies for a permit a second time, have you any discretion in acting upon that second application?

Mr. SIMONTON. Yes; we have this discretion. The law says that the permit can not be issued to anyone who, within one year, has violated the law of the United States or any State, relating to the traffic in liquor. That is addressed, then, primarily, to the discretion of the commissioner. The commissioner may, on a given state of facts, on which reasonable minds might differ, find the man guilty, and the court would sustain it. It is a question of discretion, where two persons, on this state of facts, as to whether the man had violated the law, might differ. You might say no, and I might say yes. The commissioner, in his discretion, may say yes or no. If he says no, and has not abused his discretion, then, when the case is reviewed, the courts will sustain it.

Senator KING. But the point is this: Suppose there has been a trial or a number of trials before the court and he has been adjudged not guilty, and yet you feel that by reason of the trouble you have had with him and the numerous complaints that have been made

against him, his escape from conviction has been through evasion and intrigue and sharp practice, and you feel that he is not a suitable man to get another permit, can you use discretion or must you give him a permit? I say, if he has been tried and acquitted?

Mr. SIMONTON. That question has never been determined. The commissioner has to determine whether he has violated the law or determine whether he has not violated the law. If the commissioner says that he has, of course that must be his finding. If he so found, then it would go back to the court again to be reviewed in that same court: so naturally, after an acquittal in a criminal trial, the commissioner's power to see that a man is refused a permit is practically gone.

The CHAIRMAN. Mr. Simonton, can you say how many cases you have had, roughly, where the court has enjoined him from proceeding, as in this instance?

Mr. SIMONTON. No, sir; I can not give you the number; but, if you please, I would like to tell you about one case in which we were enjoined five times. They are still operating under an injunction.

That is the case of the Hermann Chemical Co.

On July 3, 1923, the Hermann Chemical Co. shipped to Boston, Mass., labeled "completely denatured alcohol," some 150 barrels of special denatured alcohol, which was then apprehended in the hands of bootleggers in Boston and traced right directly back to the Hermann Chemical Co.

On the facts we had a complete case. Later on the men comprising the company were arrested and certain papers were taken from their possession.

In the southern district of New York an injunction issued depriving us of the right to use the evidence that we had to offer.

Then we started to revoke their permit, and they came down to Washington and had an injunction issued against us, telling us to have a citation issued and a hearing held in the eastern district of New York to see whether we could revoke the permit.

That injunction issued against us. Then we went up in the eastern district of New York and issued a citation. The case proceeded for half a day, when the attorney took from his pocket an injunction from the eastern district to prevent us from going ahead with the hearing.

We had that injunction knocked out and we proceeded with the hearing.

The presiding officers, who were Captain Orcutt and Mr. Little, revoked the permit, and they came down here into the courts in the District and they got an injunction, not challenging the sufficiency of the facts but challenging the charges in the citation, and the court after considering the matter for a couple of months rendered a decision and held that the citation was not sufficiently informing, although it told them in exact barrels and where they went and who got it. We had to cite them again, the injunction remaining pendente lite until we issued a proper citation against them.

We issued another citation and had another hearing and tried out the facts. Then when we desired to revoke the permit we had to go into court down here in the District and ask that the injunction

pendente lite be discharged and that we be permitted to revoke the permit.

They challenged our action again, not on the ground that the facts were not sufficient—or, at least, they did challenge it on that ground, and the court would not pass upon it—but the court did pass upon the sufficiency of the citation. The court then rendered the opinion that our citation was sufficient and that our action was proper, but in language that I have never seen in the decisions before—and I do not mean to say this in criticism of the court—it invited an appeal. That appeal was taken and, as I understand it, the appeal was allowed in supersedeas. In other words, the permit was to stay alive until the court of appeals passed upon it.

Mr. BRITT. Mr. Wilson manages these suits in court, Mr. Chairman, and he will be able to tell you about them.

The CHAIRMAN. Let Mr. Simonton finish his statement, as I will have to go very shortly.

Mr. SIMONTON. That is all I have to say on that. There may be some corrections by Mr. Wilson. The permit is now still alive, Mr. Pyle, so far as I know.

Mr. WILSON. I just want to say——

The CHAIRMAN. I think I will have to go now. We will continue the hearing at 10.30 o'clock to-morrow morning.

(Whereupon, at 12.05 o'clock p. m., the committee adjourned until to-morrow, Saturday, January 17, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

SATURDAY, JANUARY 17, 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) 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; V. Simonton, Esq., attorney: H. W. Orcutt, division of interpretation; and Andrew Wilson, Esq., special attorney for the United States.

The CHAIRMAN. You may go ahead, Mr. Pyle.

Mr. PYLE. There are several matters that came up from time to time in the last two weeks which have not been completely disposed of. I propose this morning, with the approval of the chairman, to touch upon them for the purpose of completing the record, so far as we can.

A few days ago the matter came up of the organization and operation of the offices of the various State directors, at which time Mr. Jones was not available and the matter went over. However, as I believe this is to be the last meeting of the committee for some days, touching upon this particular subject, those matters had better be cleaned up.

The evidence heretofore produced for the committee is that the administration of the prohibition law is handled by two general forces—the men of the general agents' forces and the Federal agents' forces.

As Mr. Kennedy explained, the general agents' work under the chief of the general agents, through the divisional chiefs of the 18 divisions of the United States. The Federal agents' forces operate under the directors, each State being assigned a definite number. Do you have those numbers, Mr. Britt?

Mr. BRITT. I have that in the form of an exhibit, Mr. Pyle. You are talking about general agents?

Mr. PYLE. The Federal agents.

Mr. BRITT. Yes; I have that.

Mr. PYLE. The directors' offices were organized under the authority of the prohibition act, but not by specification, and on August 1, 1921, Commissioner Haynes issued a regulation outlining the or-

ganization of the office of the Federal prohibition director and outlining the duties of the various sections.

The Federal director in this regulation, which was issued in the form of a pamphlet, is charged with the administration of both the enforcement and the permissive features of the national prohibition act within the State over which he has jurisdiction. This embraces the supervision and direction of the clerical force and of the field force, the latter consisting of officers designated as prohibition agents.

Then the regulation goes on and says:

> The director * * * will be responsible for the proper enforcement of law and regulations and for the efficiency of his subordinates.

Further on it says:

> Before acting upon an application for a basic permit under regulations No. 60 it is the director's duty to make such investigation as the nature of the permit applied for warrants, and his action on the application should be governed by the facts and circumstances disclosed by the inspection.

It says further:

> The director also is charged with the duty of investigating alleged violations of the national prohibition act and laws relating thereto and with making such arrests and seizures as are warranted in cases of violations discovered. Complaints of alleged violations received by him should be thoroughly investigated.

It provides further for the office of assistant director. It provides for the field division in the office for an agent in charge of field work, an investigation and inspection section, which will act upon permits, investigate the applicant and the condition of his business.

It provides for group heads having charge of a number of Federal agents in various portions of the district, depending upon population, arranging the agents, in other words, with responsible superiors in convenient localities.

It then goes into the agent's forces.

It also provides for a legal division, consisting of a legal adviser, a revocation section, a legal reports section, reporting violations of the law.

It also provides for an executive clerk and for heads of various sections, including the application and permit section, the withdrawal section, which latter section handles the permits to purchase which have been discussed here, in the matter of forgeries, a mails and files section, public information section, reports and statistics section, and a personnel and disbursing section.

Now, a complete organization was established by this regulation of directors' offices for administering, as will be seen, both the criminal and the permit features of the prohibition act.

At a later date the general agent's force was created, originally designed, as was brought out by Mr. Kennedy, as a force of experts, more experienced men in handling certain of the more technical features of the law, the original idea being to assist the directors' forces in handling features which their men would probably not have the training to handle.

Regulations 60, which cover the duties of a director in all permit matters, was issued as of May, 1924, coming out shortly before that, which defined the duties of directors as to permits.

The enforcement features of the law in most States are handled by the directors, with a check of these general agents, who are stationed around where they can see what is going on in these offices, and can go further and attend to matters in their own way without consulting the director, but in most States the director has his agents.

Have you the number of those, Mr. Britt?

Mr. BRITT. I think the number of the general agents is already in the record.

Mr. PYLE. The general agents, but not the Federal agents.

Mr. BRITT. We have that here, Mr. Pyle.

Mr. PYLE. In two States the enforcement agents have been taken entirely away from the directors.

In the State of New York both inspection and enforcement work have been taken from the director.

In the State of Pennsylvania the same thing was true until last summer, at which time the State director was given back certain agents for the purpose of inspecting permits.

In connection with this permit feature, regulations 60 provide that:

> Basic permits may be granted only by the prohibition commissioner, except the following, which may be granted by directors, as hereinafter provided:
> 1. Permits to physicians to prescribe or use or to prescribe and use intoxicating liquor.
> 2. Permits to dentists and veterinarians to use alcohol.
> 3. Permits to transport, as provided in Article XV.

Those are the only three classes of permits which, at the present time, can be granted by a State director. However, all of the permit matters within a State must pass through the hands of a director.

The applicant, regardless of the class of permit, must file his application in triplicate, each copy being signed and sworn to, setting forth the information called for and any further information which he may desire to furnish. This is filed in triplicate with the director of the State.

The CHAIRMAN. I understood that it was first filed with the internal revenue collector.

Mr. PYLE. No; not in the case of an ordinary permit for intoxicating liquors. That was the permit for special denatured alcohol, which was filed with the collector.

The director is then charged with the duty of having his agents, if he has agents, investigate this application.

After that investigation, which may take some time, as it is general field work and involves some travel, the report of the agents is made to the director, and he thereupon indicates upon the application the three copies, his approval or disapproval of the permit, and states his grounds therefor, in case it is a disapproval.

The papers are then forwarded to the prohibition commissioner, who thereupon either issues the permit or disapproves and then sends the papers back to the director.

It is then the director's duty to make proper filing notations in his records, and he issues the permit, if approved, or sends notice of disapproval to the applicant.

The Chairman. Those are the basic permits that you are talking about now?

Mr. PYLE. Basic permits. The director is, therefore, required to handle this matter twice in his office, going through, and it must be handled in the commissioner's office.

The commissioner, as was brought out the other day, sometimes has information through the general agents' force of other matters pertaining to the applicant, which is given as one of the reasons for such matters being handled in his office. If he has such information on any applicant in any State that information should be furnished to the director for that State. If he is investigating he is entitled to all the knowledge in the possession of the department.

But the matter of the clerical work in this connection, I believe, is greater than is necessary. The commissioner, as has been brought out here, issues something like 130,000 permits in a year, mostly issued from the Washington office. There are also a great many which are disapproved, all of which require work, more work, possibly, than those which are approved. The result is that the actual action on these permits is not handled by the commissioner, but must be handled in a clerical manner, the routine clerical manner.

This raises the question of the advisability of centralizing or decentralizing the bureau, as has already been discussed, in the matter of the enforcement of the criminal law at the time Mr. Kennedy was present. However, it has not been gone into in the matter of permits.

In the case of a druggist in a State, the most of them are more or less of a routine matter.

The CHAIRMAN. You are speaking of retail druggists now?

Mr. PYLE. Retail druggists. It is obvious that the more quickly and more easily that can be handled the greater the efficiency of the department.

There is another feature in connection with that, and that is that these druggists, most of whom are, or presumably are, reputable business men, are operating under and by virtue of Federal law. They are entitled to the promptest possible action on their applications, whatever they may be. It may be an original basic application, but their business may develop to such an extent that they may need an enlargement of their permit, and they should be able to get a permit and quick action on those matters.

There has been a great deal of complaint in the States of Pennsylvania and Illinois, to my knowledge, of delay, though I may state that I do not know the condition in Illinois at the present time. However, a year and a half ago there was great complaint in the State of Illinois about delay, in that the matters were being forwarded to Washington and back again. The delay to the applicants was so great that they were making a most vigorous protest.

At a recent meeting of the Retail Druggists' Association, in their national convention, resolutions were adopted condemning the treatment they were getting from the department, in which the delay was more or less emphasized. I get that from newspaper reports of the resolutions which were passed, and which I noted at the time.

If these men are entitled to action on behalf of the Government, they are entitled to prompt action, and I believe that if there is

any way in which the Prohibition Department can facilitate that without sacrificing the ultimate ends of the department in the enforcement of the law and in its administration, it should be accomplished.

I do not think the Prohibition Commissioner should have any knowledge of a permittee which the directors should not or would not have, and if there is any secret information in the files of the commissioner it should be furnished to the director; but I can not see any reason why the basic permits can not be handled in the directors offices, giving close contact and connection between the applicant, the permittee, and the department.

Now, a great many druggists have come to Washington and do come to Washington in connection with matters involving their permits from time to time. That entails expense. That is a matter that needs straightening out and adjusting. They should not have to take a longer trip than is necessary. It does not concern a Maryland druggist very much to take a trip to Washington, but it would be a serious matter for one in Chicago or Minnesota or farther west.

Now, there is another feature. In case a permit is disapproved the action is reviewable, according to the national prohibition act, in a court of equity, United States court. There are decisions which have held that that action must be brought in the District of Columbia, where service is had upon the commissioner. As a matter of actual practice, I understand the commissioner will often accept service in the jurisdiction where the party resides.

Is not that true, Mr. Britt?

Mr. BRITT. He does so invariably, unless there appears some reason on behalf of the public why he should not.

Mr. PYLE. What would be such a reason, Mr. Britt?

Mr. BRITT. There might exist a condition in regard to which the commissioner might be of opinion that he should protect the public and have the party brought to the place of jurisdiction, and that their rights should not be waived.

Mr. PYLE. But under the law it can be done, however?

Mr. BRITT. Yes, sir. I am reminded by Mr. Wilson, who has charge of these matters, that it has been decided a number of times here legally that it may be remitted back to the jurisdiction where the matter arose.

Mr. WILSON. As to taking jurisdiction here, Chief Justice McCoy has held not only that the act contemplates that constitutional provision but it is, in effect, applicable to these cases where the review must be had within the jurisdiction, or within 50 miles of it. Judge Hoehling has said that in this Hermann case.

Mr. PYLE. I understand there were a few cases in which it had been held, cases brought in the District, where they actually occurred——

Mr. BRITT. Just a moment, Mr. Pyle. As to the administration of Government lawsuits, it is held, of course, that the venue of the proceedings is here in the District of Columbia, where the heads of the departments reside; so that this is the general localization for such actions. But in these cases, for various reasons, the business is transacted by a branch of the department of the Government through a directorate in the State, and therein, as I understand it, lies the basis of reason for the decision which Mr. Wilson has quoted. I will

say in this connection, in behalf of the Prohibition Unit, that the disposition is, in all instances, either by waiver or otherwise to allow the case to take its course where it will be least inconvenient and of least expense to those who desire to try out their rights in the courts.

Mr. PYLE. However, in case the commissioner so desired, he could probably force them to come to the District of Columbia, when the power is in him to grant or refuse.

Mr. BRITT. Conceding that the court should construe that to be the rule, in that case that would be the situation.

Mr. PYLE. What I am trying to get at is this, that in case the commissioner should desire to make it difficult for an applicant whose application he had disapproved he could do so, and I believe Mr. Britt will bear me out in the statement that certain applicants who are under grave suspicion have obstacles thrown in their way to prevent their getting a permit when it is believed that they will violate the law afterwards.

Mr. BRITT. I will say that the resolve is strongly against them, but I will not say that obstacles are thrown in their way.

Mr. PYLE. In the matter of these permits, if they were left to the discretion of the prohibition directors in the various States, it would be obviously impossible to compel any applicant to go outside his State to have judicial review of a disapproval of a permit.

Now, in the matter of State directors, there have been a comparatively few unfortunate examples of breach of trust by directors of the States. There have been several indictments and there have been several removals for cause; but as a rule the department can and does get very good men for those positions, men who are competent to pass upon these matters and men who feel their responsibilities rather keenly and strongly in that regard. I can not see any good reason, assuming that the department gets good directors and retains only good ones—and the department can remove those men from those positions if they are not satisfied with them—why this matter can not be more successfully handled in the director's office than it can in the Washington office.

I have never worked in the Washington office, but I have been besieged by people having business in connection with permits with the department who objected to the delay and the inconvenience and lack of satisfaction in their efforts to get information as to the status of their cases. They report that when they come to Washington they think they have gotten to the right man and they take the matter up, and in a few weeks they find they were not to the right man, that somebody higher up has taken a hand in the proceedings, and the result is delay. They have come into the office in Pittsburgh—and when I was in Chicago the same thing occurred—complaining of the delay and their inability to get to the man with whom the business ultimately must be transacted and talk it over with him.

Mr. BRITT. Mr. Pyle, are you prepared to be specific about those cases?

Mr. PYLE. I am not. They are simply applicants, particularly druggists, who have come in from time to time complaining.

Mr. BRITT. I merely want to say that while I in no wise dispute what you now say, I am satisfied that they have come to you in just that way, and yet, Mr. Chairman, I think I am prepared to say that

if the individual cases were presented there would be a record and sufficient reason why there was a delay.

Mr. PYLE. Well, that does not get around my point, Mr. Britt——

Mr. BRITT. Not at all. I merely wanted to stress that point.

Mr. PYLE. That by having a director handle these matters would probably save one step, and it would save a duplication of clerical work.

It comes down to a point of centralization of power. I am convinced that the department can get very competent directors who possibly would be better qualified than the persons who ultimately, in rather a clerical capacity, would pass on the permit in the department. The directors are furnished with the machinery for handling this work, and I can not, from my study of conditions in the field and of the regulations, perceive of a valid reason for not allowing the directors to handle this work. The department has control over the directors; they can select good men and remove them if they prove inefficient or incompetent. I believe the people in the States are entitled to direct contact with the man who supervises the work in that State. In the work in the director's office he does have the routine work of issuing permits to purchase, and that is what I call routine work.

It has been determined by the commissioner how much liquor a man may withdraw. That is the real discretionary matter. The issuance of a withdrawal permit or a permit to purchase by a director is merely checking the man to see how much this man has already withdrawn against his permit and O. K'ing his application if it does not exceed that. That is more or less routine matter and gives the director no power——

The CHAIRMAN. Can anyone here tell me how many employees in the unit there are who are engaged in passing upon these 130,000 permits?

Mr. BRITT. Mr. Chairman, I have here full exhibits of both the office organization and the field organization, including the item which you refer to now, which I have had prepared in response to counsel's request. I will give that later in my testimony, if that is desired.

The CHAIRMAN. I would like to put that in the record at this time, showing just how many men are engaged in that.

Mr. BRITT. I will get that for you right here.

The CHAIRMAN. Yes; because we are dealing with that subject now, and I think it would be proper to have that in sequence in the record.

Mr. BRITT. Yes.

Mr. SIMONTON. Mr. Chairman, may I make a suggestion here?

The CHAIRMAN. Wait until he finds that.

Mr. SIMONTON. While he is looking that up I would like to suggest this, with your permission.

The CHAIRMAN. Yes.

Mr. SIMONTON. Of course, there are many reasons why compromises should be handled in the field, and they could be analyzed and brought down to an exact basis, but one that occurs to me right now is this: Let us assume that the Fleischmann Co. permits were issued by the seven directors, we will say, and then the seven directors would each have to inform each other of the operations

of the same company in their jurisdictions. In other words, the New York director would write to the Bridgeport director, the Bridgeport director would write to the New York director, and the New York director would write to the Philadelphia director, covering everything that might happen in that jurisdiction which would prevent a violation of the law in the other jurisdiction; whereas, when all of these reports come to Washington they go to one head.

The CHAIRMAN. Oh, yes; I understand that, but that is just one of the kind of instances that are given for the continuance of a policy which builds up the biggest possible bureau in Washington. In the case of every organization that I have come in contact with they pick out the exceptions and emphasize them as the reasons——

Mr. SIMONTON. If you will permit me——

The CHAIRMAN (continuing). For continuing the most inefficient system in the world.

Mr. SIMONTON. I began with that to illustrate it. That is true with regard to every distillery, with regard to every whisky distillery, and with regard to every industrial alcohol distillery in the country.

The CHAIRMAN. You mean they all have branches?

Mr. SIMONTON. No, sir. Every distillery in the country is dealing with permittees in several jurisdictions. If they violate the law down in Kentucky or Illinois——

The CHAIRMAN. Let us see, for a minute. If a distillery only has one office in one location, how can it be dealing with permittees in several jurisdictions?

Mr. SIMONTON. Because the permittees withdraw from all of these distilleries.

The CHAIRMAN. Yes; but is there not an accumulation of all of those records in the Washington office?

Mr. SIMONTON. I am A, in Illinois. Mr. Pyle is B, in Kentucky. I enter into a collusive arrangement with Mr. Pyle in Kentucky by which I can bootleg in Illinois. Mr. Pyle's permit comes up in Kentucky. The Illinois director has that information. He may bootleg with a man in Nevada or New York. All of that information has to come to the director under this suggested system, who would issue Mr. Pyle's permit. He may get it from a dozen different States where the distiller has been in collusion with the permittee in a particular transaction. That runs throughout the whole gamut of distillery work. The general agents develop that. Their field is not really within one State; their field may cover three States. The general agent's force receives reports from these agents in the various jurisdictions. Interstate shipments or intercontinental shipments are made, and all of that information comes to Washington.

The CHAIRMAN. I can not see why, if a director is competent to make the investigation in the first place, he can not develop the evidence on the application for the permit.

Mr. PYLE. In that case, I believe the same result would be obtained if the Prohibition Unit kept the various directors informed of all transactions by permittees of persons within their State.

Mr. BRITT. I will now answer the chairman's question as to the number of persons in the Prohibition Unit employed in work in connection with the issuance of permits.

In the permit division of the Prohibition Unit in Washington there is a total of 102 officers, clerks, typists, stenographers, and other officers and employees, engaged in work connected with the issuance, recording, considering applications, and other matters in relation to permits.

Mr. PYLE. That does not include everyone. You have in your section a number of men who really work most of the time on permits, have you not?

Mr. BRITT. I have no one in my office that works with permits in the original stage. They are mainly employed with the questions that grow out of permits, but they are reflected back for another purpose and in another way. They do not have reference to the issuance of the permit, other than to make a report upon some alleged violation that is being considered in the office of counsel, at the request of the permit division, for its information, as to whether the permit should or should not be issued. That is, it relates to the qualifications of the permittee in the matter of some charge of some sort, but not in work upon or issuing the permit in response to the application.

Mr. PYLE. What percentage would you say, of the work of your office, is devoted to permit work and what percentage to criminal law?

The CHAIRMAN. I do not think that is important, Mr. Pyle. I realize the necessity of having some agency for reviewing these things.

Mr. BRITT. My exhibit would throw a great deal of light on that, Mr. Pyle.

Mr. PYLE. In two States that I have mentioned, the directors have been shorn of their law-enforcement power. In the State of New York, as was formerly the case in Pennsylvania, the director has absolutely no power; he can not even make an investigation of the permit that he is called upon to approve. I believe he handles the withdrawal permits. Is not that the case, Mr. Britt?

Mr. BRITT. In the State of Pennsylvania?

Mr. PYLE. In New York?

Mr. BRITT. In the State of New York, the director has not force at his command other than his immediate force for the conduct of the office business.

Mr. PYLE. He handles withdrawal permits?

Mr. BRITT. Yes, sir.

Mr. PYLE. But not basic permits?

Mr. BRITT. No.

Mr. PYLE. The inspection is all done by the general agents' force under Mr. Yellowley?

Mr. BRITT. That is true, as I understand it.

Mr. PYLE. And the director has no discretionary powers, then, in any way, in that State?

Mr. BRITT. No; I would not say that. You mean he has no discretionary power in the inquiry?

Mr. PYLE. Yes.

Mr. BRITT. He has no power in the inquiry; but, of course, he has the discretionary power, as he would have in any condition when the matters are reported to him, when he comes to act for his directorate.

Mr. PYLE. But he has to take some one else's statement.

Mr. BRITT. He gets his information through the general agents.

Mr. PYLE. Through the general agents.

Mr. BRITT. As to the facts indicated.

Mr. PYLE. In the State of Pennsylvania, the director has been given investigation and inspection power, maintaining two offices for that purpose. As I understand it, and as it has been proposed by Mr. Haynes and suggested at the meeting on December 31, it was ultimately proposed to use that system over the United States, placing all the enforcement in the hands of general agents, and giving the directors the power of inspection and the right of approval or disapproval of permits, and the handling of withdrawals. That is the way I understood the statement that he made.

Now, I might state that this system in Pennsylvania—and incidentally, some figures were to be furnished which would show it more successfully—as I understand this system in Pennsylvania, it is giving considerable dissatisfaction to the people of that State. I do not know that I can give concrete facts without calling people in, and that would make a ballot on it; but there seems to be considerable dissatisfaction both among permittees and on the part of the Governor of Pennsylvania, who is an avowed advocate of dry laws. The people generally seem dissatisfied there. As to that, I speak from my own observation. Whether giving the director there full power to handle that would correct matters or not, I do not know. My impression is that it would relieve the dissension to a certain extent. If it is the policy of the department to get cooperation with the State and local officers, and to get harmony, it is reasonably obvious that that end will not be best obtained by sending in strangers to administer the law in their jurisdictions. I believe that the men who ar acquainted, men of some prominence in the various jurisdictions or States, will get better cooperation from the officers of that State, and will get better harmony than an outsider.

The CHAIRMAN. I would like to ask here if the bureau is ready to introduce an exhibit as to the relative merits of the system that is now being followed in New York and Pennsylvania in contradistinction to the other system adopted in the other States?

Mr. BRITT. Mr. Chairman, I have not the data ready on that point. I do not understand that it was requested of me, and I do not understand this reference.

Mr. SIMONTON. I can answer that. Mr. Kennedy is getting up information on that subject for the committee and he will produce it.

The CHAIRMAN. He is going to endeavor to prove that the system now followed in New York and Pennsylvania is better than the system followed in the other States?

Mr. SIMONTON. Yes, sir; that is what he said, that the conditions were better——

Senator KING. He had better just state the facts and then let us draw our own conclusions, without starting with a thesis that it is better, which he thinks he must support.

Mr. SIMONTON. I have not any information as to just how he is proceeding, except I think he will produce before you the men, or at least will bring statements before you from men who actually know what the conditions are, and not draw conclusions.

Mr. BRITT. We will place at your disposal anybody that there is to testify, as the Senator suggests.

Mr. PYLE. I would suggest that there is really only one test to determine it, and that is how hard it is to get a drink. It is a matter of prohibition.

The CHAIRMAN. I would not say that that is the case. The people always will be able to get a drink if you do not stop the sources of supply.

Mr. SIMONTON. That would be a matter of more arrests and more convictions.

The CHAIRMAN. That may or may not be. We will see when that information comes in.

Senator KING. I have heard many complaints because of your sending strangers into States. As they say, you discredit the local men, and that you can get many good men without sending in strangers. Some of the men you have sent into States, where complaints have been made to me, have proven to be disreputable and wholly unreliable. They say it is very bad, and that you do not get results, and that it is altogether a very reprehensible policy. I am expressing no opinion. It seems to me that those criticisms should be weighed by the department.

Mr. PYLE. The purpose of taking it up in connection with the operation of the directors' offices at the present time was to bring up this question in connection with the centralization or decentralization of power. It is a question that every department of the Government has considered. Some of them have centralized, and I understand that some have decentralized in their work; but I believe that in this work of enforcing the prohibition law, where it must be handled ultimately by attorneys in court, presumably the United States district attorneys, the men who get the best results are the men from that vicinity, men they know and in whom they have confidence, men that they have known possibly for years. They will work more closely with those men, and I believe they can get better cooperation from sheriffs and the police than an outsider can. Those people seem to resent outsiders coming into their territory to enforce the laws in that territory.

The CHAIRMAN. My experience would indicate that you are never going to get decentralization of this power, which it is generally admitted is the proper system, as long as you have this organization of bureau chiefs in Washington. In other words, they are going to hang on to all the power they can get and they are going to have just as big a staff as they can get. They are never going to consent to decentralization until Congress commands them to decentralize the work of these several bureaus.

Senator KING. A bureau is costantly reaching out for more power. That is always the case.

Mr. PYLE. A typical example, of course, is this department in the management of the general agents force and the proposed plan to place all enforcement of the criminal phases of the law in their hands. All of the permits, except the permits for physicians, veterinarians, dentists, and for transport, are now in their hands. It is a matter that must be seriously considered, because the department is not getting cooperation in the States which are not favorable to national prohibition.

In this prohibition issue obviously we can exclude a great number of States which are doing all they can do themselves to enforce prohibition. That can not come about all at once, even when all of the efforts of the legal machinery are set in motion toward that end; but there are States where the local offices and the State offices are doing all they can do, and where public sentiment is strongly for it.

There is no issue on national prohibition in those States, and it has but slight effect, because the States themselves are taking care of prohibition.

The issue comes in the States which are opposed. Possibly they have prohibition acts of their own on their statute books, but where the bulk of the people are opposed to national prohibition, in those States the only solution of the problem is to be able to put prohibition over in that territory.

The CHAIRMAN. I would like to say right at this point that I am going to keep on insisting that the bureau do something with respect to concentrating these men in the wet States. The division of their forces among all of the States on a basis of population or some other similar basis is absolutely ridiculous and asinine. The whole prohibition forces should be concentrated in the wet States. The unit knows those wet States just as well as the public knows them, and yet they apparently divide their forces so that you do not get any real competent administration in any one of these alleged wet States.

Mr. PYLE. The question, as I see it, in the handling of these directors' offices, brings up squarely this question of centralization and decentralization. I would suggest that the representatives of the department be heard in connection with the present policy, and if they have any suggestions to make that they give them.

First, however, I would like to have inserted in the record, for some discussion, the specific statement of the number of agents and clerks employed in the directors' offices, together with some discussion of their duties, for the purpose of determining whether the clerical force could not be reduced by the decentralization of the bureau, and avoid the present duplication of the matter of permits.

Senator KING. Before they get to that, Mr. Pyle, have you finished?

I was detained at one of the departments this morning. Have you finished all that you have on the manufacturing of alcohol, denatured alcohol, sales, etc., and the effects?

Mr. PYLE. We have more cases in the files, but not nearly all that should be gone into. As I understand it, the committee proposes to take up the tax matters again for a time, which will give us an opportunity to go through and get a complete review of the situation as to the various large permittees.

The CHAIRMAN. I might say for the benefit of the Senator that I have been crowding this section of the investigation pending completion by Mr. Manson of a number of income-tax cases, and that beginning with Monday we are going to let the prohibition investigators go ahead and prepare the cases that the Senator refers to. We will then go ahead with the income-tax matters that Mr. Manson has been preparing.

Senator KING. I should be glad, if it meets the view of the chairman and the members of the committee, if Mr. Pyle could get some

testimony showing the number of deaths and injuries resulting from drinking the decoctions that are put out in the country to-day. I noticed in this morning's paper that more than 500 or 600 people died in New York in the last year as the result of drinking the stuff that is sold to the people of that State.

I would like also to know whether or not there is an increased use of heroin and cocaine and drugs of that kind and whether it may be in any way attributed or connected in any way with prohibition enforcement.

Mr. PYLE. I will endeavor to get that.

Senator KING. I would not feel that you ought to go too far out of your way, because it might not be within the purview of the committee.

The CHAIRMAN. The bureau has a narcotic division, and I think you will be able to get figures from that division, anyway.

Senator KING. I have had a number of letters since this investigation started, in which it is charged that the enforcement of prohibition has resulted in a very large increase in drunkenness; that the records in cities throughout the United States, even in dry territory, show more convictions for intoxication than ever before; that there is a great increase in the use of all kinds of drugs from caffein up, or down, a great increase in the use of tobacco by the young, a greater consumption of coca-cola and other decoctions, many of them ,ad, prepared in the drug stores; all of which letters tend to discredit prohibition. I would like to know just what the facts are with regard to these matters.

Mr. PYLE. I will endeavor to get some information on that.

Senator KING. There has been a tremendous increase in the use of candy and tobacco, particularly cigarettes, and I think, of cocaine and heroin.

The CHAIRMAN. I think the Senator will find that some of that is propaganda to discredit prohibition.

Senator KING. No doubt.

Mr. PYLE. I may say in that connection that it is rather well known that liquor and drugs are sold in the same general neighborhood to a large extent, so that there is possibly no connection; but I will get such figures as are available on that.

Mr. BRITT. Mr. Chairman, I have here, at the request of Mr. Pyle, as I understood it, a number of exhibits prepared in the office of Assistant Prohibition Commissioner Jones, giving the complete organization of the central Prohibition Unit, with the number of officers and employees assigned to each division, their salaries, and the total cost of the conduct of each division. That covers the central unit.

Then, I have a similar exhibit as to the field service, and in connection with what has been said here about the discussion of a number of interesting policies—and I admit that that is a most important subject—it has seemed to me that since those are the bases of all sound considerations and wise conclusions, I would like to ask the committee, having only been furnished with the originals to-day, that I discuss it to the extent that you wish me to, and there are some matters that may be of interest, and then be permitted to take these originals back and have copies made, and then offer them for

the record, for I believe you will want them in the course of your discussions.

First, as to the central unit, we have the office of the Prohibition Commissioner, with 13 officers and employees, at a total expense of $27,100.

Senator KING. Do you mean that those are his assistants?

Mr. BRIT. Yes, sir; assistants or immediate employees around him.

Senator KING. Name some of them. Who are they?

Mr. BRITT. Senior clerk, at $2,500; clerks, at $2,040, $1,860, $1,740, $1,680, $1,440, and $1,320.

Senator KING. But they are not assistant commissioners?

Mr. BRITT. No.

Senator KING. Just the clerical force in his office?

Mr. BRITT. In his immediate office, sir.

Senator KING. Of course, the records themselves would show the facts as to that. I do not suppose there is any necessity of your wasting much time on it, as we will have those facts when we get the statement in the record.

Mr. BRITT. I am merely giving an outline and not naming the employees at all.

Senator KING. All right.

Mr. BRITT. Office of assistant commissioner, a total of 61 employees, at a cost of $99,760.

Senator KING. Does that refer to the office of Assistant Commissioner Jones?

Mr. BRITT. Yes, sir.

Mr. PYLE. What are the general duties of that office—the office of assistant commissioner?

The CHAIRMAN. I think we had better get these figures into the record, Mr. Pyle, so that we may have a continuity.

Mr. BRITT. The office of counsel—counsel and one clerk, who is assigned to secretarial work, and there is also a detail to do secretarial work, making two in the office of clerks or secretaries.

The division of interpretation——

The CHAIRMAN. Just a moment. When you refer to the counsel there: is that your division?

Mr. BRITT. Yes, sir; that is my immediate office.

The CHAIRMAN. What you are going onto now is an office that you have charge of, but these employees are not in your immediate office?

Mr. BRITT. It is a division of the counsel's office, the division of interpretation; 103 employees, $210,800.

Senator KING. It is no wonder that there are so many misinterpretations, when you have such a big force to interpret the law.

The CHAIRMAN. Counsel might make notes as we go along, and then ask what these various employees interpret.

Senator KING. You say there are 103 in that office to interpret the law?

Mr. BRITT. Yes; I will be glad to explain how they are all occupied, and I am satisfied that you will find that they are honestly and thoroughly, and I think properly occupied. That is a matter of opinion, but I will be glad to tell you how they are occupied.

Then, there is the division of litigation in the same office, 156 employees, $302,340.

There is the audit division, with 74 employees, $140,500.

I believe I have already given you the permit division, but I think I had better give it in this connection, so as to have the whole thing here. The division of permits, 102 employees, a total of $166,600.

Then, the narcotic division, 96 officers and employees, at a cost of $163,400.

Office of chief of general prohibition agents, 51 employees, $88,340.

This exhibit contains the style of the divisions, the style of each of the officials, the salaries they receive, and the aggregate salary in each of the divisions.

Mr. PYLE. May I ask you a question in connection with these figures? Is that the Budget allowance for your last year's expenditures?

Mr. BRITT. This is as of January 12, 1925.

Mr. PYLE. For what period?

Mr. BRITT. And is covered in the allowance for the fiscal year ending June 30, 1925, the current allowance.

Mr. PYLE. It is your Budget allowance?

Mr. BRITT. Yes; it is the appropriation based upon the Budget.

Mr. PYLE. The figures as given for the various offices include only the salaries; you have not included the incidental expenses?

Mr. BRITT. Oh, no; this does not include office expenses. It is just what it says.

Senator KING. Does that give the total number of employees in the District of Columbia?

Mr. BRITT. Yes, sir.

Senator KING. And their salaries?

Mr. BRITT. And their salaries, with the totals.

Now, I do not wish to be understood as saying that this represents the total expenditure in the District of Columbia. There are the office expenses aside from the salaries, which are set forth in the exhibit prepared here for the 1926 Budget, and which I will offer; but I think that that had better be deferred until I look into it to see whether it comprises all of that. As I am handling data prepared by another official and for him, I think I should be sure as far as I go with it.

Now, as to the field service, you will bear in mind that the statute does not give the name or style of any of these field officers, other than they are referred to as assistants of the Commissioner of Internal Revenue or inspectors. Then, they have assumed, in the course of administration, various designations which have become fixed in the administration service. For instance, there is no establishment in the statute of a directorate or office of a director, but the Commissioner of Internal Revenue and his assistants have provided a directorate for each State in the Union, and an office of director for each State in the Union, and have appointed a director for that office, and also a directorate for each of the Territories of Alaska, Hawaii, and Porto Rico.

Senator KING. A directorate comprises more than the director; it means the director and his staff; is that it?

Mr. BRITT. Yes, sir. The director and the staff officers of the directorate.

The Panama Canal Zone, to which, of course, the national prohibition act applies, is administered by the Treasury Department. It is administered by the War Department; that is to say, the Governor of the Panama Canal Zone administers the prohibition law with other laws, and it has no direct connection with the Treasury Department.

The same thing is true of the Virgin Islands, where the administration of the prohibition law has been transferred to the Treasury Department, and the Governor of the Virgin Islands, who is appointed by the Navy Department, administers the prohibition law in those islands.

In the Philippine Islands, the national prohibition act does not apply, and we have no administration of the act there.

The CHAIRMAN. How is it enforced in Hawaii?

Mr. BRITT. It is enforced by a director. Hawaii is made a directorate, as are the States.

The CHAIRMAN. Under the Treasury Department?

Mr. BRITT. Under the Treasury Department, the Prohibition Unit.

There is, at this time, a director for each of the States in the Union, 48, and for each of the three Territories that I have named, making a total of 51 directorates and 51 directors, with salaries ranging from $3,000 to $5,200, averaging $4,072.55.

I have an exhibit for each of the directorates of the States, starting with the State of Alabama, the number of employees of each, with their salaries, and the total quota or allotment of money out of the appropriation for that directorate. The disbursing officer is the director himself, who pays his personal employees and officers, the accounts finally being audited as other accounts are audited, and the money being charged to the appropriation for the enforcement of prohibition and narcotics.

The CHAIRMAN. I would like to know if there is anyone in the bureau here who can tell us the methods which are used in allotting the appropriations to the various States, and in allotting the number of employees to the various States.

Mr. BRITT. I can give you such information as I have here, which may be helpful. As I said before, I have not been an administrative officer, but I know something about these things incidentally, naturally.

The CHAIRMAN. Is Mr. Jones here?

Mr. BRITT. He is not in the city to-day, sir; but he will be available when he is.

The condition of prohibition enforcement to which Mr. Pyle has referred, which is practically accomplished by the States in some States, the difficulty of enforcement in the States, which must always be taken into account, the number of permittees, and particularly the number of manufacturing permittees; in other words, the permittee interests, aggregately speaking, constitute an important means of determining how much should be appropriated to that directorate for enforcement in that section, and it has something to do, evidently, with the salary of the director, for it starts with where the director has not very heavy duties. The salary seems to have gone

down in one instance here, I notice, as low as $3,000, and $3,300 in other instances, while in one or two instances it goes up, as I have said, to $5,000 and to $5,200. But to answer your question in summary, the amount of work required in the directorate is the criterion which determines the force assigned to that directorate, and, of course, the quota for the payment for services.

The CHAIRMAN. How did you arrive originally at the amount of work to be done in the various States when you allotted the number of employees and the appropriation?

Mr. BRITT. It was a matter of inquiry and investigation, and also development and growth, changed from time to time. As Mr. Pyle has said, in all of the directorates except two the inspection and enforcement officers are attached to the directors, and they are the directors' administrators of that enforcement agency in their directorates.

The CHAIRMAN. Are there any rules and regulations existing which prescribe cooperation with sheriffs, police departments, and the State police?

Mr. BRITT. There are no written rules and regulations, but I can state in a word what efforts are made.

The CHAIRMAN. Well, if you have not any written regulations it is not necessary to state it.

Mr. BRITT. There can not be any, because we could not enjoin anything upon them. The officers, of course, are instructed and directed to use every possible means of cooperation with sheriffs and policemen, and there is in many places very fine cooperation, in some places only measurable cooperation, and in some places I would possibly be justified in saying there is very little.

In the States of Maryland and New York there are no State laws for the enforcement of prohibition under the national prohibition act.

The CHAIRMAN. Are those the only two States in which that condition exists?

Mr. BRITT. Massachusetts was a third; but at the last election, as I recall it, they approved some sort of referendum which provides for enforcement. Am I correct in that, Captain Orcutt?

Mr. ORCUTT. I did not get that.

Mr. BRITT. Am I correct in saying, Mr. Orcutt, that at the last election they approved some referendum providing for prohibition enforcement in the State of Massachusetts?

Mr. ORCUTT. Yes, sir; the Legislature of Massachusetts in its last session passed a law which became effective upon its adoption at the referendum, and which was adopted at the special election in that State, making the prohibition law operative in Massachusetts.

The CHAIRMAN. Are there any other States that have no local prohibition laws?

Mr. BRITT. Only Maryland and New York.

Mr. ORCUTT. If you will permit me, Mr. Britt, I am informed, not officially, but by hearsay largely, that the Supreme Court of Nevada has recently declared its act unconstitutional. How far that goes, I do not know. I only have that offhand. If that decision is as has been reported to me, then that State is in the same category with Maryland.

Senator KING. As I understand it, then, Mr. Britt, every State in the Union except two and possibly Nevada, if the statement of Mr. Orcutt is true, has a prohibition law?

Mr. BRITT. Yes, sir; a prohibition law in line with the purposes of the eighteenth amendment. As you will recall——

Senator KING. Well, is it a law merely adopting the Federal prohibition law and providing for its enforcement, or is it an independent act of their own, prescribing prohibition and making provision for its enforcement?

Mr. BRITT. That is it exactly—not exactly the national prohibition law, but to the very same end. In most instances they go far beyond the national prohibition law. In North Carolina, for instance——

Senator KING. Yes; we are familiar with that in my State. We go beyond the national prohibition law there and in other States, too.

Mr. BRITT. Yes. One other word about the matter of cooperation: My own view is that the ultimate fate of the eighteenth amendment depends upon the cooperation of the States, through their county and State police officers. If the Federal Government were to undertake to enforce the law alone, it would take an army of officers and require millions of dollars; so it would seem to me that one of the great things desired is to make good with cooperation. In some States, as I have already said, it is already beyond any efforts on the part of the Federal Government.

In my State you can get a conviction and send a man to the chain gang for two years for mere reselling, and it is done by the State force. In some instances I have known them to send them up for four years. The administration of the law in the State courts is very far beyond that in the Federal courts, although in my jurisdiction, the western district of North Carolina, Judge Webb is a very extraordinarily fine judge in administering the prohibition law. The State itself does not have to depend very much upon Federal aid.

The CHAIRMAN. That is interesting. Now, how many Federal employees are in that State engaged in prohibition work?

Mr. BRITT. I do not know the number, but this exhibit will give it.

The CHAIRMAN. Can you turn to it there?

Mr. BRITT. I think they have linked two or three States together down there. Of course, you must not forget that there is a permit——

The CHAIRMAN. If we forget, the bureau will remind us.

Mr. BRITT. In North Carolina there are 67 employees, all told, at a cost of $133,240.

Senator KING. That covers the permits as well as the enforcement?

Mr. BRITT. Everything; yes.

Mr. PYLE. There is a class of general agents working in that State also?

Mr. BRITT. Yes, sir.

Mr. PYLE. And they would also work in addition to this personnel?

Mr. BRITT. Yes, sir.

The CHAIRMAN. In view of your statement here, my opinion would be that that is an outstanding example of what I have tried to develop here, that the allocation of these employees is not intelli-

gently done; that you are operating in such a way in the States where the States themselves enforce prohibition as to be detrimental to the work in the States where the States do not enforce prohibition.

Mr. BRITT. I do not want to be understood as saying that these Federal agents are not usefully and properly employed, but I do want to say that the State itself is intensely on the job at all times. Of course, the task is an immense one, and in my State, or in that belt of States there, we have the Allegheny Mountain section, where, unfortunately, they have always had a good many moonshine stills. But they are very small things. They do not make a very great amount of liquor, in my opinion. There are constant efforts on the part of the sheriffs and prohibition agents and the local officers to stop that. I think, in the aggregate, they make less liquor—that is, that gets out to the people to use—in my State than is made by one concern we had under consideration here.

Mr. PYLE. Do local officers work on those, or do they fail to?

Mr. BRITT. They work on them. In my State there are joint efforts by the sheriffs, the policemen in towns and cities, and the prohibition agents, and they often go together on their raids. They are very active.

Mr. PYLE. In view of the penalties that would be prescribed in the Federal courts there, the case would probably be brought in the State court?

Mr. BRITT. The cases seem to drift very largely into the State courts. In the middle and eastern part of the State they do largely. In the western part of the State, where Judge Webb presides, knowing that there will be condign punishment, they go into the Federal courts very largely, but they also go into the State courts there.

Senator KING. Is not the disposition to go into the Federal court, even in those States where there is a strong sentiment in favor of prohibition, because the agents think that it will reflect a little more upon their earnestness and their zeal?

Mr. BRITT. I am not so sure of it.

Senator KING. Are not the actions brought in the Federal courts instead of the State courts?

Mr. BRITT. I am not sure that I have ever noticed that. If so, it seems to be declining, for there is a vast amount of cooperation, and many agents have told me that "we are trying to get them into the State courts, because we think we would have a better chance of getting conviction there."

Senator KING. What is the aggregate number of employees in the entire Prohibition Unit, including those on land and those on sea?

Mr. BRITT. Yes; I wanted to give you some other figures, which I think you will want.

Senator KING. Does this list that you have there give the number on the boats?

Mr. BRITT. No, sir; it does not. That is the Coast Guard Service. We have very little prohibition agent service there.

Senator KING. As I recall it, you got $11,000,000 last year, before we adjourned in June, as an additional appropriation, out of which you were to buy some boats?

Mr. BRITT. That was for the Coast Guard Service, Senator, not for the prohibition service. The Coast Guard Service has now taken

over the rum-running proposition, and I have understood that their total equipment is to amount to something like 400 boats, when they are all finished. The appropriation is large, and they are handling rum runners by the hundreds. I think ultimately they will solve that problem absolutely. In other words, I think they will solve it absolutely; their equipment and allowance are sufficient for that purpose.

The CHAIRMAN. That is a smuggling proposition and not a prohibition law enforcement proposition, is it not?

Mr. BRITT. Yes.

Mr. PYLE. As I understand it, they have over twice the force of the Prohibition Unit in the fleet?

Mr. BRITT. I do not know the extent of their force, but I know it is very large.

Mr. PYLE. I saw a figure that it was about 4,500.

Mr. BRITT. Well, that is entirely different from the bureau.

Senator KING. This list that you have given only covers the land activities in enforcing prohibition?

Mr. PYLE. About 4,500 men watching the coast, and 1,700 men watching all the rest of the United States.

The CHAIRMAN. I would like to know if the Cramton bill in any way deals with the Coast Guard Service, or whether that still remains in the Coast Guard Bureau.

Mr. BRITT. It does not touch it in any way and is not related to it any more than the present laws do.

Here is a statement in further answer to the Senator's question: The general prohibition agents, this mobile force which Mr. Haynes explained in your presence, has a number of divisions throughout the country. There are 18 of those, and I have a statement here showing the number of men assigned to each division, with their salaries, the total amount expended in the division, and the total amount expended by the general prohibition agent service, which I think you will find a useful exhibit, and I would like to have it go in.

Then, there are other forces here that are in the field force, as to each of which you should be advised.

One is the narcotic field force. This is a complete exhibit on the narcotic field force. There the field work is again made up in divisions. The number of divisions is 18 and they bear the name of the city which constitutes the head of the division, as the New York division, the Washington division, the San Francisco division, etc. This exhibit gives the number of employees assigned to each division and the total quota for the division, with the total field force. There are 357 officers, and the expenditure is $794,940. That is for the field force, not the office force.

The CHAIRMAN. Then, the District of Columbia force would be additional to that?

Mr. BRITT. You mean the central unit force?

The CHAIRMAN. Yes.

Mr. BRITT. Yes, sir; entirely separate.

Senator KING. Does the memorandum which you have there give all of those in the narcotic division?

Mr. BRITT. Yes, sir.

Senator KING. In Washington and throughout the United States?

Mr. BRITT. Yes, sir; everywhere.

Senator KING. About a year ago a friend of mine was telling me that he happened to see in a little town in Idaho one night, at the hotel, eight representatives of various bureaus of the Government for the detection of crime in that town. There were two narcotic men, two or three prohibition men, a deputy marshal, one man representing the Post Office Department, looking after violations of the postal laws, and two looking after counterfeiters. There were also some Federal officers of the tax unit in that one little town in Idaho at one time. Several district attorneys have also spoken to me about the duplication by the Federal Government in the matter of the detection of crime, and that it is something scandalous. I think it is, too.

Mr. BRITT. Well, there could be a large aggregation of officers from different departments, all on useful, profitable missions. Of course, I am not speaking of this particular one.

Senator KING. That is my predicate. Why should not the unit, your narcotic and your prohibition divisions, because they are germane and cognate, have one person handle all of the work in that State or in that district, instead of having different organizations and different employees and those multiplied numbers?

Mr. BRITT. That would not work well or economically for the Government, for the reason that the work is of a different character in each case from the other, and it requires special technical training for it. Particularly is that true in connection with the narcotics. The matter of work in connection with the narcotics is a thing of localization for a while, for the community, while in the prohibition work it is that of migration.

Senator KING. A sheriff will look after all crimes, from homicide down to thefts, including narcotics and violations of the State laws, and I have not discovered that it needs a superman to be a sheriff. I think you magnify too much the duties and responsibilities of some of these positions. You contend that there must be a sort of special training or special scientific knowledge in order to discharge the duties, but I see no reason why the narcotic and prohibition work, in most cases, could not be handled by the same organization.

Mr. BRITT. My own view of it is that for prohibition and narcotics there should be specially and distinctly trained men. Training is one of the great necessities of the situation. That is my opinion.

Mr. PYLE. A great many of the narcotic agents were transferred to the Prohibition Unit, were they not?

Mr. BRITT. I beg your pardon.

Mr. PYLE. I say a great many of the narcotic agents were transferred to the Prohibition Unit, were they not?

Mr. BRITT. Some of them; and I think some of them were originally in the Internal Revenue Service.

Senator KING. At any rate, there is no disposition to unite them?

Mr. BRITT. No; and let me say that——

Senator KING. I did not ask for an argument. There is no disposition to do it?

Mr. BRITT. No; there is no disposition to do it.

Senator KING. And no plan to do it?

Mr. BRITT. No, sir. They are separated in the statute.

Senator KING. And the plan is to build up separate organizations?

Mr. BRITT. As far as I know.

Senator KING. And maintain them?

Mr. BRITT. So far as I know, it is the aim to continue the present organization.

Senator KING. Yes.

Mr. BRITT. We have in the field at warehouses where whiskies are stored in bond officers in charge to protect them and to guard them. From time to time it has been found to be an indispensable necessity. I call your attention to that as a matter of information, as I am trying to give a complete exhibit of the entire central and field forces.

The number of warehouse agents are scattered throughout the country at all the different warehouses—concentration warehouses, general bonded warehouses, special bonded warehouses, and others of whatever style they may be. We have 190 of these, at an expense of $266,700.

Senator KING. Does that include the guards?

Mr. BRITT. Yes; the guards.

Senator KING. That does not include the number who are there under the revenue laws?

Mr. BRITT. The internal revenue laws?

Senator KING. Yes.

Mr. BRITT. Well, you see the Internal Revenue Bureau includes the entire service.

Senator KING. Oh, I know that, but——

Mr. BRITT. You are talking about the storekeeper gaugers?

Senator KING. The storekeeper gaugers.

Mr. BRITT. It does not include those, sir. They are at the distilleries and denaturation plants. No: it does not include them.

Mr. PYLE. Are those men appointed by the prohibition director or by the collector of internal revenue of the State?

Mr. BRITT. These men are appointed by the Collector of Internal Revenue, and they are paid out of the appropriation for prohibition.

Mr. PYLE. Then all that that amounts to is that the Commissioner of Internal Revenue is taking the money from the prohibition appropriation to pay the men who are doing his work for the collector?

Mr. BRITT. No; it is not his work. The protection of the spirits in these various places involves the protection of the public against violations of the national prohibition act. If the spirits are removed, not only may the Internal Revenue Bureau be deprived of the tax but the spirits are diverted over the country. No; I regard the interest of prohibition as greater than the tax feature in that case.

Mr. PYLE. Has not the Revenue Service always furnished men at these warehouses to see that the spirits were not diverted without the payment of the tax?

Mr. BRITT. No, sir; before prohibition the storekeeper gauger was the man in charge of the warehouse and of the distillery. The distillery now is nothing but a naked warehouse, and of course the necessity for protection has increased proportionately, as you will see.

The CHAIRMAN. If the Cramton bill is adopted, there will be no relation between the collectors of internal revenue and the prohibition officers?

Mr. BRITT. They will have nothing to do with—the collectors will have nothing whatever to do with the survey of distilleries, with the enlargement of distilleries, or with the protection or withdrawal of the spirits.

The CHAIRMAN. Then the collector will have to have an additional force to look after the revenue laws?

Mr. BRITT. No; his force will be greatly lessened.

The CHAIRMAN. As I understand it, they are both now under the same head, but the Cramton bill proposes to separate the collectors of internal revenue and all the revenue officers from the prohibition officers and put them under two separate heads. Is that correct?

Mr. BRITT. Practically so.

The CHAIRMAN. Is not that correct?

Mr. BRITT. Not exactly. This is what it provides, Senator: The collectors of the districts will have nothing whatever to do with the spirits, except to collect the tax on them—nothing but that.

The CHAIRMAN. In other words, then, if the prohibition employees let these spirits out, the revenue officer has no protection by which he can get his revenue?

Mr. BRITT. You mean the collector of internal revenue?

The CHAIRMAN. Yes.

Mr. BRITT. They will be entirely in the custody of the Prohibition Bureau.

The CHAIRMAN. In other words, the collector has no jurisdiction over that for the purpose of securing his tax.

Mr. BRITT. Yes.

The CHAIRMAN. Is that correct?

Mr. BRITT. Not exactly. Let me give you an illustration.

The CHAIRMAN. I understand that. The fact I want to determine—and I do not want you to encumber the record with an argument, so that we can not find out what we are talking about—is if the Cramton bill is adopted the collector of internal revenue will have no agents or representatives to insure the collection of the tax, except that he might get the cooperation of the Prohibition Unit voluntarily. Is that correct?

Mr. BRITT. He will have no supervision at all over the spirits at any stage except to issue tax stamps and authorize withdrawal by saying that the tax has been paid. That is all.

I now want to come down to the field chemists, the only remaining class.

The Bureau of Chemistry and Industrial Alcohol has already been described by the head of it, he being the chemist, Mr. J. M. Doran, who testified before you, the central office, of course, being here in the Prohibition Unit and the Treasury Department. Then, in the field at various place there are various laboratories which the Government has provided—at Buffalo, Chicago, Columbus, Little Rock, and other places. A chemist is in charge, with an assistant, and sometimes more than one assistant, for the purpose of making chemical analyses of all specimens of narcotics and liquors and other things that are subject to inspection by chemists, or that are required to be inspected by chemists, coming under the national prohibition act and the narcotic law. Of these, there are 39 in the field at an expense of $84,560.

Senator KING. That number includes their assistants, does it?

Mr. BRITT. That includes all in the field.

Mr. PYLE. What was that money figure?

Mr. BRITT. The number of chemists is 39 and the cost is $84,560.

The CHAIRMAN. Have you put in the record anywhere the total number of employees under the directorates of the States?

Mr. BRITT. Yes, sir; that is here.

The CHAIRMAN. I overlooked that.

Mr. BRITT. I want to say again, that I was given only the original of these exhibits, and I would like to take them back and have them copied, and then have a copy of them put into the record.

The CHAIRMAN. Yes; I would like to have that done. I will have Mr. Pyle follow that up to see that they are attached to the record, but they need not be copied into it.

Mr. PYLE. I shall go into the matter of the distribution of the various directors' officers when the record is available.

The CHAIRMAN. I would like to know if the bureau is prepared to give us the information we asked for as to the number of distilleries?

Mr. BRITT. Yes, sir; I have that here.

The CHAIRMAN. The number of gallons distilled?

Mr. BRITT. Yes.

The CHAIRMAN. And the number of gallons denatured?

Mr. BRITT. This was prepared and furnished to me by the Chief of the Division of Industrial Alcohol and Chemistry, who keeps the books. There are in the country 68 industrial alcohol plants, by which is meant 68 industrial alcohol distilleries.

Mr. PYLE. Distilleries?

Mr. BRITT. Yes. And there are 88 denaturation plants which we have described here.

The CHAIRMAN. Have you the proportion of those that are handled and controlled by the distillers, and those which are separate?

Mr. BRITT. That is not given here, sir.

The CHAIRMAN. We asked for that information, so that we could see how many plants were engaged in the matter of denaturing.

Mr. BRITT. I will make a note of that.

Mr. PYLE. It may be that those 68 distillers include denaturing plants.

Mr. BRITT. Of the 68 distillers named here, some of them have denaturation plants, but there are denaturation plants that are not connected with the distillers. That is what the Senator is asking for, that they be separated, and we will furnish that information.

During the year 1924 there was produced 692,040.1 barrels of completely denatured alcohol and 661,705.8 barrels of special denatured alcohol.

The CHAIRMAN. Are there 50 gallons to the barrel?

Mr. BRITT. Yes; they are called fifties. The completely denatured and special denatured amounted to 1, 353,749.9 barrels.

Senator KING. That is the total of the two?

Mr. BRITT. Yes. Here is a note which I think would be of interest:

"Under the general heading 'industrial alcohol' should be included the quantity of alcohol withdrawn, tax paid, and also the quantity withdrawn in a pure state, but tax free, for the use of the

United States, States, municipalities, hospitals and scientific institutions, customs, bonded manufacturing warehouses, and for export."

These withdrawals amounted to 139,335.74 barrels. That is, these last named.

You asked me the other day, Mr. Chairman, for the amount of distilled spirits remaining on hand in the country. Will you have time to take that now?

The CHAIRMAN. Yes.

Mr. BRITT. We were requested to bring up the figures as to the amount of distilled spirits in bond in the country at this time.

The CHAIRMAN. Is that generally meant to be whisky?

Mr. BRITT. I beg your pardon?

The CHAIRMAN. Is your statement as to distilled spirits to be interpreted as covering whisky?

Mr. BRITT. Generally whisky; there is some brandy.

Senator KING. You do not call wine distilled spirits?

Mr. BRITT. Oh, no; that is not distilled spirits.

Senator KING. Or alcohol?

Mr. BRITT. No; this does not include alcohol.

Senator KING. Just whisky and brandy?

Mr. BRITT. Just whisky and brandy. That is what we understand by distilled spirits ordinarily.

Senator KING. Yes.

Mr. BRITT. On July 1, 1919, the beginning of war-time prohibition, there were 63,942,931.5 proof gallons of whisky in distillery, general, and special bonded warehouses in the United States.

The CHAIRMAN. When you say "proof gallons," is that equal to the sixty-three million and odd gallons by volume?

Mr. BRITT. You are referring to whisky now?

The CHAIRMAN. Yes; I mean as related to volume.

Mr. BRITT. Wine gallons are 100 proof?

The CHAIRMAN. When you say sixty-nine-odd million of proof gallons, is that equal to 63,000,000 by volume?

Mr. BRITT. That is what I mean; yes.

Senator KING. Then the word "proof" there is tautological; it simply means volume?

Mr. BRITT. Yes. On January 31, 1920, the beginning of constitutional prohibition, there were 56,440,610.1 proof gallons of whisky in such warehouses, and on November 30, 1924, the last date for which the records are complete, there were 28,679,004 proof gallons in such warehouses. These figures are based on the contents of the packages when produced and deposited in warehouse.

Recent withdrawals of whisky indicate that the packages now contain about 70 per cent of their original contents. For example, a package containing 45 gallons at the time of production, would, upon regauge at this time, show a loss of 13.5 gallons and an actual content of 31.5 gallons. Therefore, the actual amount of whisky in warehouses on November 30, 1924, would appear to be approximately 21,000,000 gallons.

Then there is this note:

Under Carlisle law, loss for seven years, the period of allowance, can not exceed 13.5 gallons.

Thereafter there is no allowance.

The CHAIRMAN. On that basis, then, the whisky now in the warehouses will soon be consumed, will it not?

Mr. BRITT. No, sir; according to the statistics of annual consumption here, that would last 10 years.

The CHAIRMAN. Then, to get good whisky for medicinal purposes, when should the distillers again be permitted to distill?

Mr. BRITT. It is said to be not sufficiently aged until it is 3, 4, or 5 years old. That is my understanding of it.

The CHAIRMAN. So that in five or six years we should again permit the distillers to distill whisky for medicinal purposes?

Mr. BRITT. That is the statute; yes.

Senator KING. If the owners of this whisky are not permitted to sell it, or at least if they do not find purchasers for it within the period of seven years from the time it is manufactured, and if this diminution continues you allow no credit to them after the seventh year, and then, when they finally withdraw it, they might have no whisky at all, but they are charged with it.

Mr. BRITT. Yes. The statute does not allow it.

Senator KING. It would seem to me that that might work a very great injustice to them?

Mr. BRITT. That is an argument for my suggestion that the Government should take it over. You should take it over and save them from that loss. That is my belief, and I think it is the wisest thing that could be devised, for, as was said the other day, the liquor is in a constantly waning quantity and value.

Mr. PYLE. In the matter of personnel, Mr. Britt, in the act authorizing the Commissioner of Internal Revenue to employ agents to assist in enforcing the prohibition act, the provision was inserted:

> That the commissioner and Attorney General, in making such appointments, shall give preference to those who have served in the military or naval service in the recent war, if otherwise qualified—

Do you know whether that provision is generally followed out?

Mr. BRITT. I understand that it is. It is the law, and it has been discussed somewhat in my presence, and it is my understanding that it is being followed. Of course, that does not say that one who applies would necessarily get the position, but he would have the preference that the law gives. As I understand, that is the way the administrative officers handle it, but I could not state that with definiteness.

Mr. PYLE. I would prefer not to go into any further discussion at this time until we have the figures before us as to the directors' offices.

The CHAIRMAN. With the approval of Senator King, we will adjourn, so far as the prohibition end of it is concerned, subject to call, and if agreeable to the Senator we will again convene at 10.30 o'clock on Monday morning to take up the discussion concerning the Income Tax Unit.

(Whereupon, at 12.05 o'clock p. m., the committee adjourned until Monday, January 19, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

TUESDAY, FEBRUARY 3, 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 31, 1925.

Present: Senators Couzens (presiding), Ernst, and King.

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

Present on behalf of the Prohibition Unit of the Bureau of Internal Revenue: Mr. James J. Britt, counsel; Mr. V. Simonton, attorney; and Mr. H. W. Orcutt, division of interpretation.

The CHAIRMAN. You may go ahead, Mr. Pyle.

Mr. PYLE. I believe, at the close of our last meeting pertaining to prohibition, Mr. Britt had a list prepared of statistics as to the agents and their stations, which he desires to place in the record.

Mr. BRITT. Mr. Chairman, Senator King requested a memorandum as to the progress made in narcotic enforcement, and I requested of the chief of the narcotic division a statement covering some considerable period showing the work done, and what is claimed to be the progress. I offer that statement in the form of a memorandum, signed by the chief of the narcotic division, for the record.

The CHAIRMAN. All right, sir.

(The memorandum referred to is as follows:)

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
Washington, January 26, 1925.

Memorandum for Senate's special investigating committee:

Subject: Data relative to increase or decrease in the use of narcotic drugs.

Statistics show that the quantities of narcotic drugs legitimately imported into the United States and used have decreased during recent years. Only opium and coca leaves are now permitted to be imported, the latest figures being as follows:

Imports

Year	Opium	Coca leaves
	Pounds	*Pounds*
1922	135,093	33,080
1923	99,354	246,933
1924	87,344	208,962

Exports have likewise decreased, and the following figures show the opium which was contained in preparations exported from the United States. No crude opium as such is permitted to be exported; exportation only of medicines containing opium or its derivatives is permitted.

Exports

Year	Opium	Coca leaves
	Pounds	*Pounds*
1922	1,272	606
1923	243	444
1924	130	148

Purchases of opium and coca leaves from manufacturers for the same years show corresponding decreases as follows:

Domestic purchases

Year	Opium	Coca leaves
	Pounds	*Pounds*
1922	63,953	1,275
1923	53,947	917
1924	10,766	177

Exports of preparations containing morphine, codeine, and other derivatives of opium show similar decreases. The net quantity of the pure alkaloids of opium is given below, together with the quantity on which tax has been paid at the rate of 1 cent per ounce or fraction thereof, indicating the proportion in which alkaloids of opium are used in medicines exported.

Exports of alkaloids of opium and preparations containing alkaloids of opium

Year	Net quantity	Taxable quantity
	Ounces	*Ounces*
1922	6,686	502,187
1923	1,689	290,306
1924	1,675	379,175

Domestic purchases of morphine, codeine, etc., and preparations containing morphine, codeine, and other alkaloids of opium are given below in the same manner as above for exports:

Domestic purchases of alkaloids of opium and preparations containing alkaloids of opium

Year	Net quantity	Taxable quantity
	Ounces	*Ounces*
1922	317,086	4,025,754
1923	402,017	5,073,726
1924	179,121	2,526,485

Cocaine, which is the only salable alkaloid or derivative of coca leaves, has decreased in use in recent years, as evidenced by the following figures for domestic purchases from manufacturers:

Cocaine

Year	Net quantity	Taxable quantity
	Ounces	*Ounces*
1921	81,520	738,270
1922	58,320	428,127
1923	57,123	436,608
1924	37,051	273,551

Exports of cocaine and products containing cocaine have likewise decreased, as shown by the following statistics:

Cocaine

Year	Net quantity	Taxable quantity
	Ounces	*Ounces*
1921	7,928	99,346
1922	3,386	28,512
1923	1,085	39,229
1924	489	31,518

The use of coca leaves in the manufacture of the soft drink known as Coca Cola has little, if any, relation at the present time to the legitimate traffic in coca leaves and cocaine. After all cocaine is extracted from the coca leaves a certain manufacturer sells the decocainized leaves to the Coca Cola Co. for the manufacture of the sirup which is used for the soft drink. The Harrison Act specifically exempts from its jurisdiction decocainized coca leaves. Decocainized coca leaves do not contain cocaine. Caffeine, a drug which ordinarily is thought of as being the stimulating element of coffee or tea, does not come within the scope of the Harrison Act and has no relation to the traffic in narcotic drugs.

With respect to the relative uses of derivaties of opium, it should be noted that the narcotic drugs import and export act, as amended by the act of June 7, 1924, prohibits the importation of opium for the purpose of manufacturing heroin, so that eventually no heroin will be available in the United States for legitimate purposes. Manufacturers of opium products have repeatedly reported that the demand for morphine for medical purposes is growing less, while the demand for codeine for medical purposes is not decreasing, sometimes increasing in proportion to the decrease in the demand for morphine. This contention is supported by statistics for recent years. During the year 1922 morphine and codeine purchases from manufacturers stood in the respective ratio of 35 to 20, and during the year 1923 the respective ratio of preparations of morphine and codeine purchased from manufacturers stood at 13 to 11. During the year 1924 only slightly more morphine than codeine was purchased from the manufacturers. This is conceded to be a desirable condition, since codeine is far less habit forming than morphine.

The number of persons and firms qualifying as manufacturers of narcotic drugs has decreased from a total of 914 persons paying tax as importers and manufacturers during the year 1920 to a total of 364 qualified on June 30, 1924, as such importers and manufacturers.

The enforcement of the Harrison Act with relation to criminal cases tried during the past three years is revealed by the following statistics:

	1922	1923	1924
Number of convictions	3,131	4,194	4,242
Number of acquittals	233	285	276
Aggregate years sentences	2,811	4,632	5,020
Fines	$204,059	$291,690	$311,695

The total collections under the internal revenue narcotic laws for the past four years are as follows:

1921	$1,170,291.32	1923	$1,013,226.26
1922	1,269,039.90	1924	1,057,066.33

In attempting to suppress the illicit traffic in narcotic drugs it has been found that most of the drugs used illicitly are smuggled. Only a very small part of the drugs made from the opium and coca leaves permitted to be imported ever finds its way into illicit use.

A recent survey of the prevalence and trend of narcotic drug addiction in the United States by the United States Public Health Service conclusively shows that the number of narcotic drug addicts has decreased steadily since 1900. The survey concludes that before this decrease began there may have been 264,000 addicts in the country. At the present time the maximum estimate is placed at 150,000, with the probable correct number at 110,000.

L. G. NUTT,
Head Narcotic Division, Prohibition Unit.

Mr. BRITT. The chairman has requested a statement as to the aggregate number of denaturation plants in the United States, and also a separation of them, showing how many there are at alcohol distilleries and how many at places other than at alcohol distilleries. I furnish that in the form of a memorandum, over my own signature, also for the record.

(The memorandum referred to by Mr. Britt is as follows:)

JANUARY 26, 1925.

Memorandum for Senate Special Investigating Committee:

With reference to the statement made at a recent hearing of your committee, in regard to the number of denaturing plants now authorized, it may be stated that 21 are operated by persons or concerns who are not proprietors of industrial alcohol plants, and 67 by persons operating industrial alcohol plants—a total of 88.

JAMES J. BRITT,
Chief Counsel, Prohibition Unit.

Mr. BRITT. At a previous session of the hearings the organizations of the Prohibition Unit and the organization of the field force were submitted in the form of what were thought to be appropriate exhibits, and, after discussion of them by counsel and the committee, it was agreed that I should prepare copies and offer them for insertion in the record, which I have done. I now offer for the use of the committee the copies, being identical with those submitted and previously discussed.

The CHAIRMAN. Are those covered in any of the hearings of any other committee of the Senate?

Mr. BRITT. Not to my knowledge, sir.

The CHAIRMAN. Are they in the hearings of any committee of the House of Representatives?

Mr. BRITT. Not to my knowledge.

The CHAIRMAN. I see no objection, if it meets with the approval of Senator Ernst, to putting them in these hearings. They are in no other record of Congress.

(The exhibits referred to were thereupon received by the committee, and are as follows:)

Bureau overhead

1	prohibition commissioner	$7,500
1	assistant prohibition commissioner	5,000
1	counsel	6,000
1	head of narcotic division	5,000
1	chief general prohibition agents	5,000
1	head interpretation division	4,000
1	head litigation division	4,000
1	head industrial alcohol and chemical division	5,200
1	head audit division	4,000
1	associate head permit division	3,900
1	associate head permit division	3,900
1	assistant head narcotic division	4,000
1	assistant chief general prohibition agents	3,900
1	assistant head industrial alcohol and chemical division	3,800
1	assistant head audit division	3,600
1	assistant head litigation division	3,800
1	chief chemist	4,000
1	section chief	3,300
18	Total	$82,900

Field overhead

51	Federal prohibition directors ($3,000–$5,200)	$207,700
18	divisional chiefs ($4,000–$5,000)	71,900
15	narcotic agents in charge ($3,800 each)	57,000
84	Total	336,600
	Total overhead	419,500

List showing quotas of Federal prohibition directors, by States, as of January 12, 1925

State and title	Number of employees	Salary
ALABAMA		
(Medicinally dry)		
Federal prohibition director	1	$4,000
Assistant director and head of the field force	1	3,000
Head executive division	1	2,500
Federal prohibition agents	13	2,000
Do	3	1,800
Do	3	1,680
Clerks	2	1,440
Do	1	1,320
Total	25	51,420
ALASKA	*	
(Medicinally dry)		
Acting Federal prohibition director	1	3,000
Federal prohibition agents	3	2,100
Do	1	1,860
Do	2	1,680
Clerk	1	1,500
Total	8	16,020
ARIZONA		
(Medicinally dry)		
Federal prohibition director	1	$3,300
Assistant director and head of executive division	1	2,400
Federal prohibition agents	12	2,100
Do	2	1,860
Do	1	1,680
Clerk	1	1,560
Do	1	1,440
Total	19	39,300
ARKANSAS		
(Medicinally dry)		
Federal prohibition director	1	4,000
Head of field force	1	2,400
Legal adviser	1	2,800
Head of executive division	1	2,800
Group head	1	2,800
Federal prohibition agents	11	2,100
Do	1	1,680
Clerks	2	1,740
Do	2	1,680
Do	1	1,440
Total	22	47,860

List showing quotas of Federal prohibition directors, by States, etc.—Continued

State and title	Number of employees	Salary
CALIFORNIA		
Federal prohibition director	1	$5,200
Assistant Federal prohibition director	1	3,000
Head of field force	1	3,000
Legal adviser	1	3,000
Assistant to legal adviser	1	2,400
Head executive division	1	2,800
Group head	1	2,800
Do	2	2,400
Federal prohibition agents	3	2,300
Do	37	2,100
Do	15	1,860
Do	10	1,680
Clerks	1	2,100
Do	3	2,040
Do	1	1,980
Do	5	1,860
Do	1	1,740
Do	9	1,680
Do	2	1,560
Do	6	1,500
Do	7	1,440
Do	1	1,380
Do	5	1,320
Do	1	1,140
Do	1	1,020
Total	117	225,000
COLORADO		
Federal prohibition director	1	4,000
Head of field force	1	2,800
Head executive division	1	2,800
Federal prohibition agents	12	2,100
Do	1	1,680
Clerks	3	1,680
Do	1	1,560
Do	1	1,500
Total	21	44,580
CONNECTICUT		
Federal prohibition director	1	4,600
Head field force	1	3,000
Head executive division	1	2,800
Group heads	2	2,800
Federal prohibition agents	14	2,100
Do	1	1,680
Clerks	1	1,860
Do	2	1,740
Do	1	1,560
Do	1	1,440
Do	1	1,260
Total	26	56,680
DELAWARE		
(Medicinally dry)		
Federal prohibition director	1	3,300
Federal prohibition agents	1	2,300
Do	1	2,100
Do	3	1,680
Clerks	1	2,100
Do	1	1,680
Total	8	16,520
FLORIDA		
(Medicinally dry)		
Federal prohibition director	1	4,000
Group heads	3	2,400
Federal prohibition agents	6	2,100
Do	1	1,860
FLORIDA—continued		
Federal prohibition agents	3	$1,680
Clerks	1	1,860
Do	1	1,740
Do	2	1,320
Total	18	30,940
GEORGIA		
(Medicinally dry)		
Federal prohibition director	1	4,600
Legal adviser	1	2,800
Group heads	2	2,800
Federal prohibition agents	16	2,100
Do	4	1,860
Do	3	1,680
Do	1	1,680
(Temporary 60 days additional)		
Clerks	1	2,300
Do	1	1,860
Do	2	1,680
Do	1	1,440
Total	33	69,120
HAWAII		
Federal prohibition director	1	3,300
Federal prohibition agents	10	2,100
Do	1	1,500
Clerks	2	2,040
Do	1	1,140
(Temporary for 3 months.)		
Total	15	31,020
IDAHO		
(Medicinally dry)		
Federal prohibition director	1	3,300
Legal adviser	1	2,700
Federal prohibition agents	1	2,400
Do	10	2,100
Clerks	1	1,680
Do	1	1,140
Total	15	72,520
ILLINOIS		
Federal prohibition director	1	5,200
Legal adviser	1	3,000
Legal assistant	1	3,600
Do	1	2,100
Head field force	1	3,500
Group heads	3	2,800
Do	3	2,400
Federal prohibition agents	2	2,300
Do	54	2,100
Do	5	1,860
Do	6	1,680
Clerks	2	2,040
Do	3	1,860
Do	6	1,740
Do	10	1,680
Do	3	1,560
Do	6	1,500
Do	15	1,440
Do	19	1,380
Do	2	1,320
Do	8	1,260
Do	2	1,140
Total	154	283,780

List showing quotas of Federal prohibition directors, by States, etc.—Continued

State and title	Number of employees	Salary
INDIANA		
(Medicinally dry)		
Federal prohibition director	1	$4,000
Assistant Federal prohibition director	1	3,300
Legal adviser	1	2,500
Head field force	1	3,000
Group heads	4	2,800
Federal prohibition agents	3	2,300
Do	20	2,100
Do	1	1,680
Clerks	1	1,860
Do	1	1,680
Do	5	1,500
Do	1	1,440
Do	1	1,380
Total	41	88,740
IOWA		
Federal prohibition director	1	4,000
Assistant Federal prohibition director	1	3,300
Head of field force	1	3,000
Legal adviser	1	2,800
Group heads	2	2,800
Federal prohibition agents	11	2,100
Do	1	1,860
Clerks	1	1,860
Do	1	1,740
Do	3	1,440
Do	1	1,320
(Temporary additional.)		
Total	24	52,000
KANSAS		
(Medicinally dry)		
Federal prohibition director	1	4,000
Head executive division	1	2,500
Federal prohibition agents	1	2,300
Do	11	2,100
Do	1	1,680
Clerks	1	1,680
Do	1	1,560
Do	1	1,440
Total	18	38,260
KENTUCKY		
Federal prohibition director	1	4,600
Assistant director and legal adviser	1	3,000
Group head	1	2,800
Federal prohibition agents	1	2,300
Do	9	2,100
Do	2	2,000
Do	14	1,860
Do	5	1,680
Clerks	1	2,300
Do	1	2,100
Do	1	2,040
Do	3	1,560
Do	3	1,500
Do	1	1,440
Do	2	1,320
Do	1	1,140
Total	47	90,880
LOUISIANA		
Federal prohibition director	1	4,600
Head of field force	1	2,800
LOUISIANA continued		
Legal adviser	1	$2,800
Head of executive division	1	2,800
Group head	1	2,500
Federal prohibition agents	1	2,300
Do	13	2,100
Do	2	1,800
Do	4	1,680
Clerk	1	2,040
Do	2	1,860
Do	3	1,680
Do	2	1,500
Do	2	1,440
Do	1	1,320
Do	1	1,140
Total	37	74,080
MAINE		
(Medicinally dry)		
Federal prohibition director	1	4,000
Assistant Federal prohibition director	1	3,000
Legal adviser and head of executive division	1	3,000
Head of field force	1	2,800
Group heads	2	2,400
Federal prohibition agents	13	2,100
Do	2	1,860
Do	7	1,680
Clerks	3	1,680
Do	1	1,320
Total	32	66,740
MARYLAND		
Federal prohibition director	1	4,600
Legal adviser	1	2,400
Head of field force	1	3,000
Head of executive division	1	3,000
Group head	1	2,400
Federal prohibition agents	2	2,300
Do	8	2,100
Do	2	1,860
Do	2	1,680
Clerks	1	2,100
Do	1	2,040
Do	2	1,860
Do	2	1,740
Do	7	1,680
Do	3	1,440
Total	35	71,300
MASSACHUSETTS		
Federal prohibition director	1	5,000
Head of field force	1	3,000
Head of executive division	1	2,800
Legal adviser	1	3,300
Group heads	3	2,800
Federal prohibition agents	29	2,100
Do	4	1,860
Do	2	1,680
Clerks	4	2,040
Do	6	1,740
Do	6	1,680
Do	8	1,560
Do	2	1,500
Do	6	1,440
Do	3	1,380
Do	3	1,320
Do	2	1,140
Total	82	157,080

List showing quotas of Federal prohibition directors, by States, etc.—Continued

State and title	Number of employees	Salary
MICHIGAN		
Federal prohibition director	1	$4,000
Head of field force	1	3,000
Head of executive division	1	2,800
Legal adviser	1	2,800
Group heads	1	2,800
Federal prohibition agents	1	2,300
Do	18	2,100
Do	3	1,860
Do	7	1,680
Clerks	1	2,040
Do	2	1,800
Do	2	1,680
Do	1	1,560
Do	1	1,500
Do	3	1,440
Total	47	97,740
MINNESOTA		
Federal prohibition director	1	4,000
Head of field force	1	3,000
Head of executive division	1	2,500
Legal adviser	1	3,000
Group heads	2	2,400
Federal prohibition agents	12	2,100
Do	13	1,800
Do	1	2,300
Do	1	2,400
Do	4	1,680
Do	1	2,040
Do	3	1,860
Do	6	1,680
Do	1	1,560
Do	1	1,440
Do	3	1,380
Total	51	101,560
MISSISSIPPI (Medicinally dry)		
Federal prohibition director	1	4,600
Head of field force	1	2,800
Head executive division	1	2,500
Group head	1	2,500
Federal prohibition agents	7	2,100
Do	2	1,860
Do	2	1,680
Clerks	1	2,040
Do	2	1,680
Do	1	1,860
Do	1	1,320
Total	20	42,160
MISSOURI		
Federal prohibition director	1	4,600
Head of field force	1	3,000
Legal adviser	1	3,000
Head of executive division	1	2,800
Group head	1	2,800
Do	2	2,400
Federal prohibition agents	11	2,100
Do	4	1,860
Do	5	1,680
Clerks	2	2,040
Do	1	1,860
Do	1	1,740
Do	4	1,680
Do	2	1,560
	3	1,500
	6	1,440
	2	1,380
Do	3	1,320
Do	1	1,140
Total	52	98,460
MONTANA		
Federal prohibition director	1	$4,000
Head of field force	1	2,800
Assistant director and legal adviser	1	2,800
Head of executive division	1	1,740
Federal prohibition agents	13	2,100
Do	2	1,680
Clerks	1	1,860
Do	1	1,680
Do	1	1,500
Total	22	27,100
NEBRASKA (Medicinally dry)		
Federal prohibition director	1	4,000
Head of field force	1	3,000
Group head	1	2,400
Federal prohibition agents	8	2,100
Do	4	1,680
Do (Temporary additional)	1	1,680
Clerks	1	2,040
Do	1	1,800
Do	1	1,500
Do	1	1,320
Do (Temporary additional)	1	1,320
Total	21	42,640
NEVADA		
Federal prohibition director (acting) [1]	1	3,000
Assistant Federal prohibition director	1	3,000
Federal prohibition agents	4	2,100
Do	1	1,860
Do	5	1,680
Clerks	1	1,680
Do	1	1,440
Total	14	27,780
NEW HAMPSHIRE		
Federal prohibition director	1	3,500
Assistant Federal prohibition director	1	2,800
Federal prohibition agents	6	2,100
Clerks	1	1,140
Total	9	20,340
NEW JERSEY		
Federal prohibition director	1	5,000
Head of field force	1	2,400
Head of executive division	1	2,800
Legal adviser	1	3,000
Group head	1	2,800
Federal prohibition agents	18	2,100
Do	1	1,860
Do	4	1,680
Do (Appointed for guard duty additional.)	1	1,440
Clerks	1	2,040
Do	2	1,860
Do	4	1,680
Do	3	1,440
Do	2	1,380
Do	2	1,320
Do	4	1,260
Do	2	1,140
Total	49	93,340

[1] General prohibition agents acting in capacity of acting director.

List showing quotas of Federal prohibition directors, by States, etc. —Continued

State and title	Number of employees	Salary
NEW MEXICO		
(Medicinally dry)		
Federal prohibition director	1	$3,300
Head of executive division	1	2,500
Federal prohibition agents	11	2,100
Do	5	1,680
Do	1	1,320
(Undercover work.)		
Clerks	1	1,680
Do	1	1,440
Total	21	41,740
NEW YORK		
Federal prohibition director	1	5,200
Assistant Federal prohibition director	1	3,900
Special assistant Federal prohibition director	1	3,900
Head of executive division	1	3,600
Assistant head of executive division	1	3,000
Attorneys	3	3,000
Federal prohibition agents	1	2,300
Do	3	2,100
Clerks	2	2,400
Do	2	2,300
Do	1	2,100
Do	2	2,040
Do	1	1,920
Do	8	1,860
Do	4	1,740
Do	25	1,680
Do	8	1,560
Do	11	1,500
Do	17	1,440
Do	9	1,380
Do	4	1,320
Do	5	1,200
Do	15	1,140
Do	1	1,000
Do	1	900
Do	1	2,700
(Assigned to area coordinator's office.)		
Total	129	217,840
NORTH CAROLINA		
(Medicinally dry)		
Federal prohibition director	1	4,000
Acting head of field force[2]	1	4,000
Assistant Federal prohibition director and head of executive division	1	3,300
Legal adviser	1	3,000
Federal prohibition agents	16	2,100
Do	7	2,000
Do	29	1,860
Do	4	1,680
Clerks	1	2,040
Do	1	1,680
Do	3	1,440
Do	2	1,320
Total	67	133,240
NORTH DAKOTA		
(Medicinally dry)		
Federal prohibition director	1	3,300
Head of field force	1	2,800
Head of executive division	1	$2,500
Federal prohibition agents	7	2,100
Do	2	1,680
Clerks	2	1,680
Do	1	1,500
Total	15	31,420
OHIO		
Federal prohibition director	1	4,600
Assistant Federal prohibition director	1	3,000
Head of field force	1	3,500
Legal adviser	1	3,000
Head of executive division	1	2,800
Group heads	2	2,800
Do	1	2,400
Federal prohibition agents	13	2,100
Do	16	1,860
Do	11	1,680
Do	1	1,500
Clerks	5	1,680
Do	3	1,500
Do	5	1,440
Do	6	1,380
Do	6	1,320
Do	2	1,260
Do	2	1,140
Do	1	1,020
Total	78	142,740
OKLAHOMA		
(Medicinally dry)		
Federal prohibition director	1	3,500
Head of field force and legal adviser	1	3,000
Group heads	2	2,800
Federal prohibition agents	7	2,100
Do	4	1,800
Do	1	1,680
Clerks	3	1,680
Do	1	1,380
Total	20	42,340
OREGON		
(Medicinally dry)		
Federal prohibition director	1	3,300
Head of field force and assistant to director	1	2,800
Legal adviser	1	2,500
Federal prohibition agents	1	2,300
Do	5	2,100
Do	5	1,860
Do	2	1,680
Clerks	3	1,680
Do	1	1,500
Total	20	40,600
PENNSYLVANIA		
Federal prohibition director	1	5,200
Head of executive division and assistant director	1	3,000
Legal adviser	1	4,000
Attorneys	2	2,800
Inspector	1	3,000
Do	1	2,700
Do	2	2,400

[2] Divisional chief acting in capacity of head of the field force.

List showing quotas of Federal prohibition directors, by States, etc.—Continued

State and title	Number of employees	Salary
PENNSYLVANIA—continued		
Inspector	1	$2,300
Do	11	2,100
Do	3	1,860
Do	1	1,680
Clerks	1	2,040
Do	4	1,860
Do	5	1,680
Do	7	1,560
Do	7	1,500
Do	7	1,440
Do	19	1,380
Do	2	1,320
Do	3	1,260
Do	6	1,140
Total	86	149,820
PORTO RICO		
Federal prohibition director	1	5,000
Group heads	1	2,400
Do	1	2,100
Federal prohibition agents	5	1,680
Do	4	1,500
Clerks	1	2,040
Do	2	1,380
Do	1	1,320
Do (Temporary over quota.)	1	960
Total	17	30,980
RHODE ISLAND		
Federal prohibition director	1	3,800
Head of field force	1	3,000
Federal prohibition agents	9	2,100
Do	1	1,860
Do	1	1,680
Clerks	1	2,040
Do	2	1,680
Do	1	1,500
Do	1	1,440
Do	1	1,320
Total	19	38,900
SOUTH CAROLINA		
(Medicinally dry)		
Federal prohibition director	1	4,000
Head of executive division	1	2,400
Group heads	2	2,500
Do	1	2,400
Federal prohibition agents	1	2,500
Do	10	2,100
Do	3	1,860
Do	1	1,680
Clerks	1	1,680
Do	1	1,440
Do	1	1,380
Do	1	1,320
Total	24	50,380
SOUTH DAKOTA		
Federal prohibition director	1	3,500
Head of field force	1	2,800
Federal prohibition agents	8	2,100
Do	1	1,860
Do	1	1,680
Clerks	1	1,680
Do	2	1,320
Total	15	30,960
TENNESSEE		
(Medicinally dry)		
Federal prohibition director	1	$4,000
Head of field force	1	3,000
Head of executive division	1	2,800
Group heads	4	2,500
Federal prohibition agents	8	2,100
Do	1	2,000
Do	19	1,860
Do	1	1,500
Clerks	1	2,040
Do	1	1,860
Do	1	1,680
Do	1	1,500
Do	1	1,440
Total	41	83,960
TEXAS		
Federal prohibition director	1	4,000
Head of executive division	1	2,100
Head of field force	1	3,000
Legal adviser	1	3,300
Group heads	2	2,800
Do	1	2,400
Do	1	2,100
Federal prohibition agents	19	2,100
Do	4	1,860
Do	5	1,680
Clerk	1	2,040
Do	3	1,680
Do	2	1,440
Do	1	1,380
Do	5	1,320
Do	1	1,140
Total	49	97,920
UTAH		
(Medicinally dry)		
Federal prohibition director	1	3,500
Head of field force	1	2,800
Head of executive division	1	1,860
Federal prohibition agents	8	2,100
Clerk	1	2,040
Total	12	27,000
VERMONT		
Federal prohibition director	1	3,500
Head of field force	1	2,500
Federal prohibition agents	9	2,100
Clerk	1	1,740
Do	1	1,440
Total	13	28,080
VIRGINIA		
Federal prohibition director	1	5,000
Assistant Federal prohibition director	1	3,000
Legal adviser and acting head of field force	1	3,600
Head of executive division	1	2,800
Group heads	3	2,800
Do	1	2,500
Federal prohibition agent	1	2,500
Do	4	2,100
Do	8	2,000
Do	12	1,860
Do	3	1,680
Clerks	3	2,040
Do	2	1,680
Do	2	1,440
Total	43	91,720

List showing quotas of Federal prohibition directors, by States, etc.—Continued

State and title	Number of employees	Salary
WASHINGTON		
(Medicinally dry)		
Federal prohibition director	1	$4,000
Head of field force	1	2,400
Legal adviser and assistant director	1	3,000
Head of executive division	1	2,300
Group heads	2	2,400
Federal prohibition agents	20	2,100
Do	2	1,860
Do	3	1,680
Clerks	3	1,740
Do	1	1,680
Do	2	1,440
Total	37	77,540
WEST VIRGINIA		
(Medicinally dry)		
Federal prohibition director	1	4,000
Assistant Federal prohibition director	1	2,800
Head of field force	1	3,000
Group heads	1	2,800
Do	1	2,400
Federal prohibition agents	13	2,100
Do	1	1,860
Do	1	1,680
Clerks	1	2,010
Do	1	1,680
Do	2	1,440
Do	1	1,380
Total	25	53,820
WISCONSIN		
Federal prohibition director (acting) [1]	1	$4,000
Assistant director and head of executive division	1	3,300
Head of field force	1	3,000
Legal adviser	1	3,000
Group heads	1	2,800
Do	2	2,400
Federal prohibition agents	17	2,100
Do	2	1,860
Do	1	1,680
Clerks	1	2,040
Do	1	1,860
Do	5	1,680
Do	1	1,500
Do	3	1,440
Do	2	1,320
Total	40	82,760
WYOMING		
Federal prohibition director	1	3,500
Head of field force	1	2,800
Federal prohibition agents	7	2,100
Do	1	1,860
Clerks	1	1,500
Do	1	1,440
Do	1	1,320
Total	13	27,120
Grand total	1,866	3,683,940

[1] General prohibition agents acting in capacity of acting director.

Organization of the Prohibition Unit

The divisions or offices composing the Prohibition Unit are as follows:
Office of Federal Prohibition Commissioner.
Office of Assistant Prohibition Commissioner.
Office of counsel: Division of interpretation, division of litigation.
Office of chief, general prohibition agents.
Narcotic division.
Industrial alcohol and chemical division.
Permit division.
Audit division.

Functions of the Various Divisions

OFFICE OF FEDERAL PROHIBITION COMMISSIONER

The Prohibition Commissioner has supervision over the enforcement of the national prohibition act and the Harrison narcotic act.

OFFICE OF ASSISTANT PROHIBITION COMMISSIONER

The Assistant Prohibition Commissioner acts as consultant to the Prohibition Commissioner on questions of policy and administration and general executive functions. In the absence of the commissioner he takes his place as Acting Prohibition Commissioner. He directs policies to be followed in the various divisions of the unit, renders decisions in complicated cases, at times conducts major revocation hearings, and supervises the organization and administration of the offices of the Federal prohibition directors for the various States.

Under his supervision are matters pertaining to personnel, space, supplies and equipment, distribution of mail, and files. The Assistant Prohibition Commissioner is also chairman of the central committee of the Prohibition Unit, which committee coordinates the work of the different divisions of the unit with respect to the consideration of applications for and the issuance of permits to manufacture, sell, purchase, transport, or prescribe intoxicating liquor, and sees that the issuance of permits is at all times kept current and correct, that the necessary official inspections are promptly made on pending applications, that the office of the counsel of the unit furnishes prompt assistance in connection with legal features of permit matters when requested, and that all work relating to permits or preparatory thereto is duly coordinated and kept up to date, and considers any major and perplexing questions that arise in the unit.

OFFICE OF COUNSEL

The head of this office acts as chief counsel to the Prohibition Commissioner and conducts through the two branches of his office—the division of interpretation and the division of litigation—the law work of the unit.

The division of interpretation prepares legal opinions as to the construction of statutes, regulations, legal proceedings, and practice, and briefs of the law; drafts regulations and Treasury decisions so far as the work of the Prohibition Unit is concerned, and correspondence with other Government offices and the public involving interpretation of law and regulations; passes upon applications for pardon; and assists Federal prohibition directors, collectors of internal revenue, and United States attorneys in court proceedings, both criminal and civil, and assessment hearings. It this division claims for abatement and refund and offers in compromise are considered and passed upon, as are also proposed hearings on assessment under section 35 of the national prohibition act, and other laws.

The principal functions of the division of litigation are to keep in close touch with all civil litigation and all criminal prosecutions arising in connection with enforcement of the national prohibition act. This branch of the office also has charge of the revocation of permits issued under said act and either conducts or reviews all revocation hearings; keeps in close touch with the Department of Justice and the United States attorneys throughout the country, and assists them generally in cases pending court; prepares in important cases criminal informations, tentative indictments, bills for injunctions, libels, and other pleadings, also search warrants with appropriate affidavits; prepares briefs on important law points for United States attorneys and other officers officially interested; has custody of files in all reported cases, numbering approximately 273,303; has charge of the seizure and forfeiture of contrabrand property.

OFFICE OF CHIEF, GENERAL PROHIBITION AGENTS

This office has charge of the operation of the mobile force of prohibition enforcement officers, which force investigates distilleries, breweries, industrial alcohol plants, and users of and dealers in denatured alcohol, as well as doing general prohibition enforcement work. This office also directs the work of a force of field supervisors who make personal inspections of offices of the 51 Federal prohibition directors and the 18 divisional chiefs, general prohibition agents, to insure efficient office administration and cooperation with the Washington office.

NARCOTIC DIVISION

All work incident to the administration of the internal revenue narcotic laws, through the 65 collectors of internal revenue, as applied to the 289,047 registrants and taxpayers under these laws; also the enforcement of these laws is directed and supervised from this division through the 15 narcotic divisions, in which there are operating at the present time 317 agents, inspectors, and field clerks. The permissive features of the narcotic drugs import and export act are also directed from this division.

INDUSTRIAL ALCOHOL AND CHEMICAL DIVISION

This division conducts the chemical work of the Bureau of Internal Revenue in Washington and in the field, and administers the provisions of Title III

of the national prohibition act, relating to production and use of industrial alcohol. It also administers certain features of the general internal revenue laws relating to bonded warehouses, and is charged with the work connected with the concentration of distilled spirits, and in many instances cooperates and advises with the permit division in establishing standards for medicinal and toilet preparations and flavoring extracts.

PERMIT DIVISION

This branch of the unit issues all basic permits for the use and sale of intoxicating liquors under the national prohibition act, also permits covering importation and exportation of intoxicating liquors; passes upon all bonds submitted in support of permits to ascertain whether such bonds are properly executed; renews permits which have been outstanding for one year; establishes standards for medicinal and toilet preparations and flavoring extracts; receives, files, and checks commissioner's copies of withdrawal permits, Forms 1410-A, covering withdrawals of intoxicating liquors and sacremental wine allowed by Federal prohibition directors, to ascertain whether permittees have been permitted to withdraw amounts in excess of the amounts allowed by their basic permits.

AUDIT DIVISION

The functions of this division comprise the assessment of taxes and penalties and the keeping of accounts relative thereto in all cases involving liquors and narcotics; action on claims in abatement or refund of taxes or penalties pertaining to liquor; briefing offers in compromise and consideration and recommendation of action thereto where liability is incurred under bonds given to insure proper use of untaxpaid pure or denatured alcohol procured by manufacturers or users; drafting regulations, or cooperating and advising in relation thereto with the office of counsel; examination and audit of returns and accounts relating to and proper accounting of—

(*a*) Untaxpaid spirits in Government bonded warehouses or removed therefrom free of tax.

(*b*) Denatured alcohol shipped to or in possession of manufacturers, dealers, and users.

(*c*) Liquors in wineries, storerooms, breweries, and dealcoholizing plants.

(*d*) Liquors dispensed on physicians' prescriptions, disposed of for nonbeverage purposes, etc.

FEDERAL PROHIBITION DIRECTORS' OFFICES

There is a Federal prohibition director in each State and Territory, responsible for administration of both the permit and enforcement features in his jurisdiction, except in the States of Pennsylvania and New York, where the enforcement work is directed by the chief general prohibition agents. These directors are under the supervision of the Assistant Prohibition Commissioner and are regularly inspected by the field supervisor's force. Federal prohibition directors make recommendations on applications for basic permits within their respective States and issue withdrawal permits for intoxicating liquors, for medicinal purposes, in their jurisdicton. During the fiscal year ended June 30, 1924, the Federal prohibition directors of the several States issued 670,685 withdrawal permits for intoxicating liquor. The Federal agents under the supervision of the Federal prohibition director are also shifted to various sections of the country when occasion requires. These agents keep a constant check on all permittees, inspect drug stores and conduct raids.

BUREAU OVERHEAD

1 Prohibition Commissioner	$7,500
1 Assistant Prohibition Commissioner	5,600
1 counsel	6,000
1 head of narcotic division	5,600
1 chief, general prohibition agents	5,600
1 head, interpretation division	4,600
1 head, litigation division	4,600
1 head, industrial alcohol and chemical division	5,200
1 head, audit division	4,000

1 associate head, permit division	$3,900	
1 associate head, permit division	3,900	
1 assistant head, narcotic division	4,000	
1 assistant chief, general prohibition agents	3,900	
1 assistant head, industrial alcohol and chemical division	3,800	
1 assistant head, audit division	3,600	
1 assistant head, litigation division	3,800	
1 chief chemist	4,000	
1 section chief	3,300	
18		$82,900

FIELD OVERHEAD

51 Federal prohibition directors ($3,000–$5,200)	207,700	
18 divisional chiefs ($4,000–$5,000)	71,900	
15 narcotic agents in charge ($3,800 each)	57,000	
84		336,600
Total overhead		419,500

Narcotic field force as of January 12, 1925

Division and title	Number of employees	Salary
Not assigned to divisions:		
Narcotic officers	1	$3,300
Do	4	2,800
Do	4	2,100
Total	9	22,900
Boston division, Boston, Mass.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	2,800
Do	5	2,300
Do	10	2,100
Do	1	1,860
Narcotic clerks	1	1,680
Do	1	1,500
Total	20	44,140
New York division, New York, N. Y.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	3,000
Do	2	2,800
Do	1	2,500
Do	1	2,400
Do	4	2,300
Do	20	2,100
Do	4	1,860
Narcotic clerks	1	2,040
Do	1	1,500
Total	36	79,480
Philadelphia division, Philadelphia, Pa.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	2,800
Do	3	2,500
Do	2	2,300
Do	17	2,100
Do	1	1,860
Narcotic clerks	1	1,680
Do	1	1,560
Do	1	1,320
Total	28	60,820
Washington division, Washington, D. C.:		
Narcotic agent in charge	1	$3,800
Narcotic agents and inspectors	1	3,000
Do	3	2,800
Do	1	2,500
Do	2	2,400
Do	2	2,300
Do	13	2,100
Do	7	1,860
Narcotic clerks	1	1,680
Do	2	1,320
Total	33	71,740
Atlanta division, Atlanta, Ga.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	3	2,800
Do	1	2,500
Do	1	2,300
Do	12	2,100
Narcotic clerks	1	1,680
Do	1	1,320
Total	20	45,200
Nashville division, Nashville, Tenn.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	3,000
Do	1	2,800
Do	2	2,700
Do	3	2,300
Do	12	2,100
Narcotic clerks	1	1,680
Do	2	1,440
Do	1	1,320
Total	24	52,780
Cleveland division, Cleveland, Ohio:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	2,800
Do	2	2,500
Do	1	2,400
Do	1	2,300

Narcotic field force as of January 12, 1925—Continued

Division and title	Number of employees	Salary
Cleveland division, Cleveland, Ohio—Continued.		
Narcotic agents and inspectors	18	$2,100
Narcotic clerks	1	1,500
Do	1	1,320
Total	26	56,920
Chicago division, Chicago, Ill.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	3,300
Do	5	2,800
Do	3	2,500
Do	4	2,300
Do	11	2,100
Do	1	1,860
Narcotic clerks	2	1,680
Do	2	1,440
Total	30	69,000
Minneapolis division, Minneapolis, Minn.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	2	2,800
Do	5	2,500
Do	1	2,300
Do	10	2,100
Do	1	1,860
Narcotic clerks	2	1,560
Total	22	50,180
Kansas City division, Kansas City, Mo.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	2	3,000
Do	1	2,800
Do	3	2,300
Do	11	2,100
Do	2	1,860
Narcotic clerks	1	1,440
Do	1	1,320
Total	22	49,080
El Paso division, El Paso, Tex.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	1	3,000
Do	1	2,800
Do	1	2,500
Do	2	2,300
Do	12	2,100
Do	1	1,860
El Paso division, El Paso, Tex.—Continued.		
Narcotic clerks	1	$1,500
Do	1	1,140
Total	21	46,400
Denver division, Denver, Colo.:		
Narcotic agents in charge	1	3,800
Narcotic agents and inspectors	3	2,500
Do	1	2,300
Do	7	2,100
Narcotic clerk	1	1,500
Total	13	29,800
Seattle division, Seattle, Wash.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	3	2,300
Do	15	2,100
Do	1	1,860
Narcotic clerk	1	1,680
Do	1	1,440
Total	22	47,180
San Francisco division, San Francisco, Calif.:		
Narcotic agent in charge	1	3,800
Narcotic agents and inspectors	2	3,000
Do	1	2,800
Do	3	2,500
Do	1	2,400
Do	2	2,300
Do	11	2,100
Narcotic clerks	1	1,680
Do	1	1,440
Do	1	1,320
Total	24	54,640
Hawaii division, Honolulu, Hawaii:		
Narcotic agent in charge	1	2,800
Narcotic agents and inspectors	1	2,300
Do	4	2,100
Narcotic clerk	1	1,380
Total	7	14,880
Grand total	357	794,940

Field chemists

Location and title	Number of employees	Salary
Laboratory, Buffalo, N. Y.:		
Chemist in charge	1	$3,000
Assistant chemist	1	1,860
Clerk	1	1,440
Total	3	6,300
Laboratory, Chicago, Ill.:		
Chemist in charge	1	3,000
Assistant chemists	1	2,400
Do	2	2,100
Clerk	1	1,440
Total	5	11,040
Laboratory, Columbus, Ohio:		
Chemist in charge	1	3,000
Assistant chemist	1	2,400
Clerk	1	1,440
Total	3	6,840
Laboratory, Little Rock, Ark.:		
Chemist in charge	1	3,000
Assistant chemist	2	2,400
Do	1	2,100
Clerk	1	1,860
Total	5	11,760
Laboratory, Minneapolis, Minn.:		
Chemist in charge	1	3,000
Assistant chemist	1	2,100
Agent assigned to chemist	1	2,300
Clerk	1	1,440
Total	4	8,840
Laboratory, New York, N. Y.:		
Chemist in charge	1	$3,000
Assistant chemists	2	2,400
Do	1	2,100
Clerks	1	1,380
Do	1	1,320
Do	1	1,140
Total	7	13,740
Laboratory, Philadelphia, Pa.:		
Chemist in charge	1	3,000
Assistant chemist	1	2,400
Do	1	2,100
Clerk	1	1,440
Total	4	8,940
Laboratory, Providence, R. I.:		
Chemist in charge	1	3,000
Assistant chemist	1	2,100
Clerk	1	1,140
Total	3	6,240
Laboratory, San Francisco, Calif.:		
Chemist in charge	1	3,000
Assistant chemist	1	2,400
Do	1	2,100
Do	1	1,860
Clerk	1	1,500
Total	5	10,860

Warehouse agents as of January 12, 1925

State	Number of employees	Salary
Alabama	1	$1,440
California	12	1,440
	2	1,140
	14	19,560
Illinois	4	1,440
	1	1,140
	5	6,900
Indiana	3	1,440
		4,320
Kentucky	69	1,440
	1	1,140
	70	100,500
Louisiana	3	1,440
	8	1,140
	11	13,440
Maryland	1	$1,740
	29	1,440
	30	43,500
Massachusetts	3	1,440
		4,320
Missouri	1	1,440
New York	11	1,440
	1	1,140
	12	16,980
Ohio	5	1,440
		7,200
Pennsylvania	24	1,440
	11	1,140
	35	47,100

Washington force of prohibition unit, by divisions, January 12, 1925

	Number	Rate	Amount
Office of Prohibition Commissioner:			
Prohibition Commissioner	1	$7,500	$7,500
Senior clerk	1	2,500	2,500
Clerk	1	2,040	2,040
Do	2	1,860	3,720
Do	1	1,740	1,740
Do	1	1,680	1,680
Do	2	1,440	2,880
Do	2	1,320	2,640
Do	1	1,260	1,260
Do	1	1,140	1,140
Total	13		27,100
Office of Assistant Prohibition Commissioner:			
Assistant Prohibition Commissioner	1	5,600	5,600
Section chief	1	2,500	2,500
Senior clerk	2	3,000	6,000
Do	1	2,800	2,800
Do	1	2,500	2,500
Clerk	5	1,440	7,200
Do	5	1,140	5,700
Do	1	1,740	1,740
Do	7	1,860	13,020
Do	4	1,380	5,520
Do	3	1,320	3,960
Do	5	1,680	8,400
Do	4	1,500	6,000
Do	1	2,100	2,100
Do	2	2,300	4,600
Do	1	2,800	2,800
Do	1	1,260	1,260
Do	3	1,260	3,780
Do	5	1,140	5,700
Do	7	1,080	7,560
Do	1	1,020	1,020
Total	61		99,760
Office of counsel:			
Counsel	1	6,000	6,000
Clerk	1	1,860	1,860
Interpretation division:			
Assistant counsel	1	4,600	4,600
Assistant division heads	1	4,200	4,200
Do	1	3,300	3,300
Special counsel	1	4,000	4,000
Attorneys	1	5,000	5,000
Do	2	4,600	9,200
Do	1	4,000	4,000
Do	1	3,800	3,800
Do	3	3,000	9,000
Section chiefs	2	3,000	6,000
Senior clerk	1	2,300	2,300
Do	1	2,040	2,040
Law clerk	1	3,000	3,000
Do	2	2,300	4,600
Do	1	2,100	2,100
Do	2	2,040	4,080
Do	3	1,860	5,580
Do	5	1,680	8,400
Clerks	4	2,300	9,200
Do	2	2,100	4,200
Do	8	2,040	16,320
Do	10	1,860	18,600
Do	1	1,740	1,740
Do	13	1,680	21,840
Do	2	1,560	3,120
Do	3	1,500	4,500
Do	11	1,440	15,840
Do	10	1,380	13,800
Do	5	1,260	6,300
Do	2	1,140	2,280
Total	103		210,800
Litigation division:			
Division head	1	4,600	4,600
Assistant division head	1	3,800	3,800
Attorneys	1	5,000	5,000
Do	1	4,000	4,000
Do	4	3,000	12,000
Do	1	2,800	2,800

Washington force of prohibition unit, by divisions, January 12, 1925—Continued

	Number	Rate	Amount
Litigation division—Continued.			
Attorneys	1	$2,700	$2,700
Do	1	2,500	2,500
Do	4	2,400	9,600
Do	1	1,860	1,860
Section chief	3	3,000	9,000
Do	1	2,700	2,700
Do	1	2,040	2,040
Senior clerk	1	3,000	3,000
Do	1	2,500	2,500
Do	2	2,400	4,800
Law clerk	3	3,000	9,000
Do	2	2,500	5,000
Do	6	2,400	14,400
Do	6	2,300	13,800
Do	8	2,100	16,800
Do	1	1,680	1,680
Clerk	3	2,400	7,200
Do	2	2,300	4,600
Do	7	2,100	14,700
Do	3	2,040	6,120
Do	9	1,860	16,740
Do	24	1,680	40,320
Do	4	1,560	6,240
Do	19	1,500	28,500
Do	6	1,440	8,640
Do	6	1,380	8,280
Do	11	1,320	14,520
Do	3	1,260	3,780
Do	8	1,140	9,120
Total	156		302,340
Audit division:			
Division head	1	3,900	3,900
Assistant division head	1	3,600	3,600
Section chief	2	3,000	6,000
Do	1	2,700	2,700
Senior clerk	1	2,700	2,700
Do	1	2,400	2,400
Do	2	2,300	4,600
Do	3	2,040	6,120
Clerk	3	2,100	6,300
Do	11	2,040	22,440
Do	15	1,860	27,900
Do	1	1,740	1,740
Do	17	1,680	28,560
Do	1	1,560	1,560
Do	6	1,500	9,000
Do	5	1,440	7,200
Do	2	1,320	2,640
Do	1	1,140	1,140
Total	74		140,500
Narcotic division:			
Head narcotic field force	1	5,600	5,600
Assistant head narcotic field force	1	3,600	3,600
Assistant division head	1	4,000	4,000
Section chief	2	3,000	6,000
Law clerk	1	1,860	5,580
Machine operator	2	1,680	3,360
Do	2	1,500	3,000
Do	1	1,440	1,440
Do	2	1,260	2,520
Do	1	1,140	1,140
Card punch operator	1	1,440	1,440
Do	1	1,380	1,380
Clerk	1	2,300	2,300
Do	7	2,100	14,700
Do	3	2,040	6,120
Do	8	1,860	16,740
Do	13	1,680	21,840
Do	3	1,560	4,680
Do	14	1,500	21,000
Do	9	1,440	12,960
Do	4	1,380	5,520
Do	5	1,320	6,600
Do	5	1,260	6,300
Do	4	1,140	4,560
Do	1	1,020	1,020
Total	96		163,400

Washington force of prohibition unit, by divisions, January 12, 1925—Continued

	Number	Rate	Amount
Office of chief, general prohibition agents:			
Chief general prohibition agents	1	$5,600	$5,600
Assistant division head	1	3,900	3,900
Section chief	1	2,700	2,700
Do	1	2,800	2,800
Senior clerk	1	3,600	3,600
Do	1	3,000	3,000
Do	1	2,300	2,300
Clerk	4	1,860	7,440
Do	3	1,680	5,040
Do	3	1,560	4,680
Do	5	1,500	7,500
Do	12	1,440	17,280
Do	8	1,380	11,040
Do	4	1,320	5,280
Do	4	1,260	5,040
Do	1	1,140	1,140
Total	51	.....	88,340
Permit division:			
Division head	2	3,900	7,800
Senior clerk	1	2,040	2,040
Do	2	1,860	3,720
Section chief	1	2,800	2,800
Do	1	2,500	2,500
Do	1	2,400	2,400
Do	1	1,860	1,860
Pharmacists	3	2,400	7,200
Do	1	2,300	2,300
Do	1	1,860	1,860
Druggist	1	2,100	2,100
Clerk	2	2,040	4,080
Do	7	1,860	13,020
Do	1	1,740	1,740
Do	21	1,680	35,280
Do	3	1,560	4,680
Do	4	1,500	6,000
Do	14	1,440	20,160
Do	15	1,380	20,700
Do	2	1,320	2,640
Do	10	1,260	12,600
Do	8	1,140	9,120
Total	102	.....	166,600
Industrial alcohol and chemical division:			
Division head	1	5,200	5,200
Assistant division head	1	3,800	3,800
Chemist	1	4,000	4,000
Do	2	3,800	7,600
Do	1	3,300	3,300
Do	2	3,000	6,000
Do	3	2,500	7,500
Do	5	2,400	12,000
Do	1	1,860	1,860
Do	1	1,260	1,260
Junior chemist	1	1,860	1,860
Technical expert	1	3,300	3,300
Senior clerk	1	2,300	2,300
Clerk	1	2,100	2,100
Do	5	2,040	10,200
Do	3	1,860	5,580
Do	8	1,680	13,440
Do	4	1,500	6,000
Do	3	1,440	4,320
Do	4	1,380	5,520
Do	1	1,320	1,320
Do	1	1,260	1,260
Messenger	1	1,080	1,080
Do	1	1,020	1,020
Total	53	.....	111,820
Grand total	709	.....	1,310,060

Salaries of Federal prohibition directors

Alabama	$4,000	New Hampshire	$3,500
Alaska	3,000	New Jersey	5,000
Arizona	3,300	New Mexico	3,300
Arkansas	4,000	New York	5,200
California	5,200	North Carolina	4,000
Colorado	4,000	North Dakota	3,500
Connecticut	4,600	Ohio	4,600
Delaware	3,300	Oklahoma	3,500
Florida	4,000	Oregon	3,300
Georgia	4,000	Pennsylvania	5,200
Hawaii	3,300	Porto Rico	5,000
Idaho	3,300	Rhode Island	3,800
Illinois	5,200	South Carolina	4,000
Indiana	4,000	South Dakota	3,500
Iowa	4,000	Tennessee	4,000
Kansas	4,000	Texas	4,600
Kentucky	4,600	Utah	3,500
Louisiana	4,000	Vermont	3,500
Maine	4,000	Virginia	5,000
Maryland	4,600	Washington	4,000
Massachusetts	5,000	West Virginia	4,000
Michigan	4,000	Wisconsin	4,600
Minnesota	4,000	Wyoming	3,500
Mississippi	4,600		
Missouri	4,600	Total	207,700
Montana	4,000		
Nebraska	4,000	Average	4,072.55
Nevada	3,000		

Quotas of Federal prohibition directors

State	Head, field force	Group heads	Agents	State	Head, field force	Group heads	Agents
Alaska	0	0	6	Nevada	0	0	10
Alabama	0	0	19	New Hampshire	0	0	6
Arizona	0	0	15	New Jersey	1	1	23
Arkansas	1	1	12	New Mexico	0	0	15
California	1	3	65	New York	0	0	4
Colorado	1	0	13	North Carolina	1	0	56
Connecticut	1	2	15	North Dakota	1	0	9
Delaware	0	0	5	Ohio	1	3	41
Florida	0	3	10	Oklahoma	1	2	12
Georgia	0	2	22	Oregon	1	0	13
Hawaii	0	0	11	Pennsylvania	0	0	20
Idaho	0	0	11	Porto Rico	0	2	9
Illinois	1	6	67	Rhode Island	1	0	11
Indiana	1	4	24	South Carolina	0	3	15
Iowa	1	2	12	South Dakota	1	0	10
Kansas	0	0	13	Tennessee	1	4	29
Kentucky	0	1	31	Texas	1	4	28
Louisiana	1	1	20	Utah	1	0	8
Maine	1	2	22	Vermont	1	0	9
Maryland	1	1	14	Virginia	0	4	28
Massachusetts	1	3	35	Washington	1	2	25
Michigan	1	4	29	West Virginia	1	2	15
Minnesota	1	2	30	Wisconsin	1	3	20
Mississippi	1	1	11	Wyoming	1	0	8
Missouri	1	3	20				
Montana	1	0	15	Total	33	72	983
Nebraska	1	1	12				

Force of general prohibition agents as of January 12, 1925

Division and title	Number of employees	Salary
Division No. 1, Boston, Mass.:		
Divisional chief	1	$4,500
General prohibition agent	1	3,500
Do	1	3,300
Do	3	2,500
Do	6	2,300
Do	11	2,100
Do	2	1,860
Do	2	1,680
Clerk	1	1,680
Do	1	1,440
Do	1	1,320
Total	30	67,220
Division No. 2, New York, N. Y.:		
Divisional chief	1	4,600
General prohibition agent	2	3,300
Do	6	3,000
Do	5	2,800
Do	20	2,500
Do	46	2,300
Do	89	2,100
Do	12	1,860
Do	37	1,680
Clerk	1	2,400
Do	3	1,860
Do	1	1,740
Do	9	1,680
Do	4	1,440
Do	1	1,380
Do	3	1,320
Do	2	1,140
Do	1	900
Total	243	509,500
Division No. 3, Pittsburgh, Pa.:		
Divisional chief	1	4,000
General prohibition agent	1	3,300
Do	1	2,800
Do	4	2,500
Do	6	2,300
Do	15	2,100
Do	4	1,860
Do	4	1,680
Clerk	2	1,680
Do	5	1,440
Total	43	90,120
Division No. 4, Washington, D. C.:		
Divisional chief	1	4,000
General prohibition agents	2	3,300
Do	4	2,800
Do	3	2,500
Do	6	2,300
Do	8	2,100
Do	3	1,860
Do	14	1,680
Clerks	1	1,560
Do	2	1,320
Total	44	93,200
Division No. 5, Salisbury, N. C.:		
Divisional chief	1	4,000
General prohibition agent	1	3,600
Do	1	2,800
Do	1	2,300
Do	11	2,100
Do	1	2,000
Do	1	1,860
Do	4	1,680
Division No. 5, Salisbury, N. C.—Continued.		
Clerks	1	$1,500
Do	1	1,440
Total	23	49,320
Division No. 6, Savannah, Ga.:		
Divisional chief	1	4,000
General prohibition agent	1	2,800
Do	2	2,500
Do	8	2,300
Do	5	2,100
Do	1	1,680
Clerk	1	1,680
Do	1	1,440
Total	20	45,500
Division No. 7, Jacksonville, Fla.:		
Divisional chief	1	4,000
General prohibition agents	3	2,500
Do	1	2,300
Do	9	2,100
Do	1	1,680
Clerk	1	1,680
Do	1	1,320
Total	17	37,380
Division No. 8, New Orleans, La.:		
Divisional chief	1	4,000
General prohibition agent	1	2,500
Do	8	2,300
Do	4	2,100
Do	8	1,680
Clerks	3	1,680
Do	2	1,440
Do	1	1,320
Total	28	55,980
Division No. 9, Louisville, Ky.:		
Divisional chief	1	4,000
General prohibition agents	2	3,000
Do	1	2,800
Do	3	2,500
Do	5	2,300
Do	5	2,100
Do	6	1,860
Do	3	1,680
Clerk	1	1,680
Do	1	1,440
Total	28	61,620
Division No. 10, Cleveland, Ohio:		
Divisional chief	1	4,000
General prohibition agent	1	3,600
Do	1	3,000
Do	4	2,800
Do	6	2,500
Do	8	2,300
Do	8	2,100
Do	4	1,860
Do	6	1,680
Clerk	1	1,500
Do	2	1,440
Do	1	1,320
Total	43	95,220

Force of general prohibition agents as of January 12, 1925—Continued

Division and title	Number of employees	Salary
Division No. 11:		
Divisional chief	1	$4,000
General prohibition agent	1	3,800
Do	1	3,300
Do	3	3,000
Do	2	2,800
Do	6	2,500
Do	6	2,300
Do	10	2,100
Do	2	1,860
Do	7	1,680
Clerk	1	1,680
Do	1	1,560
Do	1	1,440
Total	42	95,660
Division No. 12, Minneapolis, Minn.:		
Divisional chief	1	4,000
General prohibition agents	4	2,800
Do	2	2,500
Do	1	2,300
Do	6	2,100
Do	2	1,860
Do	2	1,680
Clerk	1	1,680
Do	1	1,320
Total	20	45,180
Division No. 13, Kansas City, Mo.:		
Divisional chief	1	4,000
General prohibition agent	1	2,900
Do	2	2,800
Do	2	2,500
Do	1	2,300
Do	12	2,100
Do	3	1,860
Do	6	1,680
Clerk	1	1,680
Do	1	1,560
Do	1	1,440
Total	31	65,340
Division No. 14, Philadelphia, Pa.:		
Divisional chief	1	4,000
General prohibition agent	1	3,600
Do	2	3,300
Do	1	3,000
Do	8	2,800
Do	7	2,500
Do	10	2,300
Do	27	2,100
Do	10	1,860
Do	18	1,680
Clerks	2	1,680
Do	1	1,500
Do	9	1,440
Do	1	1,380
Do	8	1,320
Do	1	1,140
Total	102	209,940
Division No. 15, San Antonio, Tex.:		
Divisional chief	1	$4,000
General prohibition agent	1	2,500
Do	2	2,300
Do	8	2,100
Do	2	1,860
Do	4	1,680
Clerks	2	1,440
Total	20	41,220
Division No. 16, Denver, Colo.:		
Divisional chief	1	4,000
General prohibition agent	1	2,300
Do	3	2,100
Do	1	2,000
Do	4	1,860
Do	3	1,680
Clerk	1	1,500
Total	14	28,580
Division No. 17, Seattle, Wash.:		
Divisional chief	1	4,000
General prohibition agent	1	3,000
Do	2	2,500
Do	4	2,300
Do	2	2,100
Do	3	1,860
Do	2	1,680
Clerk	1	1,680
Do	1	1,320
Total	17	37,340
Division No. 18, Los Angeles, Calif.:		
Divisional chief	1	4,000
General prohibition agent	5	2,500
Do	2	2,300
Do	7	2,100
Do	2	1,860
Do	1	1,680
Clerk	1	1,740
Do	1	1,680
Do	1	1,380
Total	21	46,000
Not assigned to divisions:		
General prohibition agent	1	3,600
Do	2	2,100
Do	33	1,860
Do	18	1,680
Total	54	99,420
At large:		
Divisional chiefs	1	5,000
Do	2	4,000
Total	3	13,000
Field supervisors	4	3,600
Do	6	3,000
Total	10	32,400

Force of general prohibition agents as of January 12, 1925—Continued

	Employees	Salaries
Federal prohibition directors' forces	1,866	$3,683,940
General prohibition agents	843	1,786,740
Field supervisors	10	32,400
Narcotics	357	794,940
Chemists	39	84,560
Warehouse agents	190	266,700
Bureau	709	1,310,860
Total	4,014	7,960,140

Mr. PYLE. Mr. Chairman, Judge Britt furnished me, a number of days ago, a copy of these schedules, and in studying them over, I was impressed with certain facts in the matter of the distribution of these agents that I desire to call to the attention of he committee, the question arising as to whether the distribution is carried out to give the greatest efficiency in the ultimate matter of national prohibition.

It has been brought out by this committee, in former sessions, that the States where the greatest trouble is occurring at present are the States of New York, Pennsylvania, New Jersey, and Maryland. They are considered the hard States, as I understand the attitude of the department.

Mr. BRITT. Mr. Pyle, if I may interrupt you there, I think the Prohibition Unit generally classes the State of Illinois, particularly as embracing the city of Chicago, with the States of New York, Pennsylvania, and New Jersey, putting Maryland probably next. That is a mere matter of judgment, however.

Mr. PYLE. Yes. These certain States are considered more wet; that is, by reason of having no dry laws of their own, or by reason of the attitude of the local officers, it makes it more difficult for the National Government to enforce the prohibition act there. Is that correct?

Mr. BRITT. Yes.

Mr. PYLE. In going over the table of the agents, as prepared, I find the State of Maryland, for instance, has but 19 Federal agents, a proportion of 1 to 76,000 and something over of population. Maryland is also administered, in part, by general agents, working out of Washington, but that is true of all States which have general agents also working in them. Maryland has 19 of them, in the proportion of 1 to 76,298 of population.

New Mexico has 19 Federal agents, which, with their population, makes it in the ratio of 1 to 18,966 of population.

It occurs to me that if Maryland is considered one of the more difficult States, and has no dry law of its own, and New Mexico has a dry law and does not even permit whisky for medicinal purposes, a principle of efficiency would be to put part of the agents from that dry State of New Mexico into the wet State of Maryland.

The State of Nevada is also a State which is dry, though I am informed that, just within a few days or a few weeks, the court has held their act unconstitutional. Notwithstanding, it is dry, and the sentiment of the people is for a dry law in that State, they having adopted one in——

Mr. BRITT. And as I understand it, that decision is pending a rehearing.

Mr. PYLE. Nevada has 12 Federal agents, or in the proportion of 1 to 6,450 of population.

Senator ERNST. Pardon me, there. Do you not have to consider the extent of the territory, as well as the density of the population?

Mr. PYLE. My observation and impression from working in the field, Senator, is that the number of Federal agents you need depends more on the attitude of the local officers. I know States where the sentiment is dry, so that the local officers enforce the law, and the Federal agents have to hunt diligently to find violations. In States where the local officers are not so energetic in enforcing the law, it is just a matter of working the Federal agents as fast as you can, and eliminating the small violations in favor of the large ones.

Senator ERNST. But where there is such an immense area to be covered, it would seem to me that that would be a factor to be considered.

Mr. PYLE. It would have to be considered, if the Federal officers are to take care of criminal enforcement.

As I say, in the State of Nevada there is about 1 to about 6,000 of population.

In the State of Michigan, for example, there are 37 Federal agents, or 1 to 96,443 of population. Michigan has this across the river difficulty, from Canada.

In the State of New York, where the agents are all concentrated in the general agents forces, there are, all told, 229 agents, or 1 to 45,788 of population. Last year, those agents made nearly 10,000 arrests. The matter of arrests, however, can not determine the matter of wet or dry, because a very energetic force might make more arrests than one not so energetic.

North Carolina, which Judge Britt has explained to the committee, is a State handled in good shape by the local officers; the sheriffs and police are doing most excellent work in the matter of the enforcement of the liquor laws, a State which is dry of its own enactment and which does not permit liquor for medicinal purposes, even, thereby greatly reducing the checking and clerical work in connection with enforcement, has 60 prohibition agents.

The CHAIRMAN. What ratio is that to the population?

Mr. PYLE. That is 1 to 42,652 of the population.

The adjoining State of South Carolina has 20 Federal agents, or 1 to 84,186 of the population.

The amount of work to be done can be determined somewhat by the fact that these 20 agents in South Carolina made 500 arrests in one year, the year ending June, 1924, and the 60 agents in North Carolina made 662 arrests.

It seems to me that the distribution should be made more in accordance with the needs. There are places where the agents have made but few arrests in the course of a whole year. There are other places where they run very high.

For example, South Dakota, 12 agents, 1 to 53,000 of population, only made 201 arrests.

The CHAIRMAN. I would like to ask Judge Britt or anyone here representing the bureau, if they have any explanation as to why North Carolina should have three times as many agents as South

Carolina, in view of the testimony here that North Carolina is habitually dry?

Mr. BRITT. The State of North Carolina is territorially a much larger State than South Carolina, and in population it is much larger. It has a very much larger mountain territory. The entire western end of the State is mountainous, and, as I stated to the committee on a former occasion, seemingly the greatest difficulty in that State is the small bush blockade distillery.

The CHAIRMAN. What is that?

Mr. BRITT. The small blockade distillery—a blockaded distillery in the bushes or mountains, of which there are relatively a good many, and a good deal of the time of the officers is occupied in locating them and destroying them, although the location and destruction of these distilleries does not usually result in an arrest. In some way they escape before the approach of the officers.

Then there was, and probably is just now, a sort of migratory mode of manning them. The State of Virginia and the State of North Carolina have, if not permanently, temporarily, for some time been occupied suppressing violations throughout both the States, and the forces are carried back and forth across the two States. Whether that continued for a considerable length of time or was only temporary I am not able to say, but I should be very glad to get information on the point if it is desired.

Then, in the same connection, the necessity for the presence of a force is influenced by a number of considerations which counsel did not name.

Violations of the liquor laws are largely like diseases. They are epidemic and they are almost, in many instances, as unaccountable as the rise and prevalence of diseases. In some instances we would think, because of the density of population, there would be a great many violations there, and preparation is made to suppress them; but we have also found that a sparsely settled community is found to be a good place for plying the work of the violator. In some States of the extreme South or Southwest we have found that to be true, particularly in the border States.

Then it is influenced by other considerations. The State police, including the county officials, are in many sections a terror to these liquor violators. In others they are not only passive but seemingly in connivance with them. That, however, I think exists only to a relatively small degree. Where that is true practically all of the activities are on the part of the prohibition agents, and it is also probably true that some error may arise from the distinction between the Federal or local prohibition agent and the general.

However, Mr. Pyle did state that in the States of New York and Pennsylvania the Federal prohibition agents had been superseded by the general prohibition agents.

Now, as to the State of Maryland, enforcement there is very largely carried on by the force of the District of Columbia.

That is the only answer I have to the chairman's question. If there are other reasons on the part of the unit, I shall be glad to furnish them, Mr. Chairman.

The CHAIRMAN. Mr. Pyle, are you going to insert into the record the paper that you have prepared there?

Mr. PYLE. I do not consider it will be necessary, Mr. Chairman, for the reason that it is simply a compilation from the one that is already placed in the record by Mr. Britt.

The CHAIRMAN. Have you checked that up with the one put in by Mr. Britt?

Mr. PYLE. Yes, sir.

The CHAIRMAN. And do they compare?

Mr. PYLE. This is prepared from the one given me by Mr. Britt. The figures are simply placed in tabular shape.

The CHAIRMAN. I think that is important, because, from analyzing the record myself, it is apparent that the distribution of those agents is not the proper one to secure the best enforcement.

Mr. PYLE. We can have this prepared in typewritten shape and have it put in as an exhibit, if the Senator desires.

The CHAIRMAN. If you say it is already in, that will be sufficient.

Mr. PYLE. It is in in a different form, but it contains the same figures.

The CHAIRMAN. Well, we will look it over and determine later.

Senator ERNST. Mr. Pyle, your criticism is that there might be a better distribution of the prohibition forces?

Mr. PYLE. I think Federal prohibition is usually separate and distinct from State prohibition. If a State has prohibition and is disposed to enforce its own prohibition, I can not see where the Federal Prohibition Unit should be called upon to enforce the Federal prohibition law, which, in almost every case, is a less drastic law than the State law.

There is another feature of it, and that is that in most cases the Federal officer has less power than the officer of the State in enforcing the law, in that the State police officers, the constabulary, the sheriffs and deputies have the general police power of the common law. They have very wide powers in enforcing the law, but an officer operating under the United States has only such powers as Congress has; that is, powers specifically granted by the Constitution, and he is held back by a great many constitutional restrictions that the officer of the State is not restricted by in any manner.

Mr. BRITT. Just a moment, Mr. Pyle.

Mr. Pyle has stressed a situation there which is desirable, but which has never been attained.

As the committee knows, the amendment puts the duty jointly upon both the Federal and the State authorities. Each feels, or ought to feel, that it assumes the obligation. In order to assume the obligations and discharge it, each must be on guard to enforce the law. Happily now, in most of the States there is a law concurrent with the national prohibition act, and in many instances, much more rigid.

The Supreme Court in passing upon that question has said that the law was entirely constitutional and proper so long as it went in the direction and toward the purposes of the amendment, even if it went far beyond the enforcement of the laws provided by Congress, or if it should stop short of those laws. In some places, as has been cited here, they have stopped short of the national prohibition act. In others, I think very wisely, they have gone beyond, but it depends upon the personnel of the enforcing officers at any given

time as to whether there is activity on the part of the State police or negligence on its part. Of course, it depends upon the same principle in the matter of the Federal enforcing officers.

The CHAIRMAN. Just a moment. You said that in some of the States the State will fall short of the Federal law?

Mr. BRITT. Yes, sir.

The CHAIRMAN. In that case, does not the Federal law go as far as it should?

Mr. BRITT. The Federal law, of course, goes as far there as anywhere else, Mr. Chairman.

The CHAIRMAN. In other words, it goes beyond the State law in some cases?

Mr. BRITT. It does; but in the States of New York, Maryland, Nevada, and until recently the State of Massachusetts, there are no enforcement laws. But, generally speaking, they are stronger in the States than the national prohibition act.

There is one other consideraion that influences the assembling of the forces in certain places.

Assignment is a thing, Mr. Chairman, which we can not determine geographically; it is a thing which we can not determine by any particular time. The public informs both the State and Federal enforcement officers of conditions; public officials inform them, and the information comes in in other ways. Emergencies arise, certain occasions, certain seasons, even, seem to give an impetus and spur to violations; and, of course, the Prohibition Unit and the State enforcing bodies can do no better than to try to adopt the means to the end, to try to be ready for the emergency, whatever it is.

For instance, if there should be a great occasion in New York, like a great convention, or in Cleveland, like a great convention——

The CHAIRMAN. Why do you mention Cleveland—because the Republicans held their convention there?

Mr. BRITT. Yes; to be frank with you, I thought of New York because the Democrats held their convention there, and of Cleveland because the Republicans held theirs there. The Prohibition Unit attempts to anticipate such a situation and be ready for such emergency. Of course, those are minor considerations, but I think it is correct to say that not mere matters of population or of geography could determine just what proportion of the force should be used at any given time, although those are considerations.

The CHAIRMAN. Let me ask you what the policy of the unit would be in a case such as this, which may not be entirely hypothetical, either, but may be an actual case. For example, there are great violations occurring in New Jersey, and you are getting a great number of complaints of conditions there. Would the bureau feel justified in centralizing their forces to help break up that condition in New Jersey?

Mr. BRITT. It would, and, as I understand it, Mr. Chairman, it is doing that.

The CHAIRMAN. Can you give us a case where you have mobilized your forces to clean up a particular condition in a particular State?

Mr. BRITT. You ask for a particular case and as to the result of the activities?

The CHAIRMAN. No; can you give me a case where you would so mobilize your forces as to clean up a particular condition?

Mr. BRITT. Yes. Take the State of Pennsylvania, in relation to the so-called breweries and other phases of violation. More than once the unit has detailed a large detachment of its force into that State for those purposes, with varying results, sometimes satisfactory and sometimes unsatisfactory. It has done likewise in the State of New York and also in New Jersey and in Illinois around the city of Chicago.

The CHAIRMAN. Just where do you take those forces from when you mobilize them in those localities?

Mr. BRITT. Well, that is a matter about which I could not speak in detail, but they are usually made from detachments taken from different places, as, for instance, from the District of Columbia would go a dozen, from Virginia half a dozen, from North Carolina a dozen, etc., making up the squad in that way.

The CHAIRMAN. That is interesting. Do you ever mobilize your regular agents to do a job of that sort?

Mr. BRITT. From the States?

The CHAIRMAN. Yes.

Mr. BRITT. I think there have been instances in which the directors of the States have been called on to lend a part of their force for those details. I am very sure there have. You will bear in mind, Mr. Chairman, I am not speaking as an executive officer; I only know about it in a general way.

The CHAIRMAN. What conclusion do you draw from the number of arrests made in a specific State as related to the number of prohibition agents there?

Mr. BRITT. Various conclusions may be drawn, but the usual conclusion is that there are other large activities on the part of the officers and conditions demanding those activities; another inference may be that the attention of the officers is directed to a multiplicity of minor cases, in which case the numerical output would be great, but the influence upon enforcement might not be great. I do not know that that is the case, but I know it is a possible inference.

Now, in some cases the county officers, the sheriff and his deputies, and in cities and towns their police officers, take care of all of the smaller cases, and I think the agents do not direct much attention there. But if they do not direct attention, it seems to be the policy, and I do not see how it could be otherwise, that these violations, although they may not individually be of the greatest consequence, can not escape unnoticed.

Mr. PYLE. In that connection, Mr. Chairman, I would like to call attention to the statement made by Mr. Haynes in the first meeting of the committee that it was the desire to get the cooperation of local officers to such an extent that the little cases would be handled by them.

The criticism has been made in the press from time to time of the vast number of little cases, and the few large ones that are being made, and, I maintain, in the matter of distribution of Federal agents for enforcement work—now, understand, that work in part was necessary as routine work in the directors' offices, the checking of permits and things of that sort, and generally a small proportion of the force would be so detailed, nevertheless, in the matter of the larger cases there are not so very many States where a large case could be made, because there are not so very many States where there

actually are large activities. What I would term a dry State is one where public sentiment favors the enforcement of the prohibition law to such an extent that the local officers are doing their full duty in enforcing the liquor law. In those States what violations occur are, of necessity, of minor importance—a single washboiler still or an isolated outfit some place in the mountains, and whose marketing must be on a very restricted basis. There will be the hip-pocket man, the little fellow in a territory which is essentially dry, and in such territory the addition of a Federal agent for enforcement work simply means one more man added to the police force or the sheriff's force. It does not mean a new influence in there. It is simply another man to look after the same thing, and my contention is based upon this chart and the figures furnished, that the criminal enforcement of the law in those States which are essentially dry in nature and in characteristics should be discouraged, and that those men should be put in the States that the Prohibition Unit through their experience have announced to be wet States and difficult States in which to carry out the provisions of the national prohibition act, that these men should not be spread over the whole country, but they should be centralized where the battle is thickest. That is the attitude of every commander on a battle field. He keeps sufficient men scattered out to keep himself informed of what is going on, but he throws his troops in where the fight is going against him, and I believe that the same attitude should govern in the matter of these agents, that they should be thrown in where the big violators are flourishing.

Philadelphia is well known as the source of alcohol for pretty nearly the whole United States, wherever alcohol goes. Pittsburgh is a great center for beer and New York City for imported liquor.

If these big violations are going on in these places that are known as wet, I believe the bureau should take every man that could be spared from the checking work, the routine work, the investigation work, in the dry States and throw them into these wet States, so as to give a large number of men, with the added advantage that the men would be more or less strange to the bootleggers. They should be thrown in where they need them most.

I think this chart carries out that.

The CHAIRMAN. You mean that it does not carry it out?

Mr. PYLE. This chart supports my position.

The CHAIRMAN. I see.

Mr. PYLE. That in the States which can be classed as dry States the number of arrests made by the men, for the most part, are nothing near, per agent, those which are made in the so-called wet territory.

While the actual results are not there, I know from my own experience in the State of Utah, a Mormon State—and the Mormons are an essentially dry church—the local officers were looking everywhere they could for liquor and making arrests where they could find them, and we had to hunt diligently to find violations out there. Our time was substantially wasted, because the local officers would have probably found them the next day if we had not. We were just a few men added to the State force.

The same thing is true in the State of South Dakota, with which I am familiar. In the State of South Dakota they have local officers

and sheriffs and police of various kinds, and they look after these violations. But there are States where the sentiment is rather wet, where they passed the law establishing the State constabulary, known as the State sheriff's office, particularly to deal with liquor laws where the local officers would not enforce them. They are doing that most effectually. The State director in such a State would not need the agents to go out and find violations, because they are reported to him, and word is sent to the governor to send the necessary State constabulary.

Now, my opinion is that the Federal Government can do nothing in a State like that, and particularly in the matter of criminal enforcement, that the local officers can not do as well or better.

Senator ERNST. Kentucky is supposed to be a dry State. It has 1 officer to every 74,000 people, but to get at the correctness of your theory, no matter how bad the conditions may be in the State of New York or elsewhere, I know that you can not spare any of those men in Kentucky. Whatever the proportion may be there, those men are needed there. They can not be spared at all. I am just illustrating this fact, that you must see that the law is observed everywhere, and notwithstanding the fact that Kentucky is dry, there may be so many violations as to require those agents to be there, and it would not be wise to send them elsewhere. Are there not plenty of other States in the same situation as Kentucky?

Mr. PYLE. In Kentucky, as I understand it, the local authorities are very efficient and active in liquor law violations.

Senator ERNST. I know, and that is the point that I am making: However efficient and however active they are, we have not enough men yet in Kentucky to properly enforce the law, and I ask you why should they be taken elsewhere?

Mr. PYLE. Would the Senator contend, for instance, that they are needed in Kentucky as badly as they are in Philadelphia or New York?

Senator ERNST. They may be needed more badly in Philadelphia or New York, but they are needed about as badly as it is possible to need officers anywhere, and we can not afford to let them go from Kentucky elsewhere.

Mr. PYLE. In the State of Kentucky, you have a peculiar situation in the director's office.

Senator ERNST. I am trying to show you that you can not always depend upon the mere statement such as you are making to judge results by. I know of my own knowledge that we have not sufficient agents to contend with the situation in Kentucky. Kentucky is a dry State, and we have the cooperation of the officers there. We had so-called local option before any national prohibition law was enacted, and yet we sadly need officers there. We do not want to send those that we have elsewhere, when they are so badly needed in Kentucky. Therefore, I fear the criticism that you are making is not always a just one.

Mr. BRITT. There is this modification, Mr. Pyle, in saying that the sheriffs and policemen are active and energetic, I have not at any time said that they were sufficient.

Take the State of North Carolina, where they are active and energetic and I think very loyal and faithful, I have not thought of stating that they were sufficient. I have received personal letters

from people in that State, making no complaint either of the sheriffs or anybody else, but there is more to do there than can be done. This force of less than 2,000 distributed throughout the country, is not, of itself, sufficient to meet all the necessities of these great emergencies. I think there is no State in the Union where the local officers are anything like doing all that should be done in the enforcement of the law.

Then, I think, with all due regard, you are in error in another particular when you say that a prohibition officer falls in with the State officers and becomes one of them. That, I think, is not quite correct. The State officers confine their operations to localities strictly, and mainly to findings and arrests, and nothing more. The prohibition agents hunt up the larger cases and conspiracies, the conspiracy being the most flagrant of the offenses against the law, and generally the State officers have nothing to do with them, and do not attempt to have, while the prohibition agents do.

I think we have some figures here, Mr. Chairman, which show that we have aggregated a larger force of the agents in those centers like New York, Philadelphia, and Chicago, and I should like to ask my associate, Mr. Simonton, by leave of the chairman, to call attention to some of those figures.

The CHAIRMAN. Before we leave that matter, while we are talking about the distribution of the agents, I think, perhaps, Senator Ernst, who has not gone over this as carefully as I have, got the impression from Mr. Pyle that Mr. Pyle thought that that was applicable in all cases. I do not think that that was Mr. Pyle's intention, and certainly that would not be my conclusion from a study of the record.

In that connection I would like to ask Mr. Britt what justification there is for 60 agents in North Carolina—one to every 42,652 people, with a total of 662 arrests, when there are only 37 in Michigan, or one to every 96,443 people, with 1,142 arrests. In other words, Michigan has nearly twice the number of arrests and has less than one-half the number of prohibition agents as related to the population that North Carolina has.

Mr. BRITT. As I said, I do not know the ground for the relative distribution as between North Carolina and Michigan.

The CHAIRMAN. As long as you do not know that, Mr. Britt, would you mind finding out or bringing somebody here to explain that to us?

Mr. BRITT. I shall be delighted. What I want to say is that I have no answer to the chairman's question as to the relative distribution of the force between the States of North Carolina and Michigan, but I am prepared to say that the force in North Carolina is profitably and necessarily employed in the enforcement of the law.

The CHAIRMAN. Well, we are not stating that. I am willing to admit at the start that every agent everywhere is needed, but it is a question of where they are the most badly needed, is it not? The fire department of a city is certainly needed everywhere, but when there is a conflagration in one place the call goes out for the entire fire department, and the department responds, and for the moment the other districts are without fire protection.

Now, here is the Detroit River, with miles and miles of frontier, and with bootlegging across the river, but there is only one officer to every 96,000 population; and here is North Carolina with over two officers to the same number of people, with less opportunities for bootlegging than there are along the Detroit River.

Mr. BRITT. I shall endeavor to get you all the information I can on that subject.

The CHAIRMAN. I think that would be interesting. Now, I want to know what the significance of this is. Take New Hampshire, for instance. It has eight prohibition officers, one for every 55,385 people. Nevada has 12 officers or a 50 per cent greater number, or one to every 6,450 people. In the State of Nevada 188 arrests were made, or about 15 per man per year, while in the State of New Hampshire 327 arrests were made, nearly twice as many arrests per man as were made in the State of Nevada. What explanation could be offered for that particular situation?

Mr. BRITT. I could not give you the cause of the discrepancy in the relative number of arrests made, but I am prepared to say that the number of arrests made is not itself a complete test of the amount of enforcement effect, or of the efforts to enforce it.

The CHAIRMAN. I admit that. I argued that with our counsel the other day, that the number of arrests was not the exact measure of the exact enforcement officers, but was just an incident to it.

Mr. BRITT. Yes.

The CHAIRMAN. But here is a comparison of New Hampshire with Nevada, and there are 50 per cent more officers in Nevada than there are in New Hampshire, with a much smaller number of people per agent in Nevada than there is in New Hampshire, and I do not understand that kind of distribution of agents.

Mr. BRITT. The question of accessability is one thing and the methods employed by the violators is another. There are still other considerations that influence it. As I say, I would not be able to tell you what caused the difference in this instance.

Mr. PYLE. The point I wish to make, Senator Ernst, is not that there is any place that has more agents than it needs.

Senator ERNST. No; I understand that.

Mr. PYLE. But the department has nowhere near the number of agents they need to properly cover the United States. It would take thousands and thousands of agents, if they were going to undertake to police the United States, but they only have a matter of 1,700 agents. Now, inasmuch as they have but 1,700, a certain number of those agents all over the country are being used for criminal enforcement work, and it is my contention that they should go to the places where the most liquor is being obtained or manufactured or brought into the country, and from which it is actually going out all over the country, that they should go to these big sources of supply, the national sources, and throw in all the agents they can to stop those leaks and fight until those places are dry.

Senator ERNST. I have got that point, and I see the importance of it, but here is what I think you are overlooking: You can not wholly neglect the work anywhere, and if you take from the few men that we have in Kentucky now a number of that force and send them anywhere else, you would have to absolutely neglect large portions

of the State entirely. Now, I do not know whether it is justifiable to leave Kentucky in that respect without any protection, in order to accumulate a larger force in some part of the country where they are so badly needed. The point I am making, therefore, is that when you simply state that there are so many men in one place, and you think they should be sent somewhere else, you may be overlooking the fact that in the first place, where these men now are, they can not possibly get along with a fewer number, and therefore they ought not to be taken away and kept somewhere else.

Just one other fact: Inasmuch as we all know that this niggardly force is not able to cope with the situation at all, I am not clear that you ought to neglect entirely a part of one State to accumulate your forces anywhere. So far as I have been able to see, and I have given the matter a great deal of attention, the effort of the department has been to distribute their forces, as far as possible, where they think they are needed from time to time, and they have used this field force, as it is called, and concentrated these men whenever and wherever they are needed. Now, the force is so miserably short in numbers that that effort is not always successful. Personally, I feel amazed at the results obtained, when I consider how few men are employed to carry on the work.

Mr. BRITT. The New York, Pennsylvania, and Illinois figures would be interesting on that.

Mr. SIMONTON. The second division of the general agents' force, which embraces New York and the fifth collection district of New Jersey, has 218 general agents.

In Maryland, which embraces Delaware, West Virginia, District of Columbia, and counties of Frederick, Clark, Loudoun, Fairfax, Prince William, Fauquier, Rappahannock, Page, Shenandoah, Warren, and Rockingham, there are 41 general agents.

Mr. PYLE. How many have you there?

Mr. SIMONTON. Forty-one.

Senator ERNST. Pardon me a minute. Does your statement take into account the general agents?

Mr. PYLE. It takes into account all of this territory where there are general agents assigned.

Senator ERNST. I know; but did you take into account that these general agents are in large measure in those places where they are needed?

Mr. PYLE. These are the figures of the Federal agents given for Pennsylvania and New York.

Senator ERNST. Those are permanent officers, and those figures have no reference to the field officers.

Mr. PYLE. They are field officers, but their activity is confined to State and Federal agents.

Senator ERNST. I know; but I am trying to make the distinction between the officers whose duties are confined to a State generally throughout the State and officers who may be assigned anywhere.

Mr. PYLE. No; these are the ones whose duties are in the States, except New York and Pennsylvania.

Senator ERNST. And that does not take into account the general field agents, who may be sent anywhere?

Mr. PYLE. Who are sent all over. That is already in the record in another meeting.

The CHAIRMAN. Mr. Simonton may continue with his figures.

Mr. SIMONTON. Illinois, eleventh district, which includes Illinois, Wisconsin, and the northern peninsula of Michigan, there are 40 general agents in addition to the Federal agents.

The other State just spoken about was Pennsylvania, which includes 121 general agents, 37 under the Pittsburgh district and 84 under the Philadelphia headquarters.

Mr. PYLE. That covers the southern half of New Jersey also?

Mr. SIMONTON. Yes, sir.

Mr. PYLE. Atlantic City?

Mr. SIMONTON. The southern half of New Jersey; yes. There was so much of that that I did not put it all in.

Mr. BRITT. In that connection, Mr. Chairman, this is in line with what Senator Ernst has said, where it can not all be done there is always an appeal to stress a particular part to the neglect of some other. For instance, where the necessities for enforcement as to alcohol violations are very great, like in the State of Pennsylvania, we have been earnestly besought to neglect so-called breweries or cereal beverage manufacturers and devote the entire force to alcohol violations. Of course, it was the policy of the unit so to dispose the force as to do all the enforcement they could against all the different lines of violations, including so-called breweries.

Mr. PYLE. I say it has been my position entirely, upon the statement of the department, that their desire was to get the larger violators rather than the small ones.

The CHAIRMAN. I think counsel is correct on that, and I think Senator Ernst, with all due respect to his defense of the bureau, overlooks the fact that what we are trying to show, and I say that because I have been in touch with counsel in this matter—is that it is more important to place these men at the source of the supply than it is to attempt to get the supply after it has gone out to the various States. For example, in Kentucky there are 2 brewery permittees; in Michigan there are 15; in New York there are 64; in Ohio there are 41; in Pennsylvania, 51; and in Illinois, 15. It is from these places that the supply is coming. It is admitted by the bureau's own witnesses that that is where the supply is coming from. It has been admitted by every witness here that the majority of the bootleg liquor is coming from industrial alcohol plants.

Does it not appear to the Senator from Kentucky that to prevent the supply from getting out from these places is more important than to catch it after it gets out?

Senator ERNST. Not at all, and the chairman is, as usual, entirely wrong. In speaking of my defending the bureau, I am speaking in the same language of his attacks, unjustified, upon the bureau. Therefore, he should temper his speech and let us see if we can not get at the truth of this, rather than to say that he is attacking the bureau and that I am defending it.

The CHAIRMAN. That is apparent from the record.

Senator ERNST. I repeat what I said before, that there is too much effort to attack the bureau, rather than to get at the truth.

Now, the situation in Kentucky is this: We have not a great many breweries. That statement shows two.

The CHAIRMAN. Two permittees at least; I do not know how many breweries.

Senator ERNST. Two what?

The CHAIRMAN. I do not know how many breweries, but there are two permittees.

Mr. PYLE. Two permit breweries.

Senator ERNST. The fact is, as we all know, that Kentucky has a large territory where moonshine whisky is made, and it takes a large number of agents to cover that territory. While the law is being enforced, Kentucky can not be neglected, and it has as much right to have the law enforced within its territory as has Michigan or New York or any other State. Therefore, it is not right to leave Kentucky wholly unprotected, in order to send these agents to these densely populated centers, from which so much of this bootleg liquor springs.

Now, as I say, we have just as few officers in Kentucky as it is possible to have to afford any kind of protection, and therefore you would not be justified in removing these officers and leaving large parts of Kentucky altogether unprotected, even to send them to New York and to Michigan; and when I say that I realize very keenly the fact that we ought to get at the sources of supply. Let me illustrate, and I know that that is important. Sometimes an agent of the Prohibition Unit will be thought to be very active, very industrious. Why? Because he runs in a lot of little violators of the law, and he shuts his eyes to the fact that beer is coming from breweries, and whisky is being manufactured in large quantities somewhere else. He does that either because he is paid not to notice, or he is not as efficient as he should be. Of course, it would be better if such officers struck at the source of supply, where the largest amount comes from of this bootleg liquor, but every territory must be covered, as far as it is possible to fairly cover it, and no one State must be neglected entirely, even though they might be sent to some other field where they would find a greater reward for immediate effort.

I know the department has pursued the policy of concentrating their general field men at these centers. It has done it time and time again.

Mr. BRITT. It is doing it now.

Senator ERNST. I know it is doing it now, but the department can not afford to remove these men and leave these other States practically without any officers, and I think that is what the argument of counsel would lead to. We must not be wholly neglected by having the officers taken from States like Kentucky, even though they might not do as much in Kentucky as they could do elsewhere. Their hands, however, are certainly full where they are.

The CHAIRMAN. Of course, the record shows the influence of the Senator from Kentucky when he gets an agent for every 74,000 population, while the Senator from Michigan has not been able to get any and his predecessors got one to every 96,000.

Senator ERNST. If the Senator from Michigan be reported correctly, he does not want protection.

The CHAIRMAN. I have pointed out to the Senator from Kentucky that I was not here when this distribution was made.

Senator ERNST. Neither was I, nor did I ask for it.

The CHAIRMAN. But the defense of the bureau will naturally encourage greater protection for the districts of the legislators defending it.

Is there anything more, Mr. Pyle?

Mr. PYLE. There is a matter that came into the record as to the organization of the office of counsel that I wish to ask a question or two on of Mr. Britt.

Mr. BRITT. Yes, sir.

The CHAIRMAN. Before you start in on that I would like, if possible, to find out what political influence there is with the bureau. Perhaps if we can find the distribution of the agents in the various States in 1920 and 1921 and for succeeding years, we might find how influential some of these Senators and Congressmen are in getting agents located.

Senator ERNST. I think that ought to be done, because that is in line with such constructive work as the chairman says he is endeavoring to arrive at.

The CHAIRMAN. Yes. I am very anxious to find out what political principles control the bureau, and I think that that perhaps will show it.

Did Mr. Britt get the question?

Mr. BRITT. What was the question?

The CHAIRMAN. The allocation of agents in 1921 and succeeding years.

Senator ERNST. As it applies to the Senator from the State of Kentucky, I will state now that I was never consulted as to the number of agents, and have never been requested to give any information on that point. I have left that to those whose business it is.

The CHAIRMAN. There is another question that has occurred to me in going over some of the records, and that was to ask the bureau what authority they had in dealing with the character and reputation of applicants for permits.

Assume, for instance, an ex-convict applies for a permit, either as the president of the corporation, or as an individual, would the bureau have any legal authority to withhold the permit?

Mr. BRITT. Yes. I wish to explain my answer.

The commissioner holds, and I think he holds correctly, that a person who is permitted to distribute liquor for the various nonbeverage purposes holds, to a degree, a sort of public trust, or quasi-public trust, and he ought to be a person of sufficient intelligence and business judgment to know what he does, and he ought to be a person of sufficient moral character to be entrusted with the thing that the law does entrust him with.

In pursuit of that belief, the commissioner holds, and I, as his legal adviser, have advised him, that he has the right to reject an application for a permit, although, on the face of the application, it appears regular and legal, if, from satisfactory evidence after having gone into the matter fully, he is convinced that the person, notwithstanding his past reputation, is a person of bad character and seeks a chance to violate the law.

That is the practice of the commissioner in the past upon applications, and is now, although I do not undertake to say that that policy can always be carried out, on account of the difficulty in getting information as to what the real character of the man is.

The CHAIRMAN. Would the attitude of the applicant for a permit on the question of prohibition have any weight with the bureau as

to the granting of a permit? Suppose, for instance, I applied for a permit, and am wet, and suppose the Senator from Kentucky applies for a permit and is dry. Would the Senator from Kentucky get his permit more readily than I would?

Mr. BRITT. That, Mr. Chairman, would make no difference whatever. That is regarded as either a political or a social privilege, and is not considered by the bureau at all; but the question of his attitude toward the violation of this law and all other laws is a question for the public and is taken into account.

Senator ERNST. For instance, if an application were made by a saloon keeper who had been convicted more than once for violation of the law, would the permit be granted?

Mr. BRITT. It would be rejected.

Mr. PYLE. Would the courts sustain you in that position? How do the court decisions run along that line?

Mr. BRITT. Well, if the courts were to define the legal side of it, they would only ask if the legal requirements were met, but if they were strict constructionists, perfectly unfriendly to the prohibition law, they would overrule us on that point. But the other judges, who look at the question in its public relation, and particularly if somewhat sympathetic with the operation of the prohibition law, would be apt to sustain the bureau.

Mr. SIMONTON. Let me illustrate Mr. Britt's statement by citing one case that came up in the district of Pittsburgh, where counsel, Mr. Pyle, was located. In this case two judges, Judge Thompson and Judge Schoonmaker, sat en bank. The application was that of the May-King Products Co. An investigation of the plant of that company showed that they were qualified physically to denature alcohol, which they had applied for a permit to do. An investigation of the personnel of that company developed the fact that they were associated in Philadelphia in the Do Well Building & Loan Association, which had nothing whatever to do with prohibition. They were directors in that company, and in the same company there were some bootleggers.

Now, no charges had ever been preferred against the men who were applying for the permit. They had never violated the law before. We knew nothing about them, except this fact, that they were associated with bootleggers in Philadelphia. The permit was refused. The case was taken to court, and it was reheard, and those were the facts that developed in the case, before Judges Thompson and Schoonmaker, sitting en bank. Both judges refused to reverse the department.

Senator ERNST. That was where?

Mr. SIMONTON. In Pittsburgh, in one of the wettest spots that we have.

That case has now gone to the circuit court of appeals, and I doubt where the circuit court of appeals will sustain the rejection; but it illustrates the lengths to which the department will go to refuse permits to those who they think are contemplating violating the law.

Mr. BRITT. And just at this time there is before the bureau a very important case, where a libel has been filed against a large distillery property, worth two or three hundred thousand dollars. It is proposed to compromise the case by paying whatever the Government

would accept with the permission of the Department of Justice. The case came up for consideration on that basis, but it was found by myself, during the consideration of the case, that the man who intended to use the business and make application for a permit to use it was under criminal indictment, although he is a wealthy man, I am told, and well qualified for the business.

I advised the commissioner that the compromise ought not to be accepted from him and that he ought not to have a permit. The compromise was not accepted, and he did not buy the business, and of course did not get the permit.

The CHAIRMAN. What would be the attitude of a court if he mandamused him for the permit?

Mr. BRITT. That, Mr. Chairman, is doubtful. It would depend upon the court.

The CHAIRMAN. I am interested in that statement, because this is government by men rather than by law, then, is it not?

Mr. BRITT. I am going to try to answer the chairman's question. I think if the court heard an explanation of the grounds for the refusal of the permit, that we could not entrust it to a man who stood under a double indictment for violating the national prohibition act, a part of the benefits of which act he sought, the court would say, in the public interest, the commissioner did what he should do.

Mr. ORCUTT. Mr. Chairman, may I make this statement, please?

There was a case at Philadelphia recently wherein Judge McKeon, if I remember rightly, although it may have been Judge Thompson, held that the Commissioner of Internal Revenue did have some discretion in passing upon the fitness of an applicant for a permit, but that his discretion must be based upon facts, and the court plainly intimated that if the commissioner had such facts as would warrant a reasonable man, in the exercise of sound discretion, refusing a permit, he was justified.

The CHAIRMAN. Was that in connection with a specific case?

Mr. ORCUTT. It was a case where a brewery—if I remember rightly the Fred Feil Brewery Co.—had applied for a mandamus to compel the commissioner to grant a permit which he had refused. As a matter of fact, the United States attorney made no defense to that case. There was no answer filed. Therefore, there were no facts before the court except the facts set forth in the complaint; but the court did make that statement.

Senator ERNST. What is your position in the prohibition service?

Mr. BRITT. He is head of the interpretation division.

The CHAIRMAN. Why is it that the district attorney did not defend the commissioner in that case?

Mr. ORCUTT. I do not know, sir. He made a motion to dismiss the case on a question of law, contending that it was purely a matter of discretion, and the court had no right to go behind his discretion.

Mr. BRITT. May I add this word:

The district attorney in that case, Mr. Chairman, filed a demurrer, and the demurrer was overruled, with, of course, the consequent direction to answer. That was the only thing that was left, and it was on the overruling of the demurrer that he made the observation that the gentleman has quoted.

The CHAIRMAN. Do I understand that the court was asked to mandamus the commissioner to issue the permit?

Mr. ORCUTT. Yes.

The CHAIRMAN. And Mr. Orcutt has said that in this case there was no argument made by the district attorney?

Mr. ORCUTT. There was no argument on the question of whether or not the facts warranted the commissioner. It was a pure question of law.

The CHAIRMAN. But in view of the opinion by the court, it seems to me that the court would have been influenced by the statement of fact, so that he might determine for himself whether the commissioner had denied the permit justly or otherwise.

Mr. ORCUTT. I take it, on a demurrer, Senator, the facts are not before the court. The demurrer admitted the facts alleged in the bill of complaint.

The CHAIRMAN. And the court decided that there were not sufficient facts?

Mr. ORCUTT. Yes, sir.

Mr. SIMONTON. I do not understand that the injunction has issued. I understand that the demurrer was overruled, and the United States was allowed to respond over, just that they may file their answer, and then it will go to a hearing on the real facts stated. The facts stated in the indictment did not refer to the commissioner's discretion, so the court overruled the demurrer and permitted the Government to respond over.

The CHAIRMAN. From the many cases that have been presented and discussed here it would seem, from the statements of the officials of the bureau that this is a government of men rather that a government of law. In other words, you say that if the attitude of the judge is friendly to the law, he renders one decision, and if unfriendly to the law he renders another decision. That is a peculiar state of affairs in a country where there is supposed to be government by law and not by individuals.

Mr. BRITT. Mr. Chairman, I think there does exist a proper legal discretion in the commissioner but, of course, as Captain Orcutt has said, it must be based upon facts. It can not be arbitrary. I agree fully with the chairman as to that. Neither the commissioner, nor anybody for him, has any right to say simply of his own will that any man shall or shall not have a permit. That would not only be arbitrary, but it would be unlawful; but if, upon a sufficient state of facts, and after full inquiry, an inquiry as to both sides, of course—that is what I mean by an inquiry—he then became satisfied, upon the facts, that the person was unfit, he ought to refuse it I have so advised.

The CHAIRMAN. But Mr. Britt said awhile ago that if he was a strict legalist he would require the permit to issue.

Mr. BRITT. Speaking of the court?

The CHAIRMAN. Yes; so I say, in one case, a judge may be a strict legalist and require a permit to issue, and in another case he may not be so strict a legalist, and he would therefore sustain the bureau. That is a peculiar situation, where we are governed by the court's personal impression as to whether he should be a strict legalist or otherwise.

Senator ERNST. I do not think Mr. Britt meant to say that one judge would act in accordance with the law, and the other would

not. I think he meant to say that it depends upon the construction of the law as applied to that particular case by that judge.

Mr. BRITT. Exactly.

The CHAIRMAN. Well, he did not say that in his previous statement.

Mr. BRITT. I think my language will show that I did.

Senator ERNST. But that is the case?

Mr. BRITT. Of course, I meant to say that where he has fixed views on any matter they may, to a greater or less degree, influence his judgment. We know that is the humanity of us all, and I presume judges are possessed of some of the same characteristics of humanity; but I did not mean to say and do not say now that they would grant or deny a permit simply because they were wet or dry. But there is a difference, where one is a strict conformist to legal forms; there is a difference in judges as to cases, not only prohibition cases but as to every class of case.

The CHAIRMAN. I would like to ask Judge Britt if he believes there should be a strict conformance to legalism in dealing with these cases, or whether there should not?

Mr. BRITT. You are asking me that question?

The CHAIRMAN. Yes.

Mr. BRITT. Whether the judge should be?

The CHAIRMAN. Yes.

Mr. BRITT. Of course, I should say without qualification that all judges, as all other officials, should comply with the law; but the act itself says that it shall be liberally construed, to the end that there shall be no spirits diverted to beverage purposes, and therefore the act itself has laid down for the court a rule of construction in interpreting any portion of the law.

Senator ERNST. That is the reason I made the remark I did. I thought I ought to call your attention to it.

Mr. BRITT. Yes, sir. If there is anything in the record that indicates that, I wish to correct it, because no such meaning was intended.

The CHAIRMAN. I knew I could leave it to the Senator from Kentucky to straighten out the bureau if an error was made.

Mr. BRITT. I do not admit that I made an error. If I did, I will be glad to correct it.

Mr. PYLE. I gather from your remarks that it is rather a question as to your right to withhold a permit without definitely proving a wrongdoing, and that a strict court will so hold.

Is the desire of the department or the idea or viewpoint of the department, that the law should be modified in some way to give such discretionery power?

Mr. BRITT. Discretionary power to the court?

Mr. PYLE. No; to the commissioner.

Mr. BRITT. Well, counsel is entitled to an answer to that, but I think answers as to policy should be given by the responsible administrative officers of the bureau and not by those whose function it is merely to give counsel. I have my opinions always, and I think I always have the courage, but I doubt whether I should answer that question.

The CHAIRMAN. I think the reason for counsel's asking that question is that, in looking over a number of cases the other day which

came to my attention—I can not recall them by name, but I think a case will be presented later, where men having a very bad reputation at least twice secured permits which, in the judgment of counsel should not have been granted.

Am I correct in that, Mr. Pyle, or am I wrong about it?

Mr. PYLE. Of course, there is a question of law in that matter. I take the position that the administrative unit should adminster the law, without any individual viewpoint as to the propriety of the law, but that it should take the law just as it stands.

Formerly the position of the department was, and the courts have not passed on it, as outlined by Mr. Britt, that they should decide whether the man was fit in the discretion of the commissioner. Then the courts began to get a few of these cases, and the courts began to deprive the commissioner of his discretionary power until, at the present time, I think their decisions run pretty strongly to the effect that you have to prove definite violations of the prohibition act.

The CHAIRMAN. Is that correct?

Mr. BRITT. I am not sure of that tendency in the courts. I understood counsel, in his question, to ask me whether I desired a change in the law.

Mr. PYLE. Yes.

Mr. BRITT. And that I did not answer for the reasons given, but I believe the commissioner already has the discretionary power upon a state of facts sufficient to indicate the unfitness of the applicant, to refuse his permit. Then, as to what the court would do, would be determined by what I have indicated.

Mr. PYLE. Has that ever gone to the Supreme Court?

Mr. SIMONTON. No. The May-King case was heard on the 15th day of October, and the decision should be handed down shortly.

The CHAIRMAN. Does that particular case deal with the discretion of the commissioner as against an applicant where the applicant was given a permit, the applicant having a bad character, outside of violations of the prohibition act?

Mr. SIMONTON. Yes; the mere fact that he was associated in the Do-Well Loan & Building Association, in Philadelphia, with some bootleggers was the reason. The court sustained our action in that regard. When it goes to the circuit court of appeals that should give us a guide as to how far we may go in determining that.

The CHAIRMAN. Could you tell us, Mr. Simonton, what the decision would be in a case such as this: A man's picture was in the rogues' gallery, he having been convicted of robbery or theft. This man was the head of a corporation which applied for a permit, and the permit may or may not have been granted by the bureau. Would the decision in this case act as a precedent in deciding the kind of cases that I have just stated?

Mr. SIMONTON. Well, that would depend entirely on how far the court discussed the particular case. If the court says, "That is away beyond your power," of course you are done. If the court lays down the rule, and then applies the rule to the facts in this case, we may have a guide for other cases.

The CHAIRMAN. I see. Have you anything further, Mr. Pyle?

Mr. PYLE. Just a few questions that I would like to ask.

From the annual report of the Commissioner of Internal Revenue for the fiscal year ending June 30, 1924, I find a little discussion of certain branches of the office of the counsel. I was particularly impressed by certain figures in connection with the interpretation division. I understand a portion of the interpretation division is working entirely on tax matters, or practically entirely on tax matters, liquor tax assessments. Is that correct?

Mr. BRITT. That is correct.

Mr. PYLE. Do you know the numerical strength of that portion of that section that is working on taxation?

Mr. BRITT. I can give you a brief statement of that. I can give you an idea. I could not give you the exact figures.

Mr. PYLE. It is a substantial portion of the force?

Mr. BRITT. Yes.

The CHAIRMAN. Before you start in on that, has that section of the legal unit of the bureau power to settle these decisions, with the approval of the Secretary of the Treasury?

Mr. BRITT. My office, that is the counsel's office, through its divisions, works the case, prepares it, jackets it, and gets it complete for submission to the Commissioner of Internal Revenue, and it goes from the latter to the Secretary of the Treasury for final approval. The actual technical work in considering a case is done in the Prohibition Unit, and is done in the counsel's office. That does not say, of course, that the Commissioner of Internal Revenue or the Prohibition Commissioner, or the Secretary, or his assistants, could not take the case and dispose of it as a whole, but I am giving the course.

The CHAIRMAN. That is in the section which you call the interpretation division?

Mr. BRITT. Yes, sir. In the counsel's office there are two main divisions. One is the division of interpretation, at the head of which is Capt. H. W. Orcutt, and the other is the division of interpretation No. 2, under the charge of Mr. P. Kennedy, which has charge of the consideration of assessment cases, abatements, and refunds, and also of compromise cases. That, I think, Mr. Pyle, is an answer to the question you asked. Do you want to know the number in that section?

Mr. PYLE. Yes; I would like to know the number working on those tax matters.

Mr. BRITT. I think we can find that for you. The number of attorneys in that division is 8 and the number of law clerks 13.

Mr. PYLE. Thirteen?

Mr. BRITT. Yes, sir. I have not here the total number of stenographers, typists, and other clerks.

The CHAIRMAN. Does that report, Mr. Pyle, show the amount which was collected in that section during the last year?

Mr. PYLE. It does, but it is scarcely in shape that is intelligible for our purposes, as yet, because we would have to take the total proposals and the collections. This shows the number of compromises, but it does not show the complete detail.

The CHAIRMAN. I would like for the record, if you can get it for the next hearing, the total amount of assessments proposed, and showing whether the proposals were based on a per gallon tax or

otherwise, and how much the Government collected, together with a general statement of the reasons for abatement in the assessments.

Mr. PYLE. Over what period do you desire that?

The CHAIRMAN. Just for the last fiscal year.

Mr. BRITT. Yes, sir.

Mr. PYLE. This shows certain lawyers, law clerks, and clerks engaged in taxation matters in the unit.

Mr. ORCUTT. Mr. Pyle, may I interrupt for a moment, please? I think I can give you roughly the figures that you ask for. I have those figures in my office. I think the total personnel that is working in the assessment division, interpretation No. 2, is approximately 78. I will be glad to get you the exact figures.

The CHAIRMAN. In the interpretation division there are 78 who pass upon assessments. Just what do they interpret outside of that?

Mr. BRITT. I can answer that by this illustration, in a very few words.

There come into the bureau annually about 75,000 official reports from field agents of various sorts. Each of these official reports must be examined for ascertainment of the following facts, whether there shall be a revocation citation, whether there shall be an assessment, whether there shall be a criminal indictment or criminal information or a libel or a forfeiture or an injunction, or any sort of legal action taken. The reports may give rise to any one or two or more of those various things.

The CHAIRMAN. If the interpretation division believes that criminal prosecution should take place as the result of examining the official report, then, do you proceed to take it up with the district attorney?

Mr. BRITT. Back of that finding, a copy is sent, under the law and under the rules, to the district attorney. Then, when the further disclosures of the case are developed in the unit, as I have just now said, then the unit places itself at the disposal of the district attorney and offers to provide the agents for his witnesses. My office prepares and has prepared many forms of criminal information, indictments, injunctions, libels, and all other sorts of processes to assist the district attorney and to aid him, and takes the case, depending on its importance, and brings it to his attention.

The CHAIRMAN. I think that was outlined before by Mr. Britt, but I am wondering whether there is any record in the bureau as to those cases which you have taken up with the district attorney and those which have been actually prosecuted by the district attorney.

Mr. BRITT. It would be very difficult, Mr. Chairman, to get statistics on that. However, we may be able to get some information that would be interesting. Mr. Simonton suggests that if it was confined to the beer and wine sections, since that section seems to be more definite and specific, we may be able to get some information.

The CHAIRMAN. I think it would be interesting to the committee to know just the number of cases which the bureau thinks should be prosecuted and the number which the district attorney believes should be prosecuted, so as to see how near their minds run together, and get the exact degree of cooperation between the legal branch of the unit and the district attorneys' offices.

Mr. BRITT. It is that, Mr. Chairman, which has necessitated, in part, the number of attorneys we have, whom we send to the field to

assist the directors for revocation and conduct these assessments which are peculiar to the Lipke decisions. We also send them to be placed at the disposition of the district attorney at any time when we feel that we can serve him, and always when he has asked for it. Sometimes we have possibly pressed on him things to a point that would be considered officiousness.

Mr. PYLE. In this report for the year 1924 I find that the division prepared 47 indictments, 321 criminal informations, 788 bills for injunctions, 176 libels, and 55 search warrants. That is work that is all properly chargeable to the Department of Justice, is it not?

Mr. BRITT. Yes, sir; that is work in the initiatory stage, which should be done by the Department of Justice, but which we do in the interest of having it ready and of pushing the cases as well as we can.

Mr. PYLE. Was that voluntary, or was it at the request of the district attorney?

Mr. BRITT. Both. We adopted as a policy to offer our services and to prepare something and have it ready, and then, in many instances, we are asked to. Just now we have a call from the district attorney of the southern district of the Senator's State—Michigan—and we have dispatched an attorney up there a number of times. I sent him there within the last week, and his services were reported not only to be necessary, but very valuable on account of the crowded docket; and we send them to other places.

The CHAIRMAN. You have no check-up on those things just enumerated by Mr. Pyle to show what would be obtained from that work, have you?

Mr. BRITT. No; we have no statistics. We may be able to get some information, as I suggested a while ago, as to brewery cases.

Mr. PYLE. I observe that this interpretation division——

Mr. SIMONTON. May I say a word at this point? In addition to what Mr. Britt has said, the Department of Justice has, frequently, through Mrs. Willebrandt, asked us to prepare pleadings, and recently she has written us a letter, a general statement, in which she has approved the plan of preparing these, stating that it has helped the department.

The CHAIRMAN. Since you have brought her name up here, what is Mrs. Willebrandt's attitude as to the prohibition law, as to whether its enforcement should be in the Department of Justice or the Internal Revenue Bureau or the Treasury Department?

Mr. SIMONTON. I have never heard her express herself on that.

Mr. BRITT. And I have never heard of an expression.

Senator ERNST. I would like to ask you how many general agents there are in the field as distinguished from those designated for each State.

Mr. BRITT. The number is given here, as I recall it. It was between six and seven hundred. However, I desire that the record shall stand in place of my recollection on that.

The CHAIRMAN. That is the number that has been testified to.

Senator ERNST. Well, I did not recall it. Has that been given accurately?

Mr. BRITT. Yes, sir; it has been given accurately and statistically in the record.

Senator ERNST. That is all I want to know on that.

Mr. PYLE. In addition to these lawyers who are working on tax matters, I notice a certain number in what is known as the audit section, whose duties are defined in the report of the Commissioner of Internal Revenue for the year 1924, which says in that connection:

> The audit division is charged with the preparation of all assessment lists and with the examination and audit of all reports and accounts which relate to distilleries; general and special bonded warehouses; industrial and denatured alcohol plants; dealers in and manufacturers using denatured alcohol; wineries, breweries, dealcoholizing plants, liquor dispensed on physicians' prescriptions, wines for sacramental purposes, liquors used in manufacturing and compounding, and liquors received by physicians, hospitals, etc.

A great deal of that work, Mr. Britt, also pertains to taxation matters, does it not?

Mr. BRITT. It does, in this way: The audit division makes the assessment where the assessment arises upon the report of a storekeeper gauger or a distiller; that is to say, the storekeeper gauger at the distillery or warehouse reports so much spirits on hand. Then, when the effort is made to tax-pay it and withdraw it, it is different. That assessment is made by the audit division. If a warehouse should be burned down and the spirits should become nonexistent, the assessment would be made by the audit division. There is not any hearing required in those cases at all. That is somewhat mechanical and is done in the audit division.

Mr. PYLE. They keep the Washington records of intoxicating liquors and taxes, which was formerly done by the Commissioner of Internal Revenue's office.

Mr. BRITT. They keep all the records of the distilleries and distillery warehousemen, and the withdrawals by permittees, as authorized by the directors.

The CHAIRMAN. Just what is the purpose of this, Mr. Pyle? What are you going to try to develop?

Mr. PYLE. I am trying to develop that funds are being used from the appropriation for prohibition and narcotic enforcement for doing work which properly belongs in the collection of taxes and which is not a part of the national prohibition act.

The CHAIRMAN. That would indicate that there was not nearly as much being spent for real enforcement of prohibition as appears on the records?

Mr. PYLE. That the force of the prohibition department with the present appropriation could be greatly strengthened and more agents could be put on.

Senator ERNST. Give us an illustration.

Mr. PYLE. For instance, in the assessment proposals, the conduct of hearings for the collection of liquor taxes, there are 78 people paid from the appropriation for prohibition, and their work is essentially the collection of the tax and the making of the assessment proposal.

Senator ERNST. What character of tax are you referring to?

Mr. PYLE. The liquor tax under the old revenue laws.

Mr. BRITT. No; Mr. Pyle, may I interrupt you? You are in error there. You see the great bulk of this service is performed under the holding, as I have previously indicated, in the Lipke case; that is, that all the taxes, double taxes, and penalties prescribed in section

35 of the national prohibition act have ceased now to be regarded as taxes, and are now classed, under the holding of the Supreme Court, as penalties. Becoming penalties they are a part of the machinery of enforcing the national prohibition act, and while we call them assessments, and when we collect the tax we call it a tax, the Supreme Court has said it is no longer that, that it is really a penalty.

Senator ERNST. This work is in ascertaining and collecting the penalties in this department?

Mr. BRITT. Exactly; yes, sir.

Mr. ORCUTT. May I add also, in reference to what Mr. Britt has said, that the penalties which Mr. Pyle is mistakenly calling the tax, but which are penalties, as Mr. Britt says, arise solely under the national prohibition act.

Mr. BRITT. And not under the internal revenue laws.

Mr. PYLE. This Lipke case that you refer to was decided in 1921, was it not?

Mr. BRITT. In 1922.

Mr. PYLE. It was in 1921 that the act was passed which expressly repealed the old revenue laws pertaining to the taxation of intoxicating liquor. This is listed on your proposals as a tax and as a penalty, so that your books show so much penalty and so much special tax.

Mr. BRITT. I have just now stated that we can never get away from calling it a tax, for the reason that the statute specifically calls it a tax, a double tax, but the Supreme Court has said that, notwithstanding the statute calls it that, it is a penalty, and must be treated as such. So it really is a form of tax, if you want to put it that way, and really the language justifies your putting it that way. It arises wholly and simply, not under the internal revenue laws, but under the national prohibition act.

Senator ERNST. I understand that perfectly.

The CHAIRMAN. I do not think that is important, anyway, Mr. Pyle, but what he was trying to demonstrate was that the entire amount of money that is assumed to be spent for prohibition enforcement, is, in part, being spent for the collection of taxes, and that if these 78 individuals were out in the field, they might be more beneficially employed, so far as prohibition enforcement is concerned, though I do not think that is important.

Mr. PYLE. It should be very clear that this is a penalty and part of the work of this bureau.

Mr. BRITT. Incidentally, taxes do arise, Mr. Chairman. That is true.

Mr. PYLE. The point I desire to make is this, that this work was formerly done by the Commissioner of Internal Revenue under the revenue laws, before prohibition, in the handling of the liquor tax. This work is now all being placed in the Prohibition Unit, though the ultimate collection is made by the collectors in the field, but all of the routine work of handling it and investigating the status of it is done by the prohibition agents.

The CHAIRMAN. That is as I understand it, because it is under the prohibition law, it arises under the prohibition law.

Mr. PYLE. Mr. Chairman, the taxation does not arise under the prohibition law. That is under the revenue laws, influenced somewhat by the prohibition laws.

Mr. BRITT. But we do not collect the commodity tax, Mr. Pyle. The collectors of internal revenue in the various collection districts collect all of the commodity taxes. We collect nothing except these penalties, which, as I have said before, are double now—taxes and penalties.

The CHAIRMAN. Mr. Pyle, do you intend to take up any prohibition feature to-morrow?

Mr. PYLE. I can take up any one of several lines, Mr. Chairman. We can go into the transactions relating to brewery permits.

The CHAIRMAN. I think we had better adjourn here, if Senator Ernst is willing, and then resume to-morrow with the prohibition matters.

Senator ERNST. All right.

Mr. PYLE. I will take up a number of brewery cases in connection with the issuance of permits.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned until to-morrow, Wednesday, February 4, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

WEDNESDAY, FEBRUARY 4, 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: Mr. John S. Pyle, of counsel for the committee.

Present on behalf of the Prohibition Unit of the Bureau of Internal Revenue: Mr. James J. Britt, counsel; Mr. V. Simonton, attorney; Mr. James E. Jones, Assistant Prohibition Commissioner; and Mrs. A. B. Stallings, chief, beer and wine section, counsel's office.

The CHAIRMAN. Senator Ernst will not be able to be present at this morning's session, because he is in attendance before the Judiciary Committee.

Have you something that you want to present to the committee this morning, Mr. Britt?

Mr. BRITT. Yes, sir. I want to supply the different items of information for which the committee called yesterday, one being a request for information, if such there is, showing the effect of the effort of the Prohibition Unit to aid the Department of Justice and the district attorneys by the preparation of bills of indictment, criminal informations, injunctions, libels, and other pleadings.

I have here a statement, prepared by Mrs. A. B. Stallings, chief of the wine and beer section in the counsel's office, who has primary administration of matters relating to wine and beer, in which, after making a certain introductory comment—and I will offer the whole statement for the record—she states that 127 indictments were prepared by attorneys in the beer and wine section, and submitted to the Department of Justice for the United States attorneys directly during the period since August, 1, 1921; that 243 criminal informations were prepared by attorneys in the beer and wine section, and submitted to the Department of Justice, or directly to the United States district attorneys.

The CHAIRMAN. To what date is that?

Mr. BRITT. Since August 1, 1921.

Mrs. STALLINGS. To the present day.

The CHAIRMAN. To when?

Mr. BRITT. To the present time; that 188 criminal prosecutions were instituted as the result of submitting the above-mentioned indictments and criminal informations.

The CHAIRMAN. What information have you to indicate that those would not have been proceeded with had you not prepared those papers?

Mr. BRITT. In answer to that, I will read the introductory paragraph of the memorandum:

At the inception of prohibition there were 1,141 breweries in operation. One hundred and fifty of these plants were immediately dismantled or converted into other industries. From December, 1920, to June, 1921, 157 breweries were reported for violations of the law. However, only two convictions were secured, both breweries being located in Wisconsin. These were the only criminal proceedings instituted throughout the United States against breweries during this period. No injunctional proceedings were instituted, and the only seizures made were those under the internal revenue laws, and were merely executive seizures, no search warrants being used.

Beginning August 8, 1921, the beer and wine section of the Prohibition Unit, with the consent of the Department of Justice, began preparing pleadings in brewery cases. All pleadings prepared in the Prohibition Unit in Washington, with the exception of search warrants, were submitted to the Department of Justice for approval and transmission to the United States attorneys. Pleadings prepared by attorneys detailed to assist in the field were in many instances submitted direct to the United States attorneys. All search warrants were prepared by attorneys of the beer and wine section of the Prohibition Unit upon the approval of the United States attorneys involved.

Resuming the items in the memorandum, there were 19 convictions secured from the foregoing pleadings and proceedings; 78 pleas of guilty were entered; 8 cases were nolle prossed; 7 cases were acquittals.

Approximately 35 informations of indictments were not filed, due to the fact that the Department of Justice or United States attorneys considered the evidence insufficient.

The CHAIRMAN. Did the bureau have that evidence when they prepared these papers?

Mr. BRITT. The bureau had the evidence upon which the papers were prepared, and entertained the view that indictments or criminal informations should grow out of them, but the Department of Justice did not concur in that view, deeming the evidence insufficient.

The CHAIRMAN. As I recall it, in the early presentation of these prohibition matters, you related that there were some 157 breweries against which criminal complaints were entered.

Mr. BRITT. One hundred and fifty-seven were reported for violations o the law.

The CHAIRMAN. Yes; and that out of that 157 you only had 2 criminal complaints?

Mr. BRITT. Two criminal complaints in that time.

The CHAIRMAN. Is there any explanation of that situation?

Mr. BRITT. The only explanation that I could give, Mr. Chairman, is that everything in relation to prohibition enforcement was at that time in its incipiency, and apparently no branch of the Government had gotten down seriously to the undertaking.

To follow with the statistics, 147 informations and indictments were submitted to the Department of Justice and the United States attorneys, which cases will be presented to the grand jury, or informations will be filed at the next term of court, or the outcome of the cases in these instances is not yet known to the Prohibition Unit.

The CHAIRMAN. In which territory was that, or was it general?

Mr. BRITT. General.

The CHAIRMAN. General?

Mr. BRITT. Yes, sir. Fines in the amount of $320,250 were imposed, and 13 years aggregate jail sentences were imposed as punishments, together with the fines.

Mr. PYLE. How many offenses were involved in that 13 years?

Mr. BRITT. That is not given, sir.

One hundred and fifty search warrants were prepared by attorneys of the beer and wine section for the approval of the United States attorneys.

One hundred and forty breweries were seized.

Ten search warrants were not approved by United States attorneys which had been prepared and tendered.

One hundred and seventeen libels for forfeiture have been prepared by the attorneys of the beer and wine section and submitted to the Department of Justice or directly to the United States attorneys.

Ninety-three libels were filed by district attorneys.

Ten libels were not filed by United States attorneys.

Twelve libels were merged with injunctional proceedings.

Two hundred and two bills for injunctions were prepared in the beer and wine section and submitted to the Department of Justice or United States attorneys.

Forty-seven temporary injunctions were obtained from the steps initiated in the form of pleadings by the unit.

Twenty-nine permanent injunctions were obtained from the same efforts.

Twelve breweries were padlocked by injunctional orders of the courts.

Approximately 50 injunctions tendered were not filed, because the Department of Justice or the United States attorneys differed in their view as to the strength of the case from the officers of the Prohibition Unit.

There are now 64 injunctions pending for hearing.

The CHAIRMAN. In connection with the work which has been done by the beer and wine section of the unit, have you any information as to how much of like work was done in that connection by the district attorneys offices and the Department of Justice?

Mr. BRITT. I have general information only, Mr. Chairman, and it is a matter of estimation. The question has reference to the actual preparation of the pleadings and other papers, initiatorial proceedings; so far as the unit is concerned, they were all prepared by the unit and in the beer and wine section; but I would not want this to be understood to indicate a view of my own, that no action of any sort was taken by the district attorneys or their assistants. It rather indicates that they deferred to us or depended upon us for the taking of the initiatory steps.

The CHAIRMAN. Before this section took any action upon these cases they had a report from the agents in the field; is that correct?

Mr. BRITT. Yes, sir.

The CHAIRMAN. And on that report they based the preparation of these papers?

Mr. BRITT. That is correct.

The CHAIRMAN. Then, at the same time they made out these reports, the district attorneys also had these reports?

Mr. BRITT. They had.

The CHAIRMAN. Did you have any information in your office to indicate what action the district attorneys were taking in these particular cases?

Mr. BRITT. Well, in instances, we had information that no action had as yet been taken, but that may have been due to the condition of their dockets, or their calendars, but it is also probable that since there was an understanding of this sort they pretty generally awaited the initiatory action on the part of the unit.

The CHAIRMAN. Had you anything in your office which suggested that you should take these proceedings in lieu of the district attorneys?

Mr. BRITT. I have before me now a letter addressed to the assistant district attorney. Mr. Simonton will present that, and then I will follow with some other matters.

The CHAIRMAN. What is the date of that?

Mr. SIMONTON. This is dated August 29, 1923, and it is signed by Mabel Walker Willebrandt, Assistant Attorney General. It deals with many matters, and if it is convenient I will just read that portion which you are interested in, Mr. Chairman.

Mr. PYLE. That is a mimeograph copy, is it not?

Mr. SIMONTON. We mimeographed it for convenience and distributed it to our attorneys for their guidance in many regards.

In this particular regard it says:

> Where affidavits, criminal informations, bills for injunction, or any pleadings or other papers are prepared for your office here for filing by a United States attorney, it is believed they should be forwarded through this office. This practice, which is followed now in brewery cases, we believe to be more satisfactory than to have them go direct to the proper United States attorney.
>
> Along the above line I may add that my attention has lately been called to the fact that your field agents are not in many cases forwarding to United States attorneys copies of their reports on which prosecution is recommended. This practice was followed for some time and I believe should be continued. Then when a United States attorney receives from here pleadings to be filed he is in possession of the agent's report setting out all the surrounding circumstances. I deem it of particular importance for the United States attorney to receive copies of reports of agents who investigate breweries, and hope that you will order the practice of furnishing such copies resumed.

The CHAIRMAN. The district attorneys, then, were evidently not taking any cognizance of the reports that they received from the agents; is that correct?

Mr. SIMONTON. The statement was that when they received the pleadings they would take the report of the agent and take the pleadings and then go into the case and see whether or not it was well grounded.

The CHAIRMAN. In other words, the initiative was always taken by the attorneys in the beer and wine section of the unit. Is that correct?

Mr. SIMONTON. Yes, sir; but the United States attorneys have written in and have told us that they relied upon us to attend to that work for them.

The CHAIRMAN. Have you any documentary evidence of that?

Mr. SIMONTON. We will get that for you, Mr. Chairman.

The CHAIRMAN. I would also like to know why the difference in practice in sending in some cases the pleadings, together with any other papers, direct to the United States attorney, and in other instances sending it to the Attorney General here in Washington?

Mr. BRITT. I will endeavor to answer that, Mr. Chairman.

Of course, under the rule one coordinated department corresponds with another through the superior officers, and the normal channel would have been for the Prohibition Unit to send all of these pleadings and papers directly through the Attorney General or through his assistant assigned to prohibition enforcement.

We were aware of that rule and were regardful of it, but because of the emergencies and of the volume of business we requested that where it would be consistent with the procedure and not inconvenient to the other department, we might communicate directly with the district attorneys. That was done usually. Latterly, because of some other reasons, the communications have been more largely through the central department.

The CHAIRMAN. In other words, as I understand from that letter, a portion of which has just been read into the record, Mrs. Willebrandt objected to these going directly to the district attorneys, and requested that they come to the Attorney General's office?

Mr. BRITT. That was the main purport of the instruction and understanding, although that was not wholly required, nor has it been fully followed.

The CHAIRMAN. Just what instigated that change of policy, to require that they come to the Attorney General's office?

Mr. BRITT. As I have stated, as I understand it, it has always been the policy, certainly as long as I know, in all the departments, for one department to communicate with another through the superior officers.

The CHAIRMAN. Yes; I understand that, but I asked what suggested that your plan of sending them directly to the district attorneys should be discontinued at that time, and that you should be required to send them to the Attorney General's office?

Mr. BRITT. I do not know any particular instances, but I know some instances that may have given rise to it. In one instance the district attorney complained that our pressing of this was rather severe and suggested that it might be somewhat in the nature of officiousness, and that may have been a reasonable inference from our energetic efforts in that direction. We do not object to the criticism, but, of course, try to conform to the rules of the other department.

The CHAIRMAN. There has been considerable friction, has there not, between the officials of the Department of Justice who are charged with the responsibility of prohibition enforcement and the officers in the Prohibition Unit.

Mr. BRITT. Well, to put it mildly, there have been some very serious differences of opinion.

The CHAIRMAN. And they usually bring about friction, do they not?

Mr. BRITT. That is one of the consequences that flow from a difference of opinion. I would not want to accentuate it as friction. That would possibly be too strong a thing to say. There have been differences of opinion.

Senator WATSON. It all comes about, I think, Senator, because of the great number of these cases and a natural unwillingness on the part of a great many United States judges to have a police court made out of their court, simply to try bootlegging cases and nothing else, together with the desire of the United States district attorneys

to have only cases of consequence sent to them, that they be sifted out by the Attorney General's office, and that only cases of consequence be sent down to them for trial. They have been trying to avoid, as I understand it, a sort of weeding out process as far as practicable. They do not want to have all of these cases thrust upon them in some courts. There are some courts where they do not apparently do anything but try these bootlegging cases, and other courts where they would not try them, and they would not have time to do anything else if they were to try all of these cases sent to them direct by the unit. That is the reason, as I understand it, why they want them referred to the Department of Justice, where they may be sifted out, so that only those of real consequence should be sent down, because of the sheer inability of the courts to try all of these cases.

The CHAIRMAN. I think, Senator Watson, that that indicates in itself a serious duplication of effort and work. In other words, if a department in Washington, with a group of attorneys, clerks, and assistants of such magnitude as was read into the record yesterday, goes through all of the examination of these agents' reports which are sent to them, and is then required to send them over to another department to check its work, and if the other department disagrees with the work of the wine and beer section, for example, of the Prohibition Unit, then all of that work is wasted, because the Department of Justice, which has charge of that matter, thinks the cases are not sufficiently important, or the evidence is not of sufficient certainty to insure convictions, and they therefore are weeded out in the Department of Justice, and only such cases are sent to the district attorney as, in their opinion, are justified.

Senator WATSON. Yes; but that comes about because of the amount of money allowed the department for the employment of deputy United States attorneys. In my State, for instance, there are just two deputies, besides the United Sates district attorney. Those two deputies are very bright and competent men, and if they were to devote their time assiduously to the investigations before the grand jury of these bootlegging cases which come to them through prohibition enforcement they would not do anything else.

The CHAIRMAN. I think the Senator has missed my point. What I am trying to point out is that there is a duplication of work between the Prohibition Unit and the Department of Justice here in Washington.

Senator WATSON. Yes; I understand your point.

The CHAIRMAN. And it was not with reference to the district attorneys or their deputies in any particular districts. If there is any lack of proper allocation of appropriations, then, of course, the fault lies with Congress in not properly allocating the appropriations.

Senator WATSON. Yes; but I think, Senator, and I have come in pretty close contact with this matter—these men, the prohibition enforcement officers, are entirely diligent; in fact, they get enough cases to these fellows to keep them busy, and they insist on their being tried, but there is a little pulling back in that part of it. I know a great many judges do not want to turn their courts over to the trial of these particular cases.

The CHAIRMAN. I agree with that, and that is what I had in mind, that there should not be this pulling back, but there should

be a unification of the work, so that there would not be one department pulling against another.

Mr. BRITT. Let me make this statement in that connection, in just a word: There are no reports sent from the Prohibition Unit directly to the Department of Justice, nor does the Department of Justice, as a whole, get any reports other than those required by law to be sent to the United States district attorneys by the findings, since they are all he reports that are kept, unless there is a special request for them.

Let me say also that the number of cases, in practice, in which the Department of Justice and the Prohibition Unit have differed as to whether they should or should not proceed has been relatively small; very few, in fact, considering the total number. In this matter of bootleg cases, as they are called, hip-pocket cases, very much has been said, and very much has been deservedly said; but this should be said on the other side, that the State police officers do not notice cases which are direct violations of the law and which are offensive to the public, and in some instances scandalous. However vexatious it is, and however ultimately troublesome to the court, the Prohibition Unit feels that its officers can not voluntarily ignore them; so that presents the problem which you have stated just now.

The CHAIRMAN. Yes; but that goes right back to the discussion we had yesterday. There would not be these hip-pocket cases and these trifling cases for your agents to look after in the districts, nor would there be the annoyance to and congestion in the courts, if more effort was directed to the sources instead of trying to curtail it after it has been released from the sources.

Mr. BRITT. There are many violations of all sorts after that leaves the source. It may leave the source lawfully, while there may be, and there are, in fact, numerous violations after that time, though I, of course, agree with the idea that the great bulk of the more serious violations are connected with the source of supply.

You asked yesterday for certain information about assessments, and I will not here repeat comment that was made distinguishing the two classes of assessments which you will readily recall, one class being what we call assessments under the penal provisions, section 35, and the other being regular internal-revenue assessments.

Senator WATSON. What do you mean by "assessments"?

Mr. BRITT. Assessment of the tax.

Senator WATSON. Oh, I see.

The CHAIRMAN. I understand the Supreme Court has said they are not assessments.

Mr. BRITT. The Supreme Court did not discuss the term "assessment," Mr. Chairman. They discussed the terms "penalty" and "tax," and said that, although the statute designated them as taxes and required them to be paid for certain violations, they were nevertheless of the nature of penalties, and were, in effect, to be treated as such in administration.

The CHAIRMAN. In other words, was not that a determination that you can not tax an illegal thing?

Mr. BRITT. That was not exactly the point. The point was that this so-called tax, which we might call a penalty, might be imposed, but it was to be treated as a penalty and not as a tax, and could not

therefore be assessed without a regular hearing given to all the parties.

During the year 1924 there were prepared and sent out to the various collectors by the Prohibition Unit assessments aggregating $16,909,855.21. These were for the action of the various collectors in assessment hearings, upon notice, according to the administrative plan devised and in effect. By the end of the year we had received official notice of the actual making by the various collectors of assessments on these proposals to the amount of $2,652,337.90.

The CHAIRMAN. About 12 per cent of the total assessments?

Mr. BRITT. Approximately; yes. Another item——

Mr. PYLE. Just a moment. Have you any way of knowing how much of that was collected?

Mr. BRITT. I am coming to that just now.

Mr. PYLE. All right.

Mr. BRITT. Another item of information for which you asked was how much had been accepted in compromise on these assessments, which are of the nature of penalties and are compromisable, and as to that the record shows $704,696.38 received.

The CHAIRMAN. Does that amount, $704,000, represent the compromise on the entire $16,000,000?

Mr. BRITT. Oh, no.

The CHAIRMAN. That is what I am trying to get at. When you reached a compromise settlement, what was the relation of the amount collected on that compromise to the original amount considered when the compromise was first undertaken?

Mr. BRITT. I understand that question, Mr. Chairman, and the answer which I have for it, and which is the best I have at the present time, is this, that this sum of $704,696.38 is the aggregate amount settled on in compromise, but I do not know and have no idea of the figures as to the total amount of it before the compromise. I do know that it embraced a great number of items, and that could be prepared.

The CHAIRMAN. What I am trying to get at, and which I think the committee would be interested in knowing, is to determine the exact power of the commissioner to waive penalties. Perhaps that is not just correctly expressed, but to show to what extent he should exercise the power that he has in dollars and cents. The committee would be interested in seeing how much he has actually waived, because these compromises are settled without any hearing, and without any public record.

Senator WATSON. Oh, sure. It is a matter of personal——

The CHAIRMAN. And it suggests a former criticism of the committee, that these things were done behind closed doors and setflements were made without a public record, the public knew nothing about the facts when the case was in controversy, and yet, as a matter of fact, the public has great interest, both financially and morally.

Mr. BRITT. I have to dissent to that, and say that they are no more settled behind closed doors than any other public business in the departments is settled behind closed doors. As I said before, and I repeat, there is no effort to settle them behind closed doors, and no effort at secrecy or any executive sessions. In the sense that the doors of the buildings, and the rooms, are closed, that is practically true.

The CHAIRMAN. I think, Mr. Britt, you are rather dodging the issue.

Mr. BRITT. I think I am not dodging the issue, Mr. Chairman.

The CHAIRMAN. Everyone knows, and the records will show, that no one representing the public, except the public officials, is present at those hearings. There is no newspaper correspondent, and no one who may be interested in the method of settling these cases, except those directly interested, is present, and, as a matter of fact, Congress itself can not spend $150 without the matter being heard in public. It is public to the extent that the bills are passed by Congress with the doors wide open. I have been trying to bring out that in a number of these cases, by these methods of settling them, claims aggregating millions of dollars have been settled, while Congress, in appropriating small sums, must do it in the open.

Mr. BRITT. I can not see how it would be possible to give public notice and hold public hearings on all of these myriad small items of public business. I appreciate the Senator's point, but I want to say once again, and say it with emphasis, that in these settlements there is nothing different from the conventional and usual settlement of all administrative business; nor is there anything more secret nor any more executive or confidential in their nature. I say that because I am, myself, at the head of the division which mainly does the preparatory work of the settlement, and I am prepared to negative that suggestion.

The CHAIRMAN. I have not suggested at any time, that the practice is different there from that of any other department: neither have I impugned the motives back of these settlements at all. I still reiterate as the practice exists in the Bureau of Internal Revenue with respect to tax cases, that these matters are settled by mere negotiation across the table, without any public record or public hearing in connection with them. My only reason for bringing that up is because it is the judgment, at least of the chairman, that some tribunal ought to be set up for the settlement of these enormous cases, rather than that they be settled by administrative officers who have no responsibility to the public, no responsibility except to their own executive officer.

Mr. BRITT. I have for the second time expressed my views on that, and also the procedure in that connection.

I was addressing myself to the point that the compromise settlement resulting in the amount given here was the result of settlement of a considerable number of items, the exact number of which I do not know, but I think it would be instructive to the committee for me to say this, and I think it is my duty to do so, that there is a great deal of confusion about the authority in this connection, and also about the character of the procedure.

I want to give this in just a word, in harmony with the plan that I have followed since I have been before your committee, of trying to make everything known that would be enlightening.

This court decision was an obscure decision and needs clarification in my judgment, as much as the statute that it was purported to construe needed clarification.

When they said we must hold a hearing, they did not say what sort of a hearing, except they did intimate—when I say "they" I

mean the court—that it must be a hearing in the nature of due process of law. That is a question that has been mooted ever since we have had a government, as to what that is in certain things; but we were left there to establish some sort of a procedure under it and attempt to assess these so-called penalties in the form of taxes, and thus enforce the prohibition law as best we could, and incidentally get all the revenue we could, or else throw ourselves back upon a policy of non-action and do nothing at all; but I advised the Commissioner of Internal Revenue and the prohibition commissioner, that we ought to establish machinery which, in our judgment, complied with the law as fully as possible, and proceed, and if it were unconstitutional or unlawful the court would check us in our course.

Under this procedure have been filed more than a dozen injunctions, enjoining us from continuing in the administration of this part of the law under this procedure. We have done all we could to get one or more of those cases into the Supreme Court, where we could get a final adjudication of the matter in what we thought might be a clear decision, but we have been unable to do so.

But the point of obscurity lies in this, Mr. Chairman: If this is a penalty, one view of it is that we might leave it entirely to the courts, and, in fact, the courts do, in many instances, assume to control it, and they say, "You have no right to assess any penalty." Wherever, in our judgment, there has been court action on it, and we think that has met the case, we desist from any attempt to make an assessment.

Then, there is another thing which should be stated in this connection, and that is that when there is a violation, there is also some bond liability, which is undetermined, of course, and which is a compromisable thing in many instances.

I would say in the great bulk of instances—the proof, while morally strong, is legally very weak, though we know there has been a violation.

In those cases the whole thing is settled up under the head and style of this assessment, sometimes by a compromise, as has been said here, according to the very best judgment the department can arrive at in all of these mystifying and confusing circumstances which I have tried to describe here.

The CHAIRMAN. I wish to state at this point that the chairman has no criticism to find of the conduct of the bureau. What I am criticizing is, perhaps, more directly the action of Congress in not providing a better method.

Mr. BRITT. Yes.

The CHAIRMAN. For hearing these assessment cases and for disposing of them.

Mr. BRITT. Yes.

The CHAIRMAN. And I want to say that if I had been in your place, or the place of the commissioner, I do not believe that I could have conceived of any better system of doing it. I think it is the responsibility of Congress, and one of the purposes of this hearing is to enlighten Congress as to what it should do.

Mr. BRITT. Yes; legislation is greatly needed in that particular.

The CHAIRMAN. In settling these questions.

Mr. BRITT. Legislation is greatly needed in that particular.

Senator WATSON. What kind of legislation?

Mr. BRITT. Legislation that would state definitely whether this is a tax or a penalty, and then remit it to the proper place of administration or adjudication, according to its tenor, if it defines what it is.

Senator WATSON. Ought there to be some sort of a bureau set up for that purpose?

Mr. BRITT. I beg your pardon.

Senator WATSON. Ought there to be some sort of a tribunal in your own department to determine it just as far as your department is concerned?

Mr. BRITT. It should be remitted to Government establishments now existing or other Government establishments now existing should be specially designated. If it has the privilege it has the machinery already provided.

Senator WATSON. Why could you not do that now?

Mr. BRITT. For the reasons that I have just now stated.

Senator WATSON. Well, I know; but then——

Mr. BRITT. We are doing it now; yes, sir.

The CHAIRMAN. I differ with the procedure now, because, according to the statute, there is no responsible known official to deal with this thing, other than the commissioner, and the commissioner is charged with a hundred and one responsibilities. Therefore, he has to delegate it, and I do not believe Congress should permit this duty to be delegated to some one who is unknown.

I believe that these cases ought to be listed for hearing; that the public might, if they want to hear these cases, come in and hear them, because, many times, injustices are done, one case being settled one way and another case settled another way, without anybody knowing about it.

Mr. BRITT. If the committee desires the legal authority for making compromises, I should be glad to leave them here, or cite them, according to your wish.

The CHAIRMAN. I think we understand that. I think Senator Watson does.

Senator WATSON. Oh, yes.

The CHAIRMAN. That is mentioned in the statute and is mentioned in the new Cramton bill.

Mr. BRITT. Yes. I think it was Mr. Pyle who asked how much we had collected.

Mr. PYLE. Yes, sir.

Mr. BRITT. That is kept by the Division of Accounts and Collections on the Treasury side, and it does not come directly to us. We have not it available at this time, but on yesterday afternoon one of the officers in my division requested it, and received the reply that they would be glad to furnish it, but that it was a matter of a considerable aggregation of items. You see, when the collectors make these assessments in the field, they then proceed to collect that money and it goes directly into the Treasury, so that there is an account of it available in the Treasury, but it is not immediately available to the Prohibition Unit.

Mr. PYLE. You can arrive at the same matter in a different way. These figures that you gave of the amount proposed, the amount actually assessed, and the amount collected in a given year would be about the actual year's business, in proportion, would it?

Mr. BRITT. I think that would be above an average year.

Mr. PYLE. Above in what way?

Mr. BRITT. It would be above in this way: When this decision was rendered that that would be the machinery for holding these proceedings and finally making the assessments, there was a large number of such items of assessment that were already on the assessment books and made as assessments without a hearing. We had to abate or nullify all of those that fall within this class and which had been made without a hearing, and treat them only as findings or proposed assessments and give notice of hearing thereon, and a part of that loss included in this by extension.

Mr. PYLE. The proportionate amount would remain about the same, would it not, of the amount proposed to be assessed and collected?

Mr. BRITT. The proportionate amounts arising by the year would have remained practically the same; yes.

Mr. PYLE. In something over $60,000,000, or practically $70,000,000, it is proposed to restore in actual assessments to be made by collectors $2,652,337.90, if I get the figures correctly, and an actual collection of only $704,000.

Mr. BRITT. No.

The CHAIRMAN. I think the committee understands that those are not related in such a manner as counsel has described. We have asked for other information as to the relation of the $700,000 collected to the total amount involved. That is not contained in these figures that you just gave.

Mr. BRITT. In making the assessments hearings are not held. They are still with the collectors, and it may go to six or seven or eight million dollars before that is done. That we could not tell.

The committee also asked for a statement as to the distribution of prohibition agents during the years 1922, 1923, and 1924, and I requested of the chief of the division of general prohibition agents that he prepare and submit such a statement, which he has prepared, and which I now have, and from which I will quote, and also offer it for the record if the committee so desires.

As previously stated, the general prohibition agents are assigned to 18 divisions throughout the country.

The first division comprises the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island, and in July, 1922, there were 7 assigned to that division; on July 1, 1923, 18; and on July 1, 1924, 22.

The second division is New York and the fifth collection district of New Jersey. In 1922 there were 17; 1923, 180; and 1924, 171.

The CHAIRMAN. I just wonder whether you got the correct idea from our question of yesterday. We were then discussing the distribution of agents by States and did not refer to general agents.

Mr. BRITT. Yes.

The CHAIRMAN. Does your answer purport to cover the question we asked yesterday with regard to the distribution of agents in those years in the several States?

Mr. BRITT. This exhibit relates only to general prohibition agents, the mobile force.

The CHAIRMAN. We were discussing the distribution of agents by States, and the general agents can not be so allocated.

Mr. BRITT. Mr. Chairman, Assistant Commissioner James E. Jones has that exhibit in his hand, and deals with it administratively. May I yield to him to present it?

The CHAIRMAN. Yes.

Mr. JONES. Mr. Chairman, I have here the distribution of our agents in tabulated form. It may either go into the record, or you might glance at it and look at such States as you may be interested in, or, if you prefer, I will read the 48 States, showing the number allotted to such States during the past five years. You may look at it informally if you wish.

Senator WATSON. Does that mean the whole prohibition force in each State, the general prohibition agents, or those under the State directors?

Mr. JONES. The agents assigned to the State directors, Senator, as differentiated and distinguished from the general agents.

Senator WATSON. I think that ought to go into the record.

The CHAIRMAN. If agreeable to the committee, I would like to have it go into the record.

(The statement referred to is as follows:)

Assignment of general prohibition agents by divisions

Division No.	States comprising—	July 1, 1922	July 1, 1923	July 1, 1924
1	Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island	7	18	22
2	New York and fifth collection district of New Jersey	17	180	171
3	Twenty-third collection district of Pennsylvania	10	36	34
4	Maryland, Delaware, West Virginia, District of Columbia, and certain counties of Virginia	36	37	38
5	North Carolina and Virginia, with exception of certain counties in fourth division	7	19	17
6	South Carolina and Georgia	8	19	18
7	Florida and Porto Rico	14	9	17
8	Louisiana, Mississippi, and Alabama	6	14	13
9	Kentucky and Tennessee	7	19	22
10	Ohio, Indiana, and southern peninsula of Michigan	12	36	40
11	Illinois, Wisconsin, and northern peninsula of Michigan	10	19	27
12	Minnesota, North and South Dakota, Iowa, and Nebraska	8	15	14
13	Missouri, Kansas, Oklahoma, and Arkansas	9	19	22
14	First and twelfth collection districts of Pennsylvania	1	52	65
15	Texas, Arizona, and New Mexico	2	11	12
16	Wyoming, Utah, and Colorado	5	6	6
17	Washington, Oregon, Idaho, Montana, and Alaska	4	11	12
18	California and Nevada	3	13	18
	Total	166	533	568

NOTE.—On March 1, 1923, the fourteenth division, with headquarters at Dallas, Tex., was abolished, and the entire State of Texas was placed in the fifteenth division. Up to this time the third division included the entire State of Pennsylvania. A new division was then created, to be known as the fourteenth division, with headquarters at Philadelphia, and comprises the territory as shown above.

Force was organized July 1, 1921.

Number of prohibition-enforcement agents serving under the supervising Federal prohibition agents of the several departments on July 1 of the years indicated

Departments	1920	1921	Departments	1920	1921
Northeastern	75	70	Western	15	25
New York	188	81	Pacific	46	47
Eastern	76	53	Southwestern	72	39
Ohio-Maryland	74	63	Border	0	35
Southern	165	70	Hawaiian	1	5
Gulf	75	54			
Central	104	60	Total	943	642
Northwestern	52	40			

Northeastern department: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

New York department: New York State.

Eastern department: Pennsylvania, New Jersey, and Delaware.

Ohio-Maryland department: Maryland, Ohio, West Virginia, and District of Columbia.

Southern department: Virginia, North Carolina, South Carolina, Kentucky, and Tennessee.

Gulf department: Georgia, Florida, Alabama, Mississippi, and Louisiana.

Central department: Michigan, Indiana, Illinois, and Wisconsin.

Northwestern department: Minnesota, Iowa, Nebraska, South Dakota, and North Dakota.

Western department: Colorado, Montana, Utah, Idaho, and Wyoming.

Pacific department: Arizona, Oregon, Washington, California, and Nevada.

Southwestern department: Arkansas, Missouri, Kansas, Oklahoma, Texas, and New Mexico.

Hawaiian department: Territory of Hawaii.

Border department: Arizona, New Mexico, and Texas, with the exception of the counties of Bowie, Camp, Cass, Delta, Fannin, Franklin, Harrison, Hopkins, Lamar, Marion, Morris, Red River, Titus, and Upshur.

Senator KING. Have you not a statement there showing all of the forces of the bureau?

Mr. JONES. There are two separate forces, Senator.

Senator KING. Yes; I know that.

Mr. JONES. Yes: we have that. This is the list of agents assigned to work under the supervision of the chief of general agents. The list that Senator COUZENS has in his hand is the list of prohibition agents working under the supervision of the State directors.

Mr. PYLE. That was referred to in the record yesterday.

(The statement referred to is as follows:)

Number of prohibition enforcement agents[1] serving under the Federal prohibition directors of the several States on July 1 of the years indicated

States	1920[2]	1921[2]	1922	1923	1924	States	1920[2]	1921[2]	1922	1923	1924
Alabama	3	2	24	19	17	Nevada	1	1	8	8	5
Alaska	0	0	5	5	6	New Hampshire	1	1	7	7	7
Arizona	2	1	14	12	15	New Jersey	5	5	33	26	24
Arkansas	3	1	18	17	16	New Mexico	1	0	14	11	16
California	6	4	42	37	38	New York	45	38	234	11	[3] 10
Colorado	2	2	14	9	14	North Carolina	2	3	55	53	49
Connecticut	3	2	20	18	19	North Dakota	1	1	11	10	9
Delaware	0	0	3	3	5	Ohio	7	7	46	44	40
Florida	2	1	10	11	10	Oklahoma	2	2	15	15	13
Georgia	3	2	31	26	24	Oregon	2	2	13	10	13
Hawaii	0	0	7	5	10	Pennsylvania	22	12	47	2	[3] 18
Idaho	1	1	7	9	10	Porto Rico	2	4	3	5	7
Illinois	14	10	73	81	73	Rhode Island	1	1	10	8	10
Indiana	5	2	34	32	30	South Carolina	2	2	19	18	18
Iowa	3	2	17	17	17	South Dakota	0	0	8	9	10
Kansas	3	0	8	13	12	Tennessee	3	2	37	29	32
Kentucky	6	4	39	27	26	Texas	5	3	37	29	29
Louisiana	3	2	21	14	18	Utah	1	1	8	8	8
Maine	2	2	18	19	18	Vermont	1	1	12	9	10
Maryland	4	4	18	13	14	Virginia	4	1	45	34	34
Massachusetts	5	4	45	37	36	Washington	3	2	20	20	19
Michigan	4	3	30	28	26	West Virginia	1	0	16	12	15
Minnesota	4	4	33	34	36	Wisconsin	2	3	26	24	24
Mississippi	2	2	9	8	13	Wyoming	1	0	7	8	9
Missouri	5	5	24	23	19						
Montana	2	2	15	15	16	Total	204	156	1,318	950	972
Nebraska	2	2	8	8	5						

[1] Including assistant directors, legal advisers, heads of field force, group heads, Federal prohibition agents, and inspectors.

[2] In 1920 and until August, 1921, agents on inspection work only were under the Federal prohibition directors, those on enforcement work being under the supervising Federal prohibition agents.

[3] In New York enforcement and inspection work is under the chief, general prohibition agents, and in Pennsylvania enforcement work is under that officer, inspection work being under the Federal prohibition director.

A few agents are under the Federal prohibition director for the State of New York, such as an assistant director, a special assistant in charge of the issuance of permits, and a few special employees engaged on permit work.

The CHAIRMAN. The discussion yesterday, Senators, was that the committee's counsel and the chairman, who has been working with him, disagreed with the distribution of the agents among the various States, because they had a large number of agents in States like Kansas, Nevada, Wyoming, etc., where there was little work to be done, and not a sufficient number of agents in States like New York, New Jersey, Pennsylvania, and Maryland, where there is the greatest amount of trouble.

Senator KING. I think that if they would keep their agents out of some of these States the State officials would enforce the law and get better results than the Government is getting.

Mr. JONES. In answer to the suggestion made by the chairman, I might say that in New York and northern New Jersey we had 171 agents on July 1 last. We now have somewhat more than 230, while in Kansas we have 12. The number of agents assigned to any given State depends on local conditions.

To illustrate, in the chairman's own State we now have a governor who has, perhaps, cooperated with the Federal Government better than the governor of any other State in this Union in the enforcement of the national prohibition act. It is not necessary for us, therefore, to have as many agents in Michigan as we have in New York, where there is a governor who is notoriously wet. In Michigan Governor Groessbeck, at State expense, has purchased automobiles and boats and turned them over to the Federal Government as his part of the cooperative work on prohibition enforcement.

Senator WATSON. Do you have a State constabulary there?

Mr. JONES. The governor has practically turned over the State constabulary to this work, and has cooperated splendidly. I would say that we are now getting better cooperation from the governor of the State of Michigan than we are from the governor of any other State of this Union.

Senator WATSON. Well, they need it more, do they not?

The CHAIRMAN. The chairman refuses to admit that.

Mr. JONES. On account of proximity to wet territory it is necessary to do more or less work in the State of Michigan. Near Detroit, on the Canadian side, there is a distillery doing a land-office business.

Senator WATSON. You have that situation everywhere on the whole coast line.

The CHAIRMAN. I might say the committee is willing to have the bureau submit any evidence they have for the statement that they have used in arriving at the distribution of these agents. We are not, at least the chairman is not, anxious to criticize it until we have analyzed your methods of distribution.

Senator WATSON. How many are there in Michigan?

The CHAIRMAN. Thirty-seven.

Senator KING. That is only under one head, and then you have more under another head, under another control.

Mr. JONES. Yes.

The CHAIRMAN. But they are a flying squadron and can not be definitely allocated.

Mr. JONES. I think there are 40 in the division of which Michigan is a part. There are 40 under the divisional chief for Ohio, Indiana, and the southern peninsula of Michigan. The divisional chief has his headquarters in Cleveland, and they do considerable work in Michigan.

Senator KING. Does that include the number who are interested in looking after the granting of permits?

Mr. JONES. No; that is all done, Senator, under the direction of the various State directors.

Senator KING. What I am trying to get at is the number that you have in Michigan.

Mr. JONES. These 40 on the Mobile force may be in Michigan to-day and the next day they may be over in Senator Watson's State, or they may be in Cincinnati.

Senator KING. And how many under the other head?

Mr. JONES. Under the State director?

Senator KING. Yes; the State director.

The CHAIRMAN. Michigan has 37, as was stated in the record yesterday.

Senator KING. Then, the permit work, and so forth, would come under that.

Mr. JONES. The permissive work is done through the State director, with the aid of these agents under the State director.

The CHAIRMAN. I think Mr. Pyle has a criticism or two to make in connection with the settlement of some of these cases. Are you ready to go ahead now, Mr. Pyle?

Mr. PYLE. Yes; I can proceed.

Senator WATSON. Have you finished your statement, Mr. Jones?

Mr. JONES. I am through, Mr. Chairman, unless you have some further questions as to distribution of the agents.

Senator WATSON. Have you a greater force than the funds will allow?

Mr. JONES. No; we have not, Senator, because of the fact that under the reclassification act the Personnel Classification Board has made an entrance salary for prohibition agents of $1,680 per year. That is $140 per month, and these agents, for the most part, have to leave their homes. If they are married, they have to maintain their families at their own home town and go elsewhere and pay their own expenses, and it is very hard to keep competent men.

Senator WATSON. You can not do it.

Mr. JONES. I agree with the Senator that we can not do it. If they accept employment, very shortly they find what they are up against and quit.

Senator KING. Under this reclassification, the chiefs here in Washington are the ones who are liberally paid.

Mr. JONES. Well, I would not say that, Senator. I think a good many chiefs in Washington, if they entered private employment, could make a good deal more than the Government is paying them.

Senator KING. Why do not they do it?

Senator WATSON. Why are you in the Senate? Why do not you stay home and practice law? You could make five times as much as you do in the Senate.

Senator KING. Exactly, but they do not do it.

Mr. JONES. There are a great many people who have a love for the service, and for one reason or other there has always been a sort of glamor connected with the public service. Otherwise it is not likely that there would be as many big men now in the United States Senate perhaps.

The CHAIRMAN. Or so many small ones, perhaps.

Senator KING. If they could make more in private life, why is it that hardly a day passes by that some person who has been let out does not come to me and ask to make an effort to try to get him back?

Mr. JONES. Does not that apply to the clerical force? Is not that the mediocre person who has been let out?

Senator KING. No; they are lawyers and accountants.

Mr. JONES. I do not believe that anywhere in the Government service there is a greater turnover than there is in the Prohibition Unit.

Senator WATSON. Do they not prefer the Government service on account of its certainty rather than the size of the salary?

Mr. JONES. That has a great deal to do with it, Senator.

The CHAIRMAN. In reference to the turnover I think it would be interesting to the committee to know what your turnover has been for the last two or three years, so as to indicate to Congress what effect this low salary has on the personnel there.

Senator KING. Is not your turnover in part due to the fact that so many of your men turn out to be incompetent or crooks, susceptible to bribery?

Mr. JONES. That would not be true, so far as the Washington service is concerned. It has been necessary to let out a number of field agents for the good of the service, and where it has been found or suspected that they have been guilty of wrongdoing, bribery, or otherwise; their cases are always turned over to the United States district attorney, and we furnish him every possible assistance in the prosecution.

Senator KING. Is it not conceded in the department here by the head of your department and others who are familiar with it that a very large number of your employees accept bribes and have grown rich out of the traffic—the illicit traffic—is it?

Mr. JONES. No, sir; I do not know of anybody in the unit who has ever made such an admission, Senator. If they have they have made an admission contrary to the facts. There is no service in the Federal, State, or municipal branches of the Government where the temptation is greater than that of a prohibition agent. Where one of them happens to go wrong it is heralded all over the country, and nothing is said about the ninety-nine that go straight.

The CHAIRMAN. I think I can substantiate that from my own experience in executive work. I think Mr. Jones's statement is substantially correct. There is a very great misunderstanding in regard to how how many crooked Government officials there are.

Senator WATSON. There is no doubt about that.

The CHAIRMAN. There are many more in private industry, in proportion to the number of employees, than there are in the public service, but it is not a matter of public interest when the employee of a private concern goes wrong, while it is a matter of great public

interest when an employee of a department goes wrong, and therefore it is heralded all over the country.

Senator KING. I am not speaking generally. I am speaking of the Prohibition Unit.

The CHAIRMAN. I think my statement is applicable to prohibition employees, too, although there may be a larger opportunity in that particular class.

Senator WATSON. The opportunities are greater.

The CHAIRMAN. The opportunities are greater.

Senator WATSON. Yes.

The CHAIRMAN. But I do not believe there are any greater number in the Prohibition Unit than there was amongst bartenders when we had the wide-open saloons.

Mr. JONES. I do not believe there is a greater number that go wrong in the Prohibition Unit than go wrong among the peace officers of the country over.

The CHAIRMAN. I think that is generally true. I think the percentage of police officers, in view of their temptations, who go wrong is very, very small, and I know from actual experience of years in conducting a police department.

Senator KING. Is it not a fact that one of the excuses given for your failure to enforce the prohibition law is that so many of the employees have connived at infractions of the law or participated in infractions of the law?

Mr. JONES. No; we have never made such a statement, Senator.

Senator KING. Then, the newspapers have misrepresented you.

Mr. JONES. Exactly so. Some newspapers misrepresent us 365 days a year.

Senator KING. And they contain statements which I understood emanated from Mr. Haynes and others.

Mr. JONES. No such statements ever emanated from Mr. Haynes, nor anybody in the Prohibition Unit, Senator.

The CHAIRMAN. Proceed, Mr. Pyle.

Mr. BRITT. Just a moment, Mr. Pyle. Mr. Chairman, yesterday there was some discussion as to the discretionary power of the commissioner in allowing or refusing permits, and here is a letter addressed to George V. Moore, Esq., special assistant United States attorney, at Pittsburgh, Pa., under date of October 9, 1924, signed by Commissioner Haynes, in which the entire subject is discussed and the views of the department fully set out.

If there is any further interest attaching to that, I will submit this letter.

The CHAIRMAN. I would like to have it in the record, if the committee does not object, because I want to place in the record this morning a statement of Wayne B. Wheeler in connection with this matter of the discretion in issuing permits, which has seemed to be at variance to the practice, at least, and I think to the admission by the unit as to their discretionary power in the granting of permits.

Senator WATSON. Mr. Chairman, in that connection, I have received a statement from Mr. Wheeler. Perhaps he has sent a copy to each member of the committee.

The CHAIRMAN. Yes.

Senator WATSON. And he asked to have it put in the record. I said to him that I thought that would be unsatisfactory; that if the other members of the committee were agreeable we would like to have Mr. Wheeler come before the committee and give us an opportunity to examine him. We could then ask him such questions concerning it as we might care to put.

The CHAIRMAN. I might say for the benefit of the Senators——

Senator WATSON. What do you think about that?

The CHAIRMAN. I was going to say that when Mr. Wheeler first wrote the chairman and asked for an opportunity to come before the committee I replied to him that it had been the policy of the committee to deal only with our own employees and the employees of the bureau; that we had had requests from all over the country to appear before the committee, but that we would be glad to receive any statement that he cared to file with the committee; that we would then discuss it after it was filed with the committee, and he has evidently sent to each member of the committee the same kind of a statement that he sent to me. I do not think it is necessary to put that statement in the record, but I wish to refer to it this morning, because yesterday we had considerable discussion about the discretionary power of the bureau in issuing permits to applicants.

Mr. BRITT. I will submit this letter of October 9, 1924, addressed to Mr. Moore by Mr. Haynes.

(The letter referred to is as follows:)

OCTOBER 9, 1924.

GEORGE V. MOORE, Esq.,
Special Assistant United States Attorney, Pittsburgh, Pa.

SIR: Your letter of October 3, 1924, with reference to the case of the Ma-King Products Co., pending on appeal in the circuit court of appeals for the third circuit, has been received and will be given prompt attention. In accordance with your verbal request of Mr. H. W. Orcutt, of this office, the following tentative suggestions are made as to the provisions of law that appear to be applicable and the arguments that may be advanced to support the claim that the Commissioner of Internal Revenue has broad discretionary power in the matter of the issuance or denial of permits for the establishment of denaturing plants.

The sections of the prohibition act which appear to be applicable in the pending case are 3, 4, and 6, Title II, and 10 and 11, Title III, of the act. Section 3, Title II, provides inter alia that "liquor permits for nonbeverage purposes" may be procured, etc., only pursuant to permits to be issued by the Commissioner of Internal Revenue. Section 4, Title II, which section deals with many "unfit" preparations, including denatured alcohol, provides in part:

"A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall procure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this act and as directed by the commissioner."

In section 10, Title III, provision is made in general terms for the issuance of permits, supported by bonds, for the establishment of denaturing plants; and in section 11, Title III, authority is given for the transfer to or the obtaining of alcohol by such plants, specifically invoking in the last paragraph thereof Title II as it relates to the obtaining of permits to purchase and the giving of bonds.

It will thus be seen that while Title III of the national prohibition act is addressed particularly to regulating the production and withdrawal of alcohol and denatured alcohol, it is so closely allied to and interwoven with Title II that one may not be considered without reference to the other.

The situation thus brought about may or may not be a fortunate one, so far as the pending case is concerned, when considered from different angles. In

Title III no reference is made to any limitation on the power of the commissioner in issuing permits to establish denaturing plants. It is argued in some quarters that this means that the commissioner has the broadest discretion in this regard; while the view held by many is that where power is given to an executive officer in general terms and the public interest or individual rights call for its exercise, he may not arbitrarily refuse to act. (Rock Island County Supervisors *v.* United States, 71 U. S. 435; United States *v.* Thomas, 156 U. S. 353.)

If it were the intention of Congress that Title II should govern the issuance of permits to operate dealcoholizing plants, various provisions will be found in section 6 of that title which I think will be helpful in determining the extent of the power of the commissioner. The requirement that "No permit shall be issued until a verified written application shall have been made therefor, setting forth the qualifications of the applicant and the purpose for which the liquor is to be used," would seem to leave with the commissioner the broadest judicial discretion. If he should determine upon the evidence submitted by the applicant or obtained upon investigation, that the liquor applied for was not to be used for the purpose stated in the application, he must undoubtedly deny the application. His finding in this regard, if governed by the settled rules applicable on review of findings of facts by an executive officer vested by law with discretionary powers, will be disturbed by the courts only where there is no substantial evidence to support it. In other words, the equity court on review (as provided in sec. 5) will not weigh the evidence and decide between the applicant and the commissioner but will either sustain or reverse the latter's findings upon determining whether they were warranted by substantial evidence. (Geglow *v.* Uhl, 239 U. S. 3; Tang Tun *v.* Edsall, 223 U. S. 673; Lewis *v.* Frick, 233 U. S. 291, L. R. A. 1918 D. 597; and Cameron *v.* United States, 252 U. S. 450.) In Cameron *v.* United States the Supreme Court has for consideration an appeal from a decree of the District Court for the District of Arizona, enjoining the occupation and use of a part of the Grand Canyon Forest Reserve under an asserted lode mining claim. In confirming the decree of the district court the Supreme Court employed language which, without doing violence to the principles thus announced, might readily be paraphrased and applied to the jurisdiction vested in and the authority exercised by the Commissioner of Internal Revenue in issuing and denying the issuance of permits under the national prohibition act. The Supreme Court said in part:

"By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the Land Department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." (Citing many Supreme Court decisions.)

In that case, in announcing the settled rule of that court with regard to the findings of fact of the Secretary of the Interior under the land laws, Mr. Justice Vandeventer said:

"Whether the tract covered by Cameron's location was mineral and whether there had been the requisite discovery were questions of fact, the decision of which by the Secretary of the Interior was conclusive in the absence of fraud or imposition, and none was claimed. (Catholic Bishop *v.* Gibbon, 158 U. S. 155; Burfenning *v.* Chicago, St. P., M. & O. R. Co., 163 U. S. 321, 323, 41 L. Ed. 175, 16 Sup. Ct. Rep. 1018.) Accepting the Secretary's findings that the tract was not mineral and that there has been no discovery, it is plain that the location was invalid, as was declared by the Secretary and held by the courts below."

In addition to the above provisions there are many others requiring the exercise of judicial discretion, for instance, it is provided that no permit shall be issued to any person who within one year prior to application therefor or issuance thereof shall have violated the terms of any permit issued under this title or of any law of the United States or of any State regulating traffic in liquor. Obviously it is the duty of the commissioner to determine such fact regardless of whether or not the applicant has been charged with any crime. Again it is provided that permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. Here again we have a determination to be made by the commissioner, which, if supported by substantial evidence may not, it is believed, be disturbed by the courts. Many other illustrations may be found by a careful consideration of

the provisions of the act and these are cited merely to bring to your attention this line of thought.

That the commissioner is vested with discretionary powers in the matter of the issuance, denial, and revocation of permits similar to the discretion vested in the Secretary of the Interior in the matter of the disposal of the public lands, would appear to be the conclusion of District Judge Campbell, as announced by him in the cases of Schnitzler *v.* Yellowley, 290 Fed. 849, and Ginsberg *v.* Yellowley, 290 Fed. 262. In Schnitzler *v.* Yellowley, in reviewing the record of the revocation of a permit by the commissioner, Judge Campbell stated in part:

"The third objection raised by the plaintiff is that no discretion could lawfully be vested in the defendants to deny or refuse a permit. This objection strikes at the root of the matter, because the law itself, as it must have done to make it workable, grants to the commissioner the right to exercise what might be termed judicial discretion, subject to review by the courts.

"This act is constitutional, the commissioner was vested with a judicial discretion, and his exercise thereof was not arbitrary, but it was in full accord with and justified by the facts. The plaintiff has not shown herself to be entitled to equitable relief. The plaintiff's motions for judgment are denied. The defendant's motion for judgment is granted on the merits."

A similar application of the law was announced by Judge Campbell in Millstone *v.* Yellowley in a case which is more nearly in point with the Ma-King Products case, in that an application for the renewal of a permit was denied.

If the circuit court of appeals in the pending case should find as a matter of law that the commissioner is not vested with judicial discretion and his action in any particular case not reviewable under the principles announced in the decisions referred to, there is still another ground on which it might be urged that the application for injunction should be denied. Following the denial of the permit by the commissioner a petition was filed, as you are aware, in the district court for the western district of Pennsylvania, praying that the court review the action of the commissioner, reverse his findings disapproving the application for permit, "both as to facts and the law," and decree that the commissioner approve the application and grant the permit prayed for. On this petition and the answer filed by you, the matter was heard de novo by Judges Schoenmaker and Thompson, who found for the defendants. This procedure, if it has any support in law, must be based upon the statutory provisions of sections 5 and 6, Title II, of the national prohibition act. In section 6 it is stated:

"In the event of the refusal by the commissioner of any application for a permit the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof."

In section 5 it is provided, inter alia:

"The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner *as the facts and the law* of the case may warrant. * * *" (Italics not in the original.)

This statutory provision is novel and its full import has not as yet been determined by the courts. If the findings of the court on review as to the law and facts is to be likened to the findings of a court of equity in a contempt proceeding, then the circuit court of appeals must, if substantial evidence appears of record, affirm the decision of the equity court and not consider the weight of the evidence. (Swepston *v.* United States, 251 Fed. 205; Kelley *v.* United States, 250 Fed. 947; Swartz *v.* United States, 217 Fed. 866; In re Debs, 158 U. S. 564, 600; Toledo Newspaper Co. *v.* United States, 247 U. S. 402.) In the last case the Supreme Court said in part:

"It is to be observed that our power in disposing of this objection is not to test the divergent contentions as to the weight of the evidence, but simply to consider the legal question whether the evidentiary facts found has any reasonable tendency to sustain the general conclusions of fact based upon them by the courts below."

I trust that the above may be of service to you. With rather a crippled force due to various assignments to the field, it is doubtful whether this office will be able to assist you further at present. If, however, there is any particular matter on which you desire citations, please advise me.

Respectfully,

R. A. HAYNES,
Prohibition Commissioner.

The CHAIRMAN. I will ask Mr. Pyle to read extracts from Mr. Wheeler's brief which deals with the discretionary power of the commissioner in issuing permits. Just read that section, Mr. Pyle, to complete the record. I do not think we need to go into Mr. Wheeler's statement any further than that, at least so far as I am concerned.

Mr. PYLE. This is the statement signed by Wayne B. Wheeler, as attorney and general counsel of the Anti-Saloon League of America, addressed to the chairman and members of the committee. The section that the chairman refers to is Mr. Wheeler's statement as to the discretionary power of the commissioner in the issuance of permits.

It says:

Under the national prohibition act the Prohibition Commissioner has very little discretionary power in granting or in rejecting of permits. When an application is filed in accordance with the provisions of the law, even though the commissioner may know that there is no legitimate need for the permit and that the permittee will doubtless violate the law if he engages in the business, yet he is not allowed to reject the permit upon such grounds. Recently one applicant for a permit asked to have his withdrawal amounts increased from 35,000 gallons to 75,000 gallons. When he was asked before the central committee—

That is, a committee in the unit—

* * * passing upon the application whether some of this would not be diverted, he said he did not know and was not responsible for that. He wanted the permit; others were getting them, and it was not up to him to be responsible for this. The department rejected the application, but the court in the District of Columbia mandamused the department to issue the permit.

He then discusses the Canadian system and continues:

Evidently greater discretion is needed in handling these permits. It will lessen the criticism that the department is not handling these applications effectively by rejecting applications for permits when the commissioner is morally certain that the liquor will be diverted to illegal uses.

That is a statement of the general counsel of the Anti-Saloon League.

Senator WATSON. Is not that what was testified to here about that other case?

The CHAIRMAN. Yes; I think Mr. Haynes told us about that particular case.

Senator WATSON. Yes.

The CHAIRMAN. But that has not been the general experience of the Prohibition Unit, according to the testimony, and I have heard it all, Senator.

Senator WATSON. Yes; you have heard it all.

Mr. JONES. That was the case of the Penn Distributing Co. They applied for an increase, I think, from 35,000 gallons to 75,000 gallons.

The CHAIRMAN. Yes; Mr. Haynes testified to that when he first came before the committee.

Mr. PYLE. The law in placing this permit power in the commissioner placed upon him two separate and distinct duties, one, the enforcement of the criminal law, preventing criminals from functioning and operating in their crime; the other in issuing permits to lawful, legitimate industries authorized and provided for by the act of Congress.

In the issuance or withholding of permits the commissioner acts in an administrative way with property rights, the business of individuals, some of many years standing, many involving a great investment of money, others of less, but there are substantial property rights involved. Therefore the issuance or withholding of a permit in a great many cases means the life or total suspension of business.

In the law, in section 6 of Title II of the act, we find certain provisions as to the persons to whom a permit may be issued. Among others it says:

> No permit shall be issued to any person who, within one year prior to the application therefor or issuance thereof, shall have violated the terms of any permit issued under this title or any law of the United States or of any State regulating traffic in liquor.

There are other restrictions, such as pharmacists and other interests, and the act prescribes that:

> No permit shall be issued until a verified, written application shall have been made therefor setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

That gave rise to a considerable discussion as to how much discretionary power the commissioner actually had. The contention of the department for a long time was that he had full discretionary power, I believe, as to going into the character of the applicant.

Is not that correct, Mr. Britt?

Mr. BRITT. Yes.

Mr. PYLE. The court decisions as they began to be rendered cover the same point——

Mr. BRITT. Just a minute, Mr. Pyle. That the bureau had discretionary power to go into the character of the applicant, particularly in relation to his qualities as to law observance.

Mr. PYLE. The court decisions limited that a little until, at the present time, as Mr. Britt stated here yesterday, a court who strictly interprets the law holds that you are practically deprived of discretionary power, and other courts hold that you still have discretionary power. I believe all courts in review hold that you are confined to facts within your knowledge, however.

Now, there has been a great deal of complaint that the attitude of the Prohibition Unit in enforcing criminal laws has influenced their attitude toward the issuance of permits. This will necessarily fall into various classes, the principal ones being breweries and alcohol distilleries, denaturing plants and whisky distilleries, and the druggists, both wholesale and retail, who would form the principal class of permittees.

This morning I would like to run over briefly some few cases pertaining to breweries.

A brewery operating under a permit in the manufacture of near beer operates by making a beer containing from 3 to 4 or 5 per cent, by volume, alcoholic percentage. Then this beer is placed in vats or containers and heat applied, either steam or other form of heat, by which the alcohol is driven off, leaving the remaining product, known as cereal beverage, commonly known as near beer. The alcohol can be reduced in that manner to below one-half of 1 per cent. That is the procedure followed to-day by most of the breweries in the United States.

That is a temptation to brewery plants that formerly operated in the making of beer when the law permitted the manufacture of beer. They used the very same equipment, with the exception of a heating device for driving off the alcohol.

A brewery is designed to make two things. With the machinery or equipment that they have, with very slight modifications, they can make either beer or near beer and ice. The most of them had ice-making equipment. A brewery operating under a permit to manufacture near beer for sale can have a double source of income by manufacturing ice and the cereal beverage, while the brewery manufacturing without a permit is confined practically to the ice business, unless it is converted into some other industry. They have been converted into creameries and dairies, but at considerable expense.

The point comes up as to the effect of the withholding of a permit on the enforcement of the prohibition law. A brewer operating under a permit is subject to inspection at any reasonable business hour, any reasonable hour, by any prohibition agent of the United States. The prohibition agents have access to the plant and can look over all of the machinery, vats, and tanks or any of the apparatus in the brewery without a warrant. They have access to it in any reasonable business hour.

The brewery operating without a permit can only be entered by obtaining proof of a violation of the national prohibition act and obtaining a search warrant from the nearest United States marshal and executing it in the regular manner of executing a search warrant, which takes time and causes delay.

In the case of either a permit or a nonpermit brewery, which is putting out beer containing an unlawful alcoholic content, the beer has to be what is commonly known as shot out quickly, run from the brewery in trucks or in another manner, and loaded in a car and gotten away quickly; so that the one brewery is in no better shape than the other for violating the law.

The CHAIRMAN. It has been my general understanding that all of the advantage in law violation was with the brewery that had no permit and where a search warrant was required to go into them.

Mr. JONES. You are exactly right, Mr. Chairman.

Senator WATSON. What do you propose in order to remedy that?

The CHAIRMAN. What do you propose to remedy it, Mr. Pyle?

Mr. PYLE. I was not taking that up at this point.

There is only one proposal that I can see to remedy it, and that is to pass a law requiring all brewery apparatus, brewery machinery, brewery plants, to register, the same as the stills are registered, which would give the prohibition officers the authority to enter and see whether they were used as registered for use. Under the prohibition law there is no way by which it can be handled at the present time.

The CHAIRMAN. So you do admit that all of the advantage is with the brewery that does not have a permit.

Mr. PYLE. If I were going to run a brewery and put high-powered beer on the market, I would not want a permit. I would do as they are doing—put a high wall around the plant and put armed guards around the gate. It is a substantial advantage to the brewer who has no permit.

Senator KING. Several gentlemen who were operating breweries under permits, making near beer, men whose character was not under suspicion and whose operations had never led to a suspicion, even of law infraction, complained to me that they were subjected to more hounding and annoyance and visitation than other brewers who had permits who were notoriously violating the law, and who were manufacturing beer. They called attention to one house in Nevada where they said they were making beer, and it was known. The agents never bothered them, and yet one of the persons to whom I am referring now said that the agents were almost daily in his place, and he had never been suspected, even, and he is a man of the highest character.

Mr. PYLE. In view of the situation that has been developed it is interesting to go into the matter of cases where it would seem that the provision of the law holding a one-year limitation as to a violation of the national prohibition act has been ignored, and that a more or less arbitrary attitude had been taken on the part of the department in withholding permit, thereby depriving the brewery of the use of its facilities.

There is one group of cases, and a number of kindred cases that I would call attention to, which happened in the Pittsburgh district.

It seems that in the fall of 1922 one Saul Grill, a general prohibition agent, was sent to Pittsburgh to take charge of the general agent's office there, ostensibly, and he worked up a number of cases of bribery while there. He accepted bribes and worked up a case from that standpoint, the transactions occurring with one Friday and Friedmann, according to his report.

Senator KING. Those were employees of the bureau?

Mr. PYLE. No; they were the brewers; they were representing the brewers, presumably.

These men, according to Mr. Grill's story, paid him money and gave him a list of certain breweries that were to be protected for that money. This was in the fall of 1922.

The matter was taken up through the courts. One grand jury refused to indict on his testimony, and another one indicted, and Mr. Friedman was tried and acquitted, and I was informed that the balance of the cases have been nolle prossed. The offense in that case was not a violation of the national prohibition act, but a bribery case which occurred in 1922. John A. Friday was connected with the Independent Brewing Co., but no action was taken at that time on their permit, nor any action against the Independent Brewing Co. When I speak of the Independent Brewing Co., it refers to a large chain of breweries, all but one of which have been suspended.

The CHAIRMAN. Do I understand you to say that because of this man Friday having been connected with this criminal case there should have been action against the Independent Brewing Co.?

Mr. PYLE. No. I do not. I call your attention to the fact that no action was started there.

The CHAIRMAN. Why do you say no action was started there if there was not any action desirable?

Mr. PYLE. I am calling attention to the fact that nothing was taken until 1924, when the Independent Brewing Co.'s permit was

disapproved, based on this old case in 1922. They had operated in the meantime, and no action was taken. Evidently there was no criminal case against the brewery, but, nevertheless, the permit was arbitrarily withheld.

Now, another case connected with that one is the Pittsburgh Brewing Co.

I might say in the case of the Independent Brewing Co. the violations showed that there were no violations of the prohibition law charged against that company.

The Pittsburgh Brewing Co. had no dealings with Saul Grill by any of their officers or known agents. However, their name was on the list.

Mr. JONES. For protection.

Mr. PYLE. For protection—furnished by Mr. Friday and Mr. Friedman to this man Grill; but there were no violations ever reported against the company. They also operated until, in 1924, their permit was also disapproved.

It seems to me that it is an arbitrary action and the department is trying to impose penalties for a crime that properly belongs in the courts; but for one year the permit was withheld—for the year 1924—and then was granted for 1925.

Senator WATSON. In case the bureau should grant a permit, and there are notorious violations of the law, has not the department the right to withdraw the permit?

Mr. PYLE. I did not catch that.

Senator WATSON. Suppose a permit is granted, and then the manager violates the terms of the permit, has not the bureau the right to withdraw the permit?

Mr. PYLE. They can revoke a permit when a violation is discovered.

Senator WATSON. They do not have to go to court to do that?

Mr. PYLE. No; but in the matter of withholding a permit, they are withholding the right to operate a business, and the contention that I make is that that should be done only upon grounds authorized in the act itself; that a suspicion should not be the ground for withholding it, because it is a substantial property right in that industry. On the other hand, the commission of some other crime should not be a ground for revoking it. If a man is entitled to his permit, and then he violates the law, let the enforcement end of the work apprehend him at it. They can even go so far as to destroy the plant in some jurisdictions.

The CHAIRMAN. I should like to ask Mr. Jones if he knows what the attitude of the bureau was and the reasons that the bureau withheld the permits of those companies in 1924.

Mr. JONES. When Mr. Pyle has finished I shall be glad to make a statement to the committee, or at such time as is most convenient to the committee.

Senator WATSON. I will have to leave now, but I will read your statement in the record, Mr. Jones. I am interested in that particular feature of it.

Senator KING. Do you claim that the bureau has the right to exercise discretionary power in these matters because of a mere suspicion or some unsupported statement?

Mr. JONES. It was a little more than suspicion, Senator. This man, John A. Friday, who was the vice president of the Independent Brewing Co., was the owner in part of the Independent Brewing Co., and the owner either in part or in whole of the Chartiers Valley Brewing Co.

Morris Friedman owned in whole or in part the Keystone and the Hazelwood Breweries. They gave these agents approximately $25,000 in money.

Senator KING. Government agents?

Mr. JONES. Government agents, for protection to certain breweries, the names of which are as follows: Independent Brewery, Pittsburgh; Hazelwood Brewery, Pittsburgh; Fort Pitt Brewing Co., Sharpsburg, Pa.; Pittsburgh Brewing Co., Pittsburgh; Keystone Brewing Co., Millvale, Pa.; and Cartiers Valley Brewing Co., Carnegie, Pa.

They paid these agents approximately $25,000 for protection; that is, the right to market an illegal product by such breweries.

Senator KING. What became of the money?

Mr. JONES. The money was held by our agents and used at the trial of Morris Friedman. Morris Friedman was acquitted, though we never believed that he was innocent. He disowned the money, stating that it was not his money. The money has been turned into the Treasury to the credit of miscellaneous receipts.

The CHAIRMAN. In other words, in that case the agents were honest and turned in the money?

Mr. JONES. They turned in about $25,000, and that has been credited to miscellaneous receipts of the Treasury.

The CHAIRMAN. Was this a frame-up on the part of the bureau to catch these people?

Mr. JONES. Conditions just prior to that time were very bad in Pittsburgh, Mr. Chairman. We sent Saul Grill there with some other agents, and some agents of the special intelligence unit, which is a unit distinct and apart from the Prohibition Unit. The special intelligence agents had charge and custody of this money. There were two forces working together.

The CHAIRMAN. I know, but it was a plan on the part of the Government to catch these men, was it?

Mr. JONES. Yes, sir; it was.

The CHAIRMAN. That is what I wanted to know.

Mr. JONES. It did not partake of entrapment. They turned the money over to the district attorney. In fact, there was a representative of the Department of Justice there at the time, and he cooperated closely with the agents who were taking this money from the brewers for protection.

Senator KING. However, the jury did not believe the agents and acquitted the defendant?

Mr. JONES. That is correct.

Mr. PYLE. I might state in that connection that the grand jury in Pittsburgh would not bring a bill in any of these cases. It was then taken to Erie, which is a more rural district. It was taken to that judicial district and an indictment there was found against Friedman only.

Mr. JONES. That is correct.

Mr. PYLE. And on the trial of the Friedman case last fall he was acquitted. The district attorney thereafter moved to nol-pros the other cases, they depending upon the same state of facts.

The CHAIRMAN. Then, because of the conditions just related, the permit was denied to the Pittsburgh and Independent Breweries; is that correct?

Mr. JONES. Yes, sir. The permit is still denied to the Independent Brewing Co., although we have issued a permit to the Pittsburgh Brewing Co.

The CHAIRMAN. In other words, if one member of a corporation, and you said it was in whole or in part—you did not say which——

Mr. JONES. He was vice president, Mr. Chairman.

The CHAIRMAN. I understand that, but wait until I get through—then the property rights of the other stockholders of that particular corporation were denied because of the misconduct of one particular officer; is that correct?

Mr. JONES. That is correct; yes, sir; he was an officer acting, presumably, for the brewery.

Mr. BRITT. The only way that the corporation could act was by him or some other agent.

The CHAIRMAN. I was not finding fault with it, but I just wanted to get at the facts.

Mr. JONES. The statement of Mr. Friedman was that he collected certain money, and he said that Mr. Friday collected certain money from Mr. Ridall, president of the Pittsburgh Brewing Co., as a part of this corruption fund.

Mr. PYLE. Grill said that Friedman said that.

Mr. JONES. Friedman told the agents that in the Fort Pitt Hotel.

Mr. PYLE. According to this report.

Mr. JONES. According to this statement.

The CHAIRMAN. I thought that you held up the Pittsburgh Brewing Co.'s permit, not for a whole year but for a part of a year?

Mr. JONES. We later came to the conclusion that the evidence partook too much of hearsay, and in view of the fact that their previous record had been good we issued them a permit, but we have not issued a permit to date to the Independent, the Chartiers Valley, the Keystone, or the Hazelwood.

The CHAIRMAN. Are they closed?

Mr. JONES. They are closed.

Mr. PYLE. The Hazelwood is in the hands of the marshal.

The CHAIRMAN. Then, during this period of the suspension of the right of the Pittsburgh Brewing Co. to operate, was there any financial loss sustained, do you know?

Mr. JONES. Oh, no doubt, Mr. Chairman, there was a financial loss sustained, because they were closed; they were not operating.

The CHAIRMAN. What were they supposed to manufacture—just near beer?

Mr. JONES. That is all, as far as I know, Mr. Chairman. They may have manufactured ice or pop, which they could do without a permit, of course.

The CHAIRMAN. Were there any claims made as to their loss as the result of withholding the permit? Do you find that in the record?

Mr. PYLE. I think there was no money claim——

The CHAIRMAN. Was there any statement made as to the loss?

Mr. PYLE. The Independent Brewing Co. has something like a dozen plants in their name.

The CHAIRMAN. We are talking about the Pittsburgh Brewing Co.

Mr. PYLE. The Pittsburgh Brewing Co. has made no statement of a financial loss.

The CHAIRMAN. I wonder whether, in arguing before the bureau as to why they should have their permit, they made any statement of that sort?

Mr. JONES. They did make quite an extensive statement, Mr. Chairman. We had a general hearing on the subject, and if I remember correctly, their attorney told us that it was a corporation with a capitalization of $19,000,000, which formerly operated a great many breweries, and it had closed all but one. Just what their loss was as a result of their being closed for the part of the year I do not know, and no representation was ever made to the unit as to that.

Mr. PYLE. There was one other brewery connected with the same transaction.

Mr. BRITT. May I say one word there, Mr. Chairman? I wish it to be borne in mind here that all of these breweries were corporations, and that the charge was against a large group, practically all of them, that is, against the seven, and that it was a conspiracy. The charge was that bribe money was offered for the purpose of allowing them and each of them that contributed to it to violate the law, which might be regarded as one of the most fundamental and serious violations, if true.

The CHAIRMAN. Yes; I gathered that from the testimony, but it was afterwards determined, after considerable delay, that the testimony was hardly sufficient on which to withhold the permit, and what I am trying to develop is this: It occurs to me that before this great financial loss, if there was one, was sustained there should have been a proper tribunal to have settled that question, and not after the loss had accrued.

Mr. JONES. Well, there was a hearing, Mr. Chairman, before a committee.

The CHAIRMAN. Oh, yes; I understand those hearings, but that is one of the things that I am complaining about—the method of holding those hearings.

Mr. JONES. This was an open hearing, at which certain Members of Congress were present, and very largely attended.

The CHAIRMAN. I am not saying that that is not so, but it was certainly not a judicial tribunal or any tribunal set up by Congress where proper rules of evidence were observed.

Mr. PYLE. In the case of the Tube City Brewing Co.——

Mr. BRITT. That is one of the seven referred to?

Mr. PYLE. Yes; at McKeesport the permit was issued for 1923 and 1924, there being no violations reported against the brewery at that time at all, or that the department considered worthy of weighty consideration or action. The agent's reports gave it a clean bill of health, yet we find in the files of the unit, under date of October 15,

a memorandum relative to a conference of the central committee, in which there is this remark:

An examination of the records on file in this office also show that this is the only company mentioned as having contributed to such bribery which is now operating under an annual basic permit, and recommendation is made that the company be immediately cited to show cause why its permit should not be revoked.

The matter was taken up, and citation was to be issued by the director for Pennsylvania, who refused to issue it because of the age of the case.

Then Mr. Britt has a memorandum which says:

Take no action on the 1924 permit, but file a memorandum with the permit division suggesting disapproval of application for 1925.

That, to my mind, is an arbitrary action, in that they are endeavoring to go back over a period of over two years for an alleged violation of another law, not the prohibition act, and to punish them by depriving them of the operation of their plant for a year—to punish them for this other act which the courts had ignored. As I say, it seems to me that that is an arbitrary action in depriving persons of their property rights, and that is worthy of serious consideration by your committee.

The law is becoming more clear every day on this matter; as Mr. Wheeler says, the discretionary powers are largely absent. At any rate, the violation of the law must have occurred within a year prior to the application, according to the law, and it seems to me it is pretty arbitrary to go back and try to inflict punishment because the court did not handle the case as the department thought it should on the evidence of these agents. Over two years afterwards they have apparently tried to punish them for this act, which the department could not prove sufficiently to convince the court of their guilt.

Now, if I may go on for just a moment more very briefly, there is is the case of the Paterson Brewing & Malting Co., Katz branch, of Paterson, N. J. This same man Grill enters into that transaction. In that case Grill was paid $2,000 to protect this establishment. He was then hired by them to escort the beer from the brewery to the place where it was being sold in New York City.

It was shown that the agents got samples the first time, and the second time they made a seizure, thereby having a clear case against the brewery. This happened in October.

The CHAIRMAN. What year?

Mr. PYLE. 1923. It was a clear case of bribery, manufacture, transportation, and sale.

In that case—this happening in October, 1923—there was no revocation proceeding brought, but the permit for 1924 was very properly withheld. The significant thing in this connection is that first the permit was allowed to stand through October, November, and December without revocation action, in accordance with the law, and the thing that I desire to read in here is to be considered in connection with this other case also, and that is the statement of Commissioner Haynes in his letter to the district attorney for New York City.

The CHAIRMAN. What date?

Mr. PYLE. This being dated March 14, 1924, reviewing this case. The case is still pending criminally, or has it been finished lately?

Mr. JONES. I think it has been finished. I think there was an acquittal.

Mr. BRITT. I think so: yes.

Mr. PYLE (reading):

Conclusion drawn: After thoughtful and careful consideration of all the facts in the case, this office was of opinion that the interest of the Government would be best conserved by issuing permits to the company, thereby subjecting it to Government surveillance and inspection, realizing that operation without permits afforded great opportunity for fraud. Consequently, permits were issued.

The CHAIRMAN. That is a strange conclusion, is it not? Because a man has a bad character you are going to give him a permit so that you can watch him?

Mr. PYLE. I can not reconcile the decisions of the department in these cases unless it is a punitive effort in the case of the Pittsburgh Brewing Co. and the Independent Brewing Co. and those other brewing companies in Pittsburgh that I mentioned. If it is the desire to punish, they are usurping the authority of the courts. It seems to be the opinion of the unit, as it is mine, that a brewery without a permit is in better shape to violate the law than one that has a permit but I can not reconcile these cases, and I would like to hear any discussion on the part of Mr. Britt or Mr. Jones in that connection.

Mr. BRITT. I want to say a word in regard to the Tube City Brewing Co., to which reference was made by Mr. Pyle.

Mr. PYLE. Which one was that?

Mr. BRITT. The one in which you referred to the memorandum written by me.

Mr. PYLE. Oh, yes; the Tube City Brewing Co.

Mr. BRITT. The memorandum was written by me, as stated, and written advisedly. At the time it was written the Tube City Brewing Co. was one of the seven to which reference has been made, and one of the seven concerning which there were allegations of the offer of bribe money and some other incidental charges. There had been this general hearing of all of these cases in a group, to which Assistant Commissioner Jones has referred. I was present at the hearing, and it was the intention to deny the permits for the time being in all of those cases practically upon the same general ground, and at the time this memorandum was dictated it had been brought to my attention that the Tube City company, which we had intended to include in the other list and disallow its permits, had been in some way allowed to continue.

The CHAIRMAN. "In some way"? What is that way?

Mr. BRITT. I do not know. The formal action taken by the unit was that it should be revoked, but in some way that permit was continued, and this was before the Friedman case was brought; it was before any action was taken in any other case to which Mr. Jones has referred, and I was merely advising that since it came within the same purview it should sustain the same relation as the others, and the permits were disallowed. I merely put it in that category for the time being. That was the object of the memorandum.

Mr. JONES. With your permission, I would like to make one general statement in regard to the Pittsburgh Brewing Co. case, in connection with the remarks made by Mr. Pyle.

In the fall of 1922, it is alleged, there was a corruption fund created by certain dealcoholizing plants in or near Pittsburgh, Pa., to debauch Government agents. Both agents of the intelligence unit and prohibition agents were involved in receiving such funds. Information of the situation did not reach the Prohibition Unit in Washington until the spring of 1924, as the prohibition agents, believing agents of the intelligence unit were in charge of this work, did not make a report, and agents of the intelligence unit thought that the prohibition agents had made a report to the Prohibition Unit. There was no corresponding delay, however, in presenting these facts to representatives of the Department of Justice.

When the Prohibition Unit was advised of this corruption fund, in the spring of 1924, the applications for permits then pending for the year 1924 filed by concerns alleged to be connected with this corruption fund were disapproved.

The CHAIRMAN. Do you mind if I interrupt you as you go along?

Mr. JONES. Not at all, Senator.

The CHAIRMAN. Who did this thinking, when it was thought that in one case the intelligence unit was looking after it, and in another case the Prohibition Unit?

Mr. JONES. No doubt the agents themselves who conducted the investigation. They were the only people who could do so. Each one thought the other had made the report.

Mr. BRITT. Inquiry being made jointly.

Mr. JONES. Yes.

The CHAIRMAN. And no report, as the result of that, was ever made to the heads of the unit; is that your position?

Mr. JONES. Not until the spring of 1924. When the Prohibition Unit was advised of this corruption fund, in the spring of 1924, the applications for permits then pending for the year 1924, filed by concerns alleged to be connected with this corruption fund, were disapproved. The following dealcoholizing plants alleged to be connected with the corruption fund were not issued basic permits for the year 1924.

The CHAIRMAN. Let me ask you at this point if you sustained the rumor that there was a corruption fund?

Mr. JONES. Yes, sir; we did, because there was the money in evidence, the money which the agents received, that they could not have turned over to the Government, except that they had received it in this manner.

The CHAIRMAN. But I understood you to say that you planned to collect the fund through this man Grill, and what I want to know is whether, prior to that time, you had any evidence that there was a fund?

Mr. JONES. Only hearsay; and we sent Grill and the representatives of the special intelligence unit to Pittsburgh to ascertain the facts.

The CHAIRMAN. And you never got any evidence that there had been a fund previous to that particular fund?

Mr. JONES. Never any concrete evidence. The special intelligence unit worked on the matter for some months. I was about to give you a list of the breweries. They are the Independent Brewery, Pittsburgh; Hazelwood Brewery, Pittsburgh; Fort Pitt Brewing Co., Sharpsburg, Pa.; Pittsburgh Brewing Co., Pittsburgh; Key-

stone Brewing Co., Millvale, Pa.; and the Chartiers Valley Brewing Co., Carnegie, Pa.

Mr. BRITT. I believe the Tube City was a branch of one of those.

Mr. JONES. I am coming to that.

Mr. BRITT. Yes.

Mr. JONES. The Tube City Brewing Co., McKeesport, Pa., was also alleged to be connected with this corruption fund, but a permit for 1924 had been issued to this company prior to the receipt of the report of the alleged bribery.

The CHAIRMAN. That is the case where Mr. Britt, in the records, suggested that the permit proceed and some punishment be laid out in the future. Is that correct?

Mr. JONES. That is the same one.

Mr. BRITT. It did not direct, Mr. Chairman, that it proceed. This was at the end of the year 1924, and that action was taken as to 1925.

Mr. SIMONTON. I think you are referring to the Paterson case, Mr. Chairman. That is not connected with this case at all.

Mr. BRITT. No; the Paterson company is the New Jersey brewery, and is independent of the ones we are referring to now.

The CHAIRMAN. I understand, but Mr. Pyle read into the record a memorandum of Mr. Britt concerning the Tube City Co.

Mr. BRITT. Yes, sir; concerning the Tube City Co.

Mr. SIMONTON. Not to the effect that you state?

The CHAIRMAN. Oh, yes.

Mr. JONES. The Tube City Co. permit was issued in the early part of 1924, before we had this information, and our attention was not called to that fact, and it was allowed to stand, and I think perhaps it should have been allowed to stand.

Upon receipt of the notice of disapproval by the companies of their applications for permits to operate during the year 1924, the Prohibition Unit received protests and requests for hearings. Accordingly, it was arranged that a hearing should be given the complaining dealcoholizing plants in Washington. Such hearing was held in the rooms of the Prohibition Unit on July 14, 15, and 16, 1924, before the central committee of the Prohibition Unit.

The CHAIRMAN. Were these permits effective for the calendar year?

Mr. JONES. The calendar year.

The CHAIRMAN. So that from January 1, 1924, to July 1, 1924, there were not permits?

Mr. JONES. They operated, Mr. Chairman, under an application for a renewal, until the early part of May, when the applications for the year 1924 were disapproved.

The CHAIRMAN. So the situation then was that from May to July they were actually without a permit?

Mr. JONES. Some of them are without a permit to this date, from May to the present time. The breweries, which were owned in whole or in part by either Friedman or Friday, who dealt directly with the agents who passed this money, are without permits now.

The CHAIRMAN. That is indicative of the fact that the bureau has considerable discretion, is it not?

Mr. JONES. We considered that it partook of a violation. They would only pass tens of thousands of dollars for one purpose, and that was for protection, so that they could release high-powered beer with impunity.

The CHAIRMAN. I am not disposed to dispute that, but I am saying that the bureau did have considerable discretion.

Mr. JONES. I think every major administrative officer, Mr. Chairman, is naturally vested with a certain amount of discretionary power. Otherwise you might as well have $900 or $1,000 clerks functioning, and have them write out the permits as requested.

The CHAIRMAN. I am not in disagreement with that. I am of the opinion that the greatest degree of discretion should be given to administrative officers.

Mr. JONES. I think you are right.

The CHAIRMAN. But I say that Mr. Wheeler disagrees with that position, and I am bringing that point out.

Mr. BRITT. He is talking all the while, as I understand it, about discretionary power to allow additional quantities arbitrarily, while we have been talking about discretionary power to determine the qualifications of a permittee. That was discussed before the committee the other day, and that differentiation was made.

The CHAIRMAN. I understand. He deals with it in a broader sense than that. He only mentions that as an incident in the case of an increase in withdrawals, and not as a basis for contending that the bureau had not sufficient discretionary powers.

Mr. BRITT. I heard him make a reference to the Province of Quebec, and that there the minister of customs had the discretionary power, regardless of any charge against the permittee, to say that the country has enough on distribution, and therefore we will allow no more. I do not think the commissioner has any such power as that in this country, and I do not wish to be so understood. The discretionary power that I have been discussing has been directed mainly toward the discretionary power of determining whether a person was, in relation to his observance of the law, a fit person to be intrusted with the permit originally.

The CHAIRMAN. Do you mean all laws, or just the prohibition law?

Mr. BRITT. I mean laws generally, and particularly the prohibition law. If a man is a violator of any law, and is notoriously such, the reasonable inference is that he will violate the prohibition law. His attitude toward law observance in general should be considered.

The CHAIRMAN. In other words, if he was an ex-convict, a crook, you would exercise discretion in granting him a permit?

Mr. BRITT. I would say that that went so strongly to the question of his character that he could not be trusted with a permit.

The CHAIRMAN. And you would deny it?

Mr. BRITT. I would deny it.

Mr. PYLE. That is absolute discretion.

Mr. BRITT. The statute itself, in everything it says, goes to indicate, first, by requiring a bond, and by other implications, that the person who gets a permit should be, in the estimation of those who are authorized to give it, a person worthy of being intrusted with it, and if it is proved by his past character in relation to the laws of the country generally, and he is found by the unit to be a

law violator, I think the Commissioner of Internal Revenue has entire discretionary power to take that into account, and that he has the power to refuse the permit, and that, in fact, he ought to refuse it.

Mr. PYLE. On his reputation?

Mr. BRITT. Yes; on his reputation. If it is made known to me that A, who asks me for a thing which I only can confer upon him—under the law—and it is made to appear that he is a notorious nonobserver of the laws generally, I would draw a moral and legal inference that he is not a person who would keep the laws generally, and would therefore violate this law if he had an opportunity to do it. Where it is proved, not where it is assumed, Mr. Chairman, but where it is proved to the satisfaction of the commissioner that the applicant is a bad man in relation to the law, he should not have a permit, and is not entitled to it.

The CHAIRMAN. You believe they should investigate the character of an applicant before a permit is granted?

Mr. BRITT. I do; and we do investigate his character; yes, sir.

The CHAIRMAN. If a man had ever been a convict and had reformed, he would have no chance in the world of getting a permit, then?

Mr. BRITT. Yes, sir; he would have all the chances that his character would warrant.

The CHAIRMAN. You would have to exercise considerable judgment to determine whether he was of proper character or not.

Mr. BRITT. It is not a matter of judgment; it is a matter of proof.

The CHAIRMAN. I do not know how you can prove whether a man has reformed. You do not know when he will break out again.

Mr. BRITT. If a man has once violated the law and thereafter for a considerable period of time has regarded the law, I think it is safe to assume that he has reformed. I do not want it understood that I think that a man who has fallen once has fallen forever.

Mr. PYLE. If a man was guilty of complicity in a bribery case in 1922 and nothing had been done against him until 1925, would you consider that he had reformed?

Mr. BRITT. I would consider him still unfit to have a permit.

Mr. PYLE. In connection with your views on this, were you giving your views as to what you think the law ought to be or what the law is?

Mr. BRITT. What?

Mr. PYLE. Your statement as to discretionary power and the exercise of it.

Mr. BRITT. I made no statement of the construction of the statute. I was giving my judgment of the discretionary power of the Commissioner of Internal Revenue.

The CHAIRMAN. I think the committee understands that.

Mr. BRITT. Yes; in passing upon the fitness of an applicant. I did not say that was a construction of the statute.

Mr. JONES. May I proceed, Mr. Chairman?

The CHAIRMAN. Yes, Mr. Jones.

Mr. JONES. At the hearing to which I have referred the Assistant Prohibition Commissioner presided.

This hearing also covered charges that a similar corruption fund had been created by certain dealcoholizing plants in Philadelphia,

Pa., but this statement does not relate to such charges, as Mr. Pyle referred only to the Pittsburgh plants.

At the hearing referred to agents of the intelligence unit, as well as the prohibition agents concerned, testified, and some of the companies were represented, some in person and some through counsel. All of the companies had been notified in advance of the hearing and given an opportunity to be represented, either in person or through counsel.

The original transcript of this hearing, with accompanying exhibits, was later transmitted to the Department of Justice.

The Government agents testified in effect as follows:

That in the fall of 1922 Mr. Morris Friedman, owner or part owner of the Hazelwood Brewing Co. and the Keystone Brewing Co., told them that Mr. John A. Friday, then vice president of the Independent Brewing Co. and owner or part owner of the Chartiers Valley Brewing Co., had collected certain sums of money, the amounts not stated, for the alleged corruption fund from Mr. Weiskirscher, an official of the Tube City Brewing Co., from the Chartiers Valley Brewing Co. and from the Independent Brewing Co., to be turned over to the agents as bribes.

That on November 16, 1922, Mr. Friedman said that the Fort Pitt brewery had paid $1,765 as their part of the $13,365 paid November 13, and on November 21, 1922, stated that Mr. Friday had collected from Mr. Saul of the Fort Pitt Brewery Co.

That Mr. Friedman told them that he had also collected certain sums of money, the amounts not stated, from Mr. Tinker, of the Keystone Brewing Co., and Mr. Thomas Scully, of the Hazelwood Brewing Co.

That in the evening of November 8, 1922, Mr. Friday and Mr. Friedman came to the room occupied by the agents at the Fort Pitt Hotel and Mr. Friday handed to Agent Nolan, of the Special Intelligence Unit, an envelope containing $500 as a retainer to pay expenses until the money could come in faster.

That on November 10, 1922, Mr. Morris Friedman came to the office of the general prohibition agents and handed Mr. W. E. Dunnigan, general prohibition agent, a $100 bill, and said: "Now, you are up here in the office handling the men, I want you to be sure and see that no breweries on that list I gave Nelson (meaning Agent Nolan) last night are bothered"; that Mr. Friedman later returned to the above office when Agents Nolan and Grill were present and gave Grill $1,000.

That on November 13, 1922, Mr. Friedman came to the Fort Pitt Hotel and was accompanied downstairs to Mr. Friedman's car by Agent Nolan; that Mr. Friedman took from under the seat of his machine a package the size of a brick of ice cream.

Mr. PYLE. That was left in the seat of an automobile?

Mr. JONES. Under the seat. They had great faith in the honesty of the Pittsburgh people.

That Mr. Friedman handed it to Agent Nolan and then drove away; that Agent Nolan then returned upstairs with the package, which when opened was found to contain $13,365 in currency.

That on November 20, 1922, Mr. Friday and Mr. Friedman called at the agent's room at the hotel; that Mr. Friday left first, and after he had left Mr. Friedman took from his pocket an envelope or

bundle and pushed it under a pillow on the bed; that this package when opened was found to contain $10,440.

That several different lists showing the plants which should or should not be raided were handed to the agents, the concerns mentioned in the later lists as being entitled to "protection" and which should not be raided being as follows: Tube City Brewing Co.; Haz lwood Brewery: Pittsburgh Brewing Co.; Independent Brewery: Fort Pitt Brewing Co.: Keystone Brewing Co.: Chartiers Valley Brewing Co.

Application for renewal permit for the year 1925 of the Tube City Brewing Co. was disapproved in December, 1924, by reason of the facts mentioned above.

This office was informed in December, 1924, that Mr. Morris Friedman, who had been indicted in connection with the bribery charges referred to, was tried and acquitted.

The CHAIRMAN. This indictment, as I understand, failed in Pittsburgh but was successful in Erie. Is that correct?

Mr. JONES. That is correct; yes. I do not know that they tried to indict Friedman in Pittsburgh. They tried to indict Friday in Pittsburgh, and they failed. If my recollection is correct, they then indicted Friedman in Erie.

Is that correct, Mr. Pyle? Is that your understanding of it? You were in Pittsburgh at the time?

Mr. PYLE. My understanding, from rumors around the Federal building——

The CHAIRMAN. Well, never mind the rumors.

Mr. JONES. But you were there?

Mr. PYLE. Yes.

Mr. JONES. The evidence above mentioned was subsequently reconsidered by this office, as a result of which permits for the year 1925 have been isued to the Pittsburgh Brewing Co., the Tube City Brewing Co., and the Fort Pitt Brewing Co.

The principal reasons on which this action was based were (1) that, so far as these companies were concerned, the evidence before the Prohibition Unit was mainly hearsay testimony, some of it twice removed, (2) that Mr. Friedman had been acquitted, (3) that no criminal proceedings had been instituted against these companies or their officers, and (4) the facts set forth below:

In the case of the Pittsburgh Brewing Co., the company denied, under oath, the charges, and also stated that it was an investment of approximately $19,000,000 with its stock widely held, representing more than 2,000 shareholders. There were some collateral charges against this company which were satisfactorily explained.

In the case of the Fort Pitt Brewing Co., the charges were specifically denied and in addition the Prohibition Unit was informed from a recent inspection made by its agents that this company has been completely reorganized; that its management and control are now in new hands: and that the newly elected officers and directors are business men in good standing in and about Pittsburgh.

In the case of the Tube City Brewing Co., a recent report of inspection made by agents of this office shows this company to be operating legitimately, and copies of affidavits of representative citizens of the community were submitted, which indicated that the officials of the company are citizens of high character.

Permits have not been issued to the Independent Brewery, the Hazelwood Brewery, the Keystone Brewing Co., nor the Chartiers Valley Brewing Co., in view of the connection with these companies of either Mr. Friedman or Mr. Friday.

Now, in short, Mr. Chairman, the unit has taken the position that the companies in which Friedman and Friday were financially interested, and which they represented in their negotiations with the agents, should be adjudged guilty of bad faith, and that permits have accordingly been denied.

With regard to the other three, upon more mature consideration it was thought that the evidence, being hearsay twice removed, and accompanied by affidavits and statements of people of good standing in the vicinity of Pittsburgh, the permits had been restored.

Mr. BRITT. And further consideration of the fact that they had been denied their permits for a considerable time.

Mr. JONES. Yes; for some months.

The CHAIRMAN. Was there any threat or a consideration of court procedure while these allegations were pending?

Mr. JONES. No, sir; I never heard of any.

The CHAIRMAN. Mr. Jones, have you had any experience in cases similar to that, wherein the applicant has gone to court for a mandamus?

Mr. JONES. Oh, yes. Yes, we have had a number of such cases.

The CHAIRMAN. What is generally the judgment of the court in such cases?

Mr. JONES. Mr. Britt, being in charge of our legal work, will have more detailed and fuller information, Mr. Chairman, and I will let him answer that.

Mr. BRITT. In the great majority of cases, which we can furnish you a memorandum of, the action of the unit was sustained, but in a minor number of instances the court overruled the unit and directed the issuance of the permit.

The CHAIRMAN. Then that statement indicates that the unit still has a very wide discretionary power?

Mr. SIMONTON. Let me read the court's decision on that subject, if you will, Mr. Chairman. It is already in the record, but I will read it to you. The case arose recently in Brooklyn, N. Y., the first case we ever had on the subject of discretionary power, the case of Schnitzler *v.* Yellowley. This was a revocation hearing, and the court said——

The CHAIRMAN. What is the date of that?

Mr. SIMONTON. It is 290 Fed. I think it was about a year ago.

The CHAIRMAN. That is enough.

Mr. SIMONTON. In Schnitzler *v.* Yellowley, in reviewing the record of the revocation of a permit by the commissioner, Judge Campbell stated, in part:

> The third objection raised by the plaintiff is that no discretion could lawfully be vested in the defendants to deny or refuse a permit. This objection strikes at the root of the matter, because the law itself, as it must have done to make it workable, grants to the commissioner the right to exercise what might be termed judicial discretion, subject to review by the courts.
>
> This act is constitutional, the commissioner was vested with a judicial discretion, and his exercise thereof was not arbitrary but it was in full accord with and justified by the facts. The plaintiff has not shown herself to be

entitled to equitable relief. The plaintiff's motions for judgment are denied. The defendants' motion for judgment is granted on the merits.

Mr. BRITT. As you review many of these cases, will you state to the committee whether you think the bulk of the tendencies of the court is toward sustaining this discretionary power, as has been described here, or against it?

Mr. SIMONTON. There is no decision, printed or otherwise, that has ever said that the commissioner did not have discretion. The point that they make, and that point we agree with them on entirely, is that there must be some fact on which the commissioner must act and which would warrant his action.

The CHAIRMAN. I am surprised to see that the Anti-Saloon League and the unit are so far apart on the question of discretion, because it is generally discussed publicly—I do not like the word "rumor"—that the Anti-Saloon League is running the Prohibition Unit.

Mr. BRITT. They are talking about this limitation of quality as a matter of public policy, as I understand it, Mr. Chairman, while we are talking about the issuance of permits. I have heard Mr. Wheeler express the view very often that after so much had been distributed throughout the country there was in Quebec some power lodged in a high administrative official to say that, as a matter of policy, there was enough in distribution. I do not want to be understood as saying that is his view, but there is a disposition to entertain that view in a great many quarters.

The CHAIRMAN. As far as I am concerned, I am glad to have that on record. Let me see the statement of Mr. Wheeler. I think we are talking at cross-purposes to some extent.

Mr. PYLE. The statement is——

The CHAIRMAN. Let me see it.

Mr. BRITT. I was not talking about his statement there, but about his views as expressed in my presence.

The CHAIRMAN. I am talking about his views as expressed in his statement, and that is the only view I have from him. This was sent to us.

Mr. BRITT. Yes.

The CHAIRMAN. There seems to be no room for misunderstanding on such a limited interpretation as to Mr. Wheeler's statement, when he says in this brief, which was submitted to all of the members of the committee——

Mr. JONES. Mr. Chairman, is it a brief submitted by Mr. Wheeler?

The CHAIRMAN. Well, a statement, then.

Mr. JONES. He made a statement before the Committee on the Judiciary of the Senate when the Cramton bill was pending.

The CHAIRMAN. "Lack of discretionary power in dealing with permits" is the heading of a paragraph in this statement. That is perfectly plain—permits. That is what we are talking about, whether the commissioner has any discretionary power in issuing permits, and this decision that Mr. Simonton has read refers to that same thing.

Mr. SIMONTON. May I suggest that the very citation on which he supports his contention is one in which the man had a permit, not one where we were denying him a permit or taking it away from him.

The CHAIRMAN. But that is not the basis of his whole statement. He indicates that as only one thing or one instance of discretion, and not as a basis for all of his contentions. Otherwise, either he or I can not understand the English language, because he says:

> Under the national prohibition act the Prohibition Commissioner has very little discretionary power in granting or in rejecting of permits.

That is perfectly plain English to me, and that would cover the question of an increase in withdrawals or a denial of an increase in withdrawals.

Then he says:

> When an application is filed in accordance with the provisions of the law, even though the Commissioner may know that there is no legitimate need for the permit, and that the permittee will doubtless violate the law if he engages in the business, yet he is not allowed to reject the permit upon such grounds.

That does not say anything about increasing the amount of alcohol he may or may not have. There is no limitation to that statement.

Then he says further:

"Recently," and he instances a case to strengthen his position about the lack of discretion, but all of the decisions that have been reported to this committee, and as stated by Mr. Simonton, are in line with sustaining the discretionary power of the commissioner.

Mr. BRITT. That is entirely clear. I had not heard that. I only had reference to his views, as I heard them expressed by him.

The CHAIRMAN. That is what Mr. Pyle read into the record while you were here this morning.

Mr. BRITT. I did not seem to get that.

Mr. PYLE. I will put in no further testimony or cases on this particular point.

The CHAIRMAN. How far do you wish to go this morning, Mr. Pyle?

Mr. PYLE. I can stop at any time. Personally, I might say that I agree with Mr. Wheeler's viewpoint on the discretionary powers.

The CHAIRMAN. You say you do agree with it?

Mr. PYLE. I do agree with it, most emphatically.

The CHAIRMAN. In view of the statements of Mr. Simonton and Mr. Britt?

Mr. PYLE. I do. I think Mr. Wheeler's statement is correct, that the courts are tending at all times to limit the discretionary power of the commissioner.

Mr. SIMONTON. In what cases, Mr. Pyle?

Mr. PYLE. Cases like the Feil Brewing Co. case. That case occurs to me right now.

The CHAIRMAN. That is important, because I have been very much impressed with the statement of the representatives of the bureau with respect to the discretionary power of the commissioner, and if the counsel for the committee has anything to sustain his contrary opinion, we had better hear that at some other time, because that would no doubt be quite lengthy.

Mr. PYLE. I can prepare a brief on this. I have not the references with me. A number of late cases seem to me to tend to limit the discretionary power and make it more a mandatory matter, unless the commissioner can show positive facts.

Mr. BRITT. There is not any doubt but that unless he has facts he can not deny the request.

Mr. PYLE. Positive facts to show that this man is connected with violations of the national prohibition act.

Now, it seems to me, in view of that attitude and Mr. Wheeler's statement of the general tendency on the part of the courts, the bureau is assuming a certain discretionary power in these brewery cases, arbitrarily assuming that for the purpose of presumably a better enforcement of the criminal phases of the prohibition act.

Mr. BRITT. Oh, no; I want to expressly deny that.

Mr. PYLE. Otherwise it is hard to see why, if a man were mixed up in a violation in 1922, his 1925 permit should be revoked, or if he was mixed up in 1922 and had been deprived of his 1924 permit, he would be any more fit to have it in 1925.

The CHAIRMAN. I disagree with counsel on that. I think there are matters of discretion in relation to periods of time. You can not deny a man a right to earn a living because at some previous time he committed a crime. Neither can you say that because you did not think he was competent in 1924 he is not competent in 1925, and that is a good basis of discretion.

Mr. PYLE. As to those who were directly connected with the bribery and had their permits withheld, I believe the Keystone Co. permit was revoked for cause, was it not, after hearing?

Mr. JONES. I think that is so.

Mr. PYLE. For direct violation. The Hazelwood Co. was placed in the hands of the court and the marshal has it in his custody to this day.

Mr. JONES. But they have asked for a 1925 permit nevertheless, and it has been denied them.

Mr. PYLE. Nevertheless they were guilty of actual violations of the law subsequent to this alleged bribery.

Mr. BRITT. There were facts here aside from the others in that case.

Mr. JONES. Additional facts?

Mr. BRITT. Yes.

Mr. PYLE. But the point is that if the bureau has discretionary power they are clearly within their rights in doing this if it has any doubt; but if they have not the discretionary power, then they are imposing a financial loss upon the people who have to deal with the department, because of such arbitrary attitude.

The CHAIRMAN. I hope the department already does have plenty of discretionary power, and I think if at any time an administrative officer abuses that power, the remedy is in the courts, and it is not for a committee of the Senate to settle that question.

Mr. JONES. I think you are exactly right.

Mr. BRITT. I do not want to be understood as saying that he has unlimited discretionary power, and I would not say he has any at all unless he has facts.

Mr. JONES. And let me say that the Volstead Act now contemplates that where a permittee is guilty of bad faith he shall be without a permit for a year. Is not that your understanding, Mr. Pyle?

Mr. PYLE. Yes.

Mr. JONES. If there does not come to the knowledge of the bureau officers in Washington that a violation was committed until some time after it was committed, I think the permittee should be without a permit for a year, just the same as had he been apprehended immediately, and in these cases it did not come to the knowledge of the administrative officers in Washington until some time after the collection of this alleged bribery fund.

The CHAIRMAN. Unless this interpretation of Mr. Jones is correct, there would not be any way in which the bureau could penalize a permittee by withholding a permit for a year if they could keep the knowledge under cover until the year was up.

Mr. JONES. That is exactly so.

The CHAIRMAN. But there must be some time when, in the judgment of the commissioner, they can hold up a permit for a year.

Mr. BRITT. It would have to be well established before he could hold it up at all.

The CHAIRMAN. To-morrow we will resume work with the Income Tax Unit and will let you know when we are ready for you again.

Mr. JONES. Mr. Chairman, in your statement during the earlier part of this hearing, you stated that there were 47 prohibition agents working in your home State of Michigan.

The CHAIRMAN. Thirty-seven.

Mr. JONES. Did you say 37?

The CHAIRMAN. Yes.

Mr. JONES. I find that there are 47 in Michigan as a total, but only 27 enforcement agents, some of the 47 being clerks, one legal adviser, a director and head of an executive division, etc.

Mr. PYLE. Those deductions were made from the figures, Mr. Jones, in determining the number.

Mr. JONES. I thought the chairman was under the impression that there were more enforcement agents in his State than we actually have there, and I simply wanted to correct that.

Mr. PYLE. No; the clerks were deducted from the figures to keep it down to the basis.

The CHAIRMAN. The statement that was submitted to the committee covered all the States, and was headed "Federal agents," and therefore it does not include general agents or clerks, does it?

Mr. PYLE. No, sir; they are excluded.

The CHAIRMAN. We will adjourn until to-morrow morning at 10.30 o'clock.

(Whereupon, at 12.45 o'clock p. m., the committee adjourned until to-morrow, Thursday, February 5, 1925, at 10.30 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

FRIDAY, FEBRUARY 13, 1925

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: Senator Couzens, presiding.

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

Present on behalf of the Prohibition Unit, Bureau of Internal Revenue: Mr. James J. Britt, counsel; Mr. V. Simonton, attorney; Mr. H. W. Orcutt, division of interpretation; Mrs. A. B. Stallings, chief beer and wine section, counsel's office; and Mr. H. B. Deatley, chief nonbeverage section, counsel's office.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. Mr. Chairman, it is my wish this morning to take up certain facts pertaining to the situation in and about the city of Philadelphia, as to the diversion of alcohol, the evidence used coming from the files of the Prohibition Unit, and centering around a certain group known as the "ring" or "clique."

I want to call the attention of the chairman to the fact that I am informed that the Prohibition Unit at the present time is working rather diligently and with some extra effort upon this particular "ring," and that it would be inadvisable if the matters brought out should obtain publicity for some time, as it might embarrass the criminal investigation now in progress.

This clique in Philadelphia, as shown by the files of the Prohibition Unit, centers around certain men who are not permit holders, but who are presumed by the department, from the records that they have placed at our disposal, to be the heads, the leaders of this organization, and they work through a number of plants, the central key plant of the organization being the Consolidated Ethyl Solvents Corporation. In affiliation with that there are a number of other concerns, the Glenwood Distilling Co. being one. The Glenwood Distilling Co. was touched upon once before, though not in detail. Another concern with which they are presumed to be affiliated is the Penn Distilling Co., also of Philadelphia. Then, there are a number of concerns which we have heretofore described as a class as "cover-up" establishments, a cover-up house being a place which takes care of, or supposedly takes care of, the product sold by the denaturing concern, thereby stopping the tracing of the shipment or alleged sale.

The Ethyl Solvents Corporation, being the key of this "ring," I think I should very briefly run over the salient facts.

According to the records furnished to us, this corporation applied for a permit in 1922, the application being issued in July—on July 12, 1922. The officers of that corporation at that time, as shown by the application, were Samuel Ulick, president, Bessie Ulick, vice president, and J. C. Ulick, secretary and treasurer.

The files show that Samuel Ulick, the president at that time, while he had no record of violation on his part, still had a police record in Philadelphia, his picture appearing in the rogues' gallery of that city.

J. C. Ulick, secretary and treasurer, however, at the time the application was filed and the permit was issued, had a record with the Prohibition Unit.

The CHAIRMAN. If you will pardon an interruption at this point, I understand that the contention of the bureau has been that they have been using discretion in granting these permits. Is that right, Mr. Britt?

Mr. BRITT. A limited discretion; yes.

The CHAIRMAN. Do the records show that the bureau had information about the records of these officers of this company at that time?

Mr. PYLE. The records in 1922 do not show that the bureau had, but the records obtained at a later date by an agent do show that. It is shown that they did not dig out those facts until after the permit had been issued.

The CHAIRMAN. There was no record of an investigation being made of the applicants for permit?

Mr. PYLE. I do not find a record, other than the agent's investigation and report.

The CHAIRMAN. Was the report of that agent and his investigation made prior to the granting of a permit?

Mr. PYLE. Yes; it was made prior to the granting of the permit, but the agents call attention to, and they overlook entirely any such criminal record or previous liquor violation record as a part of the history of these applicants.

If I might continue on that same point, J. C. Ulick, secretary and treasurer, had been connected with the Glenwood Distilling Co. some time before this application was made. The Glenwood Distilling Co. had had trouble with the Prohibition Unit, its permit, in fact, having been revoked at one time, but restored by the court. There were several seizures that had been made at that plant. He also had been an officer of the concern known as the Dysul Laboratories, a permittee whose permit was revoked for cause and after a hearing in April, 1922. He was also connected with several other such concerns, as the Atlas Chemical Solvents Corporation and the Industrial Utilities Corporation, which had had some little trouble with the Prohibition Unit—enough to cause a belief that they were not bona fide permittees endeavoring to comply with the provisions of the law.

That was the status of the officers at the time of the issuance of the permit. The agents who investigated them apparently did not dig out those facts, because they first appear in the records in a

report made by Agent Louis Wein some time after the issuance of the permit.

The CHAIRMAN. How soon after the issuance of the permit, do you know?

Mr. PYLE. Mr. Wein's report was made in 1924. This is a copy of the report by Agent Wein.

The CHAIRMAN. Do you want the chairman to understand that it was not until 1924, or approximately two years after the permit was granted, that the bureau ascertained the records of these men?

Mr. PYLE. Apparently. Now, I might outline from my knowledge of the procedure that when an original application for a permit is filed the agents are always assigned to investigate.

The CHAIRMAN. Oh, yes; I understand that.

Mr. PYLE. It apparently was a perfunctory investigation because the records do not show that they found out anything about these people at that time. However, in 1924, Agent Wein, assigned to this company, brings in these facts, which must have been on record and were on record at that time in the Prohibition Unit.

The CHAIRMAN. What were those records that were then on file?

Mr. PYLE. That J. C. Ulick, the secretary and treasurer, had been connected with at least one company whose permit had been revoked but a few months before.

The CHAIRMAN. What I am trying to get at is, When did that information first come to the attention of the bureau?

Mr. PYLE. The first record, I think, is this report of Agent Wein in 1924, in which he reviews the entire history of the Ethyl Solvents Corporation.

The CHAIRMAN. Yes; but you said they must have been in the records. Have you not found out when it first got to the bureau?

Mr. PYLE. The permit was revoked of this Dysul Corporation in April, 1922, three months before the permit was issued to the Ethyl Solvents Corporation, of which he was also named as an officer.

The CHAIRMAN. I see.

Mr. PYLE. The Consolidated Ethyl Solvents Corporation is a denaturing plant. It is not an original distiller. It is a denaturing plant, holding a permit to denature and specially denature alcohol for industrial purposes. The product, according to the report of the agents, seems to be principally completely denatured alcohol. This, again, is sold to several concerns, such as the Standard Sales Co. and the Tobacco Specialty Co., which were what are known in the prohibition service as "cover-up" houses. There were several of those.

The agents in investigating the Ethyl Solvents Corporation have evolved the facts in a very voluminous and very detailed report that there were business and family connections between the people involved in these various concerns, an overlapping and joining, a community of interest in various ways. The report of Agent Wein is very splendid in that respect. It is more or less biographical, going into the family relationships, former business connections and present business connections of the various people interested in the Ethyl Solvents Corporation, and also in the so-called "cover-up" houses.

This concern goes further than the ordinary cover-up system; they have covered up, apparently, even in the purchase of the de-

naturants, so that the records of the denaturants used will tally up with the amount that should properly show, in accordance with the records that they show for their sales. They have carried it clear through, so that a check as to the quantity of the substance used or put out will apparently tally very closely, according to the records, with what they should do. There has never been, apparently, an out-and-out capture of alcohol unlawfully leaving the Consolidated Ethyl Solvents Corporation, but almost every report filed from Philadelphia indicates the impression and belief on the part of the prohibition officers and offices that this company is diverting ethyl alcohol to illegitimate uses. I think there is no question of the department's attitude on that.

The CHAIRMAN. Are these same officers in charge that you mentioned at the beginning?

Mr. PYLE. No. Very shortly after the company obtained the permit changes began to occur with great rapidity in the official personnel. Samuel Ulick resigned as president about a month later——

The CHAIRMAN. A month later than what?

Mr. PYLE. A month after the permit was issued. On August 1, 1922, he resigned, and was succeeded by a man named Feinbert, who, the agents ascertained, was connected with the Atlas Chemical Solvents Corporation under an assumed name. Then he resigned the following spring and Robert J. Alyard was made president.

This man Alyard is a man who formerly was connected with the Blenwood Distilling Co., the Pikeswood Distillery, and the Stewart Distillery. The Pikeswood and the Stewart Distilleries have both been found by the department to be putting out liquor without permits, and I believe a seizure was made. I did not get the exact disposition of that, but they were both in trouble with the department, and compromise offers were made and accepted in the case of those distilleries. As I say, Mr. Alyard was connected with those distilleries.

He became president of this corporation. He held office only a very short time and resigned as president, and then Jacob Katz was made president of the company.

Katz had formerly been connected with the Stewart Distillery Co. He was vice president of that concern and was manager of the Philadelphia branch.

He held office as president of this corporation until he was indicted in April, 1924. He was indicted for his activities and unlawful diversions while connected with the Stewart branch in Philadelphia.

He immediately resigned and was succeeded by a man named Fishbine, who was also connected with the Glenwood Distilling Co.

J. C. Ulick, the secretary and treasurer, resigned just about the time that the permit was issued, and was succeeded by several other people, of whom but little is known, the office ultimately coming into the hands of one Drogan, who was an officer of the Atlas Solvents Corporation; so that so far as the records of the present time show the officers are Fishbine and Drogan. The record is only complete up to the last month or two.

That is the history of the Consolidated Ethyl Solvents Corporation.

The CHAIRMAN. I understand counsel to convey the idea that all of these men have been connected with the companies previously, and that they were in bad with the unit, and that that should have been taken into consideration before a permit was granted, or the permit was allowed to continue. Is that correct?

Mr. PYLE. The records in the files of the unit show that these men were in trouble or under suspicion, under grave suspicion, by the unit. In going over the record that we call "Who's who," prepared by Agent Wein, we find that it discusses these men one at a time and shows their various connections.

The CHAIRMAN. Do I understand that this Consolidated Ethyl Solvents Corporation is still in business?

Mr. PYLE. It is still in business in Philadelphia.

Mr. BRITT. Before you leave that, I should like to make a statement about it, Mr. Pyle.

The CHAIRMAN. At no time has the permit been canceled?

Mr. PYLE. So far as I find, the permit has not been revoked, and I do not find that there was a hearing ever held on this permit.

Is that correct, Mr. Britt?

Mr. BRITT. No. Action has been taken; but by intervention of the court and its order the permit was continued.

The CHAIRMAN. When was that, Mr. Britt?

Mr. BRITT. Last fall or last summer. By the action of the court, it was continued. The case is under surveillance now. Many of the violations which Mr. Pyle has narrated have certainly occurred, and perhaps all of them. I do not know what the original investigation showed. I do know that it is not an uncommon thing for there to be unfavorable disclosures as to the fitness or character of a permittee after a permit has been granted. If they had been known at the time the permit was applied for the permit would not have been granted. It is easy to say that is due to an insufficient inquiry. In some instances that is probably true, but in a case of such shrewdness and of so many ramifications as the one which Mr. Pyle has outlined it is not always possible to get all the information about the character of the men.

In this particular case what seemed to be the enormity of their illicit operations, although still legally undisclosed, was brought to my attention, and I personally advised agents physically to place themselves in position, if possible, actually to see the unlawful removals, about which so much was said, and about which so many suspicions were entertained; but as yet the inquiry is not sufficiently complete for legal action. At this time we have under way a number of plans for the circumvention of this concern which it would not be appropriate for me to detail here, but which I have good reason to believe will result, in the language of the street, in "landing" them.

There is no doubt of the alleged enormity of their schemes and plans and if as reported they deserve to be caught, and I believe they will be as the result of present plans.

I thought the court should not have interfered, but it did. I thought it should have sustained the department, but that is a matter about which I refrain from comment.

The CHAIRMAN. On what grounds did you cancel the permit?

Mr. SIMONTON. The permit was not canceled. The quantity was reduced. In an effort to cut them down to somewhere where we would have some control over them, we arbitrarily determined, on the reports and the situation presented, to reduce the quantity.

The CHAIRMAN. In other words, you reached the conclusion that while this concern might legally have, for example, 10,000 gallons a month, they were not competent to have 20,000 gallons.

Mr. SIMONTON. No, sir.

The CHAIRMAN. On what basis did you determine that they might have a permit for one quantity and not have a permit for another quantity?

Mr. SIMONTON. Simply to reduce them within the proportions. We knew they were crooks; we were morally certain that they were crooks, but we did not have legal evidence, and so as not to furnish them with an opportunity to violate the law we tried to bring them down to something that would be nearer a legitimate business, as legitimate businesses are running in that jurisdiction. We did not have the evidence, and they went into court, and the court simply ordered us to restore it.

The CHAIRMAN. You say you knew they were crooks. Did you know it when you granted the permit?

Mr. SIMONTON. No, sir. The evidence here shows that we did not.

The CHAIRMAN. Apparently the evidence was obtainable, was it not? At least, it is to be supposed that it was when their pictures were in the rogues' gallery.

Mr. SIMONTON. Yes; obtainable just as it was obtainable in other cases, but it did not happen to be obtained in this case then, Senator.

The CHAIRMAN. What was the volume that they were permitted to denature when you attempted to reduce the quantity?

Mr. SIMONTON. I can not give you that offhand, Mr. Chairman. We received 15 minutes' notice before 10 o'clock this morning that this case was coming up, and all I could do was to grab a few facts and prepare to come up here.

The CHAIRMAN. In that connection let me say that I am not inclined to criticize you for not having the facts here, and you will have plenty of opportunity to put in the facts later on if you have not them now.

Mr. SIMONTON. Yes; I have not the facts here as to that quantity. The quantity was reduced, I know, quite considerably, and the court here in the District ordered us to restore it to them after the representation of the facts that we had in our possession.

The CHAIRMAN. I have been trying to make up my mind as to just what the difference would be, in effect, whether you attempted to cancel the permit or whether you attempted to reduce the amount.

Mr. BRITT. May I say on that point, Mr. Chairman, that there are cases where, from the circumstances, we are confident morally, but not confident legally, of large illegal operations? They, of course, should be circumvented, brought to light, and punished. It is not always practicable, or even possible, to do it, but wherever it seems that from all the circumstances they could carry on the legal business with a less quantity, although we do not have the direct legal information upon which to make the reduction, we do, in cases like that, sometimes make a reduction. Whether it is a wise thing I do not know, but we do it, and we do it in the interest of enforcement.

We are conscious of irregularities, but we do not have legal proof enough either to revoke the permit or to prosecute them.

The CHAIRMAN. Can you tell us what percentage of cases you are successful of getting away with the reduction in?

Mr. BRITT. In a very large majority of the cases in which the unit makes reductions the reductions stand.

The CHAIRMAN. In such case the permittee accedes to your judgment as to the quantity?

Mr. BRITT. Yes; he either accepts our judgment or makes no further resistance.

The CHAIRMAN. Now, that is interesting——

Mr. BRITT. But do not misunderstand me, Mr. Chairman. In the great majority of cases we do not act upon mere circumstances. We have satisfactory proof that there is no necessity for the amount and cut it down on such proofs. Oftentimes there is an admission. For instance, we say:

> The law does give you the right to withdraw all the denatured alcohol that you can legitimately use in a lawful industry. Now, show us legitimate orders; show us the extent of your trade.

Oftentimes they can not do it and admit that it is only a prospective or contingent business, and there is no further resistance made. But we reduce them. However, if they show bona fide orders the amount is not reduced, and it should not be reduced if they actually need it and use it for lawful purposes, and we are as careful not to interfere with their legal rights as we try to interfere with their illegal operations.

Mr. SIMONTON. I might say, Mr. Chairman, that my attention has just been drawn by Mr. Deatley to the report dated January 28, 1925, in regard to this particular case, in which we have some specific evidence, and he understands that a citation is about to be issued, or has been issued, in Philadelphia on this corporation. I do not know whether you think this information——

Mr. PYLE. Under what date is that?

Mr. BRITT. Permit me to say that we would prefer not to have that in the record. We have inquiry plans, and if these things should get into the press it would anticipate——

The CHAIRMAN. I would like to have that go in, but we will not expose this to the press until you are ready to release it.

Mr. BRITT. Thank you, Mr. Chairman.

Mr. PYLE. The agents do work on this plan to try to catch the alcohol leaving the plant, to try to catch the permittee violating the provisions, and especially where he is suspected of putting out hundreds of thousands of barrels of alcohol. It seems to me that the way to catch that man is not to work on his record, but to catch the alcohol leaving the plant.

The CHAIRMAN. I would like to get the personnel of these concerns cleaned up. It appears that for some time since the permit was issued the bureau has been in possession of information that these officers were not proper characters to have a permit. Now, that effort has been made to cancel that permit, because of the company being officered by improper persons?

Mr. BRITT. So far as I know, Mr. Chairman, no effort has been made to cancel the permit because of the personnel.

As I said at a former hearing, the commissioner exercises a degree of discretionary power to prevent their having a permit originally, but in a case like this after a permit had been granted, and the disclosures relate merely to a question of repatation, particularly if the charges were not flagrant, we would not feel justified in attacking the permit after it was once granted.

I would also say here that inspections at this time and for the last year or two have been much more rigid than in the beginning. Sometimes the inspections are repeated three, four, or five times to determine certain things before we grant a permit, and officers are enjoined, very much after the manner of the suggestion of the counsel, to furnish a biographical account of the liquor operations of the applicant and all of the ramifications of his operations, his kinfolk, and his connections, as well as his financial relations. I think I might say that we carry that as far as our instrumentalities will allow, but we do not always find it all, and I wish not to be understood as saying so. We do not make any failure in this respect a ground of attacking the permit after it has been granted unless there is something else with it; but if there is a citation issued the former bad character is considered.

The CHAIRMAN. When the Consolidated Ethyl Solvents Corporation got a court order compelling the bureau to continue their permit for the same quantity, what was the reason given by the court?

Mr. BRITT. A bill was filed in the usual way and answer was made by the unit, or possibly by the district attorney, in which all the available defenses were set up. I have not a copy of the answer and do not know all that was put in.

The CHAIRMAN. I do not mean the answer to your complaint. I can see what that would be; but what was the court's ruling?

Mr. BRITT. Mr. Simonton will state that.

Mr. SIMONTON. I can give you that.

Mr. BRITT. Yes.

Mr. SIMONTON. This case followed the line of a decision in a previous case, the case of the Atlas Chemical Co.

In that case the court decided that we had not sufficient grounds to reduce, but did give us the privilege, upon our pointing to the statute, of making the complainant show cause for his need, and the same kind of an order had been issued, I was told just before I came up here, in this Solvents Co. case. In other words, they are now in process of demonstrating to the permit division that they have need for this amount that they have been deprived of.

The CHAIRMAN. Do I understand from that that the court concedes from the mere fact that it permitted that evidence to be put in there that you have authority to limit the quantiy?

Mr. SIMONTON. Here was the situation, if I may explain it a little more in detail:

Under regulations 61 the company is given a permit, and then the quantity that he may receive is based upon the amount of bond. If it is a $50,000 bond, he would get so much, and so on up to the $100,000 bond. This company has a $100,000 bond. The regulations provided that they were entitled to so much, and so, when we cut it down, we had no authority under the regulations as they then existed to do that, but when they went into court there has always

been a contention that there are two titles to the law. Title III deals only with industrial alcohol in denaturing plants, and Title II deals with liquors in general.

Mr. BRITT. Spirituous liquors?

Mr. SIMONTON. Spirituous liquors and liquors of all kinds. The contention we made was that Title II, relating to these industrial plants, was such that we had a right to cut them down.

Section 6, Title II, reads:

> Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used.

The court held that they must obtain a permit to purchase a certain quantity, and they must demonstrate their need for it. So that, despite the fact that they filed a $100,000 bond, they must now come in and show us before we restore them to the quantity that they were entitled to receive for their needs. In other words, they were required to file contracts and orders and show their business.

The CHAIRMAN. In other words, then, it is a question of establishing the fact?

Mr. SIMONTON. Exactly. It is just the same as if you were to go to a bank to borrow money. You would have to show your business, etc. That is the situation they are in now.

The CHAIRMAN. Then, the officials of the bureau have entire discretion as to whether they believe these facts or not?

Mr. SIMONTON. Not entire discretion; no, sir. They have a right to pass on the fact.

The CHAIRMAN. Well, I say they have entire discretion as to whether they believe it or not?

Mr. BRITT. They try the facts; yes, sir.

The CHAIRMAN. Yes.

Mr. BRITT. They are the triers of the facts.

The CHAIRMAN. And you decide whether you believe the facts as submitted or not, and if you abuse that discretion, of course, they have a right of court action?

Mr. SIMONTON. Yes.

Mr. PYLE. In that case you call on the bonding company?

Mr. SIMONTON. Yes.

Mr. PYLE. What is the purpose of that bond, and what is its effect?

Mr. SIMONTON. The purpose of the bond is twofold. One is to cover the tax if there is a diversion, and also to cover the forfeiture provision of the law where a man forfeits his bond.

Mr. PYLE. To what extent are those forfeiture provisions carried out?

Mr. BRITT. The forfeiture provisions are carried out, or attempted to be carried out, in two ways. The Attorney General held that permittee bonds were forfeiture bonds—that is, a former Attorney General, Attorney General Palmer—and that they were suable for the face value or penal sum.

Mr. PYLE. That is, in case of a violation.

Mr. BRITT. That is in case of a violation. That has reference, of course, to violations of the national prohibition act and not to make good a tax. That was a very extraordinary holding, and no court has yet concurred in it. It has not as yet been passed upon by the

Supreme Court and its ultimate legality is doubted. The Prohibition Unit has not fully administered upon that idea, for the reason that if it had it would probably not have recovered anything at all in most cases, for they challenge a demand for the full penal sum of the bond, and the department is then called upon to make proof. Counsel will no doubt realize how difficult it is to establish legal proof of diversions in the bulk of these instances. So, under this assessment-tax penalty provision, as has been discussed here, the entire civil liability of the permittee is brought into question, and if all the civil liability can be put under the head of a tax assessment, then the adjustment is made in that way. That would settle the whole liability; but if before or contemporaneously with it the Department of Justice, through its district attorneys, puts the bond in suit in court with any reasonable chance of recovery, that is another method by which the liability may be satisfied in its civil aspect: but in practice, the great bulk of the adjustments have been through the compromising of the civil liability, including everything, or through the adjustment by the assessments which I have previously described.

Mr. PYLE. There is no penalty liability on that bond, then?

Mr. BRITT. No; not after the adjustment.

Mr. PYLE. For that whole thing?

Mr. BRITT. That is the civil liability only.

Mr. PYLE. It is simply protecting the Government in the tax penalty features?

Mr. BRITT. That requires this qualification, Mr. Pyle: If a permittee gives a bond, say, of $10,000, and is guilty of a criminal violation and is indicted and prosecuted in the courts and a fine should be imposed, that fine would be, of course, payable out of the penal sum on this bond, if it were not otherwise paid, and there is, under the procedure, no discharge of the bond under the head of civil liability until the criminal action is finally disposed of, for the reason that the court may want to avail of the penal sum of the bond in the settlement of the penalty which it imposes. For that reason we withhold civil settlement until the criminal adjustment is made.

The CHAIRMAN. Do your records show that all of these assessments have been collected from the principal or the bondsman?

Mr. BRITT. They show that the major part of them has been collected from the principal, but in some instances they have been collected from the surety bond.

The CHAIRMAN. Are these bonds usually surety-company bonds?

Mr. BRITT. Yes; they are surety bonds.

The CHAIRMAN. In all cases?

Mr. BRITT. Yes, sir.

The CHAIRMAN. There are no personal bonds?

Mr. BRITT. But few. The permittee gives the surety company collateral.

The CHAIRMAN. Yes.

Mr. BRITT. The bulk of them are surety bonds.

The CHAIRMAN. I just want to get this straight: If a principal violates the law where there is no tax involved, is the responsibility of the bondsman limited to the fine that may be imposed in a criminal case?

Mr. BRITT. No; it is not. The civil liability and the criminal liability are distinguished in law, or we endeavor to distinguish them by construction, and do distinguish them in practice.

The CHAIRMAN. I know, but what does the bond provide with respect to criminal violations where there is no civil liability?

Mr. BRITT. The bond is conditioned upon keeping the law and regulations under the national prohibition act.

The CHAIRMAN. When they fail to do that, how is the liability of the bondsman arrived at?

Mr. BRITT. As I said, it is not always a liability that can be reduced to a tax. We reduce it to a tax assessment where we can, and we settle it in that way; but if the case is carried into court by the district attorney, where the permittee is sued on his bond, then the court settles it after the manner either of a forfeiture bond—which plan, as I have said, has not been very successful—or on the question of damage to the Government. The court does that in its discretion.

The CHAIRMAN. Then the court does fix the damage to the Government in that specific case?

Mr. BRITT. Yes.

Mr. PYLE. In the case of a brewery, say, you caught one truck load of beer, the penalty other than the criminal fine that may be imposed for the criminal action would be only the tax on the barrels that actually left?

Mr. BRITT. Almost that, with this qualification: Formerly an effort was made to establish like conditions of a day for a previous period or for all the previous period. But that, of course, could not be legally established, and at the present time the assessments are limited to the civil liability for which the Government has a prima facie case. That, of course, would limit it to what is actually removed on that date.

Mr. SIMONTON. Provided, of course, that the court holds it to be a damage bond.

Mr. BRITT. Yes; and, as I have said, we administer the law in most of these cases simply as if they were damage bonds; but in one instance, in Pittsburgh, as I recall now, the court put it upon the basis of a forfeiture bond and settled by requiring the penalty paid according to the face value of the bond; but that mode is not general.

Mr. PYLE. Now, to continue my discussion of the Consolidated Ethyl Solvents Corporation, the agents did make efforts, apparently, to catch the alcohol being diverted from this plant.

On July 26, 1924, there is a report showing that several agents endeavored with an automobile to seize a truck leaving that place, when another truck colluded with their car, putting it out of commission, and the truck got away.

Another truck was followed, but got to a cover-up house; but there was no clear-cut case, apparently, up to the time that this report was prepared, which was about two months ago, in which they had caught this concern violating, though you say subsequently there has been one?

Mr. BRITT. Yes, sir.

The CHAIRMAN. With reference to these cover-up houses, as I understand the testimony in the past, it indicates that you have no authority to search or to go into those so-called cover-up houses?

Mr. BRITT. No; no authority.

The CHAIRMAN. Does the Cramton bill give you such authority?

Mr. BRITT. It does not.

The CHAIRMAN. Is there any constitutional way that you might get that authority?

Mr. BRITT. I think there is; but there is not at present any statutory authority.

The CHAIRMAN. Why has not that been taken care of in the Cramton bill?

Mr. BRITT. That would have to be addressed to the promoters of the bill. I could not answer.

The CHAIRMAN. Well, I understand that; but I understand that you are the promoters of the bill.

Mr. BRITT. No, sir.

The CHAIRMAN. Or at least your superior officers, the Anti-Saloon League, are the promoters of the bill.

Mr. BRITT. Well, the Anti-Saloon League is not the superior officer of the Treasury Department or of the Prohibition Unit, Mr. Chairman.

The CHAIRMAN. Well, they work in such close cooperation: at least I am informed by Mr. Wheeler that it is practically the same, so far as their activities are concerned. Of course, it is not the same so far as the law is concerned.

Mr. BRITT. They do work in cooperation, of course, the end being the same—that of law enforcement.

The CHAIRMAN. Yes; I understand that, and I am not making this statement——

Mr. BRITT. I understand.

The CHAIRMAN. I am not out of sympathy with it at all. I am in sympathy with strict law enforcement; but I wondered why, in view of the great stress laid upon cover-up houses, no attempt has been made to get them out of existence or to catch them by statute.

Mr. BRITT. I have often expressed the opinion, and to many persons, that we had no such authority, and that it is greatly needed; and I think it would be constitutional to enact such a statute, for the reason that they have received into their keeping articles the principal ingredient of which is liquor—a controllable commodity under the national prohibition act.

The CHAIRMAN. Well, is it too late to get that into the Cramton bill, do you think?

Mr. BRITT. It should not be too late, I should think, Mr. Chairman.

Mr. SIMONTON. May I say, Mr. Chairman, that I have the understanding from rumor only that it was deliberately avoided, the putting of constructive legislation of that kind in the Cramton bill, because they only wanted to deal with that one subject in that bill—the transfer of the enforcement from the persons in the bureau over to some one else—and they did not want to bring up any collateral issues that might delay or interfere with that main purpose. That is my understanding, by rumor, as to why there is not anything but the transfer in that bill.

Mr. BRITT. The object is to create a bureau of prohibition and not to change the personnel.

Mr. SIMONTON. Yes; and not to change the law under this bill except to transfer it over to the prohibition bureau.

The CHAIRMAN. The Cramton bill provides for the employees of the bureau to be placed under the civil service and the transfer of authority to the Commissioner of Prohibition, instead of being in the Commissioner of Internal Revenue.

Mr. SIMONTON. I might say in regard to your suggestion about the cover-up houses, that in the narcotic service—and I have had some personal experience with that and know something about how it works out—there is the same difficulty there. It is eliminated by making the first cover-up house come under the law, and you have got to make all of the agents that handle the article clear down to the consumer subject to the law.

For instance, I will illustrate it to you.

We will find six registered wholesale dealers in narcotics, all of whom are entitled to do business. McKesson & Robbins, a big concern in New York, dealing in narcotics, will sell narcotics to the first one, and they will pass on down until they get to the sixth man, who will probably be the bootlegger. He is registered, though, and is entitled to do business; we have his record; he is found all right, and he has paid his license tax.

The CHAIRMAN. What check do you have on this sixth man?

Mr. SIMONTON. We have just as much check on the sixth man as we have on the first man. We go in and investigate his business and see what he has done with his drugs. That is the way it turns out, but unless we get a tip as to the activities of this particular man and go after him we fail to get him for the reason that we will start with McKesson & Robbins, and we will trace a large sale, say, to John Smith. As soon as you reach John Smith's place of business he will tell the last man that we are on his trail, and the last man will disappear if he has not already disappeared; so that unless the case comes up from the bootleggers' sale on the market or on the street, direct from this last house, they have that scheme all perfected in the narcotic service to defeat our investigations.

In the prohibition service we can not go beyond the man who actually manufactures the article. As soon as he passes it to one we are through. If we put that one man under the law that would not be enough. We would have to put a half dozen of them until you finally get down to the retailer.

Mr. BRITT. There would be no necessity of limiting it to the first purchaser.

The CHAIRMAN. Yes; but it has not worked in the case of narcotics, has it?

Mr. SIMONTON. It has to that extent, when you catch the narcotic bootlegger selling it, and you can trace him right to the man who was bootlegging it, then you catch him.

Mr. BRITT. But the difference is that in the case of narcotics we are dealing with a very dangerous and powerful agency in an exceedingly small compass and easily concealable on the person, while in the other we are dealing with a large and bulky material, the presence of which is more easily discovered.

I think, Mr. Chairman, if we had legislation by which the right of visitation and inquiry were allowed at all stages of an article into which liquors, including both alcohol and ordinary spirituous

liquors, entered under a formula authorized by the Bureau of Internal Revenue, it would be one of the most powerful aids to law enforcement of which I can conceive, at least among the things that have come to my mind.

Mr. PYLE. Would it be oppressive?

Mr. BRITT. No; not necessarily.

Mr. PYLE. Then you would say that in the case of a patent medicine containing 12 per cent alcohol you would give agents the right to go into any drug store or pharmacy where that is sold and take samples of it?

Mr. BRITT. Of course, there must be probable cause for any action that interferes with the business of a citizen. There is no intelligent official that will act without it. He will make inquiries or ask questions, but he does not carry it to the point of interfering with the business of citizens without proof, but if he has proof he will, because he has a right to interfere, and as all citizens may expect their business to be interfered with if they violate the laws.

I think it need not be oppressive, but that would depend upon the character of the agents who administered it.

Take the matter of oleomargarine. There have been inquiries that have gone very far. It has all the incidence of an internal revenue taxable article, taxed so much, and is fully subject to inquiry, so much so that I think at the present time it is under good control, both as to sanitation and as to tax.

Mr. PYLE. In this matter of diversion of denatured alcohol, it would not be necessary to follow that or to worry about it if the storekeeper gauger was honestly performing his duty, would it?

Mr. BRITT. No, sir. You are talking now about the withdrawal from the denaturing plant?

Mr. PYLE. Totally denatured.

Mr. BRITT. If the storekeeper-gauger were intelligent and honest, so far as the withdrawal from the denaturing plant for distribution is concerned, there would be no trouble about it at all, but there may be much trouble thereafter in the use of it after it is withdrawn from the denaturing plant to the user, since when the user is manufacturing and there is no storekeeper-gauger at the manufacturer's plant.

Mr. PYLE. But in the case of totally denatured alcohol, that would not make any difference?

Mr. BRITT. No.

Mr. PYLE. In the case of specially denatured alcohol you could follow that until it is actually made up into its ultimate commodity, could you?

Mr. BRITT. We can inspect the business of the manufacturer, because he is a permittee, but we have no officers stationed there.

Mr. PYLE. But under the present law you can, as a matter of fact, follow your specially denatured alcohol to the perfume manufacturer, the hair-tonic manufacturer, or whoever is supposed to put it into his product?

Mr. BRITT. Yes; to the user.

The CHAIRMAN. You say you can do that?

Mr. BRITT. We can follow it into the place of business of the manufacturer, where he has a permit, but we do not have anyone

in the capacity of a storekeeper-gauger there. However, we have the right of visitation.

Here is a case that actually occurred: A seemingly well-equipped house, with a seemingly well-vouched-for personnel, gets a permit to manufacture about half a dozen articles. Their books are examined, and are perfectly regular on their face. Their manufacturing stock is examined, in so far as it is in the place, and it exactly corresponds with the books. Everything is seemingly perfectly regular. The business is large. They say they have a purchaser to order, giving the name, which we call a cover-up house, and they deliver it to it in trucks. It receives it, and fictitious truck receipts are given. We are not allowed to visit the cover-up house at all, but we find that they had nothing more than a one-room office, with a girl sitting in the office once in a while and a man that came there occasionally. We made a request for the right to enter, but we never got it at any time. They ultimately stoutly refused it. In the meantime this concern was prodding the unit with the ablest counsel that could be obtained for a continuation of the alcohol allowed and for more, and with the statement that "We intend to increase our demands, and you will have to stand and deliver, for the reason that you have not shown anything irregular"; and in fact, legally speaking, we had not.

I think, according to the best information that I could get, hundreds of thousands of gallons, or a hundred thousand gallons or more, of alcohol got out in that way.

If we could have gone through this cover-up place, we would have established the fact whether any went there, although the indications were that none had gone. Then we would have drawn the permittee himself to the proof. The legal burden then would devolve upon him to show what he did with it. He could not have done it and we would have had him.

The CHAIRMAN. Did you attempt to follow any of those truckloads of stuff that went to this place?

Mr. BRITT. We attempted to see the removal by the truck, but we never saw it. We then attempted to ascertain whether there had been any general distribution from this cover-up house. We could get no information of any distribution from it at all.

The CHAIRMAN. I do not see why you could not find where this stuff was going to when it was being taken out of the plant.

Mr. BRITT. We tried to catch them making the physical removal.

The CHAIRMAN. No attempt was made in this case?

Mr. BRITT. Many efforts were made to catch them.

Mr. SIMONTON. We have records of officers being around the plant for days, and just as soon as they go away, or at night, something slips out.

Mr. PYLE. Are they prohibition agents?

Mr. SIMONTON. Yes; prohibition agents.

Mr. PYLE. Were they there only in the daytime?

Mr. SIMONTON. Three or four days in a good watching place, and at night.

Mr. PYLE. Didn't you say that as soon as they are taken off it gets out?

Mr. SIMONTON. Yes.

Mr. PYLE. Could not you arrange to keep them there at all times?

Mr. SIMONTON. Yes; if we had a large enough force to keep agents on there. We, of course, could do it then, but if they are there for a week or 10 days, and there is nothing doing, they have other work to do and they go away and the stuff gets out. Some of it is apprehended, of course; some of it is caught; but with the forces that we have we can not keep a man there all the time.

By the way, I would like to say that there is one other thing that I have not mentioned in connection with the detection of the narcotic service.

They have statistical machines through which they run a lot of cards, reports of sales, and as the curve of legitimate sales goes up in the community—for instance, we will take Newark, N. J.—you will suddenly see that curve of sales rise through the operation of this statistical machine, which segregates these cards and throws them into certain batches. Then they throw agents out into that section to detect why that is so; although that is a legitimate market, it is an indication of a bootleg market. I can give you an illustration where, if there are a half dozen men, the sixth man would be a bootlegger in New Jersey, and the curve of legitimate sales would begin to rise on the seaports, so we would throw our men into that jurisdiction, but we would not have to do that if we could get reports from these cover-up houses.

Mr. PYLE. That same situation would not be true in the case of alcohol, would it? When these diversions are being made, most of them are not shown as legitimate sales, in any way?

Mr. SIMONTON. I say, if we had control over these cover-up houses——

Mr. PYLE. Oh, if you followed them through——

Mr. SIMONTON (continuing). And we made them report what they did with their article; we would soon see the curve going out in certain localities as it did in the narcotics.

Mr. BRITT. I think the amendment of the law should be to the effect that there should be no place of original withdrawal without the presence of the necessary number of officers at the place to prevent diversions.

Mr. PYLE. You have that now, have you not?

Mr. BRITT. Yes, sir. And there should be authority for the right of inspection all the way to the ultimate consumer of the article.

The CHAIRMAN. In other words, you could follow hair tonic right to my home, then, and investigate the use of it?

Mr. BRITT. It would not mean that in practice, but it would in theory, yes. It would not mean that in actual practice, though.

Mr. SIMONTON. Only to the retailer.

Mr. BRITT. Only to the retailer. No; I would not say, Mr. Chairman, that it should provide for any such thing as interfering with the ordinary affairs of life. I think that is not the function of government and that laws ought not to contemplate it and that administration ought not to reach that far, but there should be a sufficient authority to carry inspection as far as is necessary to enforce the laws of the country, whatever it is.

The CHAIRMAN. That reminds me of an editorial which has been handed to me from the Washington Post this morning. I will not

take the time to read all of it. It is headed "Anti-industrial Volsteadism," and I will quote this:

> The eighteenth amendment, which is the sole authority of the Volstead Act, speaks most explicitly of alcoholic compounds used "for beverage purposes." What, then, is the prohibition agent to do with alcohol not used for beverage purposes? There is a pretense that it is necessary for them to supervise that also, because some of it is diverted from industrial to bibulous purposes. It is possible that, as Mr. Crounse, the representative of the National Wholesale Druggists' Association, concedes, "an infinitesimal proportion" is thus misused.

In reading that over it has occurred to me to ask you why that part of it could not be retained in the Bureau of Internal Revenue and the prohibitory features or the police work be done in the Department of Justice?

Mr. BRITT. That question is being much discussed, Mr. Chairman, at this time. I can give you my views about it in a few words.

The difficulty arises from the fact that people who write as that editorial is written and think, as many persons think who have raised the question, believe that there is a definite line of demarkation between the use of alcohol for industrial purposes and its possible use for intoxicating purposes or bootlegger purposes. There is no definite line of demarkation. There is in practice no way of separating the sheep from the goats or the violators from the nonviolators. In many instances there are large concerns which would not risk a dollar of their investments by violating the law or permitting it to be violated, even if they did not have moral scruples, but their subordinates and employees, often unknown to them, are carrying on illicit operations with liquor all the while. There are other large concerns—certainly concerns of large interest—where it would seem to the ordinary business man that, with all morals and obedience to law aside, it would be to their interest not to violate the law or permit it to be violated, yet wherein it has been ascertained as a fact that the business was projected for that purpose and it is conducted upon that aim.

Now, if we could devise some means of separating the lawful use of alcohol from its unlawful use, in my judgment, there could be no greater aid to enforcement, for it is unfortunate that honest business men, who run their business on an honest scale and with honest motives, must be subject to all the inquiries and investigations to which they must now be subjected in order to enforce the law, because we can not tell the intent of men's minds, nor can anyone tell what is being carried on with their knowledge or without it.

The CHAIRMAN. When I was mayor of Detroit, for example, I issued permits to near-beer saloons; I issued permits to dance halls; I issued permits to billiard rooms under proper ordinances. That matter was then turned over to the department of police, and the department of police saw that those places obeyed the law. In other words, it went out of my hands entirely to the department of the police to see that these licensees, which in the case of near beer would be permittees, obeyed the law and acted in accordance with the terms of the permit. For their failure to do that they could be prosecuted.

Now, I can not see for the life of me why you can not issue permits and notify the Department of Justice, which would correspond to the department of police in the case of a city, that the permits

had been issued to those institutions. That would put the Department of Justice on guard by notifying them that the permits were issued to those particular places. Then it would be their responsibility to see that the law and the terms of the permits are lived up to.

It seems to me that it is divided into two very different groups of activities.

The other day I saw an editorial to the effect that it was time that the Prohibition Unit was turned into a police department so that they could enforce the law the same as the police department was required to enforce the law, and I am impressed with the idea that the Prohibition Unit should be a police department, because a large part, if not all, of their activities are confined to the policing business. You certainly can not complete your efforts by confining it to the prohibition end of the law.

Mr. BRITT. The end sought is, of course, enforcement.

The CHAIRMAN. Yes; and I can not conceive of why that part should not be distinct from the permissive feature of it. In other words, in local and State governments it is clearly defined that administrative officers may grant permits and licenses for certain purposes, and that the department of police or the State constabulary will enforce the law under which these people operate. Then you have a third division in connection with that law, the courts, to sue for settlement when charges are made, and I can not see why there should be any difference in this case as compared with other activities.

Mr. BRITT. That is an important consideration and a natural conclusion, but I think it omits to take into the equation a very important factor, and that is the tremendous amount of business which is wholly administrative, but, at the same time, has an enforcement side, such as the authorization of manufacture and supervision of the making of more than 100,000,000 proof gallons of alcohol annually.

The CHAIRMAN. Yes; I understand, Mr. Britt; you are just dealing with it because of the size of it, rather than the principle of the thing. In other words, you have the theory that because the size is large therefore the principle does not apply.

Mr. BRITT. Violations against the police law arise from this manufacture and supervision of which I have spoken, and knowledge of the one is a knowledge of the other, and knowledge of the first is necessary to a knowledge of the second.

The CHAIRMAN. That is applicable in the case that I have just described with regard to the State or local government. Those same conditions apply exactly. The law-enforcing officials are notified that these permits and licenses have been issued, and they are put on notice to see that the laws are enforced. Now, the bureau, under the eighteenth amendment, might properly notify the Department of Justice that permits have been issued, and they should then see that the law is enforced.

Mr. BRITT. Suppose the Department of Justice had the administration of the police feature of the national prohibition act, which is the principal feature of it, because, of course, that is the end of the whole thing ultimately, and in its effort to enforce the police part of it it desires to control, by suggestion if not otherwise, the antecedent steps as to the bonding, warehousing, and distribution by permit, and controlling the amount distributed and to whom distributed.

Do I understand the chairman to say that this should be a matter for the police department, as incidental to law enforcement?

The CHAIRMAN. That is probably true; but assuming that in the administration of the permit section of the eighteenth amendment you would say to the Department of Justice, "We have an application for a permit from John Jones; we have the discretionary power as to whether we shall issue it or not. Can you relate any reasons why we should not grant the permit"? That would be just exactly the same as a governor or mayor does when an applicant makes application for a license for any purpose. He may, if in doubt, ask the department of police or the State constabulary if they know of any reasons why this license or permit should not be granted, and he gets that same information. Now, if you should grant a permit, in spite of the advice of the Department of Justice, the department is still on notice, and more vigorous efforts could be made to see that that permittee or licensee does obey the law. That is the way it operates everywhere else.

Mr. BRITT. As it seems to me, the difference is this: Ordinarily a department of the Government that has the administrative function, say the Post Office Department, does not attempt to police its own department. It administers and makes inquiries and furnishes the results of its findings to the Department of Justice, which performs the judicial part of it. The reason that could not be in the case of prohibition, as I conceive it, is because the problem is so large and the element dealt with is so much more tempting to violators that it places it without the ordinary purview of violations against Federal authority and sets it apart as a distinct problem.

Mr. SIMONTON. Mr. Chairman, I have heard that matter discussed for years from another angle. I might say that I was connected for quite a number of years with the foods and drugs act enforcement. That began in 1906. Since that law was enacted we have had the narcotics law, the 8-hour law, the grain standards, the cotton futures act, the ships' stores, and the packers' laws. There are a great many others, of course, one of which is the law pertaining to forest reserves. Of course, they could be placed with the Department of Justice, just as stated, but where there are regulatory statutes regulating the legitimate business, it has been the policy of the Government to place them in the department t··t has to do with that business.

Now, that may be a wrong policy from the viewpoint of some people, but that has been the established policy since 1906, I know.

The CHAIRMAN. I am not arguing with that at all, but I am of the opinion that many of those activities to which you have referred, if not all, may be segregated on the same theory that I have suggested that the prohibition feature may be segregated on.

To make it explicit, no chief of police or head of the State constabulary would take his staff and say, "You are to go to this billiard hall to see that they close down at the proper hour, that they do not let minors patronize it"; and then say to another man, "You are to go to this billiard hall to see that they do not sell liquor and to see that they do not handle drugs," and then to send another class of officers to that same identical place to see that some other statute or ordinance was obeyed.

Now, I believe the Department of Justice could be so organized that you would not have four or five officers going to the same identical place to see whether a particular feature of the law was being enforced. Take the narcotic agents, who go around to drug stores and doctors to see whether the law is being obeyed, and then another set of officers going around to see whether prohibition is being enforced. I do not understand why the same officer could not see whether both features of the law are being enforced. Certainly, in the police department of a city they do not have separate groups going around to see that each specific law is being enforced. A man in the police department is supposed to know all of the laws that he has to enforce, and in the course of his activities he is charged with responsibility of catching violators of the laws. His activities are not confined to detecting only one violation of the law but all of them. I have grave doubts as to the wisdom of this policy, and I have grave doubts as to the future if we are going to be constantly having Federal laws, as, for example, that proposed in the child labor amendment, which puts the Federal Government in the States as police authority.

Mr. BRITT. If we ultimately get the State authorities and the county and city authorities to that state of interest in this problem that I think they will come to, that will be in the direction of the chairman's suggestion. They will apply a part of their police operations to prohibition law enforcement.

The CHAIRMAN. I think that should be, but we now have Federal police in practice.

Mr. SIMONTON. The arguments that you have advanced and have been advancing, are worthy of consideration, and have been considered for years. It is just a question of the legislative policy as to what Congress wants to do.

The CHAIRMAN. Yes.

Mr. SIMONTON. But there are arguments, certainly, in favor of what you say.

Mr. BRITT. I think too much stress can not be laid on this idea, which I try to reiterate daily, that we can never depend upon the Federal authorities to enforce the prohibition laws; that to do so would take $100,000,000, in my judgment, and 100,000 men; so we must look to the State and municipal authorities for the major part of it. That ought to be patent to everybody. While we have to have the Federal forces, I think we shall also have to have the others. I think for general purposes, supervisory purposes, and exemplary purposes, the ultimate end of enforcement, in its grave aspects, has to be done by the State authorities; so that everything ought to be directed, I agree fully with the view of the chairman, toward cooperation with the States and cities. There will be ultimately that complete prohibition which I am expecting to come. I have perfect faith in it myself, and always have had. I am not disappointed at the results up to this date; I did not expect them to be much better than they have been; but there will be ultimately complete prohibition—that is, as complete as other laws are enforced—but this enforcement in the last analysis must come in large part through the State authorities, and it can not come in any other way.

The CHAIRMAN. Mr. Britt, can you see any objection to the same Federal agents doing the narcotic work and doing the prohibition work on liquor?

Mr. BRITT. Yes, I do, Mr. Chairman, for the reason that experience has shown that narcotic work requires specialization that the officers who administer the narcotic laws require special training, technical training, and I think the results are very much better since they have gone alone in that enforcement. I did not agree with that view at first. Originally, I thought it was better to let the two officers go together and do the whole work.

The CHAIRMAN. Have you any reason to advance for the fact that the Federal judiciary seems to have reached the unanimous conclusion that the enforcement features of this law should be in the Department of Justice?

Mr. BRITT. Well, Mr. Chairman, they have not reached that view as a unanimous conclusion by a great deal. There has been a suggestion to that effect. It was expressed by a very large and respectable body of the judiciary, but it does not include the entire judiciary. I can understand it as being the judicial view for the reason that the judge on the bench thinks only of cases as they come into his court, and not a great deal of their background, and naturally he could believe that the Department of Justice, which is the agency with which he deals, would be the better agency for enforcement. My own view is that that is not correct. I am prepared to give instances; at least I could give instances in refutation of that. I once had the same idea myself, but I do not incline that way now.

The CHAIRMAN. You can not enforce the law without the Department of Justice, can you?

Mr. BRITT. Oh, no.

The CHAIRMAN. You can not even get your complaints into court without the Department of Justice?

Mr. BRITT. No; we can not.

The CHAIRMAN. So that really, in effect, now the Department of Justice is the law-enforcing department of the Government, is it not?

Mr. BRITT. It is not doing anything more in the enforcement of prohibition than it is in the enforcement of any other law.

The CHAIRMAN. Oh, no; that is not the case, because in the enforcement of other laws they are charged with the responsibility of initiating it.

Mr. BRITT. No, Mr. Chairman, they are not charged with the enforcement of any other law any more than they are charged with the enforcement of this law. They have the judiciary and an investigating body, and they work through these.

The CHAIRMAN. But as to narcotics and prohibition enforcement, the responsibility is placed on you or your department, is it not?

Mr. BRITT. Just as it is in the Post Office Department by the inspectors and in the Agricultural Department and other departments, where the inspectors and officers of the department make the findings and report them to the Department of Justice, precisely as the prohibition agents do here.

The CHAIRMAN. I understand that; but I mean there are laws in regard to which the responsibility for initiating the complaint is with the Department of Justice?

Mr. BRITT. Oh, yes.

Mr. SIMONTON. Where the law absolutely forbids the doing of some thing, without regard to any legitimate use for it; for instance, section 240 of the Criminal Code, where labeling is required. That, for instance, is entirely within the Department of Justice and is investigated by the Department of Justice.

The CHAIRMAN. And are there not a lot of other cases?

Mr. SIMONTON. Yes, sir; where there is no regulatory statute connected with it.

The CHAIRMAN. For instance, there are some statutes dealing with corporations, violations of which have to be investigated by the Department of Justice to ascertain whether there are any violations of the antitrust law or any acts committed in restraint of trade, and yet the corporations are regulated by State charters.

Mr. SIMONTON. The State corporations; yes, sir.

The CHAIRMAN. There the Department of Justice gets its investigating authority, just as we do here.

Mr. PYLE. I believe in the police work the ultimate way to control the practice is to catch the permittee in such violations, and that depends upon the police power, and it does not matter who exercises it. In Pennsylvania a great many breweries have had their permits revoked by the activities of the State police, having no connection with the Government officials. The same thing is true of city officials in dealing with druggists in the unlawful sale of intoxicating liquors, and it does not embarrass the administration of the permit law. There is no direct connection between the two, providing the information is available each to the other. If a man charged with the issuing of a permit knows that the city police got this particular druggist for selling liquor unlawfully on a certain date, that is just as efficient for his purposes as if he had been there himself and had seen it.

In the matter of the State police acting in connection with a brewery or distillery, it is just as efficient; the information is what is needed. One real, substantial way to control it is to grasp them right in the act of violating the law. I concede that the criminal penalties are not severe enough to deter them in a great many cases; but, nevertheless, if you can catch this alcohol leaving the plants, such as in the case of this Solvents Corporation, you have a number of possible remedies, in addition to revocation and tax proceedings. You have criminal action and you have conspiracy action, covering heavier penalties. You also have an injunction against the property in many cases and the absolute destruction of the implements and equipment of the plant.

Mr. BRITT. But the difficulty with that is that you are enforcing the law for the entire country, with varying penalties imposed throughout the States, and in some of the States, and particularly in some localities, there is no penalty imposed at all.

Mr. PYLE. I understand; but that is going to be unified as time goes on. That argument was made before one of the committees of the House, I believe, that in some jurisdictions there was almost no administration of the law, but it was a personal matter with the judge; that the point of view of one judge as to what is a severe penalty and what would be a light penalty would be entirely different from that of another judge; but the maximum sentence as pro-

vided by law was, of course, inadequate to deter the man who was thinking in terms of hundreds of thousands of dollars profit.

Mr. BRITT. But you must keep in mind that it is the Constitution that we are enforcing, and the Constitution itself imposes the duty upon both the authorities, and there can never be any change of constitutional policy unless the Constitution itself is changed, which will probably never be, and it contemplates an enforcing by the Federal and State agents both, and you can never do away with either. My point is that the Federal forces must continue and will always continue, but in the end, on account of locality, the great bulk of the duty of enforcement will devolve upon the State police.

The CHAIRMAN. Has the Prohibition Unit had any relations or controversy with the Law Enforcement League of Philadelphia?

Mr. BRITT. Some time ago there was a deal of correspondence between the Law Enforcement League of the city of Philadelphia and the Prohibition Commissioner, some of the correspondence being directed to the Secretary and some to the Commissioner of Internal Revenue, the bulk of it finally landing with the Prohibition Commissioner. The point in controversy seemed to be that the Good Government League made a demand for the enforcement of law—all laws—and complained that the Federal authorities did not enforce the prohibition law, its complaint being against both the Treasury Department and the Department of Justice.

Considerable correspondence was had. Most of it for the Treasury Department was drafted by me. The correspondence lacked in directness, as I thought, but in each instance the league was told of the efforts being made. It was stated that the efforts were not satisfactory, but seemed to be the best that could be done under the circumstances. Finally the league had some difference among its own members, among the controlling parties, and that seemed to put an end to the discussion on the part of the league. It came to the Department of Justice and presented its evidence, which it thought inculpatory of the acts of the Prohibition Unit, and the Attorney General held that it was insufficient, that it dealt in suspicions and rumors, and the matter ended in that way, as I understand.

The CHAIRMAN. In a communication which the chairman received from the Law Enforcement League, dated February 10, they enumerate a number of things which they think the committee might do which would enlighten the committee. The committee has not found it necessary to subpœna any individual or any papers, because I believe the cooperation between the unit and the committee has been satisfactory, so far as I know, and I have not heard of any disposition on the part of the unit to withhold information.

Has any such thing come to your attention as that, Mr. Pyle?

Mr. PYLE. No; they have been very courteous.

The CHAIRMAN. I wonder what they mean, then, by suggesting that we subpœna Mr. Blair's letter file for August and September, 1923, and also the letter file of Mr. Roy A. Haynes for the same months. I mention this because I thought perhaps the bureau would feel that there was something in there that ought to come before the committee or would know whether there was anything that would further the ends of our investigation?

Mr. BRITT. Of course, I will tell the committee what I know and ascertain for it what it wants that I do not know, if I can.

The controversy had its inception with a public discussion between the Governor of Pennsylvania and the Secretary in regard to prohibition which you no doubt saw in the press. The letters that went from the Secretary on the subject—and I am mentioning this because they are finally connected with the Good Government League of Philadelphia—were drafted in the Prohibition Unit by me, and later the correspondence was switched to the Good Government League of Philadelphia, it seemingly taking up the contentions of the governor as reflected to me. Then the correspondence which went from the Prohibition Unit, over the signature of Mr. Haynes, was drafted by me, so far as I know, and that which went from Commissioner Blair also. I do not say that all the letters were drafted by me. I would not know about that, but I mean the ones that involved the main points. They were told that the State of Pennsylvania and the city of Philadelphia were entitled to know what the department was doing. The department was endeavoring to show what it was doing, and thought it was making its best efforts and that it would do anything it could to help in the premises.

Following this the Good Government League of Philadelphia demanded that we give them authority to inspect all breweries at any hour of the day or night.

In drafting the correspondence I looked into the law and gave all the authority that the law gave. We did not have any authority to give, and when I say "give" we simply indicated what they could do under the statutes. The Prohibition Unit could not cite laws other than those that were on the statute books and suggested that the governor and the State police could inspect at any time when our officers could, which I held to be at all times when they were in operation.

Then the correspondence turned upon the fact that we ought to make it unlimited. We could not make it unlimited, for to do so would be for us to so construe the law that they could go into a brewery at any hour of the day or night, which they could not do, and then the Good Government League of Philadelphia made the same request in almost every particular.

The CHAIRMAN. In other words, as I understand this matter, as it has been presented, it was an argument between the governor and the Secretary of the Treasury.

Mr. BRITT. Yes, sir; it took up the same line. It did not take it up very far, but the line was practically the same.

The CHAIRMAN. I just wanted to get a line on what the merit of it was, in substance?

Mr. BRITT. The correspondence, so far as it relates to the Prohibition Unit, with which I am familiar, will be at your disposal if you wish it. I know nothing about the other correspondence.

The CHAIRMAN. Have you any other case this morning, Mr. Pyle?

Mr. PYLE. I would like to finish up on this case of the Consolidated Ethyl Solvents Corporation.

It seems that in the summer of 1924 there were some bribery cases made against a man named Schwartz, who is named as one of the four at the head of this ring in the report of the agents, and it

was the general impression of the department, I believe, from the correspondence, that Schwartz, Lazar, Feuerstein, and Huff were the four men who were really at the head of this ring. This man Schwartz paid to Agent Carter a bribe of $1,000 in 1923.

Mr. SIMONTON. What is Schwartz's connection with the case of the Consolidated Ethyl Solvents Corporation?

Mr. PYLE. He has no paper connection with the Ethyl Solvents Corporation. He is in the conspiracy case, and is reported by Agent Wein as one of the heads of the organization.

Now, at a later date Agent Wein reports a later proceeding in the bribery case in which he was approached by this man Feuerstein, I believe. The man approached him and offered him $2,500 per week if he would lay off the Consolidated Ethyl Solvents Corporation. Agent Wein, in a rather lengthy report, states that he refused this bribe. He was then offered $10,000 in cash and $20,000 more to be held in escrow by anyone that he should indicate if this concern should not be cited within 60 days for revocation, which he also reported to the proper officers. He states that he was offered $30,000 in cash if his report would be so modified that it would not get the Consolidated Ethyl Solvents Corporation into any particular trouble.

Mr. Wein, at that time, according to his reports, put a higher figure, not dreaming that they would reach it, of $50,000, and this representative from the Consolidated Ethyl Solvents Corporation agreed to the $50,000 demand, with certain modifications, to the effect that if the report was turned in so that it could not harm the company they would pay the $50,000; that duplicate reports were to be made, and he was to let them see the injurious report and then the mild report, which would go in, all of which was reported in writing by Agent Wein to his superior officers.

Now, I do not find that this matter was taken up criminally. That may be in the pending case that you are working up, but this happened in the summer of 1923.

Mr. BRITT. He was nominally connected with the distillery, you say?

Mr. PYLE. At that time he made an offer for the distillery.

The CHAIRMAN. Do you say that this Agent Wein is still an employee?

Mr. PYLE. He is still an employee, stationed in Chicago, I believe, or in some western city. He is still in the service.

Now, in spite of that fact, it seems that there has been an unusual delay. There may be some reason for it that does not appear in the records. There has been delay in both the criminal action on this bribery case, or conspiracy action, according to the very voluminous report that he has presented, and in the permit matter.

In the first place, in the enforcement end, it strikes me that with the number of agents available in Philadelphia, with a concern of this consequence operating for over two years, the department could have concentrated enough to have caught that outfit violating the law; but that is a matter that no one can tell except the man on the ground.

Mr. BRITT. Precisely.

Mr. PYLE. But it has gone on, at any rate. As Mr. Simonton said, the department was morally certain of the violations, but the

violations were not discovered by the agents sent out there, or at least they were not reported.

Mr. SIMONTON. Until recently?

Mr. PYLE. Until very recently. This corporation has had a permit all of this time. The department has not even been able to reduce it, the court holding that they could not reduce it. There has not been any criminal action against anybody in connection with this concern.

It seems to me that that supports the contention of the chairman, as previously made, that concerns of this size should be the paramount concern of the Prohibition Unit, and that men should be taken off from other places and smaller transactions and thrown onto concerns like these if they have to sit there day and night to prevent violations. Personally, I do not favor a day and night guard. I believe if you want to catch a concern cheating the best way is to lay under concealment.

Mr. BRITT. Of course, you can not do it regularly or systematically, but you defeat your purpose. You must do it unawares to them.

The CHAIRMAN. I think you could still put men on there who would be continuous in their observation.

Mr. BRITT. You mean to regularly assign officers to the place?

The CHAIRMAN. Oh, no; not regular assignments, but changes frequent enough so as not to let them become too well known. I have been connected with police work long enough to know that it is easy enough to catch somebody if you start out to catch him.

Mr. PYLE. I do not know whether there is any reason for the delay in these matters, Mr. Britt.

Mr. BRITT. Yes; in concerns like this, where, as Mr. Simonton says, it is apparent what they are doing, if you have a slight case, enough maybe to revoke the permit, and you open up all of your facts, you may get the permit revoked. That is a good deal, but you ought to be able to fasten criminal acts, and civil liability, and it is better to strengthen such cases.

The CHAIRMAN. I know, but this case seems to have taken place two years ago.

Mr. BRITT. Well, that is unfortunate. There are other considerations, of course, but that is no excuse for taking so great a length of time; but when you go into a court you have to have a rock-ribbed and air-tight case.

Mr. SIMONTON. You have to have a rock-ribbed case.

The CHAIRMAN. In other words, a concern might make a great fortune in two years while you were getting a rock-ribbed case ready.

Mr. PYLE. Here is something I can not prove, but I think it should be stated that this ring that centers around this concern is the biggest ring in Philadelphia in unlawful diversions, and Philadelphia is considered to be the worst city in the United States for unlawful diversions of alcohol. I have that from Mr. Jones. Brooklyn runs a close second.

The CHAIRMAN. When these four men that counsel has referred to were reported to the bureau in these reports, did they solicit cooperation of the Department of Justice in trying to get a case of conspiracy?

Mr. BRITT. The reports themselves go, and then there is a conference between the officers and the district attorneys, and often between the unit and the department proper, to try to work up and bolster and strengthen the conspiracy case.

The CHAIRMAN. Is there any effort being made to complete a conspiracy case with respect to these four men involved?

Mr. BRITT. I do not know about the specific efforts in that case, Mr. Chairman. I am satisfied that there are efforts being made, but I do not have knowledge of them.

Mr. SIMONTON. I happen to recognize the names of two of these men, Feuerstein and Lazar. There is a curious coincidence in that connection in this recent decision in the Ma-King Products Co. case, where the department refused a permit because they were associated with bootleggers—that is, Feuerstein and Lazar. Those are two of the names, and that was the reason why we refused to give them a permit.

Mr. PYLE. They were associated in business at that time.

Mr. SIMONTON. They were associated in a building and loan association, all of those men, and among them were Feurstein and Lazar, and on that basis the department refused the permit.

Mr. BRITT. And the court upheld it.

The CHAIRMAN. That indicates a very large discretionary power, then, does it not?

Mr. SIMONTON. Yes, indeed.

Mr. BRITT. In the discussion of the discretionary power in this very recent decision of the Circuit Court of Appeals for the Third Circuit, in the case of the Ma-King Products Co. *vs.* Blair., just rendered, the court goes very far to uphold the discretionary power of the commissioner in those cases fully as far as I contended for the other day.

I have a copy of that opinion here, and if you wish to have it go into the record, I will be very glad to put it in.

The CHAIRMAN. I would like to have it in the record.

Mr. BRITT. Yes.

The CHAIRMAN. It may be attached to the record as an exhibit.

(A copy of the opinion in the case of the Ma-King Products Co. *v.* David H. Blair, Commissioner of Internal Revenue, is as follows:)

In the United States Circuit Court of Appeals for the Third Circuit. October term, 1924. No. 3254. Ma-King Products Co., appellant, *v.* David H. Blair, Commissioner of Internal Revenue, appellee. Appeal from the District Court of the United States for the Western District of Pennsylvania. Before Buffington and Wooley, circuit judges, and Bodine, district judge

Buffington, circuit judge: In the court below the Ma-King Products Co., a corporate citizen of New Jersey, filed a bill in equity against David H. Blair, Commissioner of Internal Revenue. It alleged it had duly made application, accompanied by proper bond, to said commissioner for a permit to operate an alcohol denaturing plant; that under the law he was empowered and authorized to grant such permit, but he had "arbitrarily, illegally, and without any reason or warant in law or in fact" disapproved the application and refused to issue the permit. The bill prayed the court to revoke the finding and disapproval of the commissioner and order him to decree that he approve and grant the permit prayed for. Traversing the foregoing allegation of arbitrary and illegal conduct, the commissioner made answer and further set forth that "as the result of an investigation conducted by respondent's agents, is informed that Harry J. Bogash and Joseph H. Klutsch, respectively, president and secretary-treasurer of the petitioning company, are not individually or

as officers of said petitioner, entitled to be entrusted with a permit of the nature and kind set forth in said bill of compaint, or any other permit under the provisions of the national prohibition act, and that therefore your respondent, upon said information, acted under full warrant of law and fact in disapproving the application of the petitioning company and declining and refusing to issue the permit prayed for by the petitioners."

Testimony was taken by both sides and the case heard by Judges Thomson and Schoomaker, of the western district of Pennsylvania, who concurred that there was nothing in the record to justify them "in finding that the Commissioner of Internal Revenue, in refusing the application of the plaintiff for the permit for the establishment of a denaturing plant, abused the wide discretion vested in him by the act of Congress." From a decree dismissing the bill this appeal is taken.

After an examination of the proofs in the case we are of the opinion the associations and business connections of Bogash and Klutsch, the principal officers of this company, were such that the commissioner had ample ground for declining to issue the company the permit. The holder of such a permit is intrusted by the Government with a power which subjects him to the approaches and bribes of lawbreakers and where, as in this case, the business associations of applicants have been with men whose conduct has already invited prohibition prosecutions against them, it goes without saying that the commissioner would have been derelict in duty in granting them a permit.

But the appellants raise the further question that the commissioner has no discretionary power, but his duty is mandatory to issue a permit. The controlling statutory law is plain. A brief reference to the pertinent parts shows the groundlessness of such contention. Section 6, Title II, of the national prohibition act provides:

"No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do."

And—

"In the event of the refusal of the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof."

That section provides:

"The manufacturer may yet appropriate proceeding in a court of equity, have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant."

The last phase, "as the facts and law of the case may warrant," shows that Congress meant the commissioner was to have not the mere mandatory clerical duty of signing a permit but the discretionary and responsible one of considering facts and law before he determined whether he would permit manufacture. If issue of the permit were mandatory on the commissioner, why give the court jurisdiction to "affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant"?

That the court was empowered to review the "findings of the commissioner" and was given power to affirm, modify, or reverse such finding, shows that what the commissioner was to do was not the perfunctory signing of a formal permit but the responsible duty of determining whether this high permissive privilege and permit should be issued to an applicant.

So holding, this appeal is dismissed at appellant's costs, and as the act provides for affirmative action by the court, the mandate will direct that there be added to the decree below dismissing the bill these words: "and the finding of the commissioner is affirmed."

Mr. BRITT. In the same connection, the chairman asked the other day if there had been specific request by the Department of Justice through its district attorneys for assistance in pleas, etc., in various cases. I have brought a list containing such requests for the record, if you desire it, and more can be obtained, if you wish them.

The CHAIRMAN. To simplify the matter, can not the bureau abstract those?

Mr. BRITT. I would be glad to do it.

The CHAIRMAN. I think those are official documents, are they not?

Mr. BRITT. They are official documents.

The CHAIRMAN. If you will abstract them and put the abstracts into the record, instead of all of that, that will be preferable.

Mr. BRITT. We will have that done, and put others with them.

The CHAIRMAN. Is there anything more, Mr. Pyle?

Mr. PYLE. I have some other matters that can be presented; but they are different; they branch off on different lines.

The CHAIRMAN. What is the character of them and what are the names of them?

Mr. PYLE. I would like to touch on the Glenwood Distilling Co. a little bit and on the Penn Distilling Co., which are affiliated, or are presumed to be controlled by this same organization. The operations are more or less similar.

The CHAIRMAN. The point you attempt to establish is the lack of action on the part of the bureau; is that it?

Mr. PYLE. Not necessarily lack of action. The case of the Glenwood Distilling Co. would practically show a lack of power on the part of the unit, and the case of the Penn Distilling Co. brings up an interesting feature of the disappearance of a large seizure made by prohibition officers.

Mr. SIMONTON. I understand not as a fact, though.

Mr. BRITT. That has been investigated by the Philadelphia office.

Mr. PYLE. Has that been located?

Mr. SIMONTON. It has been condemned under order of the court.

Mr. PYLE. That was settled recently, was it?

Mr. BRITT. Yes.

Mr. SIMONTON. They found the alcohol under label in some cars. It was connected up with the Penn Distilling Co. and libels were filed, and it was ordered destroyed by the court, so that there was no disappearance at all. It was just a mix up, because it was not identified with that particular case.

Mr. PYLE. I would prefer not to present anything further, at this time, then, until I see Mr. Davis and talk the matter over with him.

Mr. BRITT. May I make a suggestion before you close, in the interest of expedition? We have over 400,000 files in the unit. Of course, any and all of them are at your disposal; but we could serve you better if we could have a little longer notice and could bring with us the officer most familiar with the case. He could familiarize himself with it and be prepared to answer your questions more readily than when we have just a few minutes' notice. As it is, we do not know much more about the immediate case than we do about cases generally, but if we could have a little more notice we could expedite the work of the committee.

The CHAIRMAN. I am sorry about that and I assume all responsibility for it. It was due to the fact that our hearings in connection with the Income Tax Unit finished rather abruptly yesterday, but still we wanted to proceed as far as we could with our investigations.

I think we had better adjourn now, subject to call. When counsel wants to take up the next case we will try to give you sufficient notice.

Mr. BRITT. We are not complaining at all.

(Whereupon, at 12.30 o'clock p. m., the committee adjourned, subject to the call of the chair.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

WEDNESDAY, FEBRUARY 25, 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: Senator Couzens, presiding.

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

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

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. At your suggestion, Mr. Chairman, I have outlined a brief summary or résumé of the matters covered, and have tried to arrange them in such order as would give the connection between the various points heretofore made.

The eighteenth amendment by its terms places upon the Federal Government and the various States jointly the power of enforcing the spirit and provisions of the amendment.

Congress thereafter passed the act known as the national prohibition act, which was passed for the purpose of giving express provisions, criminal and civil, for carrying into effect, so far as Congress was concerned, the provisions of the eighteenth amendment. However, the debate, as shown by the Congressional Record at the time of the passage, shows that there was a spirit and idea in Congress that the United States should not, by virtue of that act, assume the duty of policing the United States, but, rather, through a permit sytem to control the importation, the production, and distribution of intoxicating liquors and see that they are kept in legitimate channels.

Pursuant to that, a rather elaborate permit system was evolved in the law. In that act, as has been brought out here before, the administration of this law was placed upon the Commissioner of Internal Revenue as the administering agent of the Government, and provided that he might appoint certain agents and assistants as he saw fit to assist him in carrying out the act, providing him with both the power and the appropriation to do so. It further provided that he should delegate any of his authority that he might see fit to any of these assistants selected by him.

Pursuant to that authority, the Prohibition Commissioner's office was created, with his various assistants, and through him and under him the unit known as the Prohibition Unit.

In that unit we find several branches and subdivisions; the executive branch consisting of the commissioner, the assistant commissioner, the various executive heads in charge of the issuance of permits and matters of that sort, and the legal staff, together with all of the necessary clerical help. That unit functions principally right here in Washington, D. C.

Then, there is the general agent's force functioning under the commissioner, through the chief of the general agents—a force of some six hundred men at the present time, who work on matters of enforcement for the most part; that is, criminal enforcement, investigating and apprehending violations of the crimina. phases of the law. They are distributed, as has been shown, all over the United States, in the same territory which is covered by the other agents, known as the Federal agents, who work under the directors of the various States. These directors are also a creature of regulation within the department, rather than being a legal creation, and they are provided in the various States with the executive machinery and the machinery for handling permits and doing the field work of the Prohibition Unit. They generally have, or very often have, a legal department within their unit, as well as the clerical help.

The work of these general agents has been done, not in connection with the Federal agents for the most part, but entirely independently, one force being used as a check upon the other.

Now, the general agents were originally created for certain classes of work, the sources of supply, checking distilleries and breweries, the larger work, though, at the present time, they are doing substantially the same type of work as the Federal agents; in some States exactly the same, and they are also used in many instances to recheck the work of the Federal agents. This has been done in some cases, I know. I have had directors complain to me of the fact that when their men made an inspection, within a short time the general agents followed right over and reinspected the same establishment.

It would seem that the theory behind all of this is a suspicion of the directors' forces. It may or may not be well founded. There have been some most unfortunate experiences with State directors, in some of the States, there having been a number of indictments and a number of removals for cause of the State directors, and a great many among their agents; nevertheless, it would scarcely seem a wise administrative measure to entirely duplicate the work of the agents under the Federal directors, because of a suspicion of their work. It would seem as though a removal would be the proper thing if the department did not have confidence in their work.

However, whatever the cause is, it is a well-known fact that the general agents, in a great many cases, go over the same work that is already done by the Federal agents. That causes a duplication of work, each not knowing what the other is doing, and that necessarily means that they may be working on the same case. It may also mean a gap, because each thinks that the other is looking after certain features of the work. There is the matter of the duplication of rents in many cities, such as New York, Philadelphia, Pittsburgh, and Chicago. Those places come to my mind now. The Government maintains two separate and distinct offices there for prohibi-

tion enforcement, neither of which has any real connection with the other, each working independently of the other, without a common head, except the commissioner, who is in Washington. On the ground, there is no common head.

Now, it may be due to the type of agents employed in these places that it is considered that a checking and watch is needed upon them. There has been a great deal said and a great deal written derogatory to the type of prohibition agents now engaged in the work of enforcing the national prohibition act.

My attention has been called to a rather scathing attack, published last October in the organ of the Sigma Delta Kappa legal fraternity, written by Mr. Pagan, special assistant to the United States Attorney General, and a man who has been connected with that office for a great many years, in which, after making some rather laudatory statements regarding the various inspectors of the Government, post-office inspectors, internal-revenue inspectors, Treasury secret-service operatives, and employees of the Department of Justice in the making of investigations, and commending them for the excellence of their work and cooperation with the district attorneys, he then goes on to say:

But national prohibition has lately brought into the field an entirely different class of men. Not a few of the honest ones are inclined to be fanatics and to indulge the belief that the prohibition amendment is the keystone of the Constitution, that the Volstead Act leads all other laws in the book, and that because of the holiness of their vocation their commissions constitute formal indulgences and dispensations in the matters of breaking laws themselves and treading upon the liberty, privacy, and personal safety of citizens who come within the range of their suspicions and pistols. They exhibit a fine scorn for the rules of evidence and dispute with lawyers points of settled law concerning which they have no more knowledge than so many jack rabbits. Heaven, to them, is a place where one can wallow in inquisitorial proceedings in connection with the enforcement of sumptuary laws. They see nothing amiss in enforcing a law intended to prevent the use of liquor for beverage purposes in such a way as to prevent its use for proper nonbeverage purposes. They hate to have it used for any purpose.

That is rather a bitter attack upon the honest, conscientious agents from a man high in the Department of Justice.

I think, from my observation, he has correctly described a few agents, a few of the more zealous, the overzealous agents, but not the class.

Mr. Pagan goes on and discusses the dishonest agent in a most vindictive way, and says:

The dishonest prohibition-enforcement officers—and there is no doubt of their existence in the service, and that in greater proportion to the honest ones than has ever before been experienced in any service—are a conscienceless, lying, fly-by-night, whisky-drinking, hijacking, bribe-taking, and all-round burglarious and piratical class, with no sense of responsibility or pride of office, making no distinction between whisky and money, satisfied with either, or, more properly, both, and, outside of this, anxious only to get some whisky or to get something "on" somebody so as to invite a bribe, or at least get undeserved credit for being fearless, zealous, and efficient. It is not surprising, therefore, that statistics show that a great proportion of these cases dumped upon prosecuting attorneys by such agents are not fit for grand jury consideration, and that an unusually large proportion of these cases prosecuted, as compared with other cases prosecuted, result in acquittals. It is said that the best way to stop a policeman is to drop one of the bottles, but one bottle will never stop one of the prohibition agents belonging to the class here considered. He has use for all of them.

I think that attack is bitter and is uncalled for, but there may be a few, and I believe there are a few agents who get into the service and who do not remain in long who are pretty nearly as described in that second portion of the article by Mr. Pagan.

The CHAIRMAN. Have you had any personal experience with the form of complaint made by these agents to the district attorneys?

Mr. PYLE. Yes, sir; a great deal.

The CHAIRMAN. What has your experience been in that connection?

Mr. PYLE. Generally, it will be a matter of this sort: The case arises from seizure or from discoveries upon search warrant, for the most part. Occasionally a conspiracy case is worked out entirely upon documentary evidence. If the matter is on seizure, the customary manner to get in is by the purchase of liquor. For instance, if you have reason to believe that a man—I will give you a concrete example, in the case of Henry Ormann, of Pittsburgh—his place was known in Pittsburgh as a place where you could buy good liquor, and he was supposed to have a quantity of it. Two very clever agents went there and persuaded him that they were old friends of his, that they knew him for a long while, and ultimately persuaded him to sell them a bottle of liquor. Thereupon the agents went to the United States commissioner, in consultation with the United States attorney, and procured a search warrant for the premises on which they purchased the liquor.

The United States attorney generally approves the matter as being legal up to that point. The search warrant is issued and served by the agents. The man is arrested, a complaint being filed for possession and sale. The case then comes to the district attorney, who thereafter files an information against this defendant. The case then comes up for trial on the evidence of the sale; in the case of a bottle, as in this case, it is labeled and actually produced before a jury, and in the case of possession it is upon the seizures made.

In that case it was some 15 or 20 barrels of liquor. That is the simplest form of a buy and raid case.

Another form is the seizure——

The CHAIRMAN. Just a minute. You are getting away from what I want. Is such a case a properly presented case?

Mr. PYLE. I should say that is a proper case, without any legal flaws.

The CHAIRMAN. But I am not asking you that. I am asking you if you know anything about the kind of complaints that the writer of that article, Mr. Pagan, is making about the prohibition agents, not about the ones that are properly presented, but those that are improperly presented.

Mr. PYLE. I misunderstood your question. I understood the chairman to ask about the general form of complaints made as to agents.

The CHAIRMAN. No; I asked if you had any experience in connection with such matters as Mr. Pagan writes about.

Mr. PYLE. Yes. This comes up in the matter of getting search warrants upon information, and then in various ways with an agent, until he has been in the service long enough to learn the obstacles in connection with obtaining search warrants and ascertaining the proof which he must be able to show he is inclined to warrant a search

warrant upon strong suspicion. That idea even goes up to some of them who fill fairly responsible positions, and they will ask for search warrants; they will say, "I went into a saloon and bought a glass of beer." "How do you know it was beer?" "Well, I could tell by the taste." Now, the district attorneys know from their experience that that is very faulty, because you can not always tell by the taste. They will demand an analysis of the beer, which can not be made, because it has been consumed. That generally creates friction. I was guilty of that mistake in my early days myself. I was sure it was beer, and I thought the district attorney should issue me a warrant. We had a considerable discussion over it. Later on in my experience I found that I could be very easily fooled, because it was very difficult sometimes to distinguish between beer and near beer.

The CHAIRMAN. Do these agents take any complaints to the United States attorney or the United States commissioner that they get without search warrants?

Mr. PYLE. They do.

The CHAIRMAN. Do they take any complaints to the United States commissioner or district attorney in which they have secured no search warrant?

Mr. PYLE. It often happens that a seizure or arrest is made without any warrant. The common law only gave an officer the right to seize and arrest in the case of a crime committed in his presence, which the courts have construed, in the case of liquor, to mean that which can be detected by his senses—smell, sight, or hearing.

It often happens that an officer going past a garage will smell the fumes of distillation coming from the garage through an open door, and he will go in and make a seizure at that time and bring the case. In some courts they will hold that that is proper, and in some courts they will hold that it is improper.

An agent may be working in a territory where the court has allowed that and then be transferred to another territory where the court refuses to accept that as legal. He will immediately have an argument with the district attorney, and there is nothing that makes the district attorney so angry as to have an agent argue with him that they do this over there, when he has probably had that up before with his own court and could not get it.

Most of these complaints that come in are on good legal grounds, but some of them are very trivial.

Another example of a seizure without a warrant is in the case of transportation in a vehicle. In the district here, the court holds, I believe, that the agent must see the liquor and must know that it is in the truck.

In the western district of Pennsylvania the courts hold that if the agent has reasonable grounds to believe that there is liquor in there, he may seize it. In some jurisdictions the court holds that he must not only know it is there, but he must then get a search warrant for the moving vehicle.

That makes for confusion there. Agents going from place to place will violate the constitutional rights of the citizens, as interpreted by the courts of the various jurisdictions, and they are inclined, having put it over in one place, to fight with the district attorney if he will not O. K. that procedure in another jurisdiction.

The CHAIRMAN. In view of all of these varying decisions by the different courts, is it your opinion that Congress could pass a statute which would unify the rule?

Mr. PYLE. I think the rule will ultimately be unified itself, as some of these cases go to the higher courts. The rule will then become unified. At present I know of no case of, say, transportation, that has been definitely settled by a higher court.

Mr. SIMONTON. What about the Milam case in the circuit court of appeals, fourth circuit?

Mr. PYLE. I am not familiar with that case.

Mr. SIMONTON. That was a case in which they defended that proposition for at least one circuit. In that case the agents had information that liquor was brought in an automobile down a roadway, and they suspected this car of containing it. They entered the car and found Chinamen, and no liquor at all. The circuit court of appeals stated that it was a perfectly proper search.

Mr. PYLE. The circuit court of what circuit?

Mr. SIMONTON. The fourth circuit, Milam *v.* United States.

The CHAIRMAN. Mr. Simonton, is there any rule which binds these circuit courts to uniformity, having been passed upon by the Supreme Court?

Mr. SIMONTON. No, sir; the circuit court itself binds its district courts.

The CHAIRMAN. I understand that, but we are trying to get a national decision.

Mr. SIMONTON. I will establish it to you in a minute. If that case goes to the Supreme Court, that becomes national.

The CHAIRMAN. Has any gone to the Supreme Court to make this rule national?

Mr. SIMONTON. Not in the matter of transportation, as yet.

The CHAIRMAN. Has any gone there on any other form of search and seizure?

Mr. SIMONTON. Under the national prohibition act?

The CHAIRMAN. Yes; that is what we are discussing.

Mr. SIMONTON. No; there is not any that has gone there on the national prohibition act involving search and seizure.

The CHAIRMAN. Well, is it not desirable, from the viewpoint of the Prohibition Unit, to have uniformity in the enforcement of the Federal laws with regard to search and seizure?

Mr. SIMONTON. Certainly, sir.

The CHAIRMAN. What effort has been made to get that?

Mr. SIMONTON. Of course, that has to come up just as it comes up under any other statute, by interpretation of the courts.

The CHAIRMAN. I understand that, but what attempt has been made by the Prohibition Unit to have the courts establish such uniformity?

Mr. SIMONTON. Of course, those cases are taken up by the Department of Justice, wherever the decision is against the Government, to the circuit court of appeals, and then on up, as the law would seem to justify the action. Of course, when the case is taken up by the defendant we have no control over it, except to meet it as it goes up. That is the history of the interpretation of all legislation.

The CHAIRMAN. I understand, but where the circuit courts have failed to sustain the unit, or where the courts have failed to sustain

the defendant, has any case of that kind come before the Supreme Court?

Mr. BRITT. On that point, Mr. Chairman, answering your first general question as to the efforts of the Prohibition Unit to get uniformity of decisions on prohibition questions, the number of questions that arise are very numerous and quite varied, involving many different points.

In every instance, in so far as I know, wherever the Prohibition Unit can interpose a suggestion, it urges that all of these unsettled and disputed points be brought to a final determination through the Supreme Court.

An instance in point is the holding in the State of New York and in the State of Montana that that part of the national prohibition act which places a limitation upon the number of prescriptions which a physician may write within a given period, or to a given person, is unconstitutional. The good offices of the Prohibition Unit were used, through the district attorneys, to bring the matter to a determination by the court of appeals first, and if unsatisfactory there, by the Supreme Court. A decision by the court of appeals has been rendered, sustaining the constitutionality of the law and holding that it is proper to place limitation upon the number of prescriptions issuable by a physician.

In the matter of a search warrant——

The CHAIRMAN. Let me ask you just at that point——

Mr. BRITT. Yes.

The CHAIRMAN. Has anybody ever gone to the Supreme Court with that question—the question of the constitutionality of limiting prescriptions?

Mr. BRITT. That is on its way to the Supreme Court now from the State of New York, as I understand it.

Mr. SIMONTON. Yes, sir.

Mr. BRITT. And there is an identical case in the State of Montana.

The most important case, as the chairman intimates, and as has been stated by Mr. Pyle, is that involving a question of search warrants. Under the fourth amendment to the Constitution of the United States, one's person, his papers, and his effects are free from search, except upon information in the form of an affidavit, constituting a probable cause or a prima facie case, so as to warrant the search.

The CHAIRMAN. In that connection, has the unit obeyed the fourth amendment?

Mr. BRITT. I was coming to that. When you ask, Mr. Chairman, whether the unit has obeyed it, you, of course, mean to ask whether all of these officers in the administration of the law have obeyed it. That question would go to the operations of the field officers in various ramifications and in their numerous inquiries, and I could not give a definite answer as to what was done in each case, or as to whether it was justified; but I think, generally speaking, there is an effort to conform to the requirements of the fourth amedment. It has been very much discussed. Of course, as everybody knows, there has been criticism of officers, but in a great many instances, I have ascertained—and I think I am pretty sensitive to that point—that the criticisms were unjust.

Take the case of the Polish ambassador, or his agent here, which created quite a sensation, and came very nearly being an international affair. I was called into counsel in the matter. As the reports first came in, it looked clear to us that the representative of the Republic of Poland had been openly insulted by prohibition officials and police officers of the city of Washington—chiefly police officers of the city of Washington, as I now recall. The incident happened some two years ago. Upon a thorough inquiry into the matter, it was made to appear to my satisfaction that while the officers were energetic and aggressive and persistent, they did not transcend their authority, and finally the blame was placed upon the representative of the Polish Government, and under the principles of diplomacy his recall was requested and he was recalled.

On first appearances, that case looked quite flagrant against the officers, and was of a character to arouse indignation on the part of all citizens who want to see the fundamental rights of individuals protected; but, as I say, the evidence showed the other way.

I am not saying that every case in which prohibition agents are involved would be justified in that way. I think there have been some indiscretions, although very greatly exaggerated.

I have personally endeavored to make an opportunity to instruct prohibition agents, if I may use that term, and to caution them in that particular. For instance, we had a case down near my home connected with two very highly reputable women of my home town. They were going along in an automobile and their car was hailed. These women were young and did not know what to do; they were driving their own car and they went on their way, and the car was shot into, and shot into unwarrantedly, too, as they were nothing but innocent women passengers. When the prohibition agents found what they had done they took charge of the women. They took them into an adjoining town and treated them with all the kindness they could. The agents saw that they had made a great mistake. I interposed such counsels as I could, and the agents were pretty severely dealt with. They were discharged from the service, and some very stringent rules were gotten out, predicated mainly upon that incident. I merely name that as an instance.

The CHAIRMAN. In connection with this representative of the Polish Government, did your inquiry show that they had a search warrant?

Mr. BRITT. No; they did not have a search warrant; but the agents were only making a request for permission to examine the place; they were not forcing themselves into a place where they had no right to go. The liquor was at a place other than at the immediate domicile of the Polish representative.

The CHAIRMAN. Let me ask you at this point whether a prohibition agent has the right to go to a private residence and make a request of that sort?

Mr. BRITT. Yes; he can make a request. He has a right to make the request.

The CHAIRMAN. Is he instructed to make these requests?

Mr. BRITT. So far as I know, Mr. Chairman, there are no instructions on that point. A matter of that sort would be left to the judgment of an officer. I, myself, have had experience as a field internal-revenue officer, and I have gone to suspected places and have asked

the master of the house—first stating to him that it was reported or charged that there was contraband liquor concealed about his premises, often in his outbuildings—and if he would mind having that point cleared up by permitting an inspection. In ninety-nine cases out of a hundred, in response to my request, they allowed the inspection. I have never forced my way into any place.

The CHAIRMAN. Yes; but, of course, you being a lawyer, you would not do that. But is it not conceivable to you that a prohibition agent, or any other agent, for that matter, appearing at a private residence, might use such duress as to get an opportunity to search the premises without the resident or the home owner knowing his constitutional rights?

Mr. BRITT. That is possible. The instances to which I refer scarcely related to a private residence. Generally it was some outbuilding. It depends entirely upon the good sense of the agent.

The CHAIRMAN. I would like to clear that up for a moment.

Mr. BRITT. Yes.

The CHAIRMAN. Do you know to what extent that is practiced; that is, where prohibition agents go to places and ask for permission to search without previously having gotten a warrant?

Mr. BRITT. I do not know the extent of the practice; but I think as to private residences it is very slight.

The CHAIRMAN. Would you think it advisable for the unit to prevent the possibility of that imposition upon residents?

Mr. BRITT. Well, I do not quite agree, Mr. Chairman, that that is of itself an imposition. As I have said, it depends upon the good faith of the officers, which we must presume. It does not carry offense, as I experienced it, if it is asked in a polite way and if there is no resentment shown on refusal. I, myself, remember only one instance of a refusal and I simply retired and no harm was done.

The CHAIRMAN. Yes; but you know that the average home owner is not familiar with the law, and he is very frequently intimidated by the mere presence or the calling of a governmental officer, and in ninety-nine cases out of a hundred, I believe, he would not know his constitutional rights, and would therefore accede to the request of the agent.

Mr. BRITT. I say very frankly, Mr. Chairman, that it is a privilege that should be exercised exceedingly sparingly, and with the uninformed not at all.

The CHAIRMAN. In the case of this representative of the Polish Government did he accede to the request of the agent to investigate?

Mr. BRITT. As I say, that liquor was at a place other than his immediate domicile. It was in the same building, but at a place other than——

The CHAIRMAN. I understand that, but I mean when the officer asked for permission to make the search—it does not make any difference whether it was at the Polish Legation or whether it was at a private house, I asked you if the representative of the Polish Government acceded to the request of the prohibition agent or the police officer?

Mr. BRITT. As I recall, the question arose as to the quantity. He admitted that he had so much liquor, but it was claimed that it was all diplomatic liquor, that it was all bought for diplomatic purposes,

and was within the diplomatic quantity. But it developed that the quantity was in excess of the diplomatic quantity.

The CHAIRMAN. When this request was made, did the representative of the Polish Government accede to the request of the governmental agent to let him make an examination?

Mr. BRITT. No; he did not. The liquor was elsewhere, and it was a family by the name of Brown, as I recall it, at whose place it was, and they permitted the examination.

The CHAIRMAN. Without a search warrant?

Mr. BRITT. Yes; there was no search warrant that I know of. There may have been one obtained later. This was two years ago, and I do not remember all of the facts in connection with it. As to your further point, I quite agree that it should be the policy—and I may say that I think it is the policy—to endeavor to conserve the fundamental rights of the citizens and householders with the very greatest possible care, and that even minor violations of the law, or violations of great character but less injurious effect on society, should be tolerated rather than there be an invasion of the individual rights of a citizen.

The CHAIRMAN. In all cases where the Prohibition Unit desires an interpretation of the law, either by a circuit court of appeals or by the Supreme Court, the unit is dependent upon the good will and willingness of the Department of Justice to prosecute in the interests of the unit; is not that correct?

Mr. BRITT. Absolutely. We have no direct entre to the Supreme Court at all. There, as you know, the cases for the Government are prosecuted by the Solicitor General or the Attorney General, although the Prohibition Unit is permitted to have a part in the preparation of the cases and in advisory matters concerning them.

The CHAIRMAN. Yes; but if in a specific case the Department of Justice should be obdurate, and if it disagreed with the unit as to the advisability of taking the case up, the determination would finally be in the Department of Justice.

Mr. BRITT. Absolutely.

The CHAIRMAN. Would you recommend that the Prohibition Unit be permitted to prosecute its own cases?

Mr. BRITT. You mean simply in so far as presenting them in the court is concerned?

The CHAIRMAN. Well, in any manner at all.

Mr. BRITT. No; I would not recommend that it should be permitted to prosecute its cases in court, for to do so would be to disorganize the judiciary—a thing that hardly could be done to public advantage.

The CHAIRMAN. Then, you believe that there must be a continued division of authority as to the prosecution of these cases?

Mr. BRITT. I think the respective departments must remain constituted as they now are; it is a matter of cooperation between the departments, and devotion to duty on the part of each. If we have those two qualities present, I think nothing need go by default that should be attended to.

There is this to say: The prohibition laws are still in the formative stage, and it is not certain in every instance just what a reasonable and proper interpretation would be.

For instance, take the matter of the allowance of search warrants. I asume that any one would have to say that you can not ask for any privileges that are extraordinary, in order to get a search warrant in a prohibition case. I do not think we are entitled to any extraordinary privileges. In other words, I think we must show a proper regard for the individual and the home through the established safeguards before we get a search warrant, just as the seeker for a search warrant in any other case must show no more and no less.

I am a zealous prohibitionist, but I would not say that we should have any special privileges in that direction.

Mr. SIMONTON. Following what Mr. Britt has said in regard to excesses committed where warrants are not obtained, and also where warrants are maliciously obtained, I have known of many prosecutions of agents for corrupt practices. I should not say "many," but I know of some. However, I have never heard of any prosecution based on these sections of the law.

In the espionage act, which is the act governing the issuance of search warants, of June 15, 1917 (40 Stat. 228) section 20 provides:

A person who maliciously and without proper cause, procures a search warrant to be issued and executed, shall be fined not more than $1,000 or imprisoned not more than one year.

Section 21 reads:

An officer who, in executing a search warrant, unlawfully exceeds his authority or exercises it with unnecessary severity shall be fined not more than $1,000 or imprisoned not more than one year.

That was in 1917.

On November 23, 1921, Congress passed what is known as the Willis-Campbell Act, in section 6 of which is the following language:

That any officer, agent or employee of the United States engaged in the enforcement of this act or the national prohibition act, or any other law of the United States, who shall search any private dwelling as defined in the national prohibition act, and occupied as such dwelling, without a warrant directing such search, or, while so engaged, shall, without a search warrant, maliciously and without reasonable cause, search any other building or property, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for a first offense not more than $1,000, and for a second offense not more than $1,000, or imprisoned not more than one year, or both such fine and imprisonment.

I have known of no such prosecution, as I say. There may have been, but I know of none under this section.

Mr. PYLE. I believe there was one in Nebraska.

Mr. SIMONTON. There may have been, but it has not been brought to my attention.

In regard to this opinion in the matter of searching automobiles without a warrant, I open my memorandum book here and I find these decisions, in which the right to search without a warrant is sustained:

Milam *v.* United States, Circuit Court of Appeals, Fourth Circuit, 296 Fed. 629.

Ash *v.* United States, Circuit Court of Appeals, Fourth Circuit, May 26, 1924.

United States *v.* Hilsinger, 284 Fed. 585. Certiorari denied, 69 Law Ed. 42.

The CHAIRMAN. Just a minute there. Those are all cases that have been decided, as I understand you, in favor of the search without a warrant?

Mr. SIMONTON. Yes; then I have a number of district court cases which may be of interest, but in regard to none of which there has been a Supreme Court pronouncement.

The CHAIRMAN. Has the Supreme Court decided that question?

Mr. SIMONTON. No, sir.

The CHAIRMAN. What do you mean by "a Supreme Court pronouncement"?

Mr. SIMONTON. In the case of the United States *v.* Hilsinger, 284 Fed. 585, certiorari was asked of the Supreme Court and it was denied in 69 Law Ed., 42. That is the Supreme Court Reporter. They simply refused to grant the certiorari. In that case the right of an agent to search an automobile was upheld, and they took a certiorari to the Supreme Court and the Supreme Court denied it. That means this, that either the court is satisfied with the construction of the lower court as being correct, or it is not willing to disturb it at this time.

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. In connection with the type of agents, Miss Willebrandt, the Assistant Attorney General in charge of prohibition cases, in an interview with the New York Times on January 25 of this year, which article Mrs. Willebrandt stated to me was authentic, describes the agents as she has come in contact with them, in a short paragraph, as follows:

> At present we haven't had the right kind of investigators.

This refers to the prohibition laws and the prohibition service.

> Many of them are well-meaning, sentimental, and dry, but they can't catch crooks. The sole object of others has been to appropriate all the graft in sight, and they won't catch crooks. These two classes have obtained their positions largely because prohibition-enforcement officers have been appointed at the instance of Senators, Congressmen, and political leaders. The average Senator or Congressman recommends a man because he has been useful politically or because he is an Anti-Saloon Leaguer, a confirmed dry, or a widely known Sunday school teacher; but that kind of a man doesn't often make a good detective. Here and there some have developed into experts, but most of them are not equal to the problem with which they deal.

The CHAIRMAN. Did I understand you, Mr. Britt, in one of the hearings to say that the unit was in perfect harmony with Mrs. Willebrandt?

Mr. BRITT. I am quite sure that I have never said it, Mr. Chairman.

The CHAIRMAN. I have a very definite impression that somebody did.

Mr. BRITT. The question was asked whether there was any great deal of friction between the two departments as departments. I said that there had been some friction, but I did not know of a great deal of friction as between the departments. I did not say that the unit was in perfect harmony with Assistant Attorney General Willebrandt, and I do not say it now.

The CHAIRMAN. Then, I had a wrong impression about that.

Mr. BRITT. I think those criticisms are, in the main, ill founded and unjust, and particularly are they incorrect wherein it is said

that prohibition agents are appointed at the behest of some Senator or Representative, speaking generally. I do not say that Senators or Representatives do not make requests as to the appointment of prohibition officers, nor do I say that they would not be within their rights in doing so, nor that they would make a bad choice if they did; but I do say that it is not the rule to allow a Senator or Representative to control the appointment, unless the applicant is a fit person, regardless of who indorses him.

That criticism is unjust and not well founded.

I may say in this connection—and I think, Mr. Chairman, you have noted the fact—that during the conduct of these hearings my associates and I have been very careful not to criticize other departments or other officials. I do not think it a dignified thing, a necessary thing, a wise thing, or a commendable thing; but there is so much of it heaped upon the Prohibition Unit and the bureau by the Assistant Attorney General that in justice to the bureau and the unit I feel that I should say something in that behalf.

I think much of the friction arose about the question of allowing injunctions or making seizures in the case of offending breweries, whose violations have been flagrant and are flagrant at this time. In a carefully prepared brief, which I wrote with the assistance of my associates in the office, I cited law abundant and authority beyond question for seizing, libeling, forfeiting, and absolutely closing these breweries by seizure process. I was met with the persistent plea that it would be sufficient to issue injunction against them and not to seize them, and that policy prevailed. I am not sure but that my persistence in this particular may be the basis of some of the frequent and bitter outgivings against the unit and its officers.

The CHAIRMAN. Who met you with the insistent contention that an injunction was sufficient?

Mr. BRITT. Mrs. Willebrandt, the Assistant Attorney General.

The CHAIRMAN. Well, if an injunction is issued, does it accomplish what you desire to accomplish in your brief?

Mr. BRITT. It rarely does, although it does in some instances, or partly so, for the reason that if the injunction is issued, say, for a year, which is the limit of time for which it may be issued, and the nuisance is not actually abated, as in common law a nuisance should be abated, by its removal, the course of the common law in the abatement of a nuisance being that the nuisance shall be physically abated or removed, and it has been the course of equity that the chancellor would do anything he should do to remove it, even to destroying every piece of property that offended, as was recently done in a case out in northern Illinois. The injunction usually amounts to a mere lockup of the place. As a matter of fact, it does not remain locked up. It continues to operate.

The CHAIRMAN. You mean they violate the injunction?

Mr. BRITT. I mean the brewer often violates the injunction and does it flagrantly, and while it is pending libel in the hands of the United States marshal, who must put guards there, still the brewers, in many instances, have been known to run on with the connivance and permission of the guards. It is for that reason and many other reasons that I argued, and argue now, that the policy of injunctions is—I do not say wholly ineffective, but generally not effective, and in flagrant cases not effective at all. In these cases the property should

be seized, libeled and forfeited, and the instrumentalities with which the brewer offends wholly removed. That is the only way to stop these violations.

The CHAIRMAN. When the injunctions are violated, are not the prohibition agents there to keep you advised of the violations?

Mr. BRITT. They can not always be there. They may or may not be there.

The CHAIRMAN. Then, as a matter of fact, from this it might be concluded that there is considerable friction between the Prohibition Unit and the Department of Justice?

Mr. BRITT. I would not say there is friction between the two coordinate departments, for that suggests the idea of friction between the whole departments. I do not say that. On the contrary, I disclaim it. But I locate it where it exists, between the Assistant Attorney General and the bureau and unit and in verification of what I have said, Mr. Chairman, I should like to ask permission to put into the record a law brief in substantiation of what I have said, in which not only the law is stated, as I think, and as others think, but in which the facts upon which necessity for a seizure policy is predicated.

EXHIBIT

PROHIBITION ENFORCEMENT—PERMITS, INJUNCTIONS, LIBELS, CRIMINAL ACTION BEFORE THE ATTORNEY GENERAL

MONDAY, *October 13, 1924.*

Mr. ATTORNEY GENERAL: First of all, let me thank you for hearing me, and say that, because of the importance of the subject matter, I have deemed it best to submit my views in writing.

In a letter from the Assistant Attorney General in charge of prohibition enforcement, addressed to me under date of April 8, 1924, after making some strictures upon the procedure and alleged tardiness in revocation hearings, there was an expression of her views as to the relative merits of injunctions and libels as enforcement remedies at cereal beverage plants with a strong preference for the former. In your letter of May 3, addressed to the Secretary, similar views were expressed as to the enforcement values of those remedies. In your of September 24, also to the Secretary, you reaffirm and enlarge the views previously expressed, and call attention to the large expense entailed upon your department, amounting, as you say, in one year to approximately $35,000, for the payment of guard service at seized beverage plants pending forfeiture proceedings, coupled with a request that this service be either taken over by the commissioner, or that the funds now appropriated for that purpose in the Treasury Department be made available for your department for the payment of such service.

You observe as follows:

"You will recollect that there has been a sharp difference of views between the Prohibition Unit of your department and the division of this department handling prohibition litigation. Your unit has contended that search warrant and libel proceedings are absolutely essential to the effective enforcement of law."

That differences exist and have existed is true, and these differences relate not only to the question of preference for injunctions or for libels as remedies but also as to the procedure in hearings in revocation cases; but may I say that the expression of certain points of view by the Prohibition Unit has been confined wholly to official communications and personal conferences with the office of the Assistant Attorney General and have always intended to be constructive. I believe, however, that these differences arise more from misunderstanding than from any essential difference in the various courses of action proposed to be pursued, and I hope that this conference will serve to dispel all such misunderstandings; and let me here assure you—and I speak for my superiors—that the purpose in requesting this interview is not to voice differences or to fault

find or to criticise, but with the hope of reaching a clearer understanding as to the best mode of approach to an imperative task with the performance of which the two departments are jointly charged.

The eighteenth amendment prohibits the manufacture, sale, transportation, importation, or exportation of intoxicating liquors for beverage purposes, but implies that such liquors may be manufactured, sold, removed, brought into, and taken out of the country for nonbeverage purposes, and the national prohibition act, in providing for the enforcement of the amendment, provides the necessary machinery for the distribution and control of liquors for nonbeverage purposes, called in administrative parlance "the permit system." This is an administrative function committed to the Commissioner of Internal Revenue; and he is charged with the duty of investigating and reporting all violations of law to the United States attorneys for the districts wherein such offenses are committed, while the several United States attorneys are charged, under the direction of the Attorney General, with the prosecution of violations of the act. In furtherance of his duty and in aid of the prosecution of offenders, the commissioner is authorized to swear out warrants, either by himself or by his assistants, against offenders and bring them before United States commissioners for the institution of criminal prosecutions.

In the administration of this law any one or all of four remedies may be invoked, to wit, citations, injunctions, libels, and criminal prosecutions. I will here indulge in a brief discussion of the use and relative merits of some of these remedies.

The issuance and control of permits is an administrative function and, save on court review, has no essential dependence upon the judiciary. Legal machinery is provided to determine what persons, in what places, to what extent, for what purpose, and under what bond nonbeverage liquors may be distributed. While here, as in laws for operating machinery generally, penalties are prescribed for failure to do what is commanded, or for doing what is forbidden, yet this part of the act should be construed in the light of its purpose—that is, the allowance and supervision of liquors for nonbeverage purposes. Section 6 provides for granting permits and section 9 for the issuance of citations where there are violations. While this is a function of the commissioner or his designated assistants, there is provision for review in a court of equity if there is error or where wrong has been done to the permittee in connection with his permit. For the issuance of citations and holdings of hearings a complete administrative procedure has been provided by the commissioner, embodied in prohibition mimeograph 289. This procedure has been criticized by some as cumbersome, unwieldy, and provocative of delays, and as occasionally interfering with the administration of the criminal law. I think it has not either delayed or hindered the administration of the criminal law, but, on the contrary, has very materially aided in its enforcement.

In issuing citations, holding hearings, and rendering judgments in revocation cases, it should be borne in mind that there is a duty of protecting the rights of permittees as well as of enforcing the law. The machinery in use provides for both of these ends. The citation is returnable not less than 15 nor more than 30 days; it must be issued by the commissioner or by some one designated by him; the permittee is entitled to an explicit statement of the charges against him; the testimony, both for the Government and for the respondent, must be taken under oath; it must be stenographically recorded and translated into typewriting; and while the right of subpœna does not lie either for the Government or for the respondent, either is permitted to present such testimony as is desired; to appear by counsel; to cross-examine witnesses; to make argument. All testimony taken on both sides must be considered by the hearer, and the judgment of revocation or of no revocation must be based thereon. When a permit is granted the permittee has therein a right of the nature of a vested right. Let us take the case of a wholesale druggist who is authorized under his permit to buy and sell 10,000 gallons of nonbeverage distilled spirits, and he contends that by such purchase and sale he makes a profit of, say, $5,000. Should it be proposed to revoke his permit, he has a right to demand that it be revoked only upon sufficient legal grounds, shown in a lawful way, and then only after he has had opportunity to defend against or rebut such charges; otherwise he may justly claim that he has been unlawfully deprived of a valuable right and denied due process of law. I think that, as a matter of law, a permit can be lawfully revoked only when it is made regularly to appear (1) that the citation was issued by one having lawful authority to issue it; (2) that it contained a sufficient bill of particulars to put

the permittee upon full notice of the charges against him; (3) that he was given an opportunity to appear and defend against the charges; and (4) that all testimony produced by him was weighed and considered in the rendition of the judgment. These four requisites being present, I deem the judgment lawful and capable of being enforced; otherwise the permittee may not have had due process of law.

In the Assistant Attorney General's letter of April 8, she says:

"There is nothing, however, that I can find in the law that would prevent your department summarily conducting the hearing on the sixteenth day and having the permit actually revoked on the sixteenth or seventeenth day after citation has issued. Within all reason I should say that 30 day after the issuance of a citation the United States attorney ought to be able to depend upon it that the permit has been revoked."

This view does not take into account all the facts, conditions, and circumstances. There must necessarily sometimes be accommodations, such as relate to attendance of parties, witnesses, and counsel. Often the Government witnesses are in distant parts of the country or in attendance upon the courts and can not attend; and it sometimes happens that the respondent is rightly entitled to an extension of time on account of illness, the preparation of his case, or the preoccupation of his counsel. It is true that owing to a number of unavoidable causes there have sometimes been regrettable delays in this part of the service, but these hearings are now current and the average period for completion of a case is less than 30 days.

As to the suggestion that permits might be summarily revoked on the sixteenth day, it should be remembered that liquor permittees are usually persons well to do and able to employ able counsel for the conduct of their cases, often resulting in a warm contest of all the proposals of the Government, lengthy cross-examinations, prolonged arguments, and the insertion in the record of much documentary testimony. There are often other attendant delays incident to such hearings, and one of the greatest difficulties encountered in the effort to prevent delays are the insistent requests of district attorneys to postpone hearings until action is taken in their criminal cases, for the reason, as they contend, that the disclosures made at the hearings are likely to injure their cases. This the Prohibition Unit has to fight constantly and vigorously. So strong are many district attorneys in their insistence that they succeed in persuading prohibition officers not to attend the hearings, resulting in an unavoidable continuance. There is no court of any rank but that under the practice in this country sometimes feels justified in continuing a cause on a proper showing, and less can not be expected of a hearer in an administrative case, which is from its very nature more or less informal.

The Assistant Attorney General further says:

"Under your revised procedure for practically a year last past no State director can stop any permit holder from making withdrawals and continuing to conduct the business under his permit until final action has been taken by the commissioner. This causes permit holders to manufacture excuses and drag out hearings as long as possible, whereas stopping their privileges while they appeal to Washington gives an incentive to a permittee to assist the Government in expeditious action."

I heartily wish this were the law, but I am satisfied that it is not and that there is no authority of law for withholding the privileges of a permit after citation until judgment is rendered. More than a dozen such cases have been taken to the courts, and in every instance it has been held that the commissioner has no such authority. What is the object of the hearing? Plainly it is to determine whether the permittee is or is not entitled to the privileges of his permit. Who knows whether he is or is not until there has been an inquiry and judgment in the case? To deny the privileges of withdrawal, which are the sole benefits of the permit, prior to the judgment is simply to render judgment to-day and then determine from 15 to 30 days afterwards whether it should have been rendered. Such a practice would be out of harmony with the whole policy of American law, and certainly in the face of every principle of the common law. The principle involves a right, and unless there is express or clearly implied authority for its denial it is the intention of the law to conserve the right. There is nothing in the statute, either express or implied, that suggests such authority. In section 5 of the act there is provision for an appeal by a defeated permittee to a court of equity, and during the pendency of the appeal the court may restrain the permittee from exercising the privileges of his permit, but there is no suggestion anywhere

that the commissioner has such power until he has upon proper inquiry determined that the permittee is not entitled to such privileges. Does not the law mean something when it expressly states that the court may restrain the permittee pending review, after the manner of a supersedeas, when the same statute is silent as to any like power by the commissioner? I am profoundly convinced that prohibition law enforcement, a matter of engrossing concern to every citizen and, much more, every official whose duty it is to enforce it, would be infinitely more advanced by keeping clearly within the law than by the exercise of power neither conferred by the statute nor consistent with the ordinary administration of justice.

The Assistant Attorney General quotes from the United States district attorney for the northern district of Illinois the comments of judges in his district on the subject of the use of permits, as follows:

"I have the honor to inform you that two judges, one of the District Court and the other of the United States Circuit Court of Appeals for the Seventh Circuit, have at different times expressed the opinion that the enforcement of the prohibition act, in so far as breweries are concerned, should be one of prevention before violations occur rather than abatement after they occur.

"Both judges have expressed the opinion that it should not be the work of the courts to close breweries, but that this is properly the work of the administrative department of the Government. One of them was quite emphatic, and said that he did not know how much longer the courts would be called upon to do administrative work of this character. The judge of the circuit court of appeals above referred to only this morning wanted to know whether his previous comments on this subject had been transmitted to the officials with power to act."

I do not believe the Assistant Attorney General intended to quote this with approval, for it must be clear that the commissioner has not plenary power fully to enforce the prohibition act at breweries or elsewhere. He is not a trial court and has no grand jury or trial jury, or even the power of subpœna process. He is merely an investigating and reporting officer, and nothing more. He can not prosecute criminal matters to a determination or proceed to forfeiture in a libel case. Those judges apparently do not appreciate the difficulties and requirements of enforcement. The permit system has its place, but it likewise has its limitations. Its province is the allowance and supervision of nonbeverage liquors. In all violations by the unlawful manufacture, removal, sale, importation, or exportation of intoxicating liquors for beverage purposes the offense committed is precisely the same whether the person committing it has a permit or has not. I would not be understood as in anywise lessening the responsibilities and duties of the permit system. It is a powerful remedy for the prevention of violations in their incipient stages. The point that I make is that it can not be substituted for the courts for the enforcement of the criminal laws of the United States.

I here summarize my conception of the law and a sound administrative policy as to permits, citations, hearings, and judgments in revocation cases:

Whenever there are violations of the statute or regulations, citation should forthwith issue, returnable within the shortest possible time within the statute, to wit, 15 days.

The issuance of a citation, being solely a function of the commissioner, should be without reference to or dependence upon any other branch of the Government.

It should contain a clear and explicit statement of all the charges against the permittee.

The date fixed for the hearing should be mandatory, and continuances should not be allowed except for absolutely unavoidable causes.

Judgment on hearings should be rendered within 10 days after the holding thereof.

If the judgment is for the revocation of a permit, all the privileges thereof should be immediately suspended, but such suspension should not be made until judgment is rendered.

As to the issuance of original permits, I have advised that the granting of permission to obtain nonbeverage liquors is conferring upon one a power of the nature of a public trust, and that no permit should be issued to any person except one of approved good reputation and of at least reasonably good business qualifications.

That thorough inquiry as to the fitness of a prospective permittee should be made in every case before action is taken on the application.

That no permit can issue to any person within one year after a violation of the law or regulations or of the liquor laws of any State, and that even thereafter, if the commissioner is convinced that the applicant is not a person of suitable reputation to be entrusted with a permit, he may, in his discretion, deny the application.

INJUNCTIONS

Sections 21, 22, 23, and 24 of the national prohibition act authorize and provide for the issuance of injunctions by Federal courts, and probably by State courts as well, for the abatement of nuisances arising out of unlawful acts in connection with intoxicating liquors, the object being to remove the offending cause and to prevent its recurrence. That in its place this is a valuable remedy and one that has often been used by your department to very great advantage in prohibition cases, I frankly admit, but, like other remedies, it has its limitations. For the abatement or removal of so-called saloons or soft-drink stands where intoxicating liquors are often unlawfully sold, or where like conditions prevail at cafés, cabarets, restaurants, and hotels, injunctions are not only an effective remedy but apparently the best means short of criminal action. Injunction is an old and effective equitable remedy for the removal of such nuisances as disturb the peace and quiet of society. The common-law doctrine of abatement of nuisances carries with it the power of the court through its order physically to remove, so far as may be necessary, the offending instrumentality, or so to change, modify, or cripple it as to prevent a recurrence of the act or condition constituting the offense. In the case of saloons, cabarets, restaurants, and hotels it is generally sufficient to enjoin the repetition of the offending act by order of the court, with sufficient bond, and probably by closing the premises, and without the physical destruction of the property used; but in the case of cereal-beverage plants, often miscalled breweries because they are a continuation of old brewery manufactories, where cereal beverages are manufactured under a permit, when it is made to appear that actual beer—that is, fermented liquors of one-half of 1 per cent of alcoholic strength, or more, by volume—is made and removed, it has been found that a mere court order closing the premises and requiring a bond from the offender has not been effective, for the reason that such plants disobey the injunction and clandestinely continue to operate, with the result that the nuisance is continued and the law flagrantly violated. This has apparently resulted from the fact that in almost every instance where an injunction has been allowed, certainly so far as has come to my knowledge, there has been merely a mandatory injunction, sometimes with a padlocking of the place, not to do certain specified acts held to be unlawful.

Without the destruction of the apparatus, fixtures, materials, and products of the owner so as to render the unlawful business incapable of continuation, which seems to be the intent of the sections of law to which I have referred, and certainly the long-recognized practice as to the abatement of the nuisance, such orders are practically useless. The injunction should carry with it the destruction of the offending instrumentalities, the abatement of the nuisance in fact, and, in case of cereal-beverage manufacturers, the destruction of the apparatus used in the manufacture of the beverage. It is probable that the courts have been influenced to a degree in this by the fact that the statutory limitation of the term of injunctions is fixed at one year, and it is no doubt thought that regard for the safety of property, the sanctity of the order of the court, and the bond required of the permittee would be sufficient to restrain for the period named without the physical destruction of the property. This has proved to be untrue in practice. In almost every instance where the injunction has been granted the plant has continued to operate, either continually or at intervals, and there has not only not been an abatement of the nuisance or a restraint of the unlawful acts but a continuation of both in defiance of the law and in the face of the order of the court. In some instances the court order provides for a mere detachment or separation of certain necessary parts of the machinery of the plant, an inconvenience easily overcome by the operator, the damaged part being easily repaired and rendered serviceable. However, there has recently come to my notice a copy of an order by United States District Judge Wilkerson, of the northern district of Illinois, in the case of United States *v.* Elgin Ice & Beverage Co., in which the injunction carried with it a complete order of destruction, with a detailed itemization of the various appa-

ratus of the plant to be destroyed as a part of the order abating the nuisance, the items consisting of 44 separate parts, sufficient to render the brewery entirely unfit for use, and imposing indirectly a heavy penalty upon the owner. If district attorneys in the various jurisdictions could secure orders similar to this, I should feel that the plea which I am to make for the seizure of cereal-beverage plants would lose much of its force. But the fact remains that, as disclosed in the various jurisdictions, the orders of injunction are generally merely orders to discontinue, which, as I have said, are usually disregarded, and violations continue.

But the use of injunctions for this purpose is hedged about by certain limitations. If the object is to remove and prevent nuisances, then it may well be doubted whether, where the owner of a business, on his own motion, abates the nuisance, the courts will sustain a continuing injunction against his property commanding him to remove that which he has already removed and to discontinue that which he has already voluntarily discontinued. It do not attempt to predict that will be the tendency of the courts in this particular, but I do know that the question is being seriously considered at this time and that the United States District Court for the District of Nebraska has held that where a nuisance had been removed by the voluntary act of the owner of the offending property no injunction will lie, for the reason that the end sought, the abatement of the nuisance, has already been accomplished. Another objection often urged, and which no doubt has a restraining influence upon courts, is the great power exercisable over person and property through injunction without a jury trial, a fact which I merely mention without approval or going into detail. However this may be, injunctions have failed to meet the lawless conditions which now exist at cereal-beverage plants, and I earnestly urged a policy of seizure and forfeiture in all cases of flagrant violations.

LIBELS

I am strongly of the opinion that in case of flagrant violation at cereal-beverage plants seizures should be made, to the end that law enforcement may be made more effective. I base this view upon the experience with injunctions and my faith in what may be accomplished through libels. In referring to this policy the Assistant Attorney General speaks of "spectacular methods." I ask for no "spectacular methods." They are furthest from my thought in suggesting this policy. I have had experience as a prosecuting officer, and it has always been my policy never to give publicity to criminal trials or kindred actions, other than as knowledge of them diffuses itself through the usual channels of public information. So "spectacular" is out of the equation. I favor a seizure policy because I believe it will yield better results and is a more emphatic assertion of the authority of the law against criminals. Heretofore violators at cereal-beverage plants have been only teased and worried and their unlawful business been permitted to continue, and the prison doors have never opened to but few.

I have no doubt of the legal authority for this course. It may be done under the internal revenue laws, where the primary purpose is taxation, or under the national prohibition act, where the purpose is to enforce police laws in furtherance of the Constitution of the United States. I can not accept the view that the power to seize under section 25 of the act is merely inferential. True, no express procedure is provided, but can it be thought that the law would clothe the court with the power to destroy or otherwise dispose of property and by the same act deny the instrumentalities with which such destruction could be made? It is hardly probable that a court would be authorized to destroy property without inquiry as to the grounds of destruction, what was to be destroyed, and whether it was to be destroyed in a manner approved by established procedure. Is it not a logical conclusion that if the court is to destroy property which has been forfeited for an offense against the law, there would go with such authority a procedure by which the court would have assurance as to the grounds for destruction, the identification of the articles to be destroyed, and to have it held by the officers of his court until judgment was rendered? And, finally, should not the destruction be made in a way approved by established usage? Congress must have believed this procedure so clearly implied that provision for machinery was deemed unnecessary.

Section 3, Title II, of the national prohibition act forbids the manufacture, possession, etc., of intoxicating liquors without a permit; and under section 33 possession without a permit is prima facie evidence that it is kept for the

purpose of being sold in violation of law. Accordingly, beer produced without a permit, or produced pursuant to a permit issued under section 37, and removed to, and possessed in, a place other than that permitted by such permit, is intoxicating liquor unlawfully manufactured, held, and possessed. All liquors unlawfully held and possessed are contraband, and all property rights therein are forfeited to the United States by section 25 of the act, which provides:

"It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law No. 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor shall be destroyed unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is in part used for some business purpose, such as a store, shop, saloon, restaurant, hotel, or boarding house. The term 'private dwelling' shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process."

Under the internal revenue laws, beer brewed and "sold or removed for consumption or sale" within the meaning of section 608 of the revenue act of 1918, reenacted by the revenue act of November 23, 1921, is taxable at the rate of $6 per barrel; and, equally with distilled spirits, may lawfully be manufactured, sold, or removed and tax paid under the following provision of section 37, Title II, of the national prohibition act:

"And such liquids, beer, ale, porter, or wine may be developed under permit by persons other than the manufacturers of beverages containing less than one-half of 1 per cent of alcohol by volume and sold to such manufacturers for conversion into such beverages."

When, therefore, beer is lawfully brewed, but sold or removed unlawfully, or brewed, sold, or removed unlawfully, the tax provided by section 608 of the revenue act of 1918 attaches; and under the authority of the case of United States v. Stafoff (260 U. S. 477), and this notwithstanding rulings to the contrary by the district courts of the eastern and middle districts of Pennsylvania in the case of United States v. American Brewing Co. (296 Fed. 772) and United States v. Pennsylvania Central Brewing Co., E. Robinson's Sons branch, decided August 22, 1924, unreported, criminal prosecution will lie and forfeiture proceedings may be instituted under the internal revenue laws.

The forfeiture provisions of the internal revenue laws applicable in such cases are sections 3340 and 3453, Revised Statutes, as follows:

"SEC. 3340. Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades, or attempts to evade, the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do or cause to be done any of the things by law required to be done by him * * *, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall forfeit for every such offense all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and be liable to a penalty of not less than $500 nor more than $1,000, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor and be imprisoned for a term not exceeding one year.

"And every brewer who neglects to keep books or refuses to furnish the account and duplicate thereof as provided by law, or refuses to permit the proper officer to examine the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of $300.

"SEC. 3453. All goods, wares, merchandise, articles, or objects on which taxes are imposed, which shall be found in the possession or custody or within the control of any person for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be for-

felted to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever in the place or building or within any yard or inclosure where such articles or raw materials are found, may also be seized by the collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made."

It is, of course, well settled that forfeited property found in a place to which the protection of the fourth and fifth amendments of the Constitution does not extend may be seized without a search warrant. (Hester v. United States, 68 Advanced Leaflets, L. Ed., S. C. R. 507.) Where, however, an executive seizure is not legally possible judicial process may be invoked. Provision is made both in the internal revenue laws, section 3462, Revised Statutes, and in section 25 of the national prohibition act for the issuance of search warrants for the seizure of the instruments of the crime. That search warrants are designed to aid in the seizure of forfeited property is well settled. In the case of Gouled v. United States (255 U. S. 298) the Supreme Court on this point said:

"Although search warrants have thus been used in many cases ever since the adoption of the Constitution, and although their use has been extended from time to time to meet new cases within the old rules, nevertheless it is clear that at common law and as the result of the Boyd and Weeks cases, supra, they may * * * be resorted to only when a primary right to such search and seizure may be found in the interest which the public or the complainant may have in the property to be seized, or in the right to the possession of it, or when a valid exercise of the police power renders possession of the property by the accused unlawful, and provides that it may be taken." (Boyd Case, 116 U. S. 623, 624.)

It will hardly be contended that section 25 of the national prohibition act and sections 3340 and 3453, Revised Statutes, do not provide for the forfeiture to the United States of the instruments of the crime. In Stowell v. United States (133 U. S. 1) the Supreme Court, referring to statutes provided for the forfeiture of property, said:

"By the settled doctrine of this court, whenever a statute enacts that upon the commission of a certain act specific property used in or connected with that act shall be forfeited, the forfeiture takes effect immediately upon the commission of the act; the right to the property then vests in the United States, although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory transfer of the right to the United States at the time the offense is committed, and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith."

The procedure by which such condemnation is effected under the internal revenue laws is well settled, both by the statute and accepted practice. (Section 3453, R. S., supra.) It is a proceeding by way of libel in rem against the forfeited property in which the property is attached and notice is given by monition to all parties in interest.

No prescribed mode of procedure is provided for effecting forfeiture under the national prohibition act. In section 25 it is declared that—

"If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor shall be destroyed, unless the court shall otherwise order."

In section 27 provision is made for the delivery by the court, upon the application of the United States attorney, to departments or agencies of the United States for medicinal, mechanical, or scientific uses intoxicating liquors "subject to be destroyed under the provisions of this act." He may also order the same sold at private sale under that section. And in section 39 it is the plain intent of Congress that some procedure shall be adopted that will preserve the rights of innocent third parties, as that section provides:

"In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued

in due form and served personally, if said person is to be found within the jurisdiction of the court."

Aside from these provisions, it should be borne in mind that in determining whether property is or is not forfeitable the seventh amendment of the Constitution must be complied with in all cases in which the value of the property is $20 or more. The amendment provides:

"In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law."

In one of the earlier cases arising out of the national prohibition act, decided April 23, 1920, United States ex rel. Soeder *v.* Crossen (264 Fed. 459), District Judge Thompson, of the eastern district of Pennsylvania, while not deciding precisely what procedure should be adopted, held that under the provisions of sections 25, 33, and 39 judicial proceedings must be instituted for the forfeiture of seized property, in which due notice is given to all parties in interest. He said, in part:

"Intoxicating liquor seized under a warrant may either be liquor as to which no property rights exist under section 25 or it may be liquor that has been lawfully possessed. There must be a determination of questions of fact and the application of the law to the facts if there is a claim of lawful possession. When an officer seizes intoxicating liquors it is not intended that he shall constitute the tribunal to determine those questions of fact nor of law.

"The right of due process of law is not abrogated by the eighteenth amendment. If the officer proceeds by search warrant to seize articles in which a citizen may or may not have property, the intent of the act must necessarily be that he shall take such other appropriate proceedings as in due course of law follow seizure; and that is clearly indicated throughout the entire act. It is not necessary for the purposes of the present question to examine other sections than section 25, under which the seizure was had, and section 33, under which the respondent claims property in the liquor seized. Section 25 provides that the liquor so seized shall be subject to such disposition as the court may make thereof, and if it is found to be unlawfully held or possessed or used it shall be destroyed, unless the court shall otherwise order; and under section 33 the burden of proof is placed upon the possessor in any action to prove that the liquor was lawfully acquired, possessed, and used. It is plain, therefore, that the intent of Congress as expressed in the act is that the officer making seizure shall cause appropriate proceedings to be brought in a court having jurisdiction, in order that claimants may have their day in court for the hearing and determination of the property rights in the liquor seized. If it appears to the officer, through the claim of a citizen or otherwise, that a judgment affecting the liquor seized might be rendered and that a citizen has claimed property in such liquor, a summons must be issued and served requiring such person to appear as claimant.

"An order will be entered for a writ of mandamus unless the respondent shall within 10 days proceed against the liquors claimed by the relator and cause a summons to be issued in due form and served in accordance with the provisions of section 39."

In In re Kupferberg (284 Fed. 914) Judge Augustus N. Hand, of the southern district of New York, while not deciding what proceedings should be adopted under the national prohibition act, expressed the view that it would be going too far to hold that section 25 "required the court in effect to try the ultimate right to dispose of the liquor upon proceedings at the foot (so to speak) of the search warrant."

In United States *v.* 3,835 Barrels of Beer et al., Hazelwood Brewing Co., unreported, decided November, 1923, a libel had been filed for the condemnation of beer and other property. The contention was made that the libel would not lie. Judge Gibson, of the District Court for the Western District of Pennsylvania, said:

"The foregoing statutory provision (sec. 25, Title II) gives the court the general jurisdiction to deal with and destroy contraband liquor. No particular method of procedure is established. This being so, all that is required under the section is that due notice and a hearing by any procedure be given the claimant of the property and that the facts be established at a proper hearing at which he was heard or was given an opportunity to be heard. These requirements were met in the instant case, and it is therefore immaterial that the Government has termed its information a libel and that the process issued was termed a monition and attachment."

In United States v. American Brewing Co. (296 Fed. 772), which involved some 25 libels filed for the forfeiture of brewery properties located in Philadelphia, Judges Dickinson and McKeehan, after discussing at length in their decisions whether section 25, Title II, provided for the forfeiture of the instruments of the crime, said:

"The conclusion is that property concerned with the violation of the Volstead Act may be forfeited by libel proceedings, and that the motions to dismiss the libels on this ground are denied."

And in the last decision rendered on this subject, United States v. 2165 Barrels of Beer (Pennsylvania Central Brewing Co., E. Robinson Sons department), decided August 22, 1924, unreported, Judge Witmer, of the middle district of Pennsylvania, said:

"The act (national prohibition act) is silent as to the form of procedure to accomplish the purpose intended or to obtain an order or decree of forfeiture, but it is clear that the property is intended to be brought before the court constructively, either by a warrant, libel, or otherwise, and to afford the owner thereof a hearing after reasonable notice before disposition thereof."

I know of no case in which the right to proceed by way of libel under the national prohibition act has been denied, except United States v. Franzoni (286 Fed. 769), and in that case there had been no prior seizure by way of search warrant or otherwise, but the property had been taken into custody by the marshal from the immediate possession of the violator, after the libel had been filed. On the contrary, in the following cases, in which decisions were rendered, procedure by way of libel under the national prohibition act was not challenged either by the claimants of the property or by the court:

United States v. Arnholt & Schafer Brewing Co.; Judge Dickinson (unreported, date not known).

United States v. John F. Betts & Sons (Ltd.); Judge Dickinson (unreported, date not known).

United States v. Rieger & Bretz Brewing Co.; Judge Dickinson (unreported, date not known).

United States v. Weisbrod & Hess Brewing Co.; Judge Dickinson (unreported, date not known).

John Hohenadel Brewing Co.; Judge Dickinson (unreported, date not known)

Whatever the course decided upon, Mr. Attorney General, I should not feel acquit if I did not call strongly to attention the real situation as to violations at cereal beverage plants. According to the best information obtainable, and it is certainly sufficiently accurate for the formation of a safe judgment, at practically all these plants violations are flagrant, notorious, contemptuous, and scandalous. The operators have ceased to have any regard for the law. Not only are they defying the law, but they are doing it on a huge scale. Their schemes of evasion are elaborate, subtle, and deep laid. High fences, or stockades, are erected around their plants; barbed-wire fences are built; routes of approach are cut off; they have a well-organized system of espionage; through informers the approach of officers is known throughout the community long before they reach the plant; in some instances underground passageways have been constructed for the secret removal of the product. It would be difficult to conceive of more powerful and effective means for evading the law. Their barred approaches, barbed-wire fences, stockades, and other barriers are a reminder of an old English fortification in feudal days, and one can fancy he sees the castle, the drawbridge, the portcullis, and the don-jon keep. I have here a few photographs of these fortified places, taken at random, which illustrate their methods. In the State of Pennsylvania alone there are 185 plants, 42 with 1924 permits, and 143 understood to be operating without permits at all, either all or a part of the time, notwithstandnig the fact that they have been repeatedly notified by registered mail that they are lawfully required to obtain permits. On the 16th day of April, 1924, on my advice, the Prohibition Commissioner sent to your department a list of 11 such places in the western district of Pennsylvania, plants reported to be operating without permits, with the request that steps be taken for their seizure, but as no reply was received to the communication it is concluded that your department did not think well of the suggestion. The Solicitor of Internal Revenue has held that permits are required by cereal beverage manufacturers, and in this opinion I concur, for it is a well-known fact that under the science of brewing no drinkable beverage of less than one-half of 1 per cent of alcoholic strength can be made without first making a product of greater strength and then reducing it through a process of development, a plan

contemplated by section 37 of the national prohibition act, in harmony with the science of producing cereal beverages, and since it is well known that they can not produce such product without making a product of one-half of 1 per cent or more of alcohol, a permit is therefore required, and I am firmly of the opinion that the fact that they manufacture this product without permits, and that they have refused to comply with the law in obtaining them, is sufficient ground to warrant their seizure, or at least a discontinuance of operations until they obtain permits. What shall be done in the premises? My answer is: Seize and confiscate the plants in every instance of flagrant violation, and prosecute and imprison the offenders. This I believe to be the only available means. What has been lacking? Candor compels plain speech. Too often prohibition officers have failed to make their cases sufficiently thorough, and too often United States attorneys have failed to institute criminal prosecutions or have prosecuted in only a half-hearted way. That is the situation.

There is before the two departments a task demanding immediate and vigorous action. Nothing short of that will suffice. We can not permit the law to be flagrantly and shamelessly violated. It is either to do or not to do. The amendment and the act mean something or nothing. We all agree that they mean what they say. It remains to see that they are enforced.

And now, Mr. Attorney General, may I for a moment refer to one or two matters touching the official relations of the two departments? In your letter of September 24 you say that the Prohibition Unit has failed to follow your department in certain matters and has dealt directly with United States attorneys, and is in that way pursuing a seizure policy in some districts, notably in the eastern district of Pennsylvania, not in line with your departmental policy. May I be pardoned for saying that there is probably some misunderstanding in this connection? While it is true that the Assistant Attorney General has always, in her conferences and communications with the Prohibition Unit, expressed a strong preference for injunctions instead of libels, yet I have never understood that she held absolutely to that view, or that she forbade resort to libels in any case whatever, but, on the contrary, have understood that she had expressly authorized seizure in many instances, particularly in the eastern district of Pennsylvania. On October 23, 1923, at a conference with Prohibition Commissioner Haynes, the Assistant Attorney General gave her full assent to a seizure policy in that district, dictating a memorandum in which she said:

"The reason for a seizure policy being used in the eastern district of Pennsylvania, with the full cooperation and consent of the Department of Justice, is that the Federal judges in that district have failed to enforce section 22 of the national prohibition act in the same expeditious manner as judges in most of the other districts of the United States have done."

This she followed by references to a holding in a certain case by Judge McKeehan, and on August 18, 1923, she advised United States District Attorney Coles that, notwithstanding her preference for the use of injunctions, she felt called upon to withdraw her objections to seizures in that jurisdiction and to advise holding property and the premises of breweries charged with violations of the law. It was in furtherance of this understanding, and particularly that of October 23, 1923, that the Prohibition Unit, through its field officers, and officers detailed from the unit, felt they were fully authorized to assist in making cases for seizures in the eastern district of Pennsylvania, and I respectfully insist that this was not done without authority and official understanding. There have been other instances in which the Assistant Attorney General, while always persisting in her preference for injunctions, has authorized the unit to proceed with the preparation of cases for libel and forfeiture.

And, now, this final word as to the main matter before us: I am authorized to say that whatever your decision as to modes of procedure, in so far as it affects the Prohibition Unit, it will be followed, and followed without question. I appreciate keenly your suggestion that the guarding of so many seized breweries under a libel policy is taxing your appropriation too heavily. This is a matter for careful consideration by the two departments. Not being an administrative officer, I am not at liberty to speak with finality on the subject of adjustment, but I have no doubt if you decide upon a seizure policy, while I do not think it would be lawful to undertake a transfer of a Treasury Department fund to your department, I nevertheless think an arrangement could be made by which prohibition officers could guard all seized property pending forfeiture proceedings and your officers be relieved. In this connection, permit

me to say that should you decide upon that course, and should there be a great number of seizures, which in my judgment there would be, it might be that in order to prevent too heavy public expense, and to expedite the administration of justice you would feel disposed to arrange for special terms of the United States courts to dispose of the heavily crowded dockets.

I have, at too great length, I fear, gone into the matters before us. My only concern is the enforcement of the law, and that I stand at all times ready for the heartiest cooperation with your department in every effort looking to that end.

JAMES J. BRITT,
Chief Counsel Prohibition Unit.

The CHAIRMAN. That is interesting, and there is no objection to your putting that in the record; but I would like to ask, inasmuch as you have pointed out that you desire to place the friction where friction exists and not include the entire coordinated branches of the Government, if you could tell us any other place or point in the coordinated branches of the Government where friction exists.

Mr. BRITT. As between other branches?

The CHAIRMAN. No: as between these two coordinated governmental branches that we are discussing.

Mr. BRITT. I would not make any general criticism of the Department of Justice. The bulk of the district attorneys are very capable, very active, very loyal, and very faithful in the enforcement of prohibition, and I think the Department of Justice, as a whole, certainly is, and the Attorney General has been, likewise, all the Attorneys General. For that reason I do not come here as a representative of the Treasury Department to make anything of the nature of a general criticism of the Department of Justice. It would not be just.

Now, these criticisms, such as the counsel has read here, are often given to the press, often given from the rostrum, and they are uttered by a high official in one coordinate branch of the Government about another coordinate branch. I have advised at all times that these statements be not answered, because they are inconsistent with the dignity of a department, as the record of what is done should always be the standard by which to judge, and not personal animus. But, as I say, they are constantly given out, and, as in this instance, often not correct in statement, certainly not in conclusion.

The CHAIRMAN. But how is this committee to arrive at a conclusion as to what the Congress should do in the way of recommending legislation for a better enforcement of the prohibition law, unless we get at these facts?

Mr. BRITT. I think we can accomplish the necessities of prohibition law enforcement and leave personalities out of it.

The CHAIRMAN. Oh, yes; that is true, and I am heartily in favor of that; but as long as these things have to be dealt with by human beings, and the human equation exists, they can not be eliminated from consideration in the legislation. Otherwise we might enact laws creating monarchs, if it was not for the personal equation, or we might create great power in individuals, if it was not for the personal equation. But that is something that we can not anticipate, and it has to be considered when Congress delegates power for the enforcement of the law; so that if there is an inherent friction or the human equation can not be dispensed with it might be necessary for

Congress to place the power in such a place and in such a way so as to reduce to a minimum, if not entirely eliminate, the friction that does exist.

Mr. BRITT. My own view is that in so far as the Bureau of Internal Revenue or the Prohibition Unit is concerned, we should at all times present an honest record of what we have done, and let it stand for itself without indulging in any criticism of other officers. That is the policy I have followed, and it is only because of what I believe to be my duty to others that I say a word here in resentment of this, one of many like criticisms, always severe, usually general, and rarely specific.

The CHAIRMAN. In other words, as I understand it, then, the Prohibition Unit has taken the position that it is too undignified to respond to these criticisms.

Mr. BRITT. Yes; that is undignified and profitless. I have personally advised that, if criticism is made, only to see if the criticism is just; not hark back, but see if the criticism is just, as criticisms do sometimes lead to important reforms.

The CHAIRMAN. Well, should not the public be informed as to the justification or the lack of justification of these criticisms that you are talking about now?

Mr. BRITT. I do not believe that Congress, or any department should be made a viaduct for criticisms that are merely of the inspiration of feeling.

I say the records and acts should be faithfully portrayed without reservation, let it hit whomsoever it may, and for Congress and the public to decide upon that record.

That is my view, and that is my advice to the Prohibition Unit, and I have advised that neither the Prohibition Commissioner, his assistant, nor any officer should notice those criticisms, and, so far as I know, they never have been noticed.

The CHAIRMAN. Following that particular policy, which seems to have been a pretty fair statement of the policy of the unit, is it not possible that the public should get an entirely erroneous impression of the Prohibition Unit?

Mr. BRITT. Mr. Chairman, it might possibly be taken that silence is a sort of admission. That is sometimes true in individual relations.

The CHAIRMAN. If that is so, is it not incumbent upon the unit, in the interest of the public, to let the public have both sides of these matters?

Mr. BRITT. We are giving the public our side of it through the record of what we have done.

The CHAIRMAN. How are you giving it your side, if you fail to resort to these charges made by another coordinate branch of the Government?

Mr. BRITT. We are giving the public our side by responding to anything that you, or any other committee, has asked for, telling what we have done and why we have done it.

The CHAIRMAN. I am not talking about that at all. I do not mean before this committee, but your general policy of failing to publicly retort to charges made by a coordinate department of the Government.

Mr. BRITT. That is a matter for the higher officials to decide. I would not launch on a policy of recrimination which, in my judgment, is never a wise thing to do, and I would not advise it. The Secretary and the Commissioner of Internal Revenue should say about things of that sort, but I would not do it. I shall insist, as I have, that the bureau make its record speak for itself, and that the public judge it by that record. That is my view, Mr. Chairman, and I only reply here because of my sense of duty to the Treasury Department.

The CHAIRMAN. Yes; but no public retort has been made to the charges in the article just referred to by counsel, has there?

Mr. BRITT. None, to my knowledge.

The CHAIRMAN. Then, how can the public know the bureau's record in that connection, if they only make an ex parte statement?

Mr. BRITT. The public knows it through the diverse channels through which information is furnished. As you well know, in these hectic days the air is full of criticism and suspicion of everybody and everything, and it is an extremely difficult thing to meet. My own experience is that we do not get very far by a running, hand-to-hand firing of one department upon another, but I am quite willing to answer here as to everything the unit has done in its effort to enforce the law, and whether it is good or bad is for this Congress and the public to say, but they shall know it, so far as I am concerned; whatever the view as to what has been done, I want it properly presented.

The CHAIRMAN. In a statement that you have made you referred to the fact that a large majority of the district attorneys have earnestly and vigorously cooperated with the department in enforcing prohibition. How many district attorneys do you estimate there are that do not do that?

Mr. BRITT. Well, I could make no estimate; I am not in a position to make an estimate, for what I might consider a delinquency might not in fact be a delinquency at all. There might be reasons unknown to me why they are doing or not doing a particular thing, and I would not undertake to make an assessment of their efforts in all cases.

The CHAIRMAN. No; I did not ask about delinquencies. I asked you for an estimate of the number of district attorneys whom the department thought were not properly cooperating with the department in the enforcement of the prohibition law.

Mr. BRITT. I could not give you any number. I think the number is relatively small.

The CHAIRMAN. Would you say 10 per cent of them?

Mr. BRITT. I would not want to venture any particular per cent. Letters from district attorneys throughout the United States were presented to your committee recently. They have now been abstracted at your suggestion, and I think that will answer that question better than I could answer it, by giving a total of interested inquiries of district attorneys throughout the country and their requests for assistance of the prohibition officers.

I should like to ask that it be made a part of the record.

The CHAIRMAN. Yes; let that be put into the record.

Mr. BRITT. It was abstracted according to your request.

(The abstract of letters referred to is as follows:)

ABSTRACTS FROM LETTERS OF UNITED STATES ATTORNEYS AND OTHER OFFICIALS OF THE DEPARTMENT OF JUSTICE IN WHICH REQUESTS FOR AND ACKNOWLEDGMENTS OF LEGAL ASSISTANCE IN RELATION TO PROHIBITION CASES WERE MADE

March 17, 1924, the United States attorney, eastern district of Illinois, East St. Louis, Ill., requested the Prohibition Unit to assign legal and clerical assistance to complete the evidence and prepare the pleadings in approximately 300 cases of violations reported by the "St. Clair clean-up squad," composed of citizens. Two attorneys and two stenographers of the litigation division and two stenographers from the office of the Federal prohibition director, Chicago, were sent to East St. Louis, Ill., and prepared the necessary papers in approximately 276 injunction suits, a task which involved the preparation of approximately 600 affidavits and 1,650 separate legal pleadings. As a result of these injunction proceedings the Federal court granted 98 permanent injunctions and also granted injunctions against 155 other places.

December 8, 1924: Letter from Assistant United States Attorney Besson, Trenton, N. J., stating the case against Hazel Brewing Co., was placed on docket for hearing and stated, "I would appreciate receiving your cooperation and help."

September 11, 1923: Letter from United States Attorney Ball, Louisville, Ky., stating he had not yet prepared criminal information against the Theodore Menk brewery and requested that it be prepared and forwarded to him.

December 6, 1924: Letter from United States Attorney Burden, Syracuse, N. Y., stating that due to the excessive amount of work in his office he would appreciate having a form of libel and criminal information prepared and sent him in the case against the Cold Springs Beverage Co., Syracuse, N. Y.

December 24, 1924: Letter from Assistant United States Attorney Besson stating, "I think you should have a representative in Trenton in the Olden Beverage Co. case" at the hearing on January 2, 1924, before Judge Bodine, and requesting that witnesses and a representative of the legal department be present on that day.

August 5, 1924: Letter from United States Attorney Coles, Philadelphia, Pa., transmitting a bill of complaint filed by the Rettig Brewing Co. and requesting that he be furnished an answer and that legal assistance be sent to aid at the hearing.

February 4, 1925: Letter from Assistant Attorney General Mabel Walker Willebrandt, referring to letter from the United States attorney, Trenton, N. J., relative to the preparation of papers in injunction proceedings against breweries and stating, "It is my understanding that the practice you have been following in the past is to be continued and I am, accordingly, advising the United States attorney that the necessary pleadings and affidavits in such matters will be prepared by your office and transmitted to him."

January 31, 1925: Letter from Assistant United States Attorney Besson, Trenton, N. J., stating that because of the importance of brewery proceedings the practice be continued of preparing injunction pleadings in the Prohibition Unit to be forwarded to him through the Department of Justice.

Assistant United States Attorney Reich, Scranton, Pa., under date of May 21, 1924, requested the prohibition office to prepare answer in the Howell & King Brewing Co. and Franklin Brewing Co. cases, stating that his office was unable to give attention to this matter.

Special Assistant United States Attorney George V. Moore, Pittsburgh, Pa., under date of October 2, 1924, wrote in reference to the Crescent Beverage Co., Irwin, Pa., and made a formal request that this office prepare information charging contempt of court, a form of libel, and a criminal information.

September 9, 1924: Letter from United States attorney, Pittsburgh, Pa., stating that he would be glad to receive a criminal information charging the Crystal Ice & Manufacturing Co., its officers and responsible parties, with the violations covered by reports of investigating agents.

August 7, 1924: Letter from the assistant United States attorney, Toledo, Ohio, relative to the General Storage & Products Co., stating: "We are very anxious to have this case taken up in the early fall and would be greatly pleased to have you submit a memorandum brief on the questions involved."

March 21, 1923: Letter from the United States attorney, Philadelphia, Pa., re Hohenadel Brewing Co., stating he would be very glad to have assistance in

the appeal to the circuit court, in which a transcript of record and brief for the United States was to be prepared and filed.

May 16, 1923: Communication from Assistant United States Attorney George H. Cohan, Hartford, Conn., re New England Food Products Co., stating that before taking action he was "awaiting instructions and documents from Washington, as that is the usual procedure in cases of this kind."

October 22, 1924: Letter from special assistant to the Attorney General, St. Louis, Mo., expressing thanks for libel pleadings in the case of Schorr-Kolkschneider Brewing Co.

September 4, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., stating that he would be glad to receive a criminal information against the Crystal Ice & Manufacturing Co. based on reported violations.

October 28, 1924: Letter from assistant United States attorney, Philadelphia, Pa., requesting list of the witnesses in certain pending brewery cases.

September 26, 1924: Letter from the assistant United States attorney, Scranton, Pa., requesting that there be prepared an answer to the bill filed by the Lykens Brewing Co.

June 9, 1924: Telegram from the United States attorney, Philadelphia, Pa., requesting the names and addresses of witnesses in a pending brewery case.

August 29, 1922: Telephone request by United States attorney, Philadelphia, Pa., for a brief in the case of Hohenadel Brewing Co. (Inc.).

November 20, 1924: Telegram from United States attorney, Philadelphia, Pa., requesting the preparation of an answer to bill in equity filed by Vollmer Brewing Co.

October 6, 1924: Letter from United States attorney, Philadelphia, Pa., re Vollmer Brewing Co., stating, "I have filed motion to dismiss, which you inclosed. The memorandum which you sent will be very helpful."

April 25, 1923: Letter from United States attorney, Philadelphia, Pa., requesting brief on questions raised in the case of Bergner & Engel Brewing Co.

December 6, 1924: Letter from assistant United States attorney, Philadelphia, Pa., requesting a brief on the legal questions in the case of A. F. Stine.

November 26, 1924: Letter from United States attorney, Philadelphia, Pa., requesting a memorandum on questions of law in the case of Albert Gerber *v.* Blair.

December 19, 1923: Letter from assistant United States attorney, Philadelphia, Pa., expressing thanks for brief in the Gerber case.

November 7, 1924: Letter from assistant United States attorney, Philadelphia, Pa., acknowledging receipt of answer to be filed in the case of Alben Chemical Co. *v.* Blair.

December 18, 1924: Telegram from United States attorney, Philadelphia, Pa., stating "Court is requesting submission immediately of brief in Alben Chemical Co.; please send at once."

January 20, 1922: Telegram from United States attorney, Portland, Oreg., requesting Government brief in Bob Lowe case.

February 11, 1922: Letter from United States attorney, Portland, Oreg., expressing thanks for citations for use in Bob Lowe case.

March 1, 1922: Letter from United States attorney, Greenville, S. C., requesting briefs on law questions raised in a pending case.

February 9, 1924: Letter from assistant United States attorney, Huntington, W. Va., requesting copies of briefs and citations on questions of search and seizure of automobile transporting liquor.

September 26, 1924: Letter from assistant United States attorney furnishing an answer in the case of Lykens Brewing Co. *v.* Blair.

December 1, 1924: Letter from assistant United States attorney, Washington, D. C., requesting views on inclosed copy of answer to information of libel which had been filed.

November 20, 1923: Letter from United States attorney, Oxford, Miss., requesting copy of the decision of United States *v.* Drawdy.

December 23, 1924: Letter from United States attorney, Norfolk, Va., requesting forms for indictments in conspiracy cases.

October 6, 1923: Letter from special assistant United States attorney, Syracuse, N. Y., expressing thanks for printed copy of petition for rehearing in the Wandmaker case and requesting that the Prohibition Unit furnish the main brief to be submitted to the court in the James S. O'Donnell case.

October 9, 1923: Letter from special assistant United States attorney, Syracuse, N. Y., re James S. O'Donnell, stating, "I renew my request that your department furnish this office with a brief for use on said submission."

November 27, 1923: Letter from special assistant United States attorney, Syracuse, N. Y., expressing thanks for a proposed brief and in the case against James S. O'Donnell and requesting that a solicitor from the Prohibition Unit be present to present the case to the court.

May 5, 1924: Letter from United States attorney, Shreveport, La., re Shreveport Drug Co., *v.* O. D. Jackson, stating he would be pleased to receive an answer and brief on behalf of the Government and the assistance of an attorney from the Prohibition Unit when the cause is set for a hearing.

January 4, 1923: Letter from Special Assistant Attorney General, St. Louis, Mo., stating that in a pending case which he considered most important he would "be very pleased with any legal assistance which your department may feel inclined to send to assist with the trial of the case."

May 17, 1922: Letter from special assistant United States attorney, Pittsburgh, Pa., expressing thanks for form of declaration on bond in the case of Max Engelberg.

February 9, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., re Max Engelberg, stating "we would be glad to have such brief as soon as it can be prepared by you and we will submit it likewise to the court."

February 9, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., stating "Any suggestions or assistance that you may make relative to the handling of the Engelberg case are certainly thankfully received."

October 25, 1922: Letter from United States attorney, Philadelphia, Pa., re O'Kane *v.* Lederer, inclosing copy of affidavit of defense and requesting the opinion of the Prohibition Unit on the subject.

January 2, 1923: Letter from United States attorney, Philadelphia, in the Lederer case stating "I would appreciate your sending me whatever brief you may have on such case."

October 11, 1923: Letter from assistant United States attorney, Philadelphia, Pa., expressing thanks for copy of petition for review of Wandmaker case, for use in the Lederer case and requesting copies of future decisions on the subject.

March 5, 1924: Letter from assistant United States attorney, Philadelphia, Pa., stating that in the Lederer case "the memorandum sent me by your office has proved invaluable. If you know of any recent decision in our favor will you let me know?"

April 9, 1924: Letter from United States attorney, Philadelphia, Pa., inclosing copy of suggested certificate in the Lederer case and requesting that the Prohibition Unit go over the question with the office of the Attorney General and return it with any suggestions deemed appropriate.

November 12, 1924: Letter from United States attorney, New York, N. Y., requesting a memorandum of argument in a pending case.

May 1, 1924: Letter from United States attorney, Fort Worth, Tex., naming an attorney of the Prohibition Unit who he requested be present at the hearing in a pending case.

December 4, 1924: Letter from assistant United States attorney, Pittsburgh, Pa., requesting decisions in the questions raised in the Woodvale Drug Co. case.

January 6, 1925: Letter from assistant United States attorney, Pittsburgh, Pa., requesting brief for argument in the Woodvale Drug Co. case.

July 3, 1924: Letter from special assistant United States attorney, Syracuse, N. Y., stating he will be glad to receive a brief in the Mifflin Chemical Co. case.

March 5, 1924: Letter from assistant United States attorney, Hartford, Conn., stating he would be pleased to receive a brief in the Thomas Fitzsimmons case.

September 24, 1923: Letter from United States attorney, New York, N. Y., requesting that he be furnished data and suggestions for the preparation of an answer in a pending proceeding.

October 16, 1923: Letter from United States attorney, New York, N. Y., requesting suggestions and a draft of the Government's answer to be filed in the case of Shaw *v.* Bowers, collector.

July 17, 1924: Letter from assistant United States attorney, Boston, Mass., requesting a brief on legal questions in the James W. Birmingham case.

May 10, 1924: Letter from United States attorney, Sunbury, Pa., stating that in pending libel proceedings he would be pleased to have someone present from the Prohibition Unit at the hearing.

December 14, 1921: Letter from special assistant to the Attorney General, St. Louis, Mo., forwarding copies of indictments against breweries and requesting criticism and suggestings thereon.

October 1, 1924: Letter from United States attorney, Philadelphia, Pa., requesting full information for the preparation of answer to a bill filed by A. J. Stine against the Commissioner of Internal Revenue.

November 26, 1924: Letter from United States attorney, Philadelphia, Pa., inclosing copy of brief filed by A. F. Stine and requesting a memorandum on the law questions raised.

May 15, 1923: Letter from United States attorney, Philadelphia, Pa., to B. W. Andrews, head litigation division, Prohibition Unit, stating in the argument of the case of the Bergner & Engel Brewing Co., "I would be glad to have you present and assist us, if it is convenient to you."

May 21, 1923: Letter from United States attorney, Philadelphia, Pa., stating that argument had been had in the case of Bergner & Engel Brewing Co. and "Mr. Finn and Mr. Rabbitt, from your office, were present. Mr. Finn assisted in the oral argument before the court."

January 3, 1925: Letter from United States attorney, Trenton, N. J., re Olden Beverage Co. (Inc.), stating, "This office begs to advise you that Mr. Jackson, of the litigation department, was present and conferred with the writer before the hearing. Mr. Jackson likewise assisted in the actual trial, and by reason of his familiarity with the decisions and procedure in connection with brewery cases was of extreme value to this office."

December 13, 1924: Letter from assistant United States attorney, Scranton, Pa., re Pilsener Brewing Co., expressing thanks for a brief furnished and stating that it would be used in the argument of the case.

May 10, 1924: Letter from assistant United States attorney, Sunbury, Pa., requesting that any answer necessary be forwarded for filing in the case against the Pennsylvania Central Brewing Co. and requesting that "some one from your department be present to take charge of the argument on the return day."

November 8, 1924: Letter from Assistant Attorney General Willebrandt, stating that on the question of appeal from the decision of the district court in the Rettig Brewing Co. case, "We would be glad to have the benefit of your recommendations in the premises. A summary of facts in the case and your views relative to the merits of the same are particularly desired."

July 19, 1924: Letter from Assistant Attorney General Willebrandt re Tacoma Brewing Co., stating, "Will you please, therefore, advise me whether in your opinion the criminal charges against this concern can be supported by the evidence * * *. An expression of your opinion as to the proper procedure to be taken by this department with respect to the pending information against the officers of the company will be greatly appreciated."

February 11, 1924: Letter from United States attorney, Baltimore, Md., stating that in the case of Alexander E. Baumgartner "I shall be very glad to have your department prepare a brief."

April 5, 1924: United States attorney, Baltimore, Md., acknowledges receipt of brief re Alexander Baumgartner and states "I shall find all this of an inestimable value in the criminal prosecution of this and similar cases now pending."

February 9, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., requesting a brief in he case of Max Engelberg.

November 21, 1924: Letter from Federal prohibition director, Baltimore, Md., re Alexander Baumgartner, stating that the United States attorney, Baltimore, Md., "informs me that the suit on this bond will soon come to trial and he will advise Mr. L. Jordan of your office, who had been handling this matter, the exact date so that he may attend."

February 27, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., inclosing a brief in the case of Max Engelberg and stating, "Thank you for the several suggestions you have heretofore made to our office with reference to the right thereof. Please be assured that we will be very glad to have your office write an additional or supplemental brief to be submitted to the court."

March 28, 1924: Letter from special assistant United States attorney, Pittsburgh, Pa., stating, "The brief prepared by you on the subject of bond forfeiture has been received from the office of the Attorney General and will be

filed with Judge Thompson in connection with the Max Engelberg case. We desire to thank you and express our appreciation of your assistance in this matter."

November 25, 1924: Letter from United States attorney, Brooklyn, N. Y., advising the case of Hoell *v.* Mellon would be tried on December 2, 1924, and "any assistance which your department can render will be greatly appreciated."

December 13, 1924: Letter from United States attorney, Brooklyn, N. Y., re Hoell *v.* Mellon, stating, "It will, therefore, be necessary to go into the case de novo, and your department is requested to prepare itself accordingly."

April 4, 1923: Telegram from United States attorney, San Francisco, Calif., re John P. Sullivan, requesting memorandum of law to meet objections raised by defendants.

April 9, 1923: Letter from assistant United States attorney, San Francisco, Calif., re John P. Sullivan Co., stating, "I am, indeed, grateful for the assistance you have rendered and appreciate the thorough and painstaking examination of the facts and the law of the case that you have made and presented.

September 19, 1922: Letter from United States attorney, New York, N. Y., requesting briefs on question raised in the case of John McGloin, and stating, "The briefs which you have already forwarded have been and will be very helpful."

January 15, 1925: Letter from special assistant United States attorney, Pittsburgh, Pa., requesting the preparation of "proof of claim" in the case of Graebing Drug & Distributing Co. (Inc.).

February 3, 1924: Telegram from United States attorney, Pittsburgh, Pa., "Have representative from your office at hearing before referee in bankruptcy, this city, February 6, 10 a. m., Graebing Drug & Distributing Co. case."

January 29, 1924: Special Assistant to the Attorney General J. R. Sloane requested Mr. Eugene Grissom, attorney for the Prohibition Unit, be designated and authorized to assist him at Chicago, Ill., in the preparation and constitution of claims based on bonds taken by the Prohibition Unit against the Chicago Bond & Insurance Co.

December 11, 1924: Letter from Assistant Attorney General Willebrandt, re National Products Co., stating, "We have no copies of such declarations in our files. Will you be able to furnish the same?"

February 25, 1924: Letter from United States attorney, Philadelphia, Pa., attention Mr. B. W. Andrews, re Commonwealth *v.* Geiferal Prohibition Agent Asher, stating, "I think it would be entirely proper for you or Mr. O'Neill or some one of the legal staff of the prohibition department to assist and be at the counsel table during the trial of this case."

April 7, 1922: Letter from United States attorney, Little Rock, Ark., expressing thanks for copy of decision and Government brief in the case of United States *v.* P. A. Payne.

May 18, 1923: Letter from United States attorney, Wilmington, Del., requesting copy of opinion by a Federal court on the question of allowance of liens by finance companies against seized cars.

June 1, 1923: Letter from divisional chief, general prohibition agents, stating the United States attorney for the northern district of New York had requested citation of precedents for the sale of vehicles for transporting liquor.

April 19, 1923: Letter from Federal prohibition director, New York, N. Y., stating that the United States attorney had requested copy of decision in the case of United States *v.* Montgomery et al.

June 5, 1924: Letter from United States attorney, Spokane, Wash., expressing thanks for copy of decision in the case of United States *v.* Breid.

January 28, 1924: Letter from assistant United States attorney, Spokane, Wash., requesting citation of decisions relative to the forfeiture of automobiles used in transporting liquor.

April 4, 1924: Letter from United States attorney, Spokane, Wash., expressing thanks for brief and argument on question of forfeiture of automobiles used in transporting liquor.

November 20, 1924: Letter from United States attorney, Washington, D. C., stating he had filed a form of libel prepared by the Prohibition Unit against an automobile seized for transporting liquor.

November 3, 1924: Letter from Assistant United States Attorney Vosberg forwarding copy of bill in equity filed by Pilsener Brewing Co. and requesting that an answer be prepared and sent to him.

May 29, 1924: Letter from Assistant United States Attorney Reich requesting that in addition to a brief in the Pennsylvania Central Brewing Co. case an attorney from the Prohibition Unit be present to personally argue the case.

June 18, 1924: Letter received from United States attorney, Williamsport, Pa., expressing his appreciation of brief forwarded in the case against the Pennsylvania Central Brewing Co.

November 17, 1924: Letter from Assistant Attorney General Mabel Walker Willebrandt stated, "Please advise whether it is expected by you that a criminal information and bill for injunction will be filed in this case and whether your department is preparing the necessary pleadings for filing."

April 25, 1923: Letter from United States Attorney Coles, Philadelphia, Pa., inclosing copy of order for argument in the Bergner & Engel Brewing Co. case and requesting briefs thereon.

October 1, 1924: Letter from Special Assistant United States Attorney Moore, Pittsburgh, Pa., requesting the preparation of pleadings in the case of Crescent Beverage Co., Irwin, Pa.

October 11, 1923: Letter from Assistant United States Attorney Biddle, Philadelphia, Pa., requesting that the legal papers and pleadings for a search warrant and an injunction against the Home Brewing Co. be prepared and sent him.

July 23, 1924: Letter from assistant United States attorney, Scranton, Pa., requesting that an answer be prepared to be filed in the case of Likens Brewing Co. *v.* Blair et al.

August 24, 1923: Letter from Special Assistant United States Attorney Follett stating that the clerk of the court desired instructions as to legal procedure and requesting advice as to several questions arising in such procedure.

January 6, 1925: Letter from special assistant United States attorney, Philadelphia, Pa., requesting a representative of the Prohibition Unit to come to Philadelphia with the unit's files in five pending brewery cases for a conference before the trials.

March 21, 1923: Letter from United States attorney, Philadelphia, Pa., re Hohenadel Brewing Co. case, stating, "I would be very glad to have your assistance in this matter, as the case will be heard some time within the next three weeks."

May 6, 1924: Letter from United States attorney, Scranton, Pa., suggesting that an attorney from the Prohibition Unit be present in court to assist in argument of Joseph Glennon Brewery case.

Requests for and acknowledgments of legal assistance by United States attorneys and other officials of the Department of Justice in relation to prohibition cases:

August 14, 1920: Letter from United States attorney, northern district, Alabama, requesting opinion of this office as to whether Volstead Act repealed tax sections of old internal revenue laws, and as to whether or not conviction in State court precludes trial in Federal court for same offense.

October 5, 1920: Letter from counsel's office stating opinion of this unit.

November 1, 1921: Letter from United States attorney, Hartford, Conn., requesting information about and forms to be used in injunction proceedings.

November 26, 1921: Information and blanks furnished from counsel's office.

November 29, 1921: Letter from United States attorney, Hartford, Conn., acknowledging receipt of letter of November 26, expressing thanks therefor.

November 8, 1921: Letter from United States attorney, Hartford, Conn., requesting forms for search warrants to be used in liquor cases.

December 30, 1921: Forms furnished from counsel's office.

December 8, 1923: Letter from United States attorney, Indianapolis, Ind., requesting detailed information as to how, since national prohibition, collectors of internal revenue had control of distilleries and contents.

December 12, 1923: Full information given in letter from interpretation division.

December 21, 1921: Letter from United States attorney, Montana, requesting information as to taxes on smuggled, moonshine, or tax-paid whisky seized with automobile transporting same.

March 18, 1922: Reply with full information from counsel's office.

March 25, 1922: Letter from same attorney acknowledging receipt of information and expressing thanks for same.

December 20, 1922: Letter from Assistant Attorney General quoting letter from United States attorney, New Hampshire, in which he suggested the de-

tailing of an attorney from this unit for the purpose of assisting him in the trial of prohibition cases.

July 30, 1923: Letter from United States Attorney Hayward, New York, acknowledging receipt of information in case of Sohn Bros. *v.* Blair, and expressing thanks for legal assistance from this office.

September 12, 1923: Letter from United States Attorney Hayward, New York, for attention of Captain Orcutt, thanking office for other information in Sohn case and requesting further conference on the subject.

April 5, 1922: Telegram from United States attorney, Cincinnati, Ohio, advising that he welcomed any assistance from this office in the Remus cases, and suggested the sending of Captain Orcutt.

April 18, 1922: Letter from United States attorney, Cincinnati, Ohio, to Captain Orcutt, advising that he had requested Commissioner Haynes to send him (Orcutt) to Cincinnati as soon as possible.

April 24, 1922: Telegram from United States attorney, Cincinnati, advising that Remus trial was set for May 4, and requesting that Captain Orcutt be sent as soon as possible.

April 24, 1922: Letter from United States attorney, Cincinnati, Ohio, thanking commissioner for assigning Captain Orcutt, whom he said was an immense help in the Remus trial.

May 8, 1922: Letter from United States Attorney Morrow, Cincinnati, to Commissioner Haynes, expressing appreciation of the fact that he (Haynes) had been able to send Captain Orcutt to help in Remus cases.

March 5, 1923: Letter from United States Attorney Morrow, Cincinnati, advising that he greatly appreciated assistance rendered to him by Mr. V. Simonton in the Independent Drug Co. case, saying: "His advice and assistance was invaluable in the Independent case, as was that of Captain Orcutt in the Remus matter. It is hard to understand how the case could have been won without Mr. Simonton's help. You are fortunate in having such men in your legal department."

January 31, 1923: Telegram in response to missing telegram from United States attorney, Chicago, Ill., requesting Colonel Nutt and Captain Orcutt to be sent to Chicago to assist in Green Mills Garden case, advising that it would be impossible for them to be in Chicago on February 1.

February 2, 1922: Telegram, United States attorney, Baltimore, Md., advising that in response to his wire of the 25th legal representative of the office would meet him at his office on February 2, relative to Allen suit.

March 31, 1922: Letter from Cohen, assistant United States attorney, Hartford, Conn., advising that in the case of United States *v.* Delohry et al. he would advise in advance of date set for hearing and would welcome any assistance that the office or Mr. Orcutt might be able to give.

March 28, 1923: Letter from Cohen, assistant United States attorney, Hartford, Conn., advising that Delohry case would come to trial April 4, and requesting that Mr. Orcutt or other representative of the department be present at that time, saying, "We shall be very pleased to have him there and receive suggestions from him."

October 7, 1924: Letter from Special Assistant Attorney General Dyott, St. Louis, Mo., requesting services of Mr. John Marshall, special attorney, Prohibition Unit, in preparing work in connection with the Jack Daniel distillery cases, advising that Mr. Marshall had assisted him in some other matters and that Mr. Marshall's assistance would hasten the conclusion of cases now on the docket.

December 27, 1924: Letter from United States attorney, Detroit, Mich., requesting that Mr. Marshall, special attorney, be sent to Detroit to assist the Government in the preparation of the Hamtramck cases.

January 23, 1925: Letter from United States attorney, Detroit, Mich, requesting the services of Mr. Marshall for assistance in the preparation of the case of the Star Products Co., involving about 20 defendants. The letter ends as follows:

"This office has always appreciated the services of Mr. Marshall, and we have always worked in perfect accord; so you may be assured if he returns here, it will meet with my approval to the fullest extent. I regard this as very valuable assistance by the Prohibition Unit."

May 21, 1924: Letter from United States attorney, Baltimore, Md., acknowledging receipt of letter that inclosed answer in case of Baker *v.* Tait, collector, thanking office for assistance rendered. (This letter was followed by several

others advising of the progress of the case, with the view of posting the office in order that legal assistance might be there when case was heard.)

January 9, 1925: Letter from assistant United States attorney, Kansas City, Mo., attention Mr. Bonsall, attorney, advising that in the case of Maturo *v.* Crooks, collector, he would have case set for some time in February or March, when convenient for Mr. Bonsall to be there to assist in the trial.

February 10, 1925: Telegram from United States attorney Hayward, New York, attention Mr. Bonsall, special attorney, advising of the continuance in the case of Seligman *v.* Bowers and requesting to be advised if Mr. Bonsall could argue the case on the 20th; and if not, to fix convenient date.

December 22, 1924: Letter from United States attorney, Boston, attention Mr. Ward Bonsall, special attorney, in relation to case of Moreland *v.* Nichols, collector, saying: "I am pleased to have the benefit of your best judgment and advice in this matter, as it is understood the case will be called again December 29."

January 16, 1925: Letter from collector of internal revenue, Louisville, Ky., attention Mr. Bonsall, special attorney, advising that the United States attorney would like very much for him to be present at the hearing of the case of Pogue Distillery Co. *v.* Lucas, collector of internal revenue, and suggested that he set a date in the week beginning February 2.

January 28, 1925: Letter from assistant United States attorney, Louisville, attention Mr. Bonsall, advising him of the date set for hearing in the Pogue case.

December 15, 1924: Telegram from United States attorney, Omaha, Nebr., requesting Commissioner Haynes to send Mr. Bonsall, special attorney, to Omaha for hearing in a conference regarding injunction matters.

December 22, 1924: Letter from same attorney, attention Mr. Bonsall, acknowledging receipt of copies of answers in cases of Kravchuk *v.* Allen, collector, and Mensbom *v.* Allen, collector.

December 9, 1924: Letter from same attorney, acknowledging receipt of answer to be filed in Pospichal *v.* Allen, collector.

December 19, 1924: Letter from same attorney, acknowledging receipt of copies of answer to be filed in case of Burkhardt *v.* Allen, collector.

July 10, 1924: Letter from United States attorney, Spokane, Wash., requesting office to draft answer in injunction suit of Sheridan *v.* Poe, collector, and requesting the sending of special counsel to assist in the trial of case and the arguments on question of law.

August 12, 1924: Telegram from same attorney, stating that Newton & Hilton were set for argument September 8 and wishing to be advised whether or not special counsel would be there.

September 25, 1924: Letter from assistant United States attorney, Tacoma, Wash., attention Mr. Bonsall, thanking him for assistance and cooperation in connection with case of Went *v.* Swindle, Collector.

December 23, 1924: Telegram from United States attorney, New Orleans, La., advising that trial of certain assessment injunction was set for Thursday, February 19, and suggested that Mr. Bonsall sign answers with him.

August 24, 1924: Letter from Assistant Attorney General Lovett, thanking unit for information furnished in letter of August 20, relative to case of Bonn Distillery Co. *v.* United States in Court of Claims, and expressing thanks for same and advising that he would avail himself of proffered assistance.

September 17, 1924: Letter from Assistant Attorney General Lovett to Commissioner Blair, acknowledging receipt of certain papers in the case of Julius Kessler *v.* United States in Court of Claims, saying: "Please accept my thanks for this material and your offer to collaborate in the defense of this suit, which offer will be gladly accepted."

The CHAIRMAN. You may proceed, Mr. Pyle.

Mr. PYLE. Mr. Britt took up this discussion of Mrs. Willebrandt's interview before I had a chance to express my opinion on it.

The article as read was entirely a discussion of the type of agent, not the activity of the unit, but the type of agent.

Mr. BRITT. I understood it was not entirely directed to the agents.

The CHAIRMAN. Well, the article is accessible to the committee, and I do not think we need go into any further discussion of that

or to have counsel's opinion on it. The committee will decide that for itself.

Mr. PYLE. One point has been brought out, though, that I wish to take up, and that is this, that agents, regardless of their other qualifications, go into this work directly at the time of appointment. They have no educational processes; they have no training, for instance, as to their rights and duties in the obtaining of a search warrant, and their rights and duties and powers in the service of a search warrant; their right to arrest without a warrant, etc. Their various powers and duties are to them an uncharted sea, on which they must feel their way. They are generally detailed with older agents, more experienced agents, who may know more about it, who will probably know something more about it, but their impressions are not definitely vouched for by any responsible person, who says: "This is the law and you can safely do this and that." They learn it; that is a kind of tradition that is passed down, that "you can do this" and "you can not do the other."

The CHAIRMAN. There must be a manual of some kind issued by the unit, is there not?

Mr. BRITT. I have never seen it, if there is.

The CHAIRMAN. Is there not a manual issued containing instructions to these agents, Mr. Britt?

Mr. BRITT. I am told that there has recently been a field manual prepared. There are instructions issued, Mr. Chairman, from time to time that relate to different subjects. You have reference to a general code?

The CHAIRMAN. I think so. I never sent a police officer out, when I was commissioner of police, without giving them several months of training, and I certainly never sent a man out without a manual of instructions as to his duties.

Mr. BRITT. There are numerous forms sent out, letters, mimeographs, etc., but there is no whole, condensed manual of instructions to field agents.

The CHAIRMAN. Do you not think that there should be?

Mr. BRITT. I do.

The CHAIRMAN. Well, I should hope there would be.

Mr. PYLE. That becomes intensely important in the matter of enforcing Federal laws, because the Federal courts adhere so closely to the protection of the Constitution, so that a single misstep made in the case of a purchase of liquor, the issuance of a search warrant, the service of a search warrant, the making out of the return, on the back of a warrant, and the innumerable small and minute details may entirely invalidate the whole case.

The CHAIRMAN. I think the committee understands that, Mr. Pyle.

Mr. PYLE. Now, to continue the résumé——

Mr. SIMONTON. I might advert to one point here. Mr. Pyle brought out here that the law is in its formative stage, that is, the interpretation of the law, that general instructions issued to one section to not get into another, and, for that reason, the department has issued instructions to the several different branches as the law in connection with those branches has been interpreted by the courts. Gradually, that is being coordinated, and there is now a committee in the department working on instructions that will be useful to all branches.

The CHAIRMAN. Of course, the law itself might be interpreted and the constitutional limitations of the agents, so as to have different rulings by different courts in different sections.

Mr. BRITT. Yes; the agents are often brought in in groups, and the commissioner has different persons who, he thinks, are capable of doing it, instruct them on various points. For instance, a group of agents recently came in, and I was requested to instruct them on the two important matters of what constituted an entrapment and what was required to make a conspiracy case. From time to time, they are instructed on special matters in that way. Mr. Simonton reminds me that there is a general field code in preparation.

Mr. SIMONTON. I might say, in answer to your question, Mr. Chairman, that in certain jurisdictions, search warrants, as Mr. Pyle pointed out some time ago, were required in times past for searching automobiles. Instructions issued in the general form two years ago to an agent in New York would be utterly useless to him in the western district of Pennsylvania or in Utah, because the interpretations of the courts were not coordinated, but they are being gradually brought to that stage, as, for instance, has been illustrated here by that search of automobiles without a search warrant, where I can say that the courts are at one on that proposition.

The CHAIRMAN. That will always be the situation if you are going to wait until you get a perfect manual. In that event, you will never have one.

Mr. SIMONTON. All acts of Congress pass through that final stage, and when that is finally settled we can tell the agents definitely as to their jurisdiction.

Mr. PYLE. There is one point that came up the other day that I have given some general study to since then. That was on the issuance of permits, in which the point was brought out that the forfeiture of those bonds was a comparatively slight matter, covering principally the tax and penalty.

As I understand it, Mr. Britt, as to this ambiguity in the law, the Attorney General has held that the face should be forfeited, but the courts generally have held the other way.

Mr. BRITT. Yes.

Mr. PYLE. In view of that, I would consider it advisable for this committee to consider the advisability of an amendment to the act whereby the entire face of the bond could be forfeited as liquidated damages or otherwise in case of violations of the national prohibition act. At the present time the bond is practically valueless. It means nothing by way of penalty or punishment to the permit holder, if he does violate the law, to have that property pledged with the Government on the surety bond, because the actual cost to him is slight. I think a provision of that sort would mean that the permit holders would be very careful.

For instance, the Ethyl Solvents Corporation, which we have discussed, has a $100,000 bond, I believe, and they would be very slow, indeed, to violate the law if this act of forfeiture would take place.

The same is true of a wholesale druggist who had a bond of, say, $15,000 or $20,000, if there was such a penalty for a violation of the law on his part—a penalty which he is relieved of at the present time.

The CHAIRMAN. Would you think, Mr. Britt, that such an amendment to the statute would be desirable?

Mr. BRITT. I do not quite follow the counsel, Mr. Chairman.

The bonds now stand in a doubtful relation, as counsel says. A former Attorney General held that they are forfeiture bonds, which would mean that you might forfeit $100,000 for the slightest offense under the terms of a permit. They are not administered that way, either through the courts or wholly by the department. They are administered more after the manner of damage bonds. To-day there are so many of them that it is exceedingly difficult for the various district attorneys to bring suit and prosecute it on all that might be brought into court. There are very many, as you know, with the result that an effort is made to settle them up, as has been previously described here, either on the score of a settlement or compromise, or in some other way, so as to make whatever can be made out of a seeming liability. Just what is your suggestion as to legislation?

Mr. PYLE. My suggestion, Mr. Britt, would be that the entitre face of the bond, or such portion thereof as the court might, in its discretion, determine, should be forfeited for a violation.

Mr. SIMONTON. That question could, of course, be settled by legislation, though it is now either in the Supreme Court or about to be placed in the Supreme Court, through a request for an interpretation or answer to certain questions certified by the circuit court of appeals from the third circuit in O'Kane *v.* Lederer. In that case the court held it to be a damage bond, and it went to the circuit court of appeals, and they are asking the Supreme Court to certify certain questions for answer. They are now in the Supreme Court, and when those answers are made it will be definitely determined whether it is a damage bond or whether it is a forfeiture.

Mr. PYLE. When would you expect a decision on that—in some months or a year?

Mr. SIMONTON. It will be some months, at least.

Mr. BRITT. That is on the question of certification.

Mr. SIMONTON. Yes; whether it is a damage bond or a forfeiture bond. So we are gradually getting this act into a position where we will know where we stand. New legislation presents to us an act for interpretation again. We must go through that same modus operandi to determine whether or not it definitely establishes it as a forfeiture or a damage bond, etc.

The CHAIRMAN. Of course, if the court reached a conclusion which was not in accordance with the law, Congress then would have the right to better express its will.

Mr. SIMONTON. Yes; that is true, of course. We believe that the will of Congress is plainly expressed in the act as it stands, but the courts disagree with us very often.

Mr. PYLE. You mean that they considered the attitude of Congress as expressed in the act, that this should be a damage bond only, to indemnify the Government as to such actual damages as you can establish?

Mr. SIMONTON. No; we consider it a forfeiture bond; but I was making the point with the chairman that new legislation always brings in the angle of interpretation, and when the court interprets it it may be against the position that Congress intended, and it has

to go to the Supreme Court again and we are back in the same situation as we were before.

The CHAIRMAN. I think if the contention of the Prohibition Unit was sustained, that it was a forfeiture bond, you would have fewer violations.

Mr. BRITT. Yes, sir.

The CHAIRMAN. And if it is not sustained by the Supreme Court, it seems to me that Congress—or it seems to the chairman of this committee, at least—should make it very plain that it is a forfeiture bond and not a damage bond.

Mr. SIMONTON. Yes, sir.

Mr. BRITT. That would not only simplify it, but, as the chairman points out, it would be a very powerful restraint.

Mr. PYLE. Now, to continue with this résumé, we have found that the principal source of supply of intoxicating liquor, becoming beverage or used for beverage purposes, is the whisky distilleries, the industrial-alcohol distilleries, the breweries, smuggling, the so-called moonshine stills, and through sacramental wines.

The whisky distilleries have supplied a great deal of illicit whisky to the country, directly or indirectly, by robberies, by forged robberies, in which the element of fraud enters, and through the fraudulent permits. Robberies by force have occurred in the past in great number. At the present time they are diminishing, due probably to the concentration in warehouses that are more easily guarded.

Robberies by fraud have occurred from time to time.

I have in mind the case of the Jack Daniels distillery, in which it was found that after a certain storekeeper-gauger had been stationed at this distillery for a time 895 barrels, I believe, supposed to contain whisky, contained water. An investigation was made and indictments were prepared. I do not believe the case has been criminally tried yet. If it has been, it was just recently, but there were 895 barrels removed during the time of a month or two that a certain storekeeper-gauger was there. That is a kind of a robbery by fraud.

It is reported commonly among bootleggers that other distilleries have been so treated, but it has not been discovered that that is true to any extent. There have been a few small cases only.

The fraudulent permits are the biggest means of getting liquor out unlawfully. This is the withdrawal permit, the permit to purchase which is adopted. The Fleischmann case grew out of the use of fraudulent permits.

In connection with the Finch Distilling Co. there have been two cases of fraud, one a small one of 200 cases on a fraudulent permit, and then at a later date a case was brought against that concern showing the removal of some 15,000 cases in that manner, and I believe that case is now pending.

Nearly every distillery has some record of some liquor going out on fraudulent permits. There are other distilleries in which the permits are used.

In the case of the Schenley distillery, as shown by the files, the system was to sell the druggists 14 cases, when they were entitled, under the rules in force in the director's office, at that time to five, in some way arranging that the records could be covered up, so that all the purchase was gotten out.

In that case the Prohibition Commissioner revoked the permit of that company, but on review before the Commissioner of Internal Revenue it was held that the evidence was insufficient, and I believe you had an opinion to that effect, Mr. Britt.

Mr. BRITT. Yes.

The CHAIRMAN. Why are 14 cases used in a case like that?

Mr. PYLE. The rule at that time was that a druggist could draw five cases, I believe, at one time. The company sold to the druggist on his application for 14 cases.

The CHAIRMAN. But I asked you why it was 14 cases?

Mr. PYLE. That just happened to be the amount that was used.

The CHAIRMAN. Then, that answers the question.

Mr. PYLE. Why that was so I do not know.

Mr. SIMONTON. Mr. Chairman, I can probably explain that. Fourteen cases is one barrel, or below 15 cases is one barrel. At that time we did not require confirmation of a permit to purchase. We now require confirmation of a permit to purchase on any quantity.

The CHAIRMAN. So that 14 was used just to get under your requirements.

Mr. SIMONTON. In the Guckenheimer case, which has been recently decided, the decision of the court of appeals affirming the conviction, it was held that on one day only enough came out to make about a half a dozen truck loads, each permit calling for 14 cases, so that they might fill this order for this illicit withdrawal; they placed it on this truck, 14 cases to each man, and they would not have to have a confirmation for each separate transaction.

As a matter of fact, it was one transaction for that purpose. Since that time we have stopped that leak by requiring confirmation in every case.

The CHAIRMAN. In that connection, referring to the druggist, Mr. Pyle, Senator Jones, at one of our hearings, raised the question not only of the high price of medicinal whisky but varying prices in the different localities and stores. Have you looked into that feature of it?

Mr. PYLE. I have some data on that, Senator.

The CHAIRMAN. Do you want to put that in the record now?

Mr. PYLE. I have not it down here with me.

In connection with the fraudulent permits, a peculiar case was the case of the Alps Drug Co. in New York City. They had adopted a practice up there of having a certain ring of men, who were later indicted, buy these applications for liquor from the druggists, paying them $1 for each case for which they applied. They apparently, through some method with the director, were able to get these permits approved and allowed. The director was removed and, I believe, indicted.

Mr. BRITT. Yes.

Mr. SIMONTON. And this case figured in his trial.

Mr. BRITT. The report was that the druggist would take out an application for 5,000 cases and would be paid $5,000, etc., the ring then later withdrawing the whisky and selling it to the bootleggers of New York City.

That shows another manner in which the permits were obtained or worked out to get the liquor for beverage purposes.

The CHAIRMAN. Has that method been stopped now, Mr. Simonton?

Mr. SIMONTON. Yes, sir. We have adopted these automatic checking machines, which cut into the paper the amount. New forms of permits have been gotten out that we can identify and analyze, and we can tell whether it is the proper paper or not. A great many methods have been adopted since then to stop that practice.

Mr. BRITT. Confirmation has been the most important thing.

Mr. SIMONTON. Yes. Our trouble of late has not been in that regard. It has not been through the illicit withdrawal of whisky. That has fallen relatively low. It is in the industrial alcohol.

Mr. BRITT. Our change of system as to confirmations had very much to do with it. That is, we require a request by the seller of the director, under registered mail, for each separate 1,410, which is the order, before the order is filled. In that way we practically shut off the use of forged permits.

Mr. SIMONTON. They would have to falsify the post-office records to do it. It is impossible, unless they bribe a post-office employee, which has not been shown to have been done in any case. It is impossible for them to make a record which will permit them to escape detection.

Mr. PYLE. The second source, and perhaps the largest source, of intoxicating liquors are the diversions from industrial alcohol distilleries.

The CHAIRMAN. I think that is already in the record.

Mr. PYLE. They occur through the use of fraudulent permits, as was done in the Fleischmann case, through the conversion of special denatured alcohol and redistilling. Philadelphia and Brooklyn are the big centers of that.

There is one other case which I think is a little different, which we have not brought out yet. It is a different line of diversion.

The Penn Distilling Co. was buying grain alcohol from a southern distillery, shipping it by cars, presumably denaturing it completely, and shipping it out through the connivance of the storekeeper-gauger. This was not even taken off of the car, some of it, but it was just transferred to other cars and shipped right out again as grain, and the storekeeper-gauger modified his records to show that it had been denatured. There is no knowing how much had gone out that way, but the department agents there actually caught 100 barrels leaving in that manner, and the permit was revoked therefor.

The CHAIRMAN. If I remember correctly, some complaint and criticism came to the chairman personally with respect to the use of corn syrup by the Corn Products Co.

Mr. PYLE. Corn sugar.

The CHAIRMAN. Yes.

Mr. PYLE. Corn sugar is used in moonshining.

The CHAIRMAN. Is there any demand for that outside of that purpose?

Mr. PYLE. Corn sugar, as I undersand it, is capable of being used in cooking, but it is very little used.

I can state that in the city of Pittsburgh, in a certain district where the commodities for manufacturing liquor were largely sold—

that is, large stills, flavoring extracts, etc.—great quantities of corn sugar were handled; and I have never in the East raided a still but what corn sugar was found. That seems to be the principal use of corn sugar.

The CHAIRMAN. Does the bureau know anything about this corn-sugar factor and this Corn Products Co.?

Mr. BRITT. This has been brought to my attention, Mr. Chairman, and I have no opinion about it.

Mr. EMERY. There is one very large use made of the corn sugar by the Corn Products Co. It is put up in tin cans and flavored with vanila, etc., and it makes an excellent table sirup.

Mr. SIMONTON. There is a very wide field for the use of corn sugar. One field is glucose. You will find it in any of these products used as sweetening.

Mr. PYLE. We are talking about the corn sugar.

Mr. SIMONTON. That is the sugar of the corn. You will see it on the labels of nearly every product that requires any sweetening.

The CHAIRMAN. Then you believe that this corn sugar is used legitimately and that there is a legitimate demand for the production of it?

Mr. SIMONTON. There is not any question about that at all, sir. That is one of the biggest angles of food production. The glucose fight for years waged over whether glucose was or was not poisonous. It finally settled down, and you will find it on the label of every product that needs sweetening.

Mr. PYLE. It is largely manufactured from grain in the Northern States—in Pennsylvania and Ohio and that section. Corn sugar seems to be the basis of moonshining, because at every still you will find quantities of it and hundreds of empty sacks in which it came.

In connection with this denatured alcohol, a suggestion has been made that additional legislation is needed to control it and follow it, so that the department can know at what point it is diverted to beverage purposes and take proper action.

Has any effort ever been made to draft a law, Mr. Britt, that would cover that situation?

Mr. BRITT. Not to my knowledge, sir.

Mr. PYLE. What would be your recommendation, as representing the bureau, in that respect—that you should follow it to the dwelling house, or only through the commercial stages?

Mr. BRITT. I do not know whether there should be any express provision of the statute by which it should be followed into a dwelling house, any more than crime is followed generally into dwelling houses and other places, because, as has been suggested this forenoon, there are certain fundamental rights that have to be protected in the enforcement of any law; but I think a great deal could be accomplished by a statute that provides, in the first place, that denaturing plants shall at all times be connected with production plants, and that when alcohol is withdrawn for denaturation and sold for manufacturing purposes the right of inspection, and continuous inspection if desired, should follow it until it is distributed as a separate article for use generally. That is, we should have some mode of reaching what has been described here as cover-up houses, for one thing, which constitute a great hindrance to law enforcement.

Mr. PYLE. If the law were amended so that the denaturing of the alcohol could take place only at the distillery, or a plant of substantial size dealing in a substantial quantity, would that do away with the necessity, to a large extent, of following the product later?

Mr. BRITT. No; it would not, for the reason that so long as you allow withdrawals for denaturation without the payment of the tax there must be sales of this denatured alcohol for manufacturing purposes, and that leaves the manufacturer, if he is disposed, just where he now is.

Mr. PYLE. I have had a great deal of complaint, both in writing and orally, from concerns posing as legitimate business concerns—and I have had no reason to believe otherwise—and I have seen articles complaining that the controlling of the alcohol was embarrassing their business, their legitimate business; that is, it is hampering their withdrawals.

Have you heard of such complaints, and what would you say as to that—that their legitimate business is being hampered in order to prevent an illegitimate business elsewhere in other lines?

Mr. BRITT. I have heard some such general complaint as that. I hardly see how that could be true, unless it should be that a large proportion of the alcohol sold legally by the producer is ultimately diverted and the efforts of the Government to prevent its diversion cut off, to a greater or less degree, the production. I know of no restrictions placed upon the raw product anywhere.

Mr. PYLE. Is there in the purchase?

Mr. BRITT. The restrictions are in the purchase; and, just now, Mr. Pyle, complaint comes in regard to the sale, without tax payment, under forfeiture through the courts. Recently—this may interest the chairman, since this question has been broached here, but it was mainly discussed before another committee on the Cramton bill—we have prepared in the unit a Treasury decision, which the commissioner and Secretary have approved, and it is the law of the department, that a director can not approve an application to purchase forfeited alcohol sold under order of the court until he has been satisfied that the regular tax has been paid. That is now the law of the department. It will probably clash with the courts, and may have to await an ultimate decision on the clash; but two evils grew out of it. The purchaser of untax-paid alcohol was, of course, at a great advantage over the purchaser of tax-paid alcohol. Then the courts in one instance, particularly in Boston, issued an order allowing the marshal to take pure alcohol and turn it over to the hospitals. The hospitals are under permit and bond, and also under limitation of quantity, and this was virtually an assumption of administrative authority on the part of the marshal. We have requested the Department of Justice to see if something can not be done to get that order withdrawn, for the reason that it is an injustice; that is, the sale under forfeiture without the tax is an injustice to the producer, and to other purchasers also, by discrimination.

It is also inclined to promote diversion by putting an excess quantity into the hands of the hospitals without control or restraint.

Mr. PYLE. As a matter of fact, if they sell in that way any alcohol, the Government has a $4.18 interest in every wine gallon that sells for about $5?

Mr. BRITT. Yes.

Mr. PYLE. The Government has more concern in having this tax paid than the producer, really?

Mr. BRITT. Certainly, but it is sold at a low price and discriminates against those who have to sell tax paid.

Mr. SIMONTON. You can see, Mr. Pyle, that it might readily be followed down by the retailer under the tax provisions.

Mr. PYLE. The matter of breweries supplying beer should be taken up. That has been discussed here showing that the permit makes but little difference in the making of high-powered beer and putting it on the market. A problem comes up as to how that matter can be controlled. At the time the breweries were discussing them I suggested the only remedy that I had been able to think of that would control that satisfactorily would be to require registration of their brewing apparatus with the collector, with power to investigate it, the same as stills are handled.

Has the department any remedy whereby a nonpermit brewery can be watched and controlled?

Mr. BRITT. I think that an exceedingly pertinent question just now, and it has been ever since I have been connected with the department, and the rigid enforcement of the forfeiture laws and the removal from proved violators of all of the instrumentalities of violation is the remedy.

The CHAIRMAN. You already have authority for doing that?

Mr. BRITT. We have ample legal authority.

The CHAIRMAN. What Mr. Pyle was asking you was whether you had any other suggestion to make with respect to the nonpermit breweries?

Mr. BRITT. I think the suggestion that all of the apparatus be registered is a good suggestion. I think that would be helpful. It certainly would be helpful in making inquiries and holding to accountability. Some remedy, legislative or administrative or both, ought to be devised by which no brewery can operate in the United States without a permit. I am clearly of the opinion that legally they are required to have a permit, for the reason that they can make no so-called near beer that is drinkable without first taking it to the height of strength above that constituting the legal limit.

Mr. PYLE. When you say it already requires permits, you refer particularly now to those that make beer by the suspended fermentation process?

Mr. BRITT. Yes; and to all.

Mr. SIMONTON. I would say that the informity in the registration system is that we have no difficulty in apprehending them under the law, and the registry would not put us in any better situation in that regard.

The CHAIRMAN. I understand that you can not make an inspection of nonpermittees.

Mr. SIMONTON. No; but they have to put it out, of course, and we catch them putting it out; but assume that we did make an inspection of these registered permittees and did find that they violated the law, then we must invoke the processes of the law and destroy that property or forfeit it.

The CHAIRMAN. I understand that, but as I have listened to the testimony as we have gone along, it indicates to me that a nonpermittee has an advantage over the permittee in brewery cases.

Mr. SIMONTON. I am merely pointing out this, Mr. Chairman——

The CHAIRMAN. Yes; I understand; but what we are trying to get at is whether there is any way of making a nonpermittee obey the law, as well as a permittee?

Mr. SIMONTON. That is what I was speaking of. Probably I have not made myself clear. Undoubtedly the registry would give you access, and when you have access you can then destroy the instrumentalities of the crime.

Mr. BRITT. Why not directly require them to have a permit for the manufacture of near beer.

The CHAIRMAN. Especially when he uses other processes.

Mr. BRITT. Yes, sir.

Mr. PYLE. Moonshine is another source of supply that is scattered all over the United States. It seems to be prevalent in what we call the dryest sections; that is, when liquor gets difficult to transport or ship in they start making their own. We find that uniformly over the country, where these large plants, breweries, distilleries, and denaturing plants are located mostly in a few of the larger cities.

The moonshine is a matter that is hard to cope with, because it is handled generally in the more secluded places.

The CHAIRMAN. I think the committee understands that. The bureau had that to contend with before there was any prohibition law.

Mr. PYLE. But the point I wish to bring out in connection with that is that in deterring that the prohibition law does not provide a penalty even as severe as the penalties before prohibition for the same offense.

My impression is, and I have dealt with a great many of them, that the one thing that will deter that is a heavier penalty. The courts seem to give pretty nearly the maximum penalty in these moonshine cases. In most of the jurisdictions moonshining is frowned upon because it is a dangerous drink, and those who make it receive scant attention at the hands of either juries or judges in most sections of the country; but the judge is restricted to a rather slight penalty, six months imprisonment, plus a fine.

I would like to hear from the department as to whether they think that the matter of a more severe penalty would be a deterrent to that class of crime?

The CHAIRMAN. Before Mr. Britt replies to that, I would like to ask wherein the law is less strict now than it was in preprohibition days?

Mr. PYLE. I forget the exact penalty under the revenue statutes.

Mr. SIMONTON. In Judge Peck's court, under indictments brought under the internal revenue laws, and which are the penalties we now have for moonshining, I have figured that there was a maximum penalty of 20 years, so that all the Department of Justice need do is to invoke the internal revenue laws, which the Supreme Court has held as now being in force.

Mr. BRITT. You mean as a sheer blockade still?

Mr. SIMONTON. Yes, sir; moonshining. In the case of the United States *v.* Stafford (260 U. S. 477), the Supreme Court said that

since November 23, 1921, all of the internal revenue laws with reference to nonbeverage and beverage liquors are now enforced, and that case involved a blockade still, a pure moonshine proposition, and they were charged with defrauding the Government of the tax.

Mr. PYLE. There is one difficulty that I have in mind just now, and that is the old theory of the punishment being so great that the juries will not convict. Queen Victoria had an unloaded pistol pointed at her several times, and the juries returned verdicts of guilty, but insane. They did not want to send a man to the penitentiary for pointing an unloaded gun at her, and they had to change the law.

If they find in some jurisdictions that the fines are too great and the term of imprisonment too long, the juries simply do not convict.

The CHAIRMAN. I think the committee understands that part of it.

Mr. PYLE. In connection with this unlawful manufacture, moonshining, redistillation, the making of flavoring, and diluting of alcohol for intoxicating liquors, most of it is being carried on in dwelling houses, behind the cloak afforded dwelling houses by the national prohibition act and the Willis-Campbell Act passed later. At first the stills were run in barns and sheds, outhouses of various sorts, and in the open air, but more and more they came into the dwelling houses, particularly farm dwellings.

The CHAIRMAN. We have problems enough, I think, to take care of the diversions from the alcohol plants, without going into the homes, going into the matter of home brew, and all that sort of thing.

Mr. PYLE. No; I am not interested in the home brew, Mr. Chairman, but the production in dwelling houses, in the case of distillation of liquor, in taking care of practically, in and around Pittsburgh, the entire moonshining business. You go along a street in certain sections of the city and you will find continual fumes of intoxicating liquor being distilled coming from the dwelling houses.

The CHAIRMAN. Do you want to repeal the fourth amendment?

Mr. PYLE. I do not, sir, but I believe the old revenue provision could be revised expressly in the law, allowing the search of dwelling houses used for the unlawful distillation of liquor, not for home brew and the making of wine, but the distillation, which I believe is always a commercial proposition. I have never seen a still that was utilized for the making of liquor for home consumption only.

The matter of sacramental wine has not yet been taken up before the committee.

The leading case on that seems to be the Continental Distributing Co. of New York. In that case, some 250,000 gallons were imported for sacramental purposes, and sold. The agents investigating the case found numerous ways in which it was handled. For instance, the companies, several of them handling it, and it being the same company under different names, with branches scattered about New York City, had the applications approved by what purported to be rabbis, but were actually found later to have no standing as such. The liquor distributed consisted of wines of various kinds and even high-grade champagnes. The agents found where this had been sold to persons who had no religious connection with the Jewish church. It was purchased through these rabbis apparently, and it

developed that the salesmen of this concern were going from house to house taking orders for the wine, and then fixing up these papers, and these purported rabbis just put their names on all of these in blank, and the wine was thereafter sold by the company.

That is just a sample of the way that sacramental wine is handled.

The CHAIRMAN. How does it get into the country? By what process does it get into the country?

Mr. PYLE. It came in under a legal permit for sale for sacramental and medicinal purposes.

The CHAIRMAN. How does the department handle the importation of these wines for sacramental purposes?

Mr. BRITT. There is no wine imported at this time for sacramental purposes. There was formerly more or less imported for that purpose, but gradually the bureau has come to hold that there is an ample supply of every needed sort of wine for sacramental purposes in this country, either from existing stocks from prior importations, or from the domestic product, there now being over 30,000,000 gallons produced in this country, with an annual addition of over 8,000,000 gallons.

The CHAIRMAN. You are not permitting any importations at all now?

Mr. BRITT. Not for sacramental purposes. There is almost no wine being imported at all.

The CHAIRMAN. For what other purposes could it be imported?

Mr. BRITT. Medicinal purposes.

The CHAIRMAN. You do allow the use of wine for medicinal purposes?

Mr. BRITT. No sir; there has been practically none, I think, within the last year.

Mr. SIMONTON. The question was whether you do allow the use of wine for medicinal purposes.

Mr. BRITT. No; that is not the question.

The CHAIRMAN. I understood he said there was practically no importation of wine.

Mr. BRITT. There are practically no importations of wine at this time for either sacramental or medicinal purposes. The Attorney General held, and I think very correctly, that there could be no importation of wine authorized under the Willis-Campbell Act if the commissioner found that there was a sufficient quantity of the same wine, or substantially the same wine, in this country. That opinion was rendered over a year ago, after it was argued before the Department of Justice, and since that time we have been able to satisfy the applicants for importation that there are at different places in the country, either of prior importations or domestic wines, what they want, and I am correct in stating that there are no importations of wine at this time.

The CHAIRMAN. Do you believe that there are any illegal diversions of sacramental wine—that is, that is used for purposes other than sacramental purposes?

Mr. BRITT. I fear there are.

The CHAIRMAN. To any great extent?

Mr. BRITT. Yes; to a considerable extent.

The CHAIRMAN. Is there any way under the law by which that may be controlled or stopped?

Mr. BRITT. It is a very difficult subject to control, Mr. Chairman. It is a matter of such delicacy, of such sanctity, and so much of a fundamental right that the department naturally is cautious not to deny wine in an instance where it is reasonably certain that it is for sacramental purposes, and yet its experience has shown that occasionally where it has allowed a withdrawal apparently for that purpose it has ultimately been diverted to beverage purposes.

The CHAIRMAN. In other words, if I contended that under my religion I was entitled to have sacramental wine, there is no way to prevent me from getting it?

Mr. BRITT. The law says that wine may be withdrawn for sacramental purposes and like religious rites, and names priests, ministers, and rabbis as officiating officers through which it may be withdrawn. We have had almost no trouble at all through priests and ministers, but I am sorry to say that, without wanting to say anything prejudicial of a race, we have had a good deal of trouble with withdrawals through rabbis for the Jews.

The CHAIRMAN. Does the bureau make any investigation as to whether these religious rites are real religious rites or assumed ones for the purpose of securing wine?

Mr. BRITT. It does, but mainly preliminary. We have had instances where the congregation that requested the wine through its purported rabbi was itself spurious, or made up of non-Jews. Of course, that was denied thereafter. We have had instances where unauthorized rabbis—that is, not duly constituted by their congregation—have made requests for wine. We have ferreted them out.

There are a number of them in Chicago under indictment. There is such a diversity of opinion among Jews as to what they should use that it makes the problem very difficult. There are some of them that say that the Old Testament use is the pure old Kosher wine of a given sort, some of it having to do with the place where it is produced, like Paletinian wine, etc. Others deny that; and there are about as many views as there are different divisions of the Jewish Church, which are very great.

I hold in my hand, anticipating some discussion of this subject, a volume of resolutions delivered to me by Mr. Albert D. Lasker, former chairman of the Shipping Board, who is a reformed Jew, and he includes here in bound form, with great care, with a letter addressed to me or to Mr. Blair, or to both of us, a very solemn protest against the allowance of any wine at all for sacramental purposes. I think there are 160 identic resolutions of reformed Jewish churches throughout the country, protesting against withdrawals of any wine, saying that they want nothing more than just simply grape juice—unfermented juice.

That would have been a solution of the problem. Mr. Lasker argued it with an eloquence that was very interesting indeed, and with great learning, legal and historical, and it is a desirable policy if the department could be brought to it to-day, both in the interest of simplicity and of law enforcement. But, on the other hand, there were the other great branches of the Jewish church, the orthodox Jews, and certain congregations of foreign Jews, that had no connection with either of these great branches.

So, on my suggestion, we notified the rabbis of as many of these different churches as we could get to come to the department, to see

if we could not arrive at a common understanding about it, and thus be furnished with a roster of the rabbis who are authentic and authorized to receive wine for religious rites. Well, we could get a list from a certain branch, but that was only fractional. We tried to get these branches together and to agree, but they could not agree, and we never could get it done, so the matter failed and was dropped. That threw us back on our general regulations, providing in detail for the distribution of the wine, which was either originally imported or of domestic production, through two main channels, one where the church had a hierarchical organization, like a bishopric, and another where it is a congregational organization.

Mr. Emery, of my office, who is handling that matter with very great efficiency, is familiar with the details, and if any discussion of detail is asked, I suggest that it be directed to him and that he be permitted to answer it.

Mr. PYLE. Just what safeguards are thrown around this now, Mr. Britt?

Mr. BRITT. In the handling of wine, so that it does not come to be used for other than sacramental purposes, when it is sold?

Mr. EMERY. In the first place, the wine itself, whether of domestic production or an importation, is kept under bond, in bonded wineries or storerooms. That is for the physical safe-keeping of the wine. Then it is granted, through this hierarchical policy, upon authenticated demands, Form 1412, I believe it is, or through a congregational form of distribution, likewise on authenticated forms, and inquiry is made by the department as to the genuineness of the congregational authorization on the rabbi or other person by the congregation, and whether his credentials are good. Then the application is in regular form, and it is also looked to to see that the amount asked for is seemingly within the bounds of the requirements.

The CHAIRMAN. Have many applications been denied?

Mr. BRITT. Applications have been denied, and permits that have been allowed have been withdrawn upon information that they were spurious or fraudulent. To a considerable extent that has been true.

The CHAIRMAN. Do you want to say anything further about sacramental wines, Mr. Pyle?

Mr. PYLE. Just to bring out the point that in certain of the churches wine is used in the home, in the dwelling houses, the rites presumably being administered by the head of the family. In these cases the wine can be delivered by a church distributer designated by the rabbi, who may be the dealer; that is, the distributer may be the dealer, and taken to the home and placed there. From that point on obviously the Prohibition Unit or the Government loses all control over it. It can be handled in any way, and it goes to these various dwellings without any further control by the unit. In other words, if the order of the head of the church goes in, that wine can go out and be peddled around the city the same as soap or kerosene. He has no responsibility, except that he must have a receipt for it when it is delivered; so that the matter is practically beyond control in the case of the orthodox Jewish Church in that manner. If the wine goes to the home and is used there, the records, of course, are terminated.

The CHAIRMAN. Is that correct, Mr. Britt?

Mr. BRITT. I think that is practically correct.

Mr. EMERY. Yes; that is true of sacramental wine; after it takes on the sacramental character it is in substantially the same position as whisky obtained on prescriptions.

The CHAIRMAN. For sacramental purposes.

Mr. EMERY. Yes, sir.

I would like to say as to wines for sacramental purposes that the permissive features of the law are no longer applicable.

Mr. BRITT. That is, the permit to purchase is no longer applicable?

Mr. EMERY. Yes, sir.

The CHAIRMAN. Have you anything further, Mr. Pyle?

Mr. PYLE. Nothing more than these to go in this morning, sir.

The CHAIRMAN. I would like to draw a matter to the attention of the bureau here, because Mr. Mellon and I have had some correspondence about this warehouse problem. The chairman is in receipt of many complaints, mostly in writing, and I think there was some discussion of it in some of our meetings, about the exorbitant warehouse charges and other charges, such as bottling charges; that the system of the bureau in fixing these concentration warehouses was, at least in part, forming a monopoly, and in corresponding with Mr. Mellon he referred to a decision, which I do not recall just now, and I have not the correspondence here.

Mr. BRITT. Yes; the Frankfort Distillery Co. *v.* Simon.

Mr. EMERY. Yes; that was the most recent one.

The CHAIRMAN. That is it. The Secretary pointed out, as I remember it, that there were enough concentration warehouses to permit of proper competition for storage purposes, so that the owner of the liquor could not be held up unreasonably for storage and bottling charges, because if it were attempted by one warehouse he might transfer his liquor to another warehouse to obtain a lower rate.

Do you know whether there is anything that stands in the way of a transfer of distilled spirits from one warehouse to another?

Mr. BRITT. I am familiar with the decision just referred to, which is the controlling law on the subject.

The CHAIRMAN. That is the case that was decided on December 9, 1924?

Mr. BRITT. Yes, sir; Simon *v.* Frankfort Distillery Co. The holding there is to the effect——

The CHAIRMAN. Yes; I have that here, and I think I will put that in the record, Mr. Britt.

Mr. BRITT. Yes.

The CHAIRMAN. You consider that decision such as to enable the warehouse-receipt owners or the owners of the distilled spirits to have an opportunity of securing competition for the storage of their product?

Mr. BRITT. It gives them a right to remove their spirits upon just cause, which is in the interest of securing competition, and failure to furnish reasonable rates would constitute just cause.

The CHAIRMAN. In that connection, I have a letter here this morning—which I will put in the record later on—from the Warehouse Receipt Owners' Protective Association of Chicago, in which they

refer to regulations P. R. O.–M. 240 as standing in the way of carrying out this court decision.

Mr. BRITT. No.

The CHAIRMAN. Through that regulation.

Mr. BRITT. No; it does not stand in the way of it.

The CHAIRMAN. Can you tell us the reason for that regulation?

Mr. BRITT. That regulation was to the effect that when the commissioner had once made an inquiry and had authorized concentration that was in compliance with the law, assuming that the rates were regular and security of the property was good, and he would not keep it in a state of rotation.

The CHAIRMAN. What do you mean by "a state of rotation"?

Mr. BRITT. That is, going from A to B for concentration warehousing, and from B to C merely to satisfy the caprice of the owner of the receipt.

The CHAIRMAN. You do not let them remove it as a matter of caprice under this rule.

Mr. BRITT. That rule was intended to check that; that is, when the commissioner has once made an inquiry it can not be moved on a whim. The object was to prevent that.

The CHAIRMAN. Why do you want to prevent that? Does that cause any loss by diversion?

Mr. BRITT. There had been complaints made, and it was held that they might not move the spirits again without any ground being shown at all, and this decision has been published as the rule of the department. I think this letter was probably written under a misapprehension.

The CHAIRMAN. Is that Form 240 now revised so as to agree with the decision of December 9, 1924?

Mr. BRITT. It is certainly nullified in so far as it is in anywise in conflict with that decision.

The CHAIRMAN. This letter says:

> I make the recommendation that regulations P. R. O.–M. 240, issued by the Prohibition Department on September 1, 1923, be repealed or modified so as to enable the owner of whisky in bond to remove his property to other warehouses where a better commercial arrangement as to storage, bottling, insurance, etc., can be made. In so far as this recommendation will no doubt be given due consideration by your committee, I have taken this opportunity of writing you personally to inform you that an emergency exists, and that this particular feature be given immediate consideration, and in order to save the property of thousands of American citizens from confiscation.

Then he goes on and refers to this particular decision; so that it is this decision which is to rule and not this order or regulation; is that right?

Mr. BRITT. Precisely. In order to make that clear, Mr. Chairman, let me look it up and write you a letter showing what was done in that case. I am satisfied that what I say is fact, but I would like to verify it and write you a memorandum or letter on it.

The CHAIRMAN. I think we will have another hearing on this, and you may submit it at that time, and try to give the committee as much assurance as you can that there is proper opportunity for the owners of distilled liquor to get proper competition between warehouses, because I have in some manner received some such assurance from the Secretary, but I do not know, if that is so, why these complaints continue to come in.

Mr. BRITT. I understand what I have said covers the facts, but I would like to furnish a letter in regard to it and go into it. I think what I have said here is the practice, but I would like to go into it more in detail.

The CHAIRMAN. Can you read into the record the regulation referred to?

Mr. SIMONTON. It has now been codified in regulations 60, revised March, 1924, and since this discussion arose I remember writing a letter on this very section, after the Simons case came out, and it made no change in our regulations at all.

In that connection, section 914 says:

> Where it is desired to remove distilled spirits in bond from one concentration warehouse to another, the director may issue permit to purchase, Form 1410-A, only upon the condition that the application, Form 1410, is signed by both consignor and consignee, warehouseman, unless such removal is specifically directed by the commissioner.

That is the section that was involved in the Simons case, and the court held that the commissioner had reserve power to order the removal where the two could not get together and there was an obvious need, as Mr. Britt has just pointed out, of the owner of the spirits being permitted to remove it to another warehouse.

The CHAIRMAN. That is in contradiction of what Mr. Britt has argued, apparently, that there has been some modification of it as a result of this decision.

Mr. BRITT. This is what I want to say, Mr. Chairman: That the decision which has been referred to here authorizes the removal on what seems to be just and fair terms, and certainly it does not place any serious obstruction in the way of the removal, and that the removal itself is in the interest of building up and maintaining this competition necessary to get the low prices. There is nothing in the regulations that inhibits that in any way, to my knowledge; but I should like to bring here a copy of 240, as well as the regulations, and let it all go into the record.

The CHAIRMAN. You have not a copy of 240 here with you?

Mr. EMERY. I think 240 was carried substantially into the regulations, Mr. Britt.

Mr. BRITT. I think the best way would be to bring 240, the decision and the regulations, here, so as to clear up this matter.

The CHAIRMAN. I would like to know why the Prohibition Unit desires to put hurdles in the way of an owner transferring his property from one warehouse to another?

Mr. BRITT. It does not, as I understand it, Mr. Chairman; not at all.

The CHAIRMAN. Well, it did, evidently, before this decision.

Mr. BRITT. There was a difference of opinion about that. Of course, people who do not get what they want in an adjustment think it should be different and say so. That is quite natural.

There was this course, which I may say was a legal course, that when the inquiry is complete, the information certain, the storage safe, the rates fair, and you have made a concentration, there must be cause shown before you move from that place to another, and thus increase the expense of removal, bond, and so forth: you would not remove it without cause.

The CHAIRMAN. I would like to know what affair that was of the unit, though.

Mr. BRITT. Just what I have stated. I think this is the meaning of the law. Otherwise you would not concentrate at all. You would be scattering.

The CHAIRMAN. Yes; but you limit the number of warehouses. That is concentration.

Mr. BRITT. Yes.

The CHAIRMAN. But from one warehouse that you recognize to another warehouse that you recognize as a concentration warehouse, just why do you care which one of these places the owner uses?

Mr. BRITT. What I have just been saying, that this is a process of concentration. It is practically all concentrated now, and we have, as you say, a limited number of concentration houses. If A has his product in one place, and he shows satisfactory reasons why it should go to another place, there is nothing to prevent his removing it.

The CHAIRMAN. If he were able to show you a difference of cost of bottling and concentration, would he be allowed to go to this other place?

Mr. BRITT. If he showed any discrimination of rates, or any other reason, he would be allowed to remove his spirits. I think that constitutes competition. Of course, it is within a limited scope; it is not unlimited.

The CHAIRMAN. How many concentration warehouses are there?

Mr. BRITT. I think about 28.

Mr. EMERY. They are listed in the regulations there.

Mr. BRITT. I think there are about 28. I may be mistaken about that.

Mr. EMERY. Not all warehouses are designated for concentration purposes.

The CHAIRMAN. Although there are some of them warehouses that are holding liquor?

Mr. EMERY. Yes; some of the old distillery warehouses, of course, will show very large quantities, and they have been continued.

The CHAIRMAN. Why have not those places been designated as concentration warehouses?

Mr. EMERY. Well, there seemed to be no real purpose served, I presume, by designating them. They perhaps were located in places where the spirits were reasonably safe. I thing they have designated 25 or 30 under these regulations.

The CHAIRMAN. Then, the liquor is not in concentration?

Mr. EMERY. Well, that is concentration itself, where 20,000 barrels are held in one warehouse. In shipping about the country there may be a loss involved. It was, of course, desirable to the concentration measure to remove or transport liquor as little as possible, because its removal meant a loss of liquor, due to absorption, breakage, and danger of theft. Of course, there was also involved the cost of handling and transporting it.

Mr. BRITT. We will furnish you all the information we can, Mr. Chairman. I am satisfied we can clarify it.

The CHAIRMAN. Then, we had better adjourn.

Mr. BRITT. May I say this one thing: I am a very hard person to report. Would it be reasonable to request that my remarks be not given to the press until I get a chance to make my corrections?

The CHAIRMAN. Oh, yes; so long as you do not change the sense of them.

Mr. BRITT. No; I do not mean to do that.

Mr. EMERY. The concentration warehouses are listed on page 93 of the regulations, revised.

The CHAIRMAN. We will let you know, Mr. Britt, when we have anything further for you.

Mr. BRITT. Very well, sir.

(Whereupon, at 12.40 o'clock p. m., the committee adjourned until to-morrow, Thursday, February 26, 1925, at 10 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

TUESDAY, MARCH 31, 1925

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

The committee met at 2 o'clock p. m., pursuant to adjournment of yesterday.

Present: Senators Couzens (presiding), Ernst, and King.

Present also: Mr. L. C. Manson, of counsel for the committee. Mrs. Mabel Walker Willebrandt, Assistant Attorney General of the United States.

Present on behalf of the Prohibition Unit, Bureau of Internal Revenue: Mr. James J. Britt, counsel, Prohibition Unit; Mr. V. Simonton, attorney, Prohibition Unit, Mr. Palmer Kennedy, attorney, Prohibition Unit; and Mr. H. W. Orcutt, head, division of interpretation, Prohibition Unit.

The CHAIRMAN. For the purposes of the record, I want to insert a letter from the Bureau of Internal Revenue, Prohibition Commissioner's office, signed by the chief counsel of the Prohibition Unit, Mr. James J. Britt, with reference to the transfer of distilled spirits, accompanied by a copy of the provisions of prohibition mimeograph No. 240. I think, Mr. Britt, that was one of the last questions that we asked you at our last hearing, is it not?

Mr. BRITT. That was the last, as far as I recall, Mr. Chairman.

(The papers referred to are as follows:)

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
Washington, March 2, 1925.

HON. JAMES COUZENS,
Chairman Senate Special Investigating Committee,
Washington, D. C.

MY DEAR SENATOR COUZENS: Referring to the last session of hearings by your committee into prohibition matters, and to your suggestion concerning the concentration of distilled spirits, permit me to say that I have made inquiry into the matter of which you spoke, and I find that the provisions of prohibition mimeograph 240, now embodied in section 914 of Regulations No. 60, are not fully in harmony with the decision of the United States Circuit Court of Appeals of the Sixth Circuit in the case of Simon *v.* The Frankfort Distillery, which is now recognized as the law on the subject, and I have, therefore, requested Prohibition Commissioner Haynes and Commissioner of Internal Revenue Blair to approve a prohibition mimeograph giving instructions in complete harmony with the decision referred to, which has been done, and I inclose herewith a copy of the mimeograph containing the new instructions.

Under these instructions all that is required of the owner of a certificate of title to spirits now concentrated in the warehouse is to make his application, pay the accrued charges of the present warehousemen, and give the required

bond, after which his spirits may be removed as a matter of right, and without awaiting specific orders of the Commissioner of Internal Revenue, it being done under the supervision of the collector of internal revenue of the district wherein the spirits are concentrated.

There are now 28 concentration warehouses in the country and I think this liberalization of the rules as to removal will make possible all the competition of which the situation is susceptible and enable the owners of spirits to get as good rates as can be had under the circumstances.

May I suggest that you insert this communication, together with the copy of the accompanying prohibition mimeograph in the printed hearings?

With sentiments of esteem, I am,

Very truly yours,

JAMES J. BRITT,
Chief Counsel, Prohibition Unit.

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
OFFICE OF FEDERAL PROHIBITION COMMISSIONER,
Washington, D. C., March 2, 1925.

TRANSFERS OF DISTILLED SPIRITS IN BOND BETWEEN CONCENTRATION BONDED WAREHOUSES

To Federal prohibition directors and others concerned:

Your attention is directed to section 914 of Regulations No. 60, in which it is provided that the director may issue permits to purchase, Form 1410–A, providing for the transfer of distilled spirits in bond from one concentration bonded warehouse to another such warehouse upon condition that the application, Form 1410, is signed by both consignor and consignee warehousemen.

The Circuit Court of Appeals of the Sixth Circuit, in a decision handed down December 9, 1924, in which Julian Simon, Ira Simon, and Herbert Simon, copartners doing business as J. Simon & Son, were appellants, and the Frankfort Distillery (Inc.), a corporation, with the appellee, holds that spirits may be removed from one concentration bonded warehouse to another such warehouse at the instance of the owner of such spirits, provided the necessary application Form 235 and bond Form 1522 and application Form 1410 are duly executed by the consignee warehousemen and all proper charges due the concentration warehouse in which the spirits are stored are paid.

The signatures of both consigner and consignee warehousemen to the application Form 1410 is, therefore, unnecessary and such removals will proceed without specific order of the Commissioner of Internal Revenue.

R. A. HAYNES,
Prohibition Commissioner.

Approved:

D. H. BLAIR,
Commissioner of Internal Revenue.

The CHAIRMAN. I wish to say for the record at this time that Mrs. Willebrandt was suggested to the chairman as a Government official who might enlighten the committee on the methods of procedure in the enforcement of prohibition by the Federal Council of Churches of Christ in America.

Counsel will introduce some testimony which will raise some questions as to the methods of procedure as recommended by the Department of Justice and the counsel for the Bureau of Internal Revenue, Prohibition Unit.

With that statement, for the benefit of Senator Ernst particularly, I will just ask Mr. Manson to interrogate Mrs. Willebrandt.

STATEMENT OF MRS. MABEL WALKER WILLEBRANDT, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES

Mr. MANSON. Mrs. Willebrandt, you are an Assistant Attorney General of the United States?

Mrs. WILLEBRANDT. Yes, sir.

Mr. MANSON. And as such you are in charge of prohibition enforcement, in so far as it is under the control of the Department of Justice?

Mrs. WILLEBRANDT. Yes; in the legal end of prohibition enforcement.

Mr. MANSON. Yes. It appears from the record of the proceedings of February 25, 1925, that there has been some difference of opinion between the legal department of the Prohibition Unit and the Department of Justice as to the proper procedure for handling brewery property, particularly as to whether proceedings should be taken to forfeit the property or whether proceedings should be taken to enjoin the use of it, under the provisions of the law. It appears from the statement of Judge Britt that your position has been that the injunction proceeding was the proper proceeding.

Mrs. WILLEBRANDT. That is correct.

Mr. MANSON. Will you give the committee your views as to why that method of procedure is preferable to a proceeding to forfeit the brewery property?

Mrs. WILLEBRANDT. First, an injunction procedure, I think, is the more effective; second, I think it is the one contemplated by Congress when Congress drew the prohibition act and outlined the remedies under it; and, third, the use of such a method of restraining violations of law and the continuance of what has been declared by law to be a nuisance, is well settled in the law itself.

We have plenty of examples and precedents for it, and probably the most important reason, so far as the Department of Justice is concerned, is that by the use of injunction you are able to clear up a large number of cases without congesting the courts. That method does not demand a jury trial.

In a libel proceeding, in a forfeiture proceeding jury trials may, and in fact, in some districts, they have been allowed.

Two additional reasons to those that I have already listed are, that as a first step before you proceed with the seizure method, as suggested by the Prohibition Unit, is the seizure itself. Seizure in name does not amount to anything, unless actually you have physical control of the property. To keep physical control of the property you have to put agents or deputy marshals in charge of that property. It is a drain on the appropriations of our department which is not warranted by the results obtained. You pay $5 a day to guards—four or five guards, sometimes one or two—for guarding immense properties, with all the potentialities for law violations that such properties have, and the result is not at all what the newspapers announce when the first announcement of seizure is made. In other words, the results from it, in places where it has been used, lead us to believe that it is a gesture, and not an actual, effective remedy.

Mr. MANSON. Will you cite some particular instances where you have resorted to that sort of procedure, and tell us what the result has been?

Mrs. WILLEBRANDT. Our department acquiesced in the Prohibition Unit's proceeding in the District of Eastern Pennsylvania, because the injunction proceedings had been there so much delayed, and the Prohibition Unit felt that by the use of the seizure method they might be able to accomplish better results. They did seize some numbers of breweries, the exact number of which I have now forgotten, but I think something around 20. The results of that led our department to set forth the letter which Mr. Stone wrote under date of September 24, 1924. It is not very long.

Senator ERNST. Is that the Attorney General?

Mr. MANSON. That is Mr. Stone, the former Attorney General.

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. Will you read that letter?

Mrs. WILLEBRANDT. Clearly as a result of these seizures in eastern Pennsylvania, and this letter is in direct answer to your question, and I should like to read it, if that is satisfactory. It is addressed to the Secretary of the Treasury, dated September 24, 1924:

Permit me to call your attention to a condition which has been created by reason of seizures under search warrant authority of a considerable number of breweries against which libels were filed and the property placed in custody of United States marshals in the different districts. These seizures have placed upon this department the necessity of spending a considerable sum in guard hire, and have been a big factor in creating a deficiency in the appropriation "Salaries, fees, and expenses of marshals, United States courts." There is set out below the amounts expended in two districts for the services of custodians in the periods mentioned:

Eastern District of Pennsylvania, December quarter of 1923, $13,617.19.

March quarter of 1924, same district, $27,768.79.

Northern District of Illinois, December quarter of 1923, $2,472.

March quarter of 1924, $2,682.

You will recollect that there has been a sharp divergence of views between the Prohibition Unit of your department and the division of this department handling prohibition litigation. Your unit has contended that search warrant and libel proceedings are absolutely essential to the effective enforcement of law. This department has felt that since Congress in enacting the prohibition act devoted four sections to setting out injunction procedure, and failed entirely to mention libel proceedings, making it necessary to read into the law by inference the authority to seize and condemn, as a matter of policy the Government should adopt the procedure most in harmony with the unquestioned intent of Congress.

Further, as a practical matter, it is felt here that the injunction procedure is by far the most effective in the long run, though lacking the spectacular possibilities of so-called search and seizure methods.

Your unit has declined to follow the views of this department in dealing directly with United States attorneys rather than through this office, as was the practice for some time, put into force the seizure policy in some districts, notably in the eastern district of Pennsylvania.

The result of this procedure has been to place a heavy burden on the appropriations of this department, and I am constrained, therefore, to bring the matter to your attention, with the request that an arrangement be made to assign to the forces of the United States marshals in the different districts where seizures of breweries have been made, or where it is intended seizures will be made in the future, a sufficient number of prohibition agents to guard this property while it is held awaiting court action.

If such proposal does not meet with your approval, I suggest consideration of the possibility of your department assuming the expense of the employment of the guards which are necessary in carrying out your policy, as you will appreciate that the estimates of this department, in accordance with its ex-

pressed views, did not contemplate the heavy drain which the seizure method has placed upon it.

I may say in passing that the assignment of agents to handle this work would meet with my hearty approval, since, as you know, a great deal of trouble has been experienced in getting guards to properly take care of this work. You will remember that a number of complaints have been made by your officers that breweries while under guard in the custody of United States marshals were continuing to run unlawfully. This was particularly true in eastern Pennsylvania.

As we have no money adequately to pay guards, and as our United States marshals' offices are unequipped to assume this responsibility, I feel the responsibility for making successful the seizure method which your unit believes in so strongly, should rest with your department, where this theory originated and where the appropriations have been passed by Congress.

As our marshals' appropriations are being drained and the condition is quite unsatisfactory at the present time, I will appreciate your early consideration of this matter.

Respectfully,

HARLAN F. STONE, *Attorney General.*

The CHAIRMAN. Was there any response to that letter, Mrs. Willebrandt?

Mrs. WILLEBRANDT. Yes.

The CHAIRMAN. As a matter of continuity, will you read that into the record?

Mrs. WILLEBRANDT. Do you want that read?

The CHAIRMAN. If you please.

Mrs. WILLEBRANDT. This is dated October 6, 1924, addressed to the Attorney General:

Receipt is acknowledged of your letter of September 24 in further relation to the point of difference between the Assistant Attorney General in charge of prohibition enforcement and the Prohibition Unit as to the choice of injunctions or libels as remedies in cases of violations by cereal beverage manufacturers.

You suggest that in case a seizure policy is followed prohibition agents be detailed to guard the property instead of United States marshals, pending proceedings, or that the appropriation of this department be made available for that purpose. I am informed that both procedures are now in use, injunctions where thought available and libels in the more flagrant cases, and since it is a matter relating more to the judicial than to the executive end of enforcement it seems to be plainly a question for your department to determine.

Last May you were good enough to agree that Mr. Britt, chief counsel for the Prohibition Unit, might appear before you and present the views of the Prohibition Unit, and an appointment for that purpose was made for the 14th of May, but it was postponed on account of the absence of the Assistant Attorney General. I now again request that you will be good enough to let a date be fixed for Mr. Britt to be heard in the matter; and when it has been gone into in its various aspects and your decision reached, whatever it may be, I shall direct that policy to be carried out without further question. I do not think the exchange of officers between the two departments for that purpose is practicable, not to speak of the question of legal authority.

Trusting that I may be favored with the appointment suggested, I am,

Respectfully,

A. W. MELLON,
Secretary of the Treasury.

Mr. MANSON. Was there such an appointment made?

Mrs. WILLEBRANDT. Such an appointment was made, and a hearing was had before the Attorney General. A number of briefs were filed with the Attorney General, which he read, and to which he replied finally to the Secretary of the Treasury, as follows.

This is addressed to the Secretary of the Treasury and is dated January 5, 1925.

Reference is made to correspondence passing between our departments with reference to procedure in brewery cases and to conference had at your request with Mr. Jones, Assistant Prohibition Commissioner, and Mr. Britt, counsel for the Prohibition Unit.

After giving careful consideration to this question and after reading the briefs submitted by Mr. Britt, I am still of the view that the injunction procedure is the more desirable practice to follow, having in mind all the interests of the Government. In this connection, however, please be advised that if in a particular case your department feels, in view of some unusual situation, a search warrant should issue commanding the seizure of the property of a brewery, and against which property it is desired to file a libel for purpose of condemnation, the Assistant Attorney General in charge of such matters will be glad to give careful consideration to the facts of the case as they may be presented by the investigating officers and direct the filing of a libel, if the situation requires such action.

Respectfully,

HARLAN F. STONE, *Attorney General.*

I might say in that connection that this divergence of views between the two departments, as to which is the better remedy, began, if I remember correctly, in the fall of 1921, and numerous hearings were had between the two departments on the subject, the correspondence between the two departments culminating in the spring of 1924, at the time of the seizure of these 20 breweries in eastern Pennsylvania.

Mr. MANSON. Have those cases been tried as yet?

Mrs. WILLEBRANDT. Most of them have, I believe. There are four or five that are still undetermined.

Mr. MANSON. What was the outcome of those proceedings?

Mrs. WILLEBRANDT. The details of the case, I could not state to you without reference to the files of the department. In no instance, to my memory, was the property of the brewery destroyed. The only time that there was any destruction, I am informed by Mr. Jones, assistant in my division, who has specific charge of these particular cases, was in a consent decree.

Mr. MANSON. Have you found that there is any difference in the character and weight of evidence required to secure a judgment favorable to the Government in a libel suit and in an injunction proceeding?

Mrs. WILLEBRANDT. I think there is.

Mr. MANSON. In other words, is it any more difficult to get a judgment favorable to the Government in a libel suit than it is in an injunction proceeding?

Mrs. WILLEBRANDT. I certainly think that it is. You are calling upon the court or jury to destroy, oftentimes, hundreds of thousands of dollars' worth of property—usually property ranging between $50,000 and hundreds of thousands of dollars—and to destroy property of that kind, as has been the experience of mine with these cases, would have taken very much more drastic evidence of willful violation and actual nuisance on the part of the property itself than it would take to merely restrain the unlawful use, or to deny the owners that use over a period of time. One is confiscation, and the other is merely restraint and a changing of the possible character of use to which the property is to be put.

Mr. MANSON. Does that explanation that you have just offered explain your statement that the injunction proceeding is more effective; in other words, is it more effective because, under a given state of facts, it is much more easy to obtain?

Mrs. WILLEBRANDT. It has proved so; yes, sir.

A summary of the reasons why injunction is preferable to the seizure method is here contained in about three pages, if you care to put it into the record.

Mr. MANSON. Yes; I think the committee would like to have that.

Mrs. WILLEBRANDT. Would you like to have it?

Mr. MANSON. Yes.

Mrs. WILLEBRANDT (reading):

Libel is nowhere mentioned in the national prohibition act. To justify its use in brewery cases resort must be had to inference and presumption under section 25.

Four sections of the national prohibition act are devoted to injunctive remedies.

Libel is an anomalous action transplanted in American legal procedure from the admiralty practice.

Injunction is a remedy as old as equity itself, its function is restraint, and punishment for violation is summary.

When Congress desired to use libel in forfeiture matters, it did so in plain terms in the food and drugs act. No similar provision is to be found in the national prohibition act.

Seizure should precede a libel. This seizure in practice is determined upon the investigating agency, though theoretically the seizure is authorized by a search warrant issued by a United States commissioner, who need not necessarily be a lawyer, and who nearly always is one who has had little success in practice. This determination of question of seizure of great quantities of property is in fact made by investigating officers.

Injunction procedure requires sanction of the court at every step. No property is taken or use of it restrained, except after judicial determination of the issues.

The result desired by libel, to wit, destruction of offending property, may be secured by order of court in injunction proceeding as necessary to abate nuisance. (Elgin Ice & Beverage Co. and Fullerton Brewing Co., Chicago, and South Fork Brewing Co., Pittsburgh.)

When trial by jury is demanded in libel cases, the result is a long, cumbersome, and uncertain proceeding.

During lapse of time necessary to get case to hearing, either in equity or on libel, restraining order may be outstanding to prevent further violation, if the proceeding is for injunction, but, if by libel, no way to punish additional violations except to add further charge against the concern.

May I interpolate by saying that that very condition arose in some of these seized Philadelphia breweries, so that in order to get the violations that had occurred between the date of filing the original libel and the date when that libel could come on for hearing, it was necessary to keep amending the libel or filing new libels.

Going on with the memorandum:

Possibility of contempt is an effective deterrent, while the discharge of guards avails nothing.

Four separate and distinct proceedings are possible under the national prohibition act, each requiring varying quantities of evidence:

First. Revocation of permit.

Second. Injunction.

Third. Criminal action.

Fourth. Confiscation of property said to be offending.

Revocation of permits, being an administrative act, requires but little evidence to support it, while to confiscate property strong and decisive evidence should be present. In actual practice (Philadelphia cases, where over 30 breweries were seized) in some instances seizures were authorized and for-

feiture proceedings recommended where later it developed the Prohibition Director refused to revoke the permit.

Seizure is not as effective as injunction, because it does not have the sanction of a restraining order of court. No summary proceeding is possible when violations occur at breweries under seizure. Guards may be bribed and beer run out without the possibility of definitely fixing the responsibility. In such instances, as they have occurred in Philadelphia, the only remedy open to the Government is to fire the guards and hope for men of greater integrity in future employment.

May I again interpolate here to say that I do not know? This memorandum makes that point clear, but to my mind it is one of the most convincing reasons why you should not resort to this seizure method. If the place is under injunction, then it is possible, when a violation occurs, to have some one on whom you can pin the responsibility for that violation, and you can hale him into court and punish him for contempt. If just a libel is pending, and hired guards are in charge of the property, and a violation occurs, which has happened, whom are you going to proceed against for that specific violation?

The CHAIRMAN. Whom are you going to proceed against?

Mrs. WILLEBRANDT. What is that?

The CHAIRMAN. Whom are you going to proceed against in a case like that?

Senator ERNST. Discharge the guards and get some more.

Mrs. WILLEBRANDT. Whom could we proceed against? We have not found out. You can fire your guards, and, of course, if you have the actual evidence of a specific nature, you can file a criminal information against those specific guards.

Senator ERNST. Has any Federal judge expressed any doubt as to the right of the Government to proceed by libel?

Mrs. WILLEBRANDT. Yes; Senator Ernst. I will come to that in just a moment. Shall I go ahead?

Senator KING. May I inquire whether you have had many cases of infidelity upon the part of guards and custodians as the result of which there has been a loss of beer or liquors going out into channels of trade and commerce?

Mrs. WILLEBRANDT. We have had a great many reports of such conditions. I think I have not had very many cases where sufficient evidence has been collected and laid before the department so we could proceed.

Senator KING. Has your attention been drawn to many cases where it has been claimed that the liquors which were impounded, either under the control of the Government or under the control of individuals and properly under their control, have been abstracted and gone out into the channels of trade?

Mrs. WILLEBRANDT. I do not want to quibble, Senator King, but I have to ask what you mean by "cases." If you mean instances where such reports by anonymous communications have reached my desk and sometimes by the general reports of the various agents of the Government by letters which have reached my desk to the effect that such a thing is going on, I will answer yes. If you mean has evidence actually of such diversion under such circumstances been placed before us so we could proceed with any indictment or anything of that sort, I will have to reduce the number very materially

In fact, offhand I do not remember of any specific case where actual evidence on which we could proceed has been given.

Mr. MANSON. That is, where there was a claim of diversion from property that was held under libel?

Senator KING. I was not referring to libel at all.

Mr. MANSON. I think that is what Mrs. Willebrandt was referring to.

Mrs. WILLEBRANDT. As I understood the Senator's question it related to the diversion of liquor from a brewery that was under a state of seizure, so called.

Senator KING. My question did not limit it to property which was libeled or to breweries which were under a state of seizure. I intended to be more comprehensive and to call attention to the entire subject.

Mrs. WILLEBRANDT. My answer referred to the question as limited.

Mr. MANSON. I will say for the Senator's information——

Senator KING. I know you were discussing libel.

Mr. MANSON. We are discussing the comparative merits of libel and injunction as a remedy.

Senator KING. Yes; I understand.

Mrs. WILLEBRANDT. Shall I proceed?

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. The memorandum continues:

After having the Roehm brewery, Philadelphia, under guard for about eight months on seizure and libel, the United States attorney found it necessary to file a bill for injunction. This was true also of four other breweries. Though seizure was made of the Hazelwood brewery at Pittsburgh, the United States attorney was compelled to file injunction to restrain the plant from putting out high-powered beer.

May I interpolate here to say that these incidents are partially in reply to the question the chairman asked a few moments ago as to whether we had had evidence upon which we could proceed of violations dating between the date of seizure and the date when the actual libel decree could be entered or the case dismissed by the court? We did have reports, particularly in this Hazelwood Brewery at Pittsburgh, of violations discovered by the State police of Pennsylvania and the Federal prohibition agents. Asking ourselves the query as to how we could get at that plant when it was supposed to be under a state of seizure and libel pending, there seemed to be no legal answer but to file an injunction, and then we could hale them in for contempt. [Reading:]

One temporary injunction has been granted in brewery cases in eastern Pennsylvania. Continuous reports have been received from prohibition agents indicating operation of breweries under seizure, and no report has been made against the Bergner & Engel brewery, although a temporary restraining order is outstanding against it.

Contempt proceedings have been given the unqualified approval of the third circuit court of appeals, in which territory most of the violating breweries are located. See decision of the court in the Westmoreland Brewery case.

Mr. MANSON. Has the circuit court of appeals in that district ever sustained a seizure under libel?

Mrs. WILLEBRANDT. That case went to the circuit court of appeals and was sustained.

Mr. HENDERSON. That was a criminal libel. They have sustained both in this case.

Mr. MANSON. In that district?

Mr. HENDERSON. Yes.

Mrs. WILLEBRANDT. Mr. Henderson handled that case. Another example to which my attention is just called is the Atlantic brewery of Philadelphia. The United States marshal made a discovery of the plant running in the middle of the night, but was unable to pin the responsibility, and no proceedings were taken against the plant.

The CHAIRMAN. That was a seizure case?

Mrs. WILLEBRANDT. It was under seizure at the time. The marshal went out himself at 2 o'clock in the morning, if I remember correctly, and saw the smoke coming from the plant, indicating that part of its machinery was running. He discharged the guards, but the evidence collected enabled the United States attorney to pin the responsibility on no one.

The CHAIRMAN. What would have been the procedure had it been under injunction?

Mrs. WILLEBRANDT. It would have been immediately haled before the court.

The CHAIRMAN. You mean the owner would have been haled before the court?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. For contempt?

Mrs. WILLEBRANDT. Yes. The final paragraph of this summary is as follows:

> Neither the seizure policy nor the injunction policy has yet been given a sincere and thorough trial.

This was under date of October 13, 1924.

> But the results in injunction cases have been more satisfactory than the seizures. The cost of guard hire under the seizure policy is tremendous. Three guards at $5 a day is the usual arrangement. This means $15 a day for a brewery. In the eastern Pennsylvania district to-day there are five under guard, which means a daily expense of $135. The middle district has nearly as many. The expense rests on the Department of Justice appropriations, and those appropriations were not made with this in view.

To revert to the question asked by Senator Ernst as to whether the courts have expressed themselves on this subject, the judges in the eastern district of Pennsylvania observed in their joint opinion in United States *v.* American Brewing Co., No. 354 of the 1923 term:

> In the case of breweries holding permits it might be well thought that a more direct method of dealing with them could be found in the withdrawal of the permits, thus avoiding the anomaly of one governmental bureau granting permission to conduct a business which was being lawfully conducted and another bureau shutting the plant up because it was being conducted unlawfully.

I would call attention also to this quotation from the court. It was in an unreported opinion and was reported to us by official communication from the United States attorney. It was stated in the United States attorney's letter as follows:

> I have the honor to inform you that two judges, one of the district court and the other of the United States Court of Appeals for the Seventh Circuit, have at different times expressed the opinion that the enforcement of the prohibition act, in so far as breweries are concerned, should be one of prevention before violations occur rather than abatement after they occur. Both

judges have expressed the opinion that it should not be the work of the court to close breweries, and that this is properly the work of the administrative department of the Government. One of them was quite emphatic and said that he did not know how much longer the courts would be called upon to do administrative work of this character. The judge of the Circuit Court of Appeals, above referred to, only this morning wanted to know whether his previous comments on this subject had been transmitted to the officials with power to act.

Under date of April 8, 1924, a letter discussing this whole matter of eight pages in length was directed by our department to the Prohibition Department. It sets forth a great many of the things that have already been tried. If the committee is interested in it, I shall be glad to have you have a copy of the communication, but unless you desire it I will not enter upon a reading of as long a communication as that. It deals with the three methods of curbing violations—injunctions, seizure, and revocation of permit.

Mr. MANSON. I would suggest that the letter be made a part of the record.

The CHAIRMAN. I think it should be.

(The letter is as follows:)

APRIL 8, 1924.

Mr. J. J. BRITT,
General Counsel, Prohibition Unit, Treasury Department,
Washington, D. C.

MY DEAR JUDGE BRITT: Thank you for sending your letter of April 4, with the inclosed memorandum from your unit, giving the permit status of the breweries seized in the eastern district of Pennsylvania, which was prepared by you as a result of our recent conferences, wherein I protested to you that permits of breweries were not revoked promptly enough after a violation of law was discovered.

I am glad to learn from this report that the permits of all except 2 of the 31 have finally been revoked. I notice most of these revocations did not take place until the month of March this year, whereas the violations were discovered by Pennsylvania State police or your agents between July and September of 1923. Revocation of the permit did not follow until some four to nine months after issuance of citation or discovery of violation.

The law provides that after your discovery of a violation of law by a permit holder you must issue a citation to him giving 15 days' notice. There is nothing, however, that I can find in the law that would prevent your department summarily conducting the hearing on the sixteenth day and having the permit actually revoked on the sixteenth or seventeenth day after citation has issued. Within all reason I should say that 30 days after the issuance of a citation the United States attorney ought to be able to depend upon it that the permit has been revoked.

In your letter you indicated that these six to eight month delays in revocations occurred because witnesses were detained in various courts. However, I am at a loss to understand how that could be just cause for these long periods of time between notice to the permit holder and action by the Commissioner of Internal Revenue, since most of your revocations are, and all of them could be conducted without oral testimony, but only upon affidavits. You have these affidavits from your agents when you get the first information of the violation. They are, therefore, in your possession when you issue the citation.

When your bureau discovers a violation and reports it here, you rightfully expect our department to act immediately. For three years this department has been doing everything within its power to speed up the termination of cases. The best United States attorneys can do in districts with congested dockets, however, is to get the case to trial within three to six months. In the meantime it is surely to the advantage of the Government to have the permit privileges summarily stopped.

United States attorneys and judges frequently complain to this department that when the case is called for trial the prosecuting officer is faced with the

anomalous situation of having the defendant represent to the court that it still has a valid unrevoked permit to operate from your bureau.

As the judges in the eastern district of Pennsylvania observed in their joint opinion in United States v. American Brewing Company, No. 354 of the 1923 term:

"In the case of breweries holding permits, it might well be thought that a more direct method of dealing with them could be found in the withdrawal of the permits and thus to avoid the anomaly of one governmental bureau granting permission to conduct a business which was being lawfully conducted and another bureau shutting the plant up because it was being conducted unlawfully."

I quote from a letter from the United States attorney of the northern district of Illinois, transmitting the comments of judges in his district on this subject as follows:

"I have the honor to inform you that two judges, one of the district court and the other of the United States Circuit Court of Appeals for the Seventh Circuit, have at different times expressed the opinion that the enforcement of the prohibition act, in so far as breweries are concerned, should be one of prevention before violations occur, rather than abatement after they occur.

"Both judges have expressed the opinion that it should not be the work of the courts to close breweries, but that this is properly the work of the administrative department of the Government. One of them was quite emphatic, and said that he did not know how much longer the courts would be called upon to do administrative work of this character. The judge of the circuit court of appeals above referred to only this morning wanted to know whether his previous comments on this subject had been transmitted to the officials with power to act."

It used to be that State directors, after the issuance of citation and the necessary 15 days required by the law had elapsed for the permit holder to come in and make a contrary showing, suspended the permit privileges until the Commissioner of Internal Revenue at Washington should finally determine otherwise. Under your revised procedure, for practically a year last past, no State director can stop any permit holder from making withdrawals and continuing to conduct the business under his permit until final action has been taken by the commissioner. This causes permit holders to manufacture excuses and drag out hearings as long as possible, whereas stopping their privileges while they appeal to Washington gives an incentive to a permittee to assist the Government in expeditious action.

I have always admitted, and do now, that the procedure you adopt and all matters connected with the issuance and revocation of permits are matters peculiarly and solely within the discretion of the Commissioner of Internal Revenue. It is only because of protests from judges and United States attorneys, such as I have set forth above, and because it is generally conceded that the control of permits and a drastic policy in their issuance and their revocation, is the key to the control of the liquor situation in this country that I presume to raise this question with you at all, knowing as I do so that I have no legal authority over it, and that whatever I may say can be construed only as a friendly protest or suggestion.

We now come to the matter you raise in the last paragraph of your letter wherein you say that you are "increasingly of the opinion that * * * the only ultimate and sufficient remedy is that * * * the plant be seized * * *." This brings us to the old subject that has been up many times between the Department of Justice and the Prohibition Unit, both before and since you took charge of the litigation section of the latter.

When I came into office in 1921, I found it to be the practice that prohibition agents, under section 25 of the national prohibition act, and usually without consultation with the United States attorney or any legal officer, would apply to a United States commissioner for a search warrant to "search and seize" a brewery that that agent had found unlawfully manufacturing or disposing of high-proof beer.

I found that after the search warrants would issue the prohibition agent would employ guards to keep the brewery in a so-called "state of seizure." Scandals were constantly arising that these guards were parties to bootlegging while they were supposed to be there as the agent of the Treasury Department to prevent it, and that the seizure of the plant was used by unscrupulous prohi-

bition agents as a method of "shaking down" breweries for large sums of money.

Accordingly, as a result of conferences at this department wherein the above conditions were discussed, we stated to you that it was our view that in every instance where your agents apprehended a permit holder in the act of violating the law, instead of this practice of "seizure" the following steps should be taken:

(*a*) Criminal proceedings against the corporation and officers be immediately instituted.

(*b*) A bill of injunction under section 22 of the national prohibition act be filed.

We particularly suggested that where a brewery continued to operate after its permit had been revoked, or where its application for permit had been denied, the evidence be furnished us so that we might bring a test case on the theory that such a plant was an "outlaw" and entitled to no more consideration than a moonshine outfit.

It was understood that while this department prosecuted cases as above, your department would promptly revoke all outstanding permit privileges.

The injunction proceeding such as set out above has been given the stamp of legal approval by the courts in every district where used and has been effective, except in the eastern district of Pennsylvania. There, although delays incommensurate with a summary proceeding such as injunction have occurred, the court nevertheless issued an injunction against the Berguer & Engel Brewing Co., since which your bureau has given us no reports of violation by that concern. It is significant that many complaints of violation were reported against breweries under "seizure." Orders of court are more effective than "guards."

Some strong features of the use of injunction are:

(*a*) It secures immediate judicial determination.

(*b*) It does not demand the delays of a jury trial.

(*c*) It is directed against the profits of an illicit liquor business, rather than the destruction of legitimate property rights.

(*d*) The place may be closed for a year, and upon violation of the order of court the managers may be summarily dealt with under contempt proceedings.

(*e*) Seizure and libel seek only to condemn the brewery property. As a part of the decree in injunction proceedings to abate the nuisance the court may order destruction of the offending res. (See decree in Elgin Ice & Beverage Co., District Court of Northern Illinois; South Fork Brewing Co., western district of Pennsylvania.)

Among the defects of the "seizure" proceedings are:

(*a*) That it ties up for a long period of time, before court determination, the use of hundreds of thousands of dollars worth of property.

(*b*) That the national prohibition act sets out no procedure for libel as it does for injunction. Therefore, resort must be had to some sort of a proceeding to confiscate the property on the theory that the res is the offender.

(*c*) Probably long drawn out jury trials would result in each of the libels filed.

(d) The seizure under the guise of a search warrant is a misuse of the search-warrant process. It practically amounts to using a search warrant as a writ of execution.

(*e*) To ask a court to completely condemn and destroy thousands of dollars worth of property, much more serious evidence would have to be marshaled (and a greater amount than your agents usually do get), than has to be given a court, when the application is only to enjoin the doing of an unlawful act.

The law of procedure whereby the Federal Government can forfeit or condemn property is very indefinite and uncertain. In brewery libel cases resort has to be made to the analagous proceedings of suits for forfeiture for illicit distilling under Revised Statutes 3257–3259 (see Coffey *v.* United States, 116 U. S. 427), which in turn follows admiralty libels.

Undoubtedly "seizure" is the more spectacular method of procedure, and may in newspaper accounts look like enforcement, but authority for it has to be read into the law and supported by presumptions, while for injunction procedure there is direct statutory authority. Injunction is as old as the law of equity, and Congress having in mind the decisions of the Supreme Court of the United States, such as Mugler *v.* Kansas (123 U. S. 623), adopted it

as a mode of relief by enacting sections 21, 22, 23, and 24 of the national prohibition act.

Very truly yours,

MABEL WALKER WILLEBRANDT,
Assistant Attorney General.

Senator ERNST. Mrs. Willebrandt, have you any facts upon which you can base a judgment as to what procedure the breweries most fear, whether injunction or seizure?

Mrs. WILLEBRANDT. No. That would be hearsay on my part. It would come to me by way of hearsay.

The CHAIRMAN. What is the practice now?

Mrs. WILLEBRANDT. Injunction. We are using injunction throughout the United States since January of this year finishing up only seizure cases.

The CHAIRMAN. So you have been successful in convincing the Internal Revenue Bureau that injunction is a proper procedure?

Mrs. WILLEBRANDT. I read to you the letter of Attorney General Stone in which he stated that it was his judgment that that was the proper procedure. That was in reply to a letter of the Secretary of the Treasury in which he said that their department would abide by the Attorney General's final conclusion. United States attorneys have been instructed as to that decision on the part of the Attorney General and have been asked to use injunctions vigorously.

Senator KING. Did the Prohibition Unit attempt in any manner to direct the course which should be pursued by the Department of Justice, whether by seizure or injunction or some other method?

Mrs. WILLEBRANDT. They set out their views to the United States attorneys and to the Department of Justice, as I have indicated, over a long period of time, since 1921.

Mr. MANSON. Mrs. Willebrandt, how do communications between the units, the Prohibition Unit, for instance, and the United States attorneys go? Do they go through the Department of Justice or is there a direct communication from the Prohibition Unit to a United States attorney in a particular district?

Mrs. WILLEBRANDT. The procedure is somewhat mixed. In most instances the Prohibition Unit communicates with the United States attorneys directly. The agents in the field do so in many instances. There are certain classes of cases that are taken up with the Department of Justice, and by us referred out to the United States attorneys in the field. That was the procedure for a year or more, I believe, as far as brewery cases were concerned, and then that procedure changed to take the case up directly with the United States attorney.

Mr. MANSON. Under your present procedure, who determines what action shall be taken by United States attorneys with respect to any particular case—the Prohibition Unit or the Department of Justice?

Mrs. WILLEBRANDT. Excuse me; will you be good enough to repeat your question?

Mr. MANSON. Under your present procedure, who determines how a prohibition case shall be handled? Do you determine it or does the Prohibition Unit determine how it shall be handled, and what remedy shall be sought?

Mrs. WILLEBRANDT. The Department of Justice determines that.

Mr. MANSON. Do I understand then that the former procedure has been abandoned?

Mrs. WILLEBRANDT. No; you asked me before whether they took it up with the United States attorneys in the field. They do take it up with United States attorneys in the field, but the United States attorneys as the representatives of the Department of Justice have a right to determine what legal remedy to pursue. In the question of injunction versus seizure, the matter was in a very unsettled state for quite a long time and in some districts the United States attorney followed the seizure method until finally it was determined by the department not to use that method and United States attorneys were so instructed. But your previous question did not ask me who determined. You asked if they took it up with the United States attorney and my answer was affirmative to that. They do take it up with the United States attorneys, but I do not want to leave the impression that the Department of Justice or the United States attorneys, if they are worthy of the name, and I think most of them are, leave to the investigating officer the ultimate determination of handling of the legal phases of the cases.

Mr. MANSON. What has been your experience with respect to the completeness with which prohibition cases are prepared by the investigating officers of the Prohibition Unit?

Mrs. WILLEBRANDT. Do you mean are they as complete?

Mr. MANSON. The investigating officer of the Prohibition Unit, when he has a complaint or when he makes an arrest or when he desires to secure an indictment, takes his case to the United States attorney for the particular district involved. That is the procedure, is it not?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. What is your experience as to whether as a rule the agents of the unit are qualified to determine what is competent evidence and what is sufficient evidence and whether as a rule they bring in a case that is supported by competent evidence and by sufficient evidence to sustain an indictment and to secure a conviction?

Mrs. WILLEBRANDT. I can only answer that of course by giving you the statements of the men who are on the firing line in the prosecution.

Mr. MANSON. They are immediately under you?

Mrs. WILLEBRANDT. The United States attorneys and the assistant United States attorneys who are obliged to handle this evidence which is placed in their hands by the investigating agents——

Mr. MANSON (interrupting). They report to you, do they not, in these cases?

Mrs. WILLEBRANDT. Yes; and the reports are numerous of a lack of running the evidence to its final conclusion, through inexperience the breaking of a case green or breaking it too soon—placing somebody under arrest before the complete scheme of conspiracy or of law violation has been investigated.

Mr. MANSON. In other words, the complaint is that in numerous instances they cause an arrest to be made or make an arrest before they have the evidence with which they can secure conviction. Is that the idea?

Mrs. WILLEBRANDT. Yes; and before the most has been made out of the situation that by further investigation should be made out of it. In other words, the chief regret on the part of United

States attorneys who are trying to enforce the law in their particular districts in so far as their prohibition cases are concerned seems to be that they have a case, but it is a small case, and by further investigation a larger one involving people who were reaping financial returns from the illicit distribution of liquor in their opinion might have been made.

Senator ERNST. In reading of these different cases I find that some of the district attorneys are nearly always successful in their prosecutions while some appear frequently to fall down. Is that the fault of the prohibition officers in getting evidence or is it the fault of the district attorneys in properly presenting the cases?

Mrs. WILLEBRANDT. I think it might be either one, Senator Ernst.

Senator ERNST. What is your judgment as to who is at fault most often?

Mrs. WILLEBRANDT. I could not base a generality on that question. Each district would depend upon the type of agents who are detailed there and the type of prosecuting officer who is there.

Senator ERNST. To illustrate, I notice in the eastern district of Kentucky there are many convictions under the judge there, Judge Cochran, and the district attorney, Sawyer Smith——

Mrs. WILLEBRANDT. The finest in the land.

Senator ERNST. They do not fall down in any of their cases?

Mrs. WILLEBRANDT. You bet they don't.

Senator ERNST. I was citing that case as to me, though I may be entirely wrong about it, an evidence of the fact that it is not so much what the prohibition officers present in the way of evidence, but it is the way it is attended to after it gets in the court room.

Mrs. WILLEBRANDT. They have pretty good prohibition agents in that district. P. Green Miller is one, and there is no better.

Senator ERNST. And Mr. Sam Collins. They are both very fine men. But the impression left upon me was that the fault was mainly in the way in which it was presented after it reached the court.

Mrs. WILLEBRANDT. I do not believe that can be stated fairly as a generality.

Mr. MANSON. Has it been found necessary in many cases to supplement the investigation made by the prohibition officers by an investigation by agents of the Department of Justice?

Mrs. WILLEBRANDT. Again I will have to answer you by the requests that come to me from United States attorneys. From many, many districts of the United States and from United States attorneys who are zealous and are generally successful in difficult prosecutions and anxious to do a good job, come the earnest solicitation to send Bureau of Investigation men to go further into this situation because they feel that, although they have a case, it is a smaller case and can be made by further and more scientific investigation.

Mr. MANSON. Then the success of United States attorneys in securing prosecutions is to some extent at least attributable to the fact that additional investigation is made by agents of the Department of Justice?

Mrs. WILLEBRANDT. In many cases that is true.

Mr. MANSON. Have you ever received any complaints from United States attorneys to the effect that the prohibition agents are

not sufficiently familiar with what the law requires in the way of proof to secure a conviction or familiar with what constitutes competent evidence?

Mrs. WILLEBRANDT. Yes; many such reports.

Mr. MANSON. You say "many." Can you give us some measure of that? For instance, how do their cases compare with the post-office cases worked up by post-office inspectors?

Mrs. WILLEBRANDT. I do not have charge of the postal prosecutions, but I do come in contact with the United States attorneys a great deal, because of the large proportion that prohibition litigation bears to the rest of the volume of their work, so that if they come to Washington they see me practically always or some of my assistants. I therefore have contact with their offices and I can only state to you that they use the post-office investigations as examples of what they would like to have a great many of their cases and their prohibition cases like.

Mr. MANSON. Do I understand that they express the wish that the prohibition cases could be prepared in the same way or as well as the post-office cases are prepared?

Mrs. WILLEBRANDT. Yes; that is correct.

Mr. MANSON. How general is this complaint from United States attorneys with respect to the qualifications of the prohibition agents when it comes to determining what evidence is required to make a case and a preparation of the case?

Mrs. WILLEBRANDT. That is a hard question to answer. Do you want me to state in how many districts I remember such complaints?

Mr. MANSON. Yes; I would like that. In other words, I would like to have you state to the committee what you know or, rather, what reports or the substance of such reports as have been made to you by United States attorneys as to qualifications of prohibition agents to prepare a case for presentation to a grand jury and for presentation to a pettit jury for trial?

Mrs. WILLEBRANDT. I can only state that New England, New York, practically all of the Atlantic seaboard districts, two of the Pacific coast districts, the inland States, Pennsylvania, Ohio, Illinois, Missouri, Nebraska, and Montana, I definitely recall as having expressed dissatisfaction with the fact that the type of case was too small in proportion to the volume of violations and that the prosecuting officer regretted that he could not get the evidence of the larger types of violation. In most of those districts, although I can not call it as a charge or complaint or any general barrage against the Prohibition Unit, there was this definite dissatisfaction with the evidence as being presented to them, and it was usually accompanied by a request for me to use my good offices in trying to get specific agents sent there to get evidence, because in the opinion of the prosecutor, agents either of a certain bureau or certain-named agents in the Prohibition Unit, who were able to secure the evidence that would enable the prosecutor to bring the cases of the type, he felt were warranted in his particular district. I would add to that list West Virginia and Michigan.

Mr. MANSON. Have you heard any complaint from judges as to the qualifications of prohibition agents to make a case?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. To what extent have you heard of complaints from judges along that line?

Mrs. WILLEBRANDT. You appreciate that it is hard for me to answer when you say "to what extent." I can not use percentages in that answer.

The CHAIRMAN. Let me ask the witness this question at this point, whether if she had more time to answer some of these questions she could do so to better advantage?

Mrs. WILLEBRANDT. Do you mean the questions are coming too fast?

The CHAIRMAN. No. If you had more time other than to-day to look up evidence in your office or refresh your mind, whether you could give us more definite information.

Mrs. WILLEBRANDT. I do not think so for this reason: Mr. Manson's question related to the complaints that have reached the department. Of course, I could look up letters, but it would be an interminable going through the files to look for letters concerning specific instances. Memory would almost have to guide as to which file to go to in order to get a letter on the subject, because there is no indexing in that way.

The CHAIRMAN. But your staff may remember things that you do not remember.

Mrs. WILLEBRANDT. I have Mr. Jones here, who handles all of the mail. There might be additional cases, yes; but I do not think there would be any great amount.

The CHAIRMAN. In answer to the previous question, you made a very broad statement as to the area of the country which had complained about the kind of evidence and the size of the cases. It would be interesting to the committee, so far as the chairman may speak for it, to have some more specific evidence than just your mere memory of the area that was covered in your answer. I thought perhaps if the hearing were postponed to some other day, you might be more specific and conclusive in your answer with respect to that particular question, because that was a big question and the answer is important.

Mrs. WILLEBRANDT. I doubt if it could be very much more specific without circularizing the United States attorneys to get their views.

The CHAIRMAN. But there must be some evidence in the department files which has made you make up your mind to such an answer as that, and it seems to me if that is in your files it ought to be available in a general way even though it did not go into all details to verify by specific instances your very broad conclusion that such an area of the country was dissatisfied with the kind of evidence and cases being presented by the Prohibition Unit.

Mrs. WILLEBRANDT. But, Senator Couzens, it would resolve itself into a question of memory in even searching the files, because there is no indexing of that sort of subject.

Mr. MANSON. I understood you to say a good deal of this information comes to you through personal contact with the United States attorneys when they come to the city.

Mrs. WILLEBRANDT. Yes; I think practically all of the districts I have mentioned have referred to it in correspondence, too, so far as that is concerned; but that correspondence would not be indexed under this sort of subject. It would be only a question of remem-

bering back in 1922 or 1923 or some other time a specific case when a United States attorney wrote in saying, "We have just got a case here against a driver and a truck, and if you could send us some men from the Bureau of Investigation who are trained, and they would get onto this case, I believe we could get others who are deeply involved in it." It is that sort of thing on which I am basing my answer, and you see that would be largely a question of hunting it out from memory.

The CHAIRMAN. Is not that complaint general—and I say it without any definite conviction of my own that it is correct—that the courts and the district attorneys and the whole unit are spending too much time in getting little cases instead of tracing back the liquor to the source?

Mrs. WILLEBRANDT. Oh, yes. That statement is made in practically every district where the volume of violations is great, but I was trying to make my answer specific in reply to the question, which was specific, as to actual complaints of the preparation of specific cases in a given district.

The CHAIRMAN. I recall quite well the question to which the answer was made, but it covered such an area that I wondered if in the files of, say, the Atlantic Seaboard States or West Virginia or Michigan you could not submit a specific letter of complaint to sustain your general statement?

Mrs. WILLEBRANDT. Again, our files are by cases. The question of dissatisfaction on the part of the prosecuting officer concerning the preparation of the cases and his desire to have them more broadly investigated in order to make a better case would be buried in a letter in a file headed a certain case. There would be no way of getting it except through memory that in a particular case he did pointedly insist on having additional investigators. My memory leads me to those places I have named. Possibly by searching my memory more some few others might come up, but it would be purely a question of memory. I do not think our files, the way our cases are filed, could make me very much more helpful to you in answering that particular question.

The CHAIRMAN. Would you say that in the instances to which you have just referred, where a driver of a wagon was complained against, that it would not have been sound judgment to have followed to the source of the liquor rather than simply getting the driver because it was obvious that he was employed by somebody, that the liquor was not owned by him, and that some other person had an interest in it. I mean by that it would be more beneficial for law enforcement if we got the source of it than merely punishing the driver.

Mrs. WILLEBRANDT. Absolutely.

The CHAIRMAN. Your answer to that question is "absolutely." Then, can you tell the committee whether the general run of cases overlooked the desirability of tracing it back to find the source and the ownership?

Mrs. WILLEBRANDT. I can state that the run of cases is entirely too small and too much of a police-court type of variety.

Mr. MANSON. From such information as is reported to you, do you believe that the police-court type of case is due to lack of proper in-

vestigation to turn up a big case that lies behind the police court case?

Mrs. WILLEBRANDT. Lack of skilled investigation in many instances; yes.

Mr. MANSON. Where the Department of Justice agents are used to supplement the work of the Prohibition Unit, they are paid from the Department of Justice appropriations, are they not?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. And the Department of Justice is not reimbursed out of the Prohibition Unit's appropriations?

Mrs. WILLEBRANDT. No.

Mr. MANSON. Have you had any complaint as to the failure of the prohibition agents to observe those provisions of the law and the Constitution intended for the protection of the individual citizen, such as entering without search warrant and enticement cases?

Mrs. WILLEBRANDT. I think practically every case that comes to my attention, to wit, largely applications for writ of certiorari to the Supreme Court, is based upon the fact that there has been in the mind of the applicant a violation of the fourth and fifth amendments as to him. I think usually the reasons that he assigns are superficial.

Mr. MANSON. But what I was trying to get at particularly was the view of the United States attorneys and the judges of the country as to whether the prohibition agents are sufficiently well informed as to the rights of citizens under the law.

Mrs. WILLEBRANDT. I have not very many complaints on that from prosecutors; no.

Mr. MANSON. Have you ever made any suggestion that you think might remedy this lack of proper training on the part of prohibition officers?

Mrs. WILLEBRANDT. You say have I ever made any such suggestion?

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. To whom?

Mr. MANSON. To anybody. Have you ever worked out in your own mind any solution of that problem?

Mrs. WILLEBRANDT. To your last question I will say yes.

Mr. MANSON. I think that would be interesting to the committee.

Mrs. WILLEBRANDT. It is very simple. I think every agent ought to be put under intensive training before he is put into the field for a considerable period of time. I believe it would help him and help the service.

Senator KING. You may spoil some political jobs in that way.

Mrs. WILLEBRANDT. He ought to be trained in the regulations of the bureau and in the internal-revenue statutes and in his powers as an internal-revenue agent. Then he ought to have some definite training in the tactics of investigation and the science of investigation, because investigation is a science in itself.

Senator ERNST. You would want the law changed so there would be preparation for the service? There is nothing for that purpose. That could not be done if it were deemed desirable under the present condition of the law, because it is not provided for; there is no such training provided for.

Mr. MANSON. Does the law forbid——

Senator ERNST (interposing). One moment, please, Mr. Manson.

Mrs. WILLEBRANDT. I would not say that it could not be done, Senator Ernst. The bureau of investigation agents are put under training.

Senator ERNST. You have a fund in the bureau which you can call upon for that purpose, have you not?

Mrs. WILLEBRANDT. I do not know of any such fund. I think it is a general appropriation. That falls outside of my department. You are asking a question outside of my field, and I am answering the best I can.

Senator ERNST. I am asking for information, because I was not aware that that could be done. I think your suggestion is a very fine one. I am not at all surprised when you say the Post Office Department has prepared their cases better than the Prohibition Unit. Why? Here is an inspector's department which has been growing up for many years, and they have trained experts, and they have been going into a field about which they have full information, and they are not under the same temptations not to discharge their duty as are these prohibition agents. Now, I can quite see the force, therefore, of why we ought to have trained men, but I was not aware of any provision in the present law or of any fund which would enable the prohibition department to train its men. If it could be done, I think your suggestion is the most excellent one and ought to be followed.

Mrs. WILLEBRANDT. The appropriation is for the enforcement of the national prohibition act; and if legal advisors can be paid as to that, I should think that the putting of men under some serious training and through a probationary period, putting them under training during that probationary period, would be allowable; but, as I said, you are leading me into a field that is not a part of my particular field. However, I know of no such special appropriation for the bureau of investigation to spend in schools. I think you do not need to put grown men into schools. It would be a question of putting them through a course of training which might be quite different. They might be rendering a useful service of a lesser character in the compilation of evidence while they were being trained.

Mr. MANSON. Have you ever made that suggestion to the Prohibition Unit? Have you ever suggested the plan to the Prohibition Unit that you have just outlined?

Mrs. WILLEBRANDT. Never officially. It would be outside of my province to do so officially.

Mr. MANSON. Have you ever done so unofficially? Have you ever done so informally?

Mrs. WILLEBRANDT. Yes; in informal discussions with the various members of the unit.

Mr. MANSON. With whom have you ever discussed it?

Mrs. WILLEBRANDT. Mr. Yellowley, Commissioner Haynes, and Commissioner Blair.

Mr. MANSON. When it comes to the trial of a prohibition case, that is a matter which is entirely under the jurisdiction of the Department of Justice, is it not?

Mrs. WILLEBRANDT. That is true.

Mr. MANSON. Do the law officers of the Prohibition Unit or of the Treasury Department ever take over the handling of prohibition cases in court?

Mrs. WILLEBRANDT. They assist United States attorneys sometimes.

Mr. MANSON. Do they ever actually conduct the trial of the cases?

Mrs. WILLEBRANDT. Not to my personal knowledge.

Mr. MANSON. Do you have any knowledge of some prohibition cases tried in western Pennsylvania by a man by the name of Littleton?

Mrs. WILLEBRANDT. Yes; but before he tried them he was made Special Assistant to the Attorney General.

Mr. MANSON. At whose suggestion was he made Special Assistant to the Attorney General?

Mrs. WILLEBRANDT. At the request of Secretary Mellon.

Mr. MANSON. What was involved in those cases?

Mrs. WILLEBRANDT. Bribery, violation of the national prohibition law.

Mr. MANSON. Those cases involved bribery of Prohibition Unit employees, did they not?

Mrs. WILLEBRANDT. So far as I know, that was the report of them.

Mr. MANSON. Was the appointment of this man Littleton as the prosecuting officer made with your approval?

Mrs. WILLEBRANDT. It was not.

Mr. MANSON. What was the outcome of those cases?

Mrs. WILLEBRANDT. One case was tried. The Friedman case was tried and lost, and the rest of them at Mr. Littleton's request were nolleprossed. The request was made to nolle prosse the cases and when the motion to nolle prosse was presented to the judge he refused to grant it.

Mr. MANSON. Upon what ground did he refuse to nolle prosse the cases? Is it not a fact the judge refused to nolle prosse those cases upon the ground that the case that was tried had not been properly presented?

Mrs. WILLEBRANDT. It was so reported to me; yes, sir.

Mr. MANSON. Did you not then try one of those cases?

Mrs. WILLEBRANDT. I?

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. Not any that Mr. Littleton had anything to do with.

Mr. MANSON. Was a conviction had in some of those cases, involving that same matter?

Mrs. WILLEBRANDT. Not any that Mr. Littleton had anything to do with.

Mr. MANSON. I am not referring specifically to the cases Mr. Littleton had to do with, but I am referring to the group of cases arising in western Pennsylvania involving bribery.

Senator ERNST. If you have the title of the cases why not suggest them to Mrs. Willebrandt.

Mr. MANSON. I do not think I have them.

Mrs. WILLEBRANDT. Answering your question, no, I do not think so.

Senator KING. Were there several groups of cases tried there in western Pennsylvania for bribery and violations of the National

prohibition law about the time that Mr. Littleton was aiding in the prosecution of some of them?

Mrs. WILLEBRANDT. No. The only bribery cases were those that Mr. Littleton took over.

Mr. HENDERSON. There were one or two bribery cases of minor importance.

Mr. MANSON. Who tried the Guckenheimer case?

Mrs. WILLEBRANDT. Mr. Henderson and Mr. Simonton and Mr. Moore, assistant United States attorney at Pittsburgh, and I.

Mr. MANSON. There was a conviction in that case, was there not?

Mrs. WILLEBRANDT. Yes, sir.

Mr. MANSON. Wasn't that part of this same group of cases?

Mrs. WILLEBRANDT. The only way in which I can say that it was a part of the same group of cases is that in Mr. Littleton's authority appears the name of "Louis Brown and others." Brown was a very wealthy member of the Guckenheimer Distillery Corporation and was one of the defendants in the group of Guckenheimer cases which the United States attorney's office regularly handled and successfully prosecuted. Mr. Henderson prosecuted those cases.

The CHAIRMAN. I am interested to know why this man Littleton was appointed since counsel has raised the question. Just why was he appointed for the specific cases?

Mrs. WILLEBRANDT. I do not know.

The CHAIRMAN. Was the regular staff of the Department of Justice unable to handle the cases?

Mrs. WILLEBRANDT. I do not think they were; no. I do not know of any disqualification.

The CHAIRMAN. They had the time?

Mrs. WILLEBRANDT. They always found the time. Mr. Henderson and Mr. Moore did it in Pittsburgh.

The CHAIRMAN. So you know of no reason for having Mr. Littleton in this particular case specially appointed?

Mrs. WILLEBRANDT. I know of none.

Mr. MANSON. Did you not protest against the appointment of Mr. Littleton?

Mrs. WILLEBRANDT. I did.

Senator KING. Is Mr. Littleton one of the employees of the Prohibition Unit?

Mrs. WILLEBRANDT. I do not know. He is employed in the Treasury Department. Whether it is in the Prohibition Unit or some other part of it I do not know.

Mr. BRITT. May I answer that question?

Senator KING. Is he a lawyer?

Mrs. WILLEBRANDT. Yes, sir.

Senator KING. Do you know anything about his standing as a lawyer—whether he is a lawyer of years of standing?

Mrs. WILLEBRANDT. He was reported to me as a very good one.

Mr. BRITT. He is not and never has been an employee of the Prohibition Unit.

The CHAIRMAN. Is he an employee of the Treasury Department?

Mr. BRITT. I understand that he is or was employed in the office

of the Solicitor of Internal Revenue, but of that I am not sure even. He has no connection with the Prohibition Unit.

Mr. MANSON. Did you take over the Guckenheimer cases because you were not satisfied with the way the other cases had been handled by Mr. Littleton?

Mrs. WILLEBRANDT. Oh, no. The Guckenheimer case started before Mr. Littleton was appointed.

Mr. MANSON. Is it customary, when an investigating officer of the Department of Justice is found to be guilty of corruption, to prosecute him or to just dismiss him?

Mrs. WILLEBRANDT. Do you ask if it is the policy?

Mr. MANSON. Is it the policy of the Department of Justice to prosecute all investigating officers who are known to be guilty of crime?

Mrs. WILLEBRANDT. Certainly. If we can get the evidence, we prosecute them immediately.

Mr. MANSON. Is it customary for the Prohibition Unit to report to you, or to report to the Department of Justice, agents of the unit who have been dismissed because they have been found to be corrupt?

Mrs. WILLEBRANDT. You make that question hard to answer when you ask if it is customary. We have had such cases and have prosecuted them.

Mr. MANSON. Did you have very many of them?

Mrs. WILLEBRANDT. We have not had a great many; no.

Mr. MANSON. You do not know to what extent it is the policy of the Prohibition Unit to report to the Department of Justice for prosecution agents who are dismissed because of being found to be guilty of corruption?

Mrs. WILLEBRANDT. I can not pass on the policy of another unit or department. I will gladly give you all the facts that I have, but I will have to ask for policies from the other departments.

Senator KING. Mr. Chairman, I am compelled to leave. I expected that the hearings would have been concluded this morning, and I made my arrangements to leave. I am going home this evening. I wanted to interrogate Mrs. Willebrandt, however, at some length, but I will do it when I get back, unless you do it now, in regard to the advisability of transferring the enforcement of the prohibition law to the Department of Justice, where I think it should have been a long time ago. I want to get the views of Mrs. Willebrandt in regard to that matter. I will defer it for the time being, and I will take it up when I get back.

Mr. MANSON. I would like to have Mrs. Willebrandt give the committee her opinion as to whether or not the prohibition law would be more effectively enforced if the enforcement were turned over to the Department of Justice?

Mrs. WILLEBRANDT. I would prefer not to answer that for this reason, not because I am at all evasive in my mental processes, but there is a bill pending before Congress purporting to do that very thing. The Department of Justice will undoubtedly be called upon at the time of that hearing before the Judiciary Committee for an opinion on that bill. That opinion will be the departmental opinion, and probably in the future, judged by the past, some people from the department will be called upon to give their opinions at that

time. I think it would be rather inappropriate for me to give my personal opinion now in anticipation of an opinion being rendered by the head of my office.

Mr. MANSON. I think the thing that the committee would be particularly interested in is your personal opinion based upon your own experience in the enforcement of prohibition.

Senator ERNST. Mr. Manson, if you will pardon me, I am on the Judiciary Committee, and I can well see how she would not like to give an opinion of that sort, and if she does not want to I do not think she ought to be pressed.

The CHAIRMAN. Of course, there is no bill before the new Congress.

Senator ERNST. Yes; there is. The Senate is a continuing body. It is there now.

Mrs. WILLEBRANDT. That is the way I understood it.

Senator ERNST. You are entirely right about it.

The CHAIRMAN. But the bill, of course, will have to be reintroduced when the new Congress convenes. All bills die when the old Congress dies.

Mrs. WILLEBRANDT. I may say, Mr. Chairman, that that bill is now the subject of quite intensive study in our department, and it seems to me that it is rather by the board for me to express my opinion on a general policy when there is a specific bill where it can be had in regard to it. People on my staff and I have had a number of conferences and are really studying it, and when we come to a conclusion with reference to this piece of legislation, which emanated from this committee, there will be no objection to the world knowing exactly what I think about it; but I do feel it might be an impropriety for me to express my opinion ahead of coming, first of all, to a mature judgment with respect to the specific bill and the expression of the head of the department on it.

The CHAIRMAN. The chairman has no objection to your not answering the question now, but I do say that we would like to have your judgment before the committee makes its final report to Congress. I am not urging that you answer it at this time.

Mr. MANSON. Are you familiar with the prohibition situation in New Jersey, Mrs. Willebrandt?

Senator ERNST. I did not know that they had prohibition in New Jersey.

Mr. MANSON. Well, the situation with respect to it.

Mrs. WILLEBRANDT. I have given it some little concern; yes.

Mr. MANSON. Is there full cooperation between the United States attorney and the prohibition director in New Jersey, in your opinion?

Mrs. WILLEBRANDT. Is there what?

Mr. MANSON. Full cooperation between the two offices, the United States attorney's office and the Prohibition Unit in New Jersey?

Mrs. WILLEBRANDT. Well, I do not know any points of friction.

Mr. MANSON. What is your opinion as to the lack of enforcement in New Jersey, based upon such reports as have been made to you in your position?

Mrs. WILLEBRANDT. I think, first of all, there are too many little cases. There is too much congestion in the courts, and there has been entirely too much politics throughout the entire State.

Mr. MANSON. Will you make that a little more specific, as to what you mean by "too much politics"?

Mrs. WILLEBRANDT. Well, we have had too much trouble getting the evidence and enforcing decrees and prosecuting the cases, and the only assignable reason was that the defendant had political influence. Whether they have or not, I do not know; but I know that the cases have been in the past unsatisfactory.

Mr. MANSON. Have you made any effort to ascertain whether the United States attorneys have been doing their full duty in the prosecution of those cases?

Mrs. WILLEBRANDT. I tried, as I try to in every district; yes, sir.

Mr. MANSON. Are you satisfied that the United States attorneys in New Jersey have done the best they could with the facts presented to them?

Mrs. WILLEBRANDT. Not in all cases; I am not.

Mr. MANSON. Do you believe that the situation in New Jersey is due to the default of the United States attorneys or to the default of the prohibition enforcement officers?

Mrs. WILLEBRANDT. Both.

The CHAIRMAN. The witness answered "both."

Mr. MANSON. When you say that there is difficulty in getting the facts, do you mean that the unit has not supplied the facts, that the prohibition investigating officers have not supplied the facts?

Mrs. WILLEBRANDT. There have been a great many cases. The cases have been too small in scope for a place that has as widespread violation as it is common knowledge the New Jersey shore has.

The CHAIRMAN. Is the situation in Pennsylvania as bad as it is in New Jersey, in your opinion?

Mrs. WILLEBRANDT. I do not think it is now; no.

The CHAIRMAN. Is it in New York as bad as it is in New Jersey?

Mrs. WILLEBRANDT. Well, of course, I can only answer based upon the conduct of cases, the size of cases, etc. My answer now does not go to the amount of violation or the free distribution of liquor, because I would not be able to give you an intelligent answer on that. Therefore I would say that New York, as a whole, has had a better record in her handling of cases.

Senator ERNST. That is, New York State?

Mrs. WILLEBRANDT. Yes; throughout the State.

Mr. MANSON. Do you believe that the prohibition law is being enforced along the Atlantic seaboard as it should be?

Mrs. WILLEBRANDT. No; I do not think so.

Mr. MANSON. What suggestion have you to make as to how its enforcement would be improved?

Mrs. WILLEBRANDT. Of course, that would lead into a speech, and I do not want to come here and make a speech. I am glad to give you every bit of fact that I have, and that you want to call for, but when you get into the realm of opinion from me I do not feel that my answer would be very helpful or proper.

Mr. MANSON. Mrs. Willebrandt, you are the law officer of the United States in whose hands the prosecutions ultimately rest, and it seems to me that your opinion as to how the enforcement of this law can be improved would be very valuable to any committee of Congress.

Mrs. WILLEBRANDT. To sum up very briefly, I would say better trained agents; fewer but larger cases, which would result in less congestion in the courts and their more speedy trial.

The CHAIRMAN. To secure these larger cases you really need more brains; is not that it?

Mrs. WILLEBRANDT. Pardon me?

The CHAIRMAN. I say, to secure these larger cases, to run them down, you really need more brains, do you not, than in the smaller cases?

Mrs. WILLEBRANDT. You need more training; yes.

The CHAIRMAN. I know; but you can not train people without brains, and some of them do not have brains, some of these people who spend all of their time on these little cases, it seems to me.

Mr. MANSON. Do you believe that the placing of the Prohibition Unit agents under the civil service would improve the situation?

Mrs. WILLEBRANDT. I think it would. It would remove them, to some extent, from political temptations, and would make political considerations less determinative of their appointment, promotion, and discharge.

Senator ERNST. Pardon me just a minute. Have you any other witnesses after Mrs. Willebrandt?

The CHAIRMAN. Not to-day, unless Mr. Britt wants to ask some questions to-day or at some other time.

Mr. MANSON. I have before me what purports to be an interview with Mrs. Willebrandt in the New York Times on January 25, which reads as follows:

> At the present time we have not the right kind of investigators (referring to prohibition enforcement). Many of them are well meaning, sentimental, and dry, but they can't catch crooks. The sole object of others has been to appropriate all the graft in sight, and they won't catch crooks. These two classes have obtained their positions largely because prohibition enforcement officers have been appointed at the instance of Senators, Congressmen, and political leaders. The average Senator or Congressman recommends a man because he has been useful politically, or because he is an antisaloon leader, a confirmed dry, or a widely known Sunday-school teacher, but that kind of man does not often make a good detective. Here and there some have developed into experts, but most of them are not equal to the problem with which they deal.

Is that statement correct?

Mrs. WILLEBRANDT. It sounds substantially very much like me.

Mr. MANSON. Does that express in a few words your general view of the trouble with prohibition enforcement?

Mrs. WILLEBRANDT. In spots of the United States, I would certainly say so.

The CHAIRMAN. What spots?

Mrs. WILLEBRANDT. And the unfortunate part of it is that where those things are true, they are true at the place where enforcement is most needed.

The CHAIRMAN. Can you tell us what those spots are? You say "in certain spots."

Mrs. WILLEBRANDT. I would rather tell you the spots where they are not true. For instance, that is not true of the appointments that come out of the State of Kansas, so far as my information goes; but the Federal Government does not have a very big burden to

carry in Kansas on prohibition enforcement. We only handled 14 cases in one year there. In the territories where there is a very large antiprohibition sentiment, which is playing its influence on the Senator or political leaders, the people who are recommended measure up less to that we need in those bad territories; and that is why I say that in certain spots in the country I think that is a fair description.

The CHAIRMAN. Would it not simplify matters if you told us those spots? You only named one exception. There must be more than one exception in the United States.

Senator ERNST. Yes; I know of another spot that is an exception.

The CHAIRMAN. Why can you not name those spots? You only gave us one exception, and you do not wish us to understand that all of the 47 other spots in the United States are like those that you describe in that article in the New York Times, do you?

Mrs. WILLEBRANDT. I could describe Idaho. I could describe quite a good many of the States, but they are mostly Middle Western States where, as I say, the Federal Government does not have to bear that big burden.

The CHAIRMAN. Name the States where they have to bear that big burden, then?

Mrs. WILLEBRANDT. The States where the Federal Government has to bear the big burden are New York, New Jersey, Maryland, Rhode Island, and Pennsylvania. I should say that they are at the top of where the Federal Government had to bear the biggest burden.

The CHAIRMAN. Have you studied the distribution of prohibition agents around through the States sufficiently to know whether they could be better placed?

Mrs. WILLEBRANDT. Of course, my knowledge of that is second hand, and I do not have sufficient facts at my hand as to just where agents are placed to come to anything other than a conclusion, which might be satisfactory to me, but which would have no public benefit at all.

The CHAIRMAN. Now, Mrs. Willebrandt, in view of what counsel has pointed out to you, that you are the chief law enforcing officer of the prohibition law of the United States——

Mrs. WILLEBRANDT. I think that is a misnomer, and I might at this point call attention to the fact that the idea is current that the Department of Justice is primarily charged with this prohibition enforcement. If that were true, then I think Congress ought to follow it up by distributing the appropriations to the Department of Justice, but without having done so, I would say that the chief responsibility for prohibition enforcement lies with the Treasury Department, because that department has received an appropriation of almost $26,000,000 for this work.

Mr. MANSON. Right on that point, the success or failure of the enforcement of prohibition depends upon securing convictions, does it not, Mrs. Willebrandt?

Mrs. WILLEBRANDT. I think, in the last analysis, it does; yes, sir.

Mr. MANSON. And it depends upon the securing of convictions of the class of people——

Mrs. WILLEBRANDT. Wait just a minute.

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. No; I would not say that, in the last analysis; it depends upon securing convictions, because I believe that the preventive features of prohibition enforcement are themselves quite important.

Mr. MANSON. Does not the success of the preventive feature depend very largely upon the ability of the Government to secure some convictions in cases where they do attempt to prosecute?

Mrs. WILLEBRANDT. Where they do attempt to prosecute; yes.

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. But as to actually making the prohibition law enforced in the same way in which other Federal laws are enforced, neither putting it on a pedestal nor left-handing it, I think there is just as much opportunity to bring that about through the preventive features as there is through the prosecuting features.

Mr. MANSON. Yes; but a large part—I will put it that way—a large part of the success of this law depends upon securing a conviction when you attempt to get a conviction, does it not?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. And upon getting hold of the people who are supplying liquor in large quantities rather than the fellow who is dribbling it out in half pint flasks?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. You are the head of that department of the Government which has charge of the prosecution of prohibition enforcement?

Mrs. WILLEBRANDT. Under the Attorney General; yes.

Mr. MANSON. Under the Attorney General?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. You are the active head of it, and it seems to me that your information, the information which drifts to you by your contact with the United States attorneys throughout the United States charged with the duty of prosecuting these cases, is of the utmost value to anybody who desired to reach an intelligent conclusion as to how this law should be amended, if it is to be amended, or as to how it should be administered.

The CHAIRMAN. That brings up the point that I was going to ask Mrs. Willebrandt about.

If you had full authority to proceed with the enforcement of prohibition under the now existing laws, what would you do?

Senator ERNST. That is a large order.

The CHAIRMAN. Well, I am assuming that Mrs. Willebrandt has made a study of this subject; at least, I have seen a good many newspaper articles and statements wherein she has found fault with it and she must know the remedy. I do not assume that she is finding fault with conditions without having thought of some relief at least, if not a complete remedy.

Mrs. WILLEBRANDT. I do not believe it is proper or appropriate for me to answer that question. It would require, first of all, more than could be given you in an offhand way. It would deal with the preventive features; first, the issuance and the revocation of permits; and then second, the organization of the evidence-gathering forces, and I could not, in a few words, even give you my small conclusions along that line.

If I were charged with any such responsibility, the first thing I would do would be to shut myself up with the problem of the facilities now at hand; not legal so much, because those have come to my attention, and I feel that I know them a little bit better, but as to the administrative features I could not give you an answer offhand without studying them exhaustively and without being in possession of all the information. You can appreciate, Senator Couzens, that I may not have had all of that information when all of those administrative matters have been in another department. All I could have is the fragmentary parts of the information that leak to me via United States attorneys in the prosecution of cases. So the only way I could answer you is that if I were charged with any such responsibility I would sit down, first of all, to analyze the entire administrative feature of the unit, and to analyze the other branches of the Government, which, if brought into coordinaton with the Prohibition Unit itself, might possibly work for the making of better cases and the widening of the means of prevention.

The CHAIRMAN. At that point let me ask you what other branches of the Government could be brought into coordination to bring about this highly desirable result?

Mrs. WILLEBRANDT. The Coast Guard, the customs, the internal-revenue agents, and the Special Intelligence Unit, which collects tax data.

The CHAIRMAN. You believe that that is all within the Treasury Department now?

Mrs. WILLEBRANDT. It is.

The CHAIRMAN. So that the proper coordination——

Mr. WILLEBRANDT. And the Bureau of Investigation of the Department of Justice.

Mr. MANSON. Do you not believe, Mrs. Willebrandt, that if the same officers who are charged with the duty of prosecuting a case were given the money and the men to prepare the case more effective results would be obtained in prosecutions?

Mrs. WILLEBRANDT. Again you are leading me back to an expression of opinion with respect to that bill.

Mr. MANSON. No.

Mrs. WILLEBRANDT. A policy of the bill, transferring it to the Department of Justice; but answering your question hypothetically, I think it is questionable; there are so many things to be taken into consideration with respect to the same branch of the Government in prosecuting as investigates that I am not sure about that.

Mr. MANSON. As it is, you have stated that it is frequently necessary for United States attorneys to call upon the Bureau of Investigation of the Department of Justice to——

Mrs. WILLEBRANDT. They ask us to do so, yes, very often.

Mr. MANSON. And is it not a fact that that is done in the more important cases?

Mrs. WILLEBRANDT. But, you see, those same United States attorneys do not very often ask for that help when they are prosecuting a post-office case, and that is made up by a department other than the prosecuting department.

Mr. MANSON. Well, the Post Office Department, on the other hand, is maintained primarily for the distribution of mail and not for the enforcement of penal statutes.

Mrs. WILLEBRANDT. I do not see the relevancy.

Mr. MANSON. The relevancy is this, that the principal function of the Prohibition Unit is to enforce the law prohibiting the manufacture and sale of liquor.

Mrs. WILLEBRANDT. Which may be preventive quite as much as prosecuting.

Mr. MANSON. Yes; but it is the enforcement of a penal statute.

Mrs. WILLEBRANDT. I am not sure that it is wholly a penal statute. I think it is both an internal revenue and a penal statute.

The CHAIRMAN. I understood you to say that, so far as you have expressed your conclusions, the greatest difficulty in enforcing the prohibition law is with the administrative features. Is that correct?

Mrs. WILLEBRANDT. I think the responsibilities of the administrative features of prohibition enforcement are equally great with the responsibilities of the evidence gathering feature that leads to criminal prosecution; yes.

The CHAIRMAN. The gathering of evidence is an administrative feature, is it not?

Mrs. WILLEBRANDT. Oh, not always; no.

The CHAIRMAN. Well, the organization of it is, is it not?

Mrs. WILLEBRANDT. Yes.

The CHAIRMAN. Then, in your statement awhile ago——

Mrs. WILLEBRANDT. As to the administrative features, I divided my statement into two halves—the issuance of permits and the preventive features of prohibition enforcement.

The CHAIRMAN. I understand, but when you were asked the question what you would do if you were charged with the responsibility of prohibition enforcement, you said you would start out to study the administrative features of prohibition enforcement, and that you knew fairly well the judicial and the prosecuting end of prohibition enforcement?

Mrs. WILLEBRANDT. Well, I should have some information on that, having worked at it for four years, almost.

The CHAIRMAN. Yes; I understand.

Mrs. WILLEBRANDT. Having worked on that side of it.

The CHAIRMAN. But I gathered from that statement that your conclusion was that there was nothing particularly to do, so far as the prosecution and the judicial end of it was concerned, but that it mainly lay with the administrative end of the work. Is that correct?

Mrs. WILLEBRANDT. No; I think you drew the implication too far. I think there is plenty to be done on both sides.

Mr. MANSON. Do you believe that there is room for improvement in the matter of the issuance and revocation of permits?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. And do you believe that if the power of the commissioner with respect to the issuance and revocation of permits were more efficiently handled, it would dispense, to a large extent, with the necessity for prosecutions?

Mrs. WILLEBRANDT. I believe it is so intended under the act.

Mr. MANSON. Have you any particular cases in mind, other than the one that you called attention to here a little while ago, where

you do not believe that the power to revoke permits has been exercised as it should be?

Mrs. WILLEBRANDT. I do not know which one I called attention to.

Mr. MANSON. Well, I believe you called attention awhile ago to a case where there was a seizure of a brewery without the revocation of a permit.

Mrs. WILLEBRANDT. Oh, I had forgotten that. You are quite right.

Mr. MANSON. Have you any other case in mind where you believe that the preventive measures of this law could have been more efficiently administered?

Mrs. WILLEBRANDT. Do you want me to name specific cases?

Mr. MANSON. Yes; give us the facts in regard to them.

Mrs. WILLEBRANDT. Well, I am not qualified without further study to name specific cases. United States attorneys have reported embarrassments in the prosecution of cases where, when they came into court to prosecute, they found that the defendant had enjoyed the permit privileges up to within a short time of the actual hearing in court.

That was referred to in that quotation that I read from the court's comments in the American Brewing Co. case, No. 354, of the 1923 term of the eastern district of Pennsylvania.

Mr. MANSON. Do you understand that in that case, after the prosecution was initiated, the permit was still permitted to stand until within a few days of the actual trial of the case?

Mrs. WILLEBRANDT. I think you will find that substantially correct in the American Brewing Co. case. That was in 1923, and my memory does not enable me to say specifically what the permit situation was, but the judges observed generally, as an outgrowth of the evidence produced before them in this case, that the more direct method of dealing with this case would be the withdrawal of the permits, and thus avoiding the anomaly. It has been a frequent report from United States attorneys that the permit priviliges were enjoyed for such a long time after violation had been discovered upon which they had to base their criminal case that they were embarrassed in the prosecution of the criminal case.

The CHAIRMAN. Do you want to ask any questions now, Judge Britt, or do you wish to make any statement at this time? If you have any questions to ask or any statements to make, I think we had better adjourn until some other date, an it is getting pretty late.

Mr. BRITT. Yes.

Senator ERNST. Mr. Britt, would you like to put in writing what you have to say and file it as a part of the record?

Mr. BRITT. I should prefer, Mr. Chairman and gentlemen, to ask a number of questions of the Assistant Attorney General.

Senator ERNST. That is all right, as far as I am concerned.

Mr. BRITT. When we received notice of the meeting of the committee to-day, we were requested to bring certain cases, and we came with those cases, and not in anticipation of any other line of inquiry; so it would suit us better to let the further questioning of Mrs. Willebrandt on your part, if you so desire, and the questioning on our part, be for another period.

Senator ERNST. That suits me.

The CHAIRMAN. When will it be convenient, Mrs. Willebrandt, for you to come here again?

Mrs. WILLEBRANT. When?

The CHAIRMAN. Yes.

Mrs. WILLEBRANDT. I could come whenever you set it, if I know ahead of time.

Senator ERNST. It is your idea now to close the hearings as soon as you can do so?

The CHAIRMAN. Yes.

Senator ERNST. How about to-morrow morning or to-morrow afternoon at 2 o'clock?

Mrs. WILLEBRANDT. To-morrow afternoon would be better.

Senator ERNST. I can be here at 2 o'clock.

Mrs. WILLEBRANDT. I had changed some appointments from this afternoon until to-morrow morning.

Mr. BRITT. May I say on that point, Mr. Chairman, that both Commissioner Haynes and Assistant Commissioner Jones are away, and the latter ill, and it is extremely difficult for me to get away to-morrow for any length of time. If it would not too greatly inconvenience the committee to set it for the day following, it would oblige me very greatly.

The CHAIRMAN. Senator Ernst wants to get away, do you not?

Senator ERNST. No; I will be here on the afternoon of that day, but not in the morning.

Mr. BRITT. Well, any day after to-morrow, I should be very glad to suit our convenience to the convenience of the committee.

The CHAIRMAN. Will that suit you, Mrs. Willebrandt?

Mrs. WILLEBRANDT. Yes.

The CHAIRMAN. We will adjourn now until 2 o'clock on Thursday afternoon.

Mr. BRITT. May I ask, Mr. Chairman, before you adjourn, whether you desire us to bring further cases for your consideration?

The CHAIRMAN. What was the nature of those cases that you have brought down to-day?

Mr. BRITT. They were the cases of the Alps Drug Co. and the Matthew Arnone case.

The CHAIRMAN. We will let you know if there are any others. That is all I think of now.

Mr. BRITT. We shall be at your service as to the cases.

The CHAIRMAN. We will adjourn until Thursday afternoon at 2 o'clock.

(Whereupon, at 4.15 o'clock p. m., the committee adjourned until Thursday, April 2, 1925, at 2 o'clock p. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

THURSDAY, APRIL 2, 1925

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

The committee met at 2 o'clock p. m., pursuant to adjournment of Tuesday, March 31, 1925.

Present: Senators Couzens (presiding), Watson, and Ernst. Mr. L. C. Manson, of counsel for the committee; Mrs. Mabel Walker Willebrandt, Assistant Attorney General of the United States.

Present on behalf of the Prohibition Unit, Bureau of Internal Revenue: Mr. Roy A. Haynes, Prohibition Commissioner; Mr. James J. Britt, counsel, Prohibition Unit; Mr. V. Simonton, attorney, Prohibition Unit; Mr. E. C. Yellowley, chief, general prohibition agents; Mr. H. W. Orcutt, head, division of interpretation, Prohibition Unit; and Mrs. A. B. Stallings, chief, beer and wine section, Litigation Division.

STATEMENT OF MRS. MABEL WALKER WILLEBRANDT, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES—Resumed

The CHAIRMAN. Mrs. Willebrandt, would you like to say anything further in amplification of your statements made before the committee the other day?

Mrs. WILLEBRANDT. I have no general statement to make, Senator. I will be glad to give all the facts that I have that you may ask for, but I would not respond to any suggestion by making a speech, or anything of that sort.

The CHAIRMAN. There was one question that I raised on the hearing of the 31st of March, and that was that I thought you ought to present some evidence to sustain your conclusions about law enforcement, and as to the cooperation that did or did not prevail on the Atlantic seaboard and in some of the other territory that you mentioned in your general statement, and I would now suggest that if you have anything here which will amplify that or sustain your conclusions, in your general statement, this would be an opportune time to put it in. You remember the statement, do you not?

Mrs. WILLEBRANDT. Yes. Your question is for me to prove the statement that there was not cooperation along the Atlantic seaboard? I wish to correct my previous statement by saying that I did not mean to say that there was not cooperation there, but I believe there was not as good enforcement there as there should be. Is not that right?

The CHAIRMAN. I will find your statement in the record here.

Mrs. WILLEBRANDT. May I state, Senator, that I have some reluctance not in giving the facts but in giving you incidents that will prove the statement, which I still adhere to, that prohibition enforcement is not in a very good state along the Atlantic seaboard, because such proof, if you want to call it that, of incidents upon which my general statement is based is found in reports that have come to me from United States attorneys and from Federal judges and from my contact with those law-enforcement officers. If my statements are to be generally given to the press, I fail to see how they can be of any beneficial result. You will appreciate that the moment I said that any United States attorney has reported to me that A, B, and C, prohibition agents, can not do the work, and L, M, and N, bureau of investigation men, can, and he appeals for L and M to come, and that statement gets to the press, immediately there is precipitated on the law-enforcement officers in that particular spot controversy, and demands on the part of the press arise to know what was said about the specific cases, and I think it is bad for law enforcement.

I do have, in the form of memoranda prepared in my office, and prepared because of an effort to find out why there were so many nolle prosses of cases in various districts, and just as a result of an effort on my part to see why more small cases could not be consolidated and there be less congestion of dockets. The memoranda that I have will prove my statements, but for the reasons that I have stated to you, Senator, I dislike very much to give them out. They involve specific references to specific litigation. It is true it is litigation that is now closed, so far as these are concerned, but to make them a part of a public record I believe is improper.

Senator WATSON. After all, the healthy and wholesome thing for you is to give your opinion about how you would improve that situation.

Mrs. WILLEBRANDT. Yes.

Senator WATSON. How would you improve it, granted that prohibition is not being enforced rigidly? How would you proceed to enforce prohibition?

The CHAIRMAN. In that connection I might say that at the hearing day before yesterday, Senator Watson, Mrs. Willebrandt declined, or at least asked to be excused from making a response to that inquiry that I made.

Senator WATSON. Well, I did not know that.

Mrs. WILLEBRANDT. My reason for declining, Senator Watson, was because I can, in my job, see only one-half of the picture, and the question addressed to me was, if I had full authority so that I could handle not only the litigation but the other side of the picture, which is now handled in the Treasury Department, what would be the first things I would do, and my answer was that with only half a knowledge, even though I may have very settled convictions, I can not make a fair answer as to just what I would do until I would shut myself up with that problem, and that is exactly what I would do, for a few weeks, to study it and come to a conclusion.

Senator WATSON. Let me ask you this question, for such response as you care to make: Would you transfer the Prohibition Unit from the Department of Justice?

Mrs. WILLEBRANDT. I also asked to be excused from answering that question.

Senator WATSON. That is all right, then.

Mrs. WILLEBRANDT. For the reason that that is contained in a pending bill.

Senator WATSON. I did not know that you had been asked that.

Mrs. WILLEBRANDT. And our department will express an opinion in due time, but that will be the opinion of my superior officer, the Attorney General.

The CHAIRMAN. In connection with your statement, Mrs. Willebrandt, I would like to draw your attention to the exact language that you used, and also, for the information of Senator Watson, I will say here that Mrs. Willebrandt made this statement:

I can only state that New England, New York, practically all of the Atlantic seaboard districts, two of the Pacific coast districts, the inland States, Pennsylvania, Ohio, Illinois, Missouri, Nebraska, and Montana, I definitely recall as having expressed dissatisfaction with the fact that the type of case was too small in proportion to the volume of violations and that the prosecuting officer regretted that he could not get the evidence of the larger types of violations. In most of those districts, although I can not call it as a charge or complaint or any general barrage against the Prohibition Unit, there was this definite dissatisfaction with the evidence as being presented to them, and it was usually accompanied by a request for me to use my good offices in trying to get specific agents sent there to get evidence, because in the opinion of the prosecutor, agents either of a certain bureau or certain named agents in the Prohibition Unit, who were able to secure the evidence that would enable the prosecutor to bring the cases of the type he felt were warranted in his particular district. I would add to that list West Virginia and Michigan.

Senator WATSON. I thank you for omitting Indiana.

The CHAIRMAN. At the beginning of the hearing to-day I asked you if you could substantiate that general statement, and in view of what you have just said, I think you might substantiate it, eliminating any reference to names. You might do it by giving localities or districts. I, for one, am not anxious to get into personalities. If you can not do it in that way, I will ask the committee to take the matter under advisement as to the best way to proceed.

Senator WATSON. I would like to ask a question, Mr. Chairman, in order to be enlightened, because I have not been in attendance at the committee meetings.

Is it the object to prove that prohibition is not rigidly enforced everywhere? If that is all there is to it, we might as well omit that.

Mr. MANSON. I think I could throw a little light on that suggestion.

The tenor of Mrs. Willebrandt's statement to the committee at the last session was that the principal difficulty that the Department of Justice labored under in connection with prosecutions was the fact that cases broke; in other words, prosecutions were brought too soon, by reason of the fact that unskilled——

Mrs. WILLEBRANDT. Pardon me for interrupting—not prosecutions; publicity.

Mr. MANSON. Publicity.

Mrs. WILLEBRANDT. And sometimes arrests.

Mr. MANSON. And sometimes an arrest—was immature.

Senator WATSON. Flushed to covey.

Mr. MANSON. Yes; that is it exactly—before the case had been investigated enough to get the big fellows behind the little fellow that happened to be driving a truck or delivering a gallon of booze. That is the substance of your statement?

Mrs. WILLEBRANDT. I see that the Senator uses the same expression that I have sometimes used when referring to an agent who from lack of training had done such a thing to a case, that they were bird dogs that barked instead of setting.

Senator WATSON. Well, after all, that is an individual weakness, is it not?

Mrs. WILLEBRANDT. It is—lack of training.

Senator WATSON. That is a departmental matter in your department, to find out the capacity of each individual member employed by it. You can remove an employee and put somebody in his place, or you can put him in some other field of activity?

Mr. MANSON. I might say further in that connection that Mrs. Willebrandt brought out the fact that reports from United States attorneys and Federal judges in the districts she mentioned show that the conditions she complained of were more or less general in these localities, and that the defect in the agents were more or less general, and I take it that it is the purpose of Senator Couzens to ask her to supply further substantiating data to those statistics. Is that right?

The CHAIRMAN. That is correct.

Mrs. WILLEBRANDT. You asked me if I had the data the other day when I was testifying and if by searching our files I could supply it, and I told you at that time that it would be a question of memory. I was then testifying from my memory of these memoranda which had been prepared for me by the attorneys in my division, each of whom is responsible for the reports and the condition of prohibition litigation in certain geographical areas.

In an effort to start it last summer particularly, and which has somewhat culminated in a clearing up of the dockets, we made a study of why there was such a congestion and why there were so many nolle prosses, and I think that these memoranda would exactly substantiate my general statement; but I believe these memoranda should not be made a part of the record. If you want to have them and study them yourself, or if your committee wish to do that, I believe it would be proper. I would like to leave them with you in order to do that, but I do not think it ought to be made a part of the committee's record.

The CHAIRMAN. What do you say, Senator Watson, about having her read them to us off of the record here?

Senator WATSON. I would like to read them myself first and see what they are. In other words, I do not see what good point there is to be served or what good purpose is to be subserved by starting out to prove by a lot of the attorneys either that prohibition is not being rigidly enforced in certain localities or that bootlegging and drinking has not stopped, because we all know that, from common knowledge or that the courts have been congested and that there are a lot of cases cluttering up the dockets or that there is some conflict somewhere between the attorneys and the department and some of the enforcement officers.

Mrs. WILLEBRANDT. No; I do not think it falls into any one of the three, Senator. These are just incidents where United States attorneys explained the reason why there was such a congestion of so many little cases on the docket, or where they in other manner analyze the reasons why they have to dismiss cases.

The CHAIRMAN. The chairman, in answer to Senator Watson's question, wishes to say that I do not disagree with the conditions as stated by the Senator, but it seems to me that if we have the conditions and the reasons for the failure of enforcement pointed out to us we might be able to devise ways and means of securing better enforcement; but unless we know the facts, we will not know how to proceed to enforce the law.

Senator WATSON. But do we not know what the facts are?

The CHAIRMAN. I do not for one. I have not seen these, and I do not know what the facts are, so far as the cause of the failure is concerned.

For the moment, if agreeable to the committee, we will let you file these with us, and we will discuss what to do with them later.

Mrs. WILLEBRANDT. They are taken up State by State. They are just in rough form.

The CHAIRMAN. How many are there, Mrs. Willebrandt?

Mrs. WILLEBRANDT. One memorandum of six pages from the attorney who has charge of correspondence and contact with United States attorneys in what we call the southeast district of the United States.

Mr. BRITT. Mr. Chairman, may I ask whether the unit will be permitted to see these memoranda before they are printed?

The CHAIRMAN. Oh, yes.

Mr. BRITT. And may I ask that the unit be furnished with a copy of them, if the committee considers them?

The CHAIRMAN. Yes.

Senator WATSON. Let me look at one of them, Mrs. Willebrandt. Maybe we can determine right here whether or not we have any objection to their being printed.

Mrs. WILLEBRANDT. They involve reports from United States attorneys, copies of which have been sent to the Prohibition Unit, Mr. Britt.

Mr. BRITT. I presume copies of the report from the United States attorneys have been furnished to the Prohibition Unit.

Mrs. WILLEBRANDT. Another is an 11-page memorandum on the dismissal of cases by the attorney in charge of what I call the northeastern district of the United States.

The CHAIRMAN. You might continue and give that description of them for the record.

Mrs. WILLEBRANDT. Yes. Another one is a four-page memorandum from the attorney in the middle section of the United States; that is, the Ohio-Michigan district.

Another one of four pages by the attorney in charge of contact with United States attorneys in the western district of the United States.

Another one of two pages from the attorney in charge of the middle western section.

The CHAIRMAN. That completes the memoranda that you are leaving with the committee for study?

Mrs. WILLEBRANDT. Yes; I identify them in that form.

The CHAIRMAN. Mr. Britt, if you want to ask Mrs. Willebrandt any questions now concerning her previous testimony, you may do so.

Mr. BRITT. Mr. Chairman, I desire to make a brief statement covering the questions raised at the hearing of last Tuesday. I think I can approach what I want to reach better by answering the objections made to some of the activities and the personnel of the Prohibition Unit, rather than by asking questions of the Assistant Attorney General, if I may proceed by that method.

The CHAIRMAN. You may proceed in your own way, Mr. Britt.

Mr. BRITT. One of the things to which attention was directed is the alleged inefficiency of the prohibition agents in the preparation of cases for court trial, the statement being made that too much relative attention was given to the small cases, and not enough relative attention to large cases; also that when the case came on for trial, there were missing links in their preparation.

The gravamen of the criticism, as I understood it, was that there was too much preponderance of what was called "police cases" or "hip-pocket cases." I will address myself to that objection first.

I think a great deal of misunderstanding exists on that point, and I think a great deal of harm has unintentionally been done the cause of prohibition enforcement by singling out what are called the "police cases," as if they were a thing avoidable. As a matter of fact, the people of the country, when they adopted the eighteenth amendment, and the Congress, when it enacted its enforcing legislation, created the necessity for bringing forward what have been pleased to be called "police" cases, and made it inevitable.

The eighteenth amendment is the only one of the 19 amendments and the only part of the Constitution that establishes a general police regulation for the country looking to public order. When the amendment was proposed and ratified and became effective, and the Congress enacted the national prohibition act to put it into effect, it named certain offenses deducible from the provisions of the amendment, fixed certain penalties for their violation, and prescribed the mode of trial. There was no distinction in the law, and there is none now, between what one individual might call a large case and another individual call a small case.

The CHAIRMAN. Do you mind being interrupted, Mr. Britt?

Mr. BRITT. Not at all.

The CHAIRMAN. Just at that point it occurs to me that, from my experience as a law-enforcing officer for many years, there rests with the administrative officers some authority and discretion with respect to how they will use their organization, and it has been stated in the testimony here that the limited number of agents with the Prohibition Unit had made it impossible for them to do all the work to be done. Therefore does it not occur to you that greater results would be obtained if this limited force that you spoke of were confined to at least endeavoring to get the sources of supply and the so-called big offenders?

Mr. BRITT. That would be true if there were anybody to bring up the rear with the small cases, but in many places there is not. It

would also be so if the duty did not devolve upon the commissioner to enforce the law in whole and not in part. There can be no such organization as an organization strictly to deal with big cases and another to deal strictly with small cases, for the reason that they are intermixed and overlap, and no one can tell where the one or the other will be found. But it should be borne in mind that what are called "police" cases are violations, both of the amendment and of the national prohibition act. Just why we should attempt to take them out of their category of importance by a name peculiar to police courts or to local jurisdictions is not clear. They are national in their character and are denounced by the Constitution in its enforcing legislation. I say once again that I think that mode of expression by a great many people, unintentionally, has done much harm to the cause of prohibition enforcement.

Suppose a prohibition officer finds a bottle of liquor on the person of an individual. That, of course, raises that very sacred constitutional right whether anything on his person shall be interfered with without certain prescribed forms being complied with, chiefly search warrants.

Well, of course, the statutes and the holdings of the courts have settled those matters.

If the citizen does have it, he is violating the law prohibiting possession. If he does carry it, which is implied by his possessing it, he is violating the law against transportation. Both of these acts are forbidden by the law. It is the duty of the commissioner to see that they are not committed if he can prevent it.

I think the amendment and the act make the United States courts, for the time being, to a degree, police courts.

The fault is not, I submit, Mr. Chairman, with the prohibition agents who perform their duty. It is with Congress. If the Congress chooses to make a court lower than the United States courts for dealing with cases of a certain degree of turpitude, with power to try such cases and make their judgment final, and thus relieve the United States district courts, that, of course, is a question for the Congress, and not for the prohibition agents to deal with. Nor is the commissioner left any alternative in the premises.

I can readily see how judges and district attorneys who, with crowded dockets, do not take very well to a multiplicity of small cases. That point, from the standpoint of time and interest, is well taken; but when you voted the amendment and enacted the law, the judges and the district attorneys had to take their work as a part of the duties of the day that fell to them.

I think the prohibition agents ought to be commended for leaving nothing undone in the line of their duties. Of course, it would not only be impolitic and even reprehensible for a prohibition agent to specialize in what might be called petty cases, but such he naturally does not do. They are in his way; he must either attend to those cases or default in his duty.

I think we are prepared to show from the records of the unit that the great bulk of the time of the agent is occupied not in small cases but in large cases, resulting in trials that carry with them the infliction of heavy fines and imprisonment in a large number of instances.

It would do the cause of prohibition a great deal of good, it seems to me, if we should call things by their right names, and not blame public functionaries for doing things which the Constitution and the statute and their oaths compel them to do.

Let me say one more word in this connection:

It is inescapable that they pick up these cases in some States, or that we shall have no enforcement at all. Take the State of New York where we have no State enforcement act. The people of that State, through their legislature, have chosen to have no State enforcement act in aid of the constitutional amendment, with the consequence that they are left to the national prohibition act, and nothing else.

What would be the effect in the State of New York if all minor cases were to be regarded as so-called "police" cases or "hip-pocket" cases, and either winked at or passed by by prohibition agents? The people of the State of New York would have no protection at all.

It is practically the same in the State of Maryland, and until the last election it was so in the State of Massachusetts.

I think that is all, Mr. Chairman, that I should take up the time to say on that point, with the exception that I think the public owe commendation to the prohibition agents for letting nothing escape them rather than condemnation; but I wish to distinctly say that I do not mean by this that they should devote the major portion of their time to small cases. The time devoted to the small and the large cases should be proportionate to the work before them and to the demands upon their time.

The CHAIRMAN. At this point I would like to say that the chairman has no thought of implying that these small cases should not be punished when caught, but it is before this committee that in finding and prosecuting these small cases many large cases are permitted to escape.

Mr. MANSON. I understood your position, Mrs. Willebrandt, to be not that you objected to the prosecution of the small cases, but that you objected to the flushing of small cases, or to the breaking of small cases, when by so doing, you permit a big conspiracy to go unprosecuted.

Mrs. WILLEBRANDT. Yes; I hate to see that done, and it is done often by inexperienced agents.

Mr. MANSON. And that, as I understand it, is the tenor of the complaint of these judges and district attorneys?

Mrs. WILLEBRANDT. That and the fact that the small cases are pursued sometimes, you will find, in some of these complaints, with as great zeal as a big case.

Mr. MANSON. Did you ever hear of the Fleischmann case?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. Have you ever looked into the Fleischmann case?

Mrs. WILLEBRANDT. I had no files in the department from which I could look into the Fleischmann case, until recently. There has been so much publicity about it and so much comment that I made inquiry about it.

Mr. MANSON. Was it ever brought to your attention by the Prohibition Unit?

Mrs. WILLEBRANDT. It was not.

The CHAIRMAN. Since you have received this information from the Prohibition Unit, have you investigated the files and the records?

Mrs. WILLEBRANDT. I directed an inquiry to the Treasury Department, asking whether there was evidence upon which we could base a prosecution, and whether any such evidence had ever been transmitted to any United States attorney. I did that in an effort to find out if our department had failed to prosecute——

Senator ERNST. That is with reference to what case?

Mrs. WILLEBRANDT. The Fleischmann case he is asking for.

The CHAIRMAN. Have you had any reply to that inquiry?

Mrs. WILLEBRANDT. Yes; a reply was sent, which gave a list of United States attorneys to whom evidence in the Fleischmann case had been presented. Again, owing to the fact that I do not think that it belongs in a public record, I will not name them, but will give you the number of reports that this letter from the Treasury Department said had been given. It said that seven United States attorneys had been furnished with the reports of evidence that prohibition agents had collected concerning the so-called Fleischmann case.

I wrote to those United States attorneys to find out what had happened.

One reports that no violations were reported to his office.

Another reports that he will make an investigation. He is a new United States attorney, and has just taken charge. He knows of none, but he will make an investigation.

Another reports that a small portion of the evidence in one of the George Remus cases involved the use of a report of a prohibition agent, and it is one of the reports that are included in the Treasury's report to us as being one that they sent to this United States attorney on the Fleischmann case.

Another, also a new United States attorney, reports that he can find no record, and that he will make a search.

Another makes a report that a report in the case was made. I might as well give you this district because it is a dead prosecution now. It is a matter of public record. That is the Hartford district. The district attorney, a new one, reports the records of his office to be that the prohibition agent's report was furnished his predecessor in office, and was made the subject of a prosecution against Frederick A. Kirk, the Connecticut agent of the Fleischmann Co., and Michael DeLohery and Edward Deregius. The United States attorney charged them with conspiracy to divert certain quantities of alcohol. The prosecution resulted in an acquittal, the acquittal coming from an instructed verdict by Judge Howe, of Vermont, who was then sitting in the Connecticut court, and Judge Howe's instruction being to acquit by reason of entrapment, and his instruction resulted from the testimony of an agent by the name of Saul Grill. Further, there was another prohibition agent's report furnished to this same office, and the United States attorney reports that his predecessor examined that evidence and reported that it did not justify suit on the bond. That was merely a bond suit and not a criminal suit.

The CHAIRMAN. I would like to ask Mr. Britt at this point if he recalls whether Mr. Pyle, when he was with the committee, got the complete files in the Fleischmann case?

Mr. BRITT. My recollection is that he did. I do recollect distinctly that he was furnished all for which he made request. On the question just asked and the answer given, permit me to say that section 2 of the national prohibition act requires the commissioner, his assistants, agents, and investigators to report violations of the act to the United States attorneys in the districts wherein committed, and the records of the unit show that the agents making inquiry into the Fleischmann case mailed copies of the reports of their findings to the respective district attorneys in the districts wherein the alleged violations were found.

Mr. MANSON. Mrs. Willebrandt, as I understand the Fleischmann case, it was shown to this committee that something like 434,000 gallons of alcohol was illegally diverted through various agencies located in different States?

Mrs. WILLEBRANDT. I know that by hearsay only.

Mr. MANSON. Yes. Would you not consider it proper procedure in a case of that sort that some centralized effort be made to ascertain whether or not there was a conspiracy between the Fleischmann Co. and its officers and its different agencies, instead of merely prosecuting in the isolated cases?

Mrs. WILLEBRANDT. I would say that that would be the only way that you could properly evaluate the reports of agents, where the report showed, as the harvest of these letters indicates, violations on the part of various branches of a parent concern. I would say that the only way that those reports could be properly evaluated would be by scrutinizing them at a central head and decide whether, upon investigation, a conspiracy case could be developed; yes.

Senator ERNST. Mrs. Willebrandt, have you any information as to what reports were furnished these various district attorneys other than the letters they wrote to you?

Mrs. WILLEBRANDT. Well, I have just the Secretary's letter, in which he tells our department what they did.

Senator ERNST. The letter from what Secretary?

Mrs. WILLEBRANDT. The Secretary of the Treasury.

Senator ERNST. Oh, yes.

Mrs. WILLEBRANDT. For instance, I wrote, stating:

I do not find that any reports or recommendations for criminal prosecution were made to this office in connection with such matters—

Referring to the Fleischmann case—

and I would like to be advised whether reports were sent to any United States attorney for action on his part.

In reply, I received this letter, which gives all of the reports of agents that did go out to United States attorneys.

The introduction to that list of reports that went out comes with this statement, quoting from the letter:

In accordance with the requirements of section 2, Title II, of the national prohibition act—

To which Mr. Britt has just referred—

and following the usual custom of this department, the investigating officers considered reports of their findings to United States district attorneys in the districts wherein the findings were made, no reports being submitted to your department, as that is not required by law and did not seem to be the custom at the time, if, indeed, it is now.

Reports were submitted by the finding officers as follows—

And then follows the name of the agent and the date he sent it to the United States attorney and what United States attorney.

Then I followed that up by writing to United States attorneys to find out what they did with these reports, and I told you what I received in reply.

Senator WATSON. Is there incorporated there a statement of what the agents reported to the United States attorneys?

Mrs. WILLEBRANDT. What the agent reported on any day?

Senator WATSON. Yes; to the attorney. What did the agents report to the atorney when they reported?

Mrs. WILLEBRANDT. No; it just says that the agent sent his report, and it gives the date.

Senator WATSON. It does not state what was in the report?

Mrs. WILLEBRANDT. No; it does not show that.

Mr. MANSON. Was your attention ever called to the fact that proceedings were had in the unit for the revocation of the Fleischmann permit?

Mrs. WILLEBRANDT. Informally; I learned that from a witness in a trial that I was engaged in trying out in the field.

Mr. MANSON. Did you ever get the proceedings of those hearings for the purpose of ascertaining whether or not there was ground for criminal prosecution?

Mrs. WILLEBRANDT. No. It was because of that information that I ran into that there had been revocation hearings and the report of the evidence in the revocation proceedings that I made an effort to find out whether there was any evidence on which we could still proceed.

Mr. MANSON. Did you attempt to secure a transcript of this evidence from the Prohibition Unit?

Mrs. WILLEBRANDT. I made no request for it; no.

The CHAIRMAN. Have you studied that testimony, Mr. Britt, that was taken during the revocation hearings?

Mr. BRITT. I have not made a detailed study of the revocation hearings. I have only looked into this case in a general way, as was stated by me at a former stage of your hearings.

The CHAIRMAN. Would you mind supplying the committee with a copy of the transcript of those hearings?

Mr. BRITT. I will be glad to file it, if we have it, and I think we have.

Mrs. WILLEBRANDT. The reason for my having any interest in the revocation proceedings is that in the Guckenheimer distillery case at Pittsburgh we received the greatest amount of help from the evidence produced in the revocation hearing. Sometimes the evidence produced in these revocation hearings helps in a criminal prosecution and sometimes it does not; but I assume that when the Treasury Department, in the progress of the revocation hearings, develops any evidence of the violation of a criminal statute they will immediately report it to us for prosecution.

Mr. MANSON. When you say "report it to us," do you mean report it to some United States attorney or report it to the Department of Justice?

Mrs. WILLEBRANDT. If it is one isolated instance of the violation of law in a specific district, I would say, in the ordinary course of things, it might properly be sent to the United States attorney.

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. If the revocation hearings would indicate a violation of the criminal statute that shows common consent or design in several different districts or branches of the same concern, then I should think the Prohibition Unit or some one from the Treasury Department, as they have in many instances, would report that matter to us at headquarters in order to make out a conspiracy case, and then we could choose which district in which to bring the indictment.

Mr. MANSON. And also work the case up as a unit. Am I right about that?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. Now, Judge Britt has called attention to the fact that the statute requires the agent to send a report to the United States attorney for the district in which the report is made. Do you know of any statute or any regulations which prohibit the department itself or the unit from notifying the Department of Justice in a case which runs into several districts?

Mrs. WILLEBRANDT. Of course not; in fact our larger cases have been made that way.

Senator ERNST. Do you know of any law which directs that to be done, Mrs. Willebrandt?

Mrs. WILLEBRANDT. No; I do not.

Mr. BRITT. Mr. Chairman, may I say on that point that there is no statutory requirement that it should be sent to the department proper, and there has been no customary practice of doing it, but if it is the desire on the part of the Department of Justice, I shall be very glad to bring to the attention of the commissioner the question of whether copies of all violations found might not be sent to the central department, as well as to the several district attorneys, and also copies of the reports of revocation hearings.

In the same connection permit me to say that everyone who holds revocation hearings is under direction to keep a sharp lookout as to the development of the possibility, or the actuality of a criminal case, from the hearing; and if so, to submit it, make the most of it, and bring it to special attention.

I have in mind one very large case which was successfully prosecuted and the violator specially punished, in which the foundation of the case was laid in the revocation hearings, and but for the revocation hearings I think it would not have been developed.

Mr. MANSON. You have no way of knowing, Mrs. Willebrandt, whether a case merits a central investigation in your office unless it is brought to your attention by the unit, have you?

Mrs. WILLEBRANDT. No; of course not. I have no way of knowing that such a case exists.

Mr. MANSON. You spoke of a man by the name of Saul Grill in connection with the Fleischmann case in Connecticut, and I believe you mentioned the fact that that case fell down because of the fact that the court held that this man was guilty of enticement; in other words, the agent was guilty of enticemen. Have you had any

other experience with that same agent, or any other reports in reference to his activities in important cases?

Mrs. WILLEBRANDT. The same thing happened in the New York cases. The cases were lost.

Mr. MANSON. What New York cases have you reference to?

Mrs. WILLEBRANDT. The cases of Foley and Katz.

Mr. MANSON. Was that a case of considerable importance?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. Involving this same agent?

Mrs. WILLEBRANDT. This same agent was the principal witness.

Mr. MANSON. Was not this same agent involved in the Pittsburgh brewery cases?

Mrs. WILLEBRANDT. He never was used as a witness in those cases.

Mr. MANSON. Was he not relied on as a witness in those cases?

Mrs. WILLEBRANDT. He was used before the grand jury. You are speaking now of this case to which you referred the other day, Mr. Littleton's cases?

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. He was used before the grand jury in those cases.

The CHAIRMAN. And indictments were obtained in all of those cases?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. Why was he not used in the trial of the case?

Mrs. WILLEBRANDT. I do not know. I did not have anything to do with those trials.

Senator ERNST. You know that he was not, do you?

Mrs. WILLEBRANDT. Yes; I do.

Mr. MANSON. Was he not the principal witness before the grand jury?

Mrs. WILLEBRANDT. I do not know that. I was not in the grand jury room.

Mr. MANSON. Referring again to those cases, the name of Mr. Littleton was connected with those cases the other day.

Mrs. WILLEBRANDT. They were in his charge; yes.

Mr. MANSON. Did Mr. Littleton try those cases?

Mrs. WILLEBRANDT. He tried the only one that was tried.

Mr. MANSON. Did he try it personally?

Mrs. WILLEBRANDT. There was another man from the Treasury Department who was there and quite active in the trial of the cases. Mr. Littleton was there, too. The man to whom I refer is named Leming.

Mr. MANSON. Who actually conducted the trial of the cases for the Government?

Mrs. WILLEBRANDT. Mr. Leming was very active in the conduct of the trial of the cases, but Mr. Littleton was there.

The CHAIRMAN. Were those indictments against individuals, or were they against breweries?

Mrs. WILLEBRANT. Individuals.

The CHAIRMAN. Brewery owners.

Mrs. WILLEBRANDT. And prohibition agents. One prohibition agent was Elmer Hawker. I will have to look up those names. This was over two years ago.

Mr. MANSON. Were not those cases which involved a charge of bribery?

Mrs. WILLEBRANDT. Yes; most of them involved bribery.

Mr. MANSON. Was not this man Grill involved in other bribery cases, or cases in which there was a charge of bribery?

Mrs. WILLEBRANDT. All the evidence that I know anything about his having made involved that.

Mr. MANSON. In other words, in all the cases in which he participated there was a charge of bribery?

Mrs. WILLEBRANDT. All that came to my attention; yes.

Mr. MANSON. Were any of those successfully prosecuted?

Mrs. WILLEBRANDT. No.

Mr. MANSON. Do you know whether he is still in the service?

Mrs. WILLEBRANDT. To the best of my knowledge, he is.

Mr. MANSON. Is he still in the service, Judge Britt?

Mr. BRITT. I beg your pardon. What is the question?

Mr. MANSON. Is this man, Sol Grill, still in the service?

Mr. BRITT. He is not.

The CHAIRMAN. When did he leave the service?

Mr. BRITT. Some two or three months ago, as I recall, or several weeks ago.

The CHAIRMAN. Did he resign of his own accord?

Mr. BRITT. I do not know as to that. Mr. Yellowley is in the room, and I will ask him.

Mr. YELLOWLEY. He was dropped.

Mr. BRITT. Mr. Yellowley answers that he was dropped.

The CHAIRMAN. You may proceed with your statement now, Mr. Britt.

Mr. BRITT. Another objection offered to prohibition agents was that they were apparently not trained. Some reference was made to schools for the training of agents, and other comments were made along that line.

There is no appropriation provided for schools for the training of prohibition agents of which I have knowledge.

The CHAIRMAN. Was there any request for an appropriation for that purpose?

Mr. BRITT. Not to my knowledge.

Mr. MANSON. As to that, if I may interrupt you, do you construe the law to mean that when you are authorized to employ an agent, you are not permitted to use the appropriation for giving such instruction as may be necessary as to his duties?

Mr. BRITT. No.

Mr. MANSON. The duties which he has to perform.

Senator WATSON. That is not the question. The question was whether or not they should hire teachers and run schools for the purpose of giving instructions.

Mr. BRITT. If I may answer the gentleman's question, I do not construe it that it would authorize the proper instruction of the officers. On the contrary, I think that is implied in the staff of officers and in the appropriation of money for their salaries, and in pursuance of that, very great pains is taken to instruct the prohibition agents in a number of ways, with, at least, I maintain, a degree of success. One of the ways of which I have documentary evidence here, and which has the hearty approval of the Assistant

Attorney General is for the commissioner—I now refer to the Prohibition Commissioner—to instruct his field directors to institute modes of training his officers, and also other field officers having charge of enforcing agents, and this has been done; not only so, but very often they are personally instructed, individually, or in small groups, by the Commissioner of Internal Revenue, and to a very much larger extent, by the Prohibition Commissioner in person, by his chief of the prohibition agents, and at irregular intervals by the attorneys of his office, who are called upon to go before them and instruct them as to the interpretation of certain statutes and regulations, and as to what would constitute evidence making a case in any particular inquiry. This is pursued at irregular intervals and in different ways throughout the entire service to a degree that I think has produced some beneficial results, although there has not been any formal school established for that purpose. I think the statute would not authorize that.

Mr. MANSON. Personally, I do not remember any suggestion of a school being established.

Mr. BRITT. And may I extend that word, Mr. Chairman, by saying that among the prohibition agents are a number of old, well-seasoned and well-trained former internal revenue officers. They are very skilled in the old practices under the Internal Revenue laws, many of which practices apply to prohibition investigations. They are made to lead and to serve as instructors, and new agents or junior agents are invariably put with one or more older agents for their training, and they are instructed not to undertake certain activities except upon the direction or instruction of the one to whose care they are committed.

May I offer for the record, Mr. Chairman, a copy of a letter dated May 22, 1922, signed by Prohibition Commissioner Haynes and addressed to Charles M. Sartain, Federal prohibition director, Birmingham, Ala., in which a course of training is set forth and earnestly enjoined; also the letter of the director acknowledging receipt of the commissioner's letter, and a copy of the letter of June 1, 1922, signed by the Assistant Attorney General, Mrs. Willebrandt, in which she says, among other things:

This is a splendid beginning along what I believe to be the very best line for improvement of respect accorded prohibition enforcement officers.

(The correspondence submitted by Mr. Britt is as follows:)

MAY 22, 1922.

Mr. CHARLES M. SARTAIN,
Federal Prohibition Director, Birmingham, Ala.

MY DEAR MR. SARTAIN: I am writing a letter similar to this to all directors of the United States this morning in order to tell them that our entire national organization is now completed.

During the next two or three weeks my chiefs of general agents will call in all of the general agents in their respective areas to their respective headquarters where for a week or 10 days they will be given an intensive schooling in the law, regulations, what constitutes evidence, how to build up a successful case, and all other matters pertaining to their work. Of course, most of these men have had large experience already, but I am particularly desirous that all of our agents, both general and Federal, operating under directors, shall have uniform instructions as to procedure.

In this connection I respectfully suggest that at the earliest convenient and practicable date, a similar school be held in your office for all the agents

operating under you. It may not be practical to call them all in at one time and it might be wisest to call them in in sections or groups, and in some instances it may be thought that two days, or three days, or four days, or five days, as the case may be, will be all the time necessary in which to discuss all the phases of their work and give such instruction as may be necessary to these men, but, having them called at the office and receive instructions from you personally, from the head of the field force, your legal department, and others in your office as to procedure and as to policies, will have a tremendous effect upon their efficiency, I believe. In other words, I am trying to get all of our forces in the United States in shape by the 1st of July, the beginning of the new fiscal year, to go into the new year with a bang, and, filled with confidence in their ability, measure up with the highest possible degree of efficiency.

The first year of our administration has been largely one of organization—perhaps three-fourths of our personnel is new. The next year must be marked by a highly trained, efficient, dependable, result-getting force, and I am especially anxious to complete the period of training before entering upon the new fiscal year.

You will please personally acknowledge this letter, with any observations that you may have to make with reference to this idea which may be helpful if passed on to other directors.

With a high degree of appreciation for the splendid cooperation that characterizes our entire organization and with best wishes for your continued success, I am,

Yours very truly,

———— ————.

JUNE 2, 1922.

Memorandum for Commissioner Blair:

I am attaching hereto letter just received from Mrs. Willebrandt expressing her approval of the plan I discussed with you some time ago relative to establishing schools for the instruction of Federal and general prohibition agents. I am also attaching, for your information, copy of a letter I have addressed to all Federal prohibition directors embodying this suggestion.

R. A. HAYNES,
Prohibition Commissioner.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 1, 1922.

Hon. ROY A. HAYNES,
Federal Prohibition Commissioner, Washington, D. C.

MY DEAR MR. HAYNES: I am in receipt of your letter inclosing a copy of the circular letter sent to all Federal prohibition directors which urges the schooling of agents working under them.

This is a splendid beginning along what I believe to be the very best line for improvement of respect accorded prohibition-enforcement officers.

Assuring you of my hearty cooperation, I am,

Yours very truly,

MABEL WALKER WILLEBRANDT,
Assistant Attorney General.

The CHAIRMAN. Was that same type of letter or set of instructions sent to other State directors than the one in Alabama?

Mr. BRITT. That is a copy of an identic letter sent to other directors and field officers.

The CHAIRMAN. To all other directors and field officers?

Mr. BRITT. I so understand it. There is also a file of letters from Mr. E. C. Yellowley, chief, general prohibition agents, addressed to his field officers, directing and enjoining them to study in their work.

I should also like to offer this file of letters for the record.

(The letters submitted by Mr. Britt are as follows:)

MARCH 7, 1925.

Mr. A. B. STROUP,
Divisional Chief, General Prohibition Agents, Boston, Mass.

SIR: In a recent letter I stated that conspiracy cases should be made wherever possible. In order that such cases may be made, it will be necessary for agents to bear in mind the essential things which must be shown in the way of evidence.

CONSPIRACY STATUTE

Section 37, Criminal Code, United States Revised Statutes, 5440, provides: "If two or more persons conspire either to commit an offense against the United States or to defraud the United States in any manner or for any purpose, and when one or more of such parties do any act to effect the object of the conspiracy, either of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

EVIDENCE

In the event agents could secure evidence showing that the parties met and agreed to commit a violation it would be, of course, the best evidence which could be secured of the conspiracy. Inasmuch as conspiracies are formed in secret and the conspirators need not and may not even be acquainted, the agents will rarely be able to get evidence showing that the parties actually met and agreed to violate the law.

Circumstantial evidence is competent to prove conspiracy. Agents should therefore find out and report concerning all details of facts and circumstances concerning the acts of the alleged conspirators, whether performed separately or by joint action, and which facts and circumstances can only be explained on the ground that there must have been an agreement entered into by the parties to violate the law.

It is not necessary to show that all of the persons took part in each of the acts performed during the working out of the conspiracy. It is permissible to show that the persons pursued by their acts the same object, one performing one part of an act and another performing another part of the act, which helped to consummate the object attained by the parties. Agents should therefore find out and report what each alleged conspirator did and how the acts performed by him were related to and contributed to the commission of the violation.

It is not necessary to show that the alleged conspirators themselves performed the acts which were the means of carrying out the violation of law. It is competent to show that the conspirators acted through a common medium and had a common interest in forming the objects of the conspiracy; that is, it is proper and competent to show that the conspirators had some other person or persons to perform the acts which carried out the object of the conspiracy. Agents should therefore always endeavor to show how the acting agent in the violation may have carried out the instructions of his employers, the conspirators.

Whenever agents believe a conspiracy is being carried out, they should endeavor to ascertain and report what may be said by anyone of the alleged conspirators, made while the violation was being carried out.

In making their investigations of conspiracies agents may find that acts in furtherance of the conspiracy were performed at widely separated points. Particularly in cases of soliciting of orders by the agent of a vendor in one part of the country who then ships it to the vendee and the latter pays the unknown vendor. In such a case agents should show clearly all the acts performed and the declarations of the various parties. Agents should endeavor to secure not only evidence of the declaration of the parties but also should secure all letters written and telegrams sent by the parties one to another. They should endeavor to get evidence proving and showing that they were written and sent by particular parties in the conspiracy, using search warrants when necessary.

In summarizing what should be done in developing a conspiracy case, it may be said that agents should thoroughly cover the acts and declarations of the parties and their agents, whether performed individually or collectively, at one place or at different places, the contents of letters and telegrams sent

and received, records of business done and any and all facts and circumstances which appear to have some bearing on the alleged conspiracy. Every phase of the case should be covered in the report, and nothing should be left by the agent to presumption or inference. Where the report is complete and thorough all of the facts stated will throw light on the case, even though some of them may not be admissible as evidence.

I request that this brief statement be given to the agents for their use. I have found that in many cases agents could make a conspiracy case out of what seems to be simply a sale or transportation by being more thorough and continuing their investigation along the line of finding out more about the transaction in question and the relation to them of the involved parties. In other words, it is a question of getting more of the kind of facts referred to in this statement as to conspiracy.

Respectfully,

E. C. YELLOWLEY,
Chief, General Prohibition Agents.

MAY 1, 1924.

Mr. A. B. STROUP,
Divisional Chief, General Prohibition Agents,
Boston, Mass.

MY DEAR MR. STROUP: I believe the reason some of our new agents in the past have not proved satisfactory is that they did not receive proper instructions at the beginning of their duties.

In the future, when we appoint new agents, I think we should make a special effort to see that they are properly instructed and trained in their duties before any great responsibility is placed upon them. In the first place, they should be furnished with copies of Regulations 60 and 61 and be permitted to examine all mimeographs and treasury decisions which are of importance to them. They should be induced to form the habit of keeping up with all new rulings of the department, to study the law and regulations from time to time, and to familiarize themselves with all matters pertaining to investigations which they will be called upon to make. The divisional chief should confer daily with new agents relative to procedure and the methods employed in making investigations. They should be assigned with the very best men on the force—men who know the work thoroughly and who can instruct the new agents on all phases of it. After a few months training along these lines, I am sure all new agents will be far better qualified to go out and make investigations on their own responsibility than they have been heretofore, where no special effort was made to advise them properly.

Please acknowledge receipt of this letter.

Very truly yours,

E. C. YELLOWLEY,
Chief, General Prohibition Agents.

APRIL 22, 1924.

Mr. A. B. STROUP,
Divisional Chief, General Prohibition Agents,
Boston, Mass.

SIR: From an examination of reports submitted to this office together with my personal observation, I am of the opinion that the agents assigned to our force have not been properly trained in every respect.

I am, therefore, calling this matter to your attention in order that hereafter when any new employee is assigned to your division, before he is assigned on any case, that you instruct him in every phase of the work which he would be required to do, more particularly as to the preparation of his reports, the steps necessary to the application for search warrants, as well as their execution and return. He also should be instructed as to the preparation of his salary voucher and his expense accounts, as well as the display of his badge and credentials and the care and use of firearms.

A sufficient supply of Regulations No. 60, revised, which are effective the 1st of May have been ordered for your office and I wish you would see to

it personally that every employee in your division is furnished with one copy of such regulations, as well as any new employee who may be assigned to your division.

The importance of these matters can not be overestimated, and I am anxious that you give it your personal attention, in order that the work of our force may be kept up to the standard.

Very truly yours,

E. C. YELLOWLEY,
Chief, General Prohibition Agents.

JULY 7, 1922.

Mr. JOHN D. APPLEBY,
Divisional Chief, General Prohibition Agents,
New York City.

SIR: General prohibition agents especially qualified for the inspection of industrial alcohol plants, alcohol bonded warehouses, denaturing plants, and the business of dealers and users of denatured alcohol have heretofore been working directly from Washington under the supervision of the head industrial alcohol and chemical division. Effective July 1, these agents will be assigned to the various divisions and work directly under the supervision of divisional chiefs. You will be advised in a separate communication the name of the officer or officers assigned under your direction for this particular class of work.

These officers will confine their activities exclusively to this class of work, where it requires their entire time. On no occasion should an agent engaged upon such duties be permitted to work alone. You will have one of your agents to work with each of the officers assigned to these inspections in order that the officer may be properly protected. As you well know, it is the best policy at all times to have two men assigned together on this class of work, or in fact any other work coming under your supervision.

Work of this character can be divided into two classes: First, the inspection of industrial alcohol plants, alcohol bonded warehouses, and denaturing plants; and second, the inspection of applications for permits of dealers and users of specially denatured alcohol and the conduct of the business of such permit holders. While the collector of internal revenue, under the provisions of Regulations 61, makes a formal inspection of the business of all applicants for permits to use specially denatured alcohol, it may be necessary from time to time to cause a reinspection of such applicants before the issuance of the permits by the officers designated for this purpose. If so, you will be given specific instructions from this office to inspect the business of the permit holders from time to time, to ascertain whether they are using the alcohol legitimately in accordance with the terms of their permits. No specific instructions in detail will be given at this time for the inspection of the premises and business of dealers and users of specially denatured alcohol, as the officers now engaged upon this class of work are familiar with the same. In brief it may be stated that in making investigations of dealers and users the primary object is to determine whether they are using and disposing of their alcohol in accordance with the law and regulations and, more specifically, the terms of their permits.

In the inspection of industrial alcohol plants, alcohol bonded warehouses, and denaturing plants officers will be guided by the following instructions:

I. OFFICERS

The agents should get in touch with officer in charge before visiting the various parts of the plant in order to know, first, whether he or the officers under him are on duty in their respective assignments. Particular attention to be paid as to the custody of the keys and as to whether any Government locks are open without the officer being personally present.

II. INDUSTRIAL ALCOHOL PLANTS

1. *Mechanical equipment, construction, and operation.*—Examine in detail the construction of the stills, vapor pipe, condenser, try box, flow locks, high wine tanks, rectifiers, kettle and rectifying columns, and cistern room (the

latter is now a part of the bonded warehouse) and see whether the provisions of article 5 of the regulations are fully complied with. Try all valves where locks are attached to see that the valve can not be moved or lifted when locked; make note of any valve or connection where lock could be attached; try all joints, unions, try-box covers, etc., to see whether alcohol could be removed by insertion of a small hose, overflowing or otherwise. Secure the plan of the industrial alcohol plant which the regulations require to be kept at the plant and check out every pipe shown on the plan with the apparatus actually in use and note if there are any changes. Note whether pipes are painted in the proper color required by article 10 and if not notify the proprietor to comply with this requirement.

Visit the fermenting room and note record 1452, officer's report, as to the filling and emptying of tubs, and see whether this record is being accurately kept. Visit material storage room and note the manner in which the proprietor records the weight or quantity of material. If the means of weighing or measuring material is not accurate or susceptible of check by the officers on duty at any time report should be made. If the plant is using fermented beverages as distilled material, note the condition of the meter recording the volume of beer pumped to the stills or the measuring cistern through which the beer must be passed in order to correctly record the quantity of distilling material. If adequate and proper quarters are not provided by the proprietor for the use of the officers on duty the fact should be reported with suggestions.

2. *Bonded warehouses.*—Note the condition of the cistern room, now a part of the bonded warehouse, as to security of locks and means taken to prevent entrance thereto except in the presence of the officer; inspect the scales used by the proprietor in gauging and note the manner of taking and recording the tare, gross, and net weight of packages which may be filled; ascertain whether officer is checking the proof and the weights of the packages from time to time. Ascertain if officer is on duty continuously when alcohol is being drawn off and packages being gauged. The requirement must be insisted upon without any deviation.

3. *Alcohol bonded warehouse.*—If bonded warehouse is in use in connection with plant where alcohol is tax paid or disposed of in any manner other than denaturation, examine the building carefully to see that article 36 is literally complied with as to the building construction, the lock on the door, the bars and gratings on windows and other openings. Note carefully the manner of storing alcohol; examine the packages and tanks; see that all tanks and pipes leading thereto and therefrom carry locks. Ascertain as near as possible, without making a detailed inventory, whether the alcohol in the warehouse corresponds with the inventory as recorded by the proprietor on the last day of the preceding month, subject to changes recorded on Forms 1443 A and B for the month of the visit. Note whether packages of alcohol after tax payment are promptly removed from the bonded warehouse. If shipments are made by tank cars note the method of filling and sealing these cars and inquire into the general scheme of tank-car shipments at the plant.

4. *Denaturing plant.*—Examine denaturing plants to see whether they are constructed in accordance with the provisions of article 94. The same security must be afforded in the denaturing plant as is required in the bonded warehouse. Examine the denaturing storage room and see that all denaturants on hand are in this room, unless they are being actually conveyed to the mixing tank; see that this room is equipped with a secure lock. The integrity of the quality of the denaturants is obviously of very great importance at the present time. Trace out all pipes and connections, using the proprietor's plan, and see that locks are affixed to all alcohol tanks and valves and pipes leading thereto and therefrom. Ascertain that no denaturing is done except upon the personal attendance of the officer, as required by article 101. This provision will be insisted upon in the strictest manner.

5. *Records.*—Examine the files of 1440, alcohol gauge; 1441, daily summary of operations; 1442, material records to be kept daily; 1443 A and B, also to be kept daily. Examine the denaturing records 1446 and 1468 A, B, C, D, E, and F. Compare quantity charged off on 1443–B to denaturing plant with quantity taken upon 1468. Make note of any large charges of tax-paid alcohol on Form 1443–B and examine Forms 1410–A or 1410–C, held by the proprietor, with necessary letters of confirmation which support such shipments. It must be borne in mind that the industrial alcohol plant, bonded warehouse, and

denaturing plant are the primary source of all alcohol lawfully distributed under the permit system and the essential things to know are:

(*a*) That all alcohol actually produced is entered upon proper records.

(*b*) That all denaturation is complete and strictly according to the regulations.

(*c*) That all alcohol disposed of in the pure state, either by transfer in bond, tax-free withdrawal, or tax-paid withdrawal, is pursuant to bona fide permits.

The Government officers have been relieved of considerable manual labor around the plant which enables them to be closer in touch with the actual operations. It must be impressed upon the officers that they are expected to know what is going on. They will be held to strict accountability for diligence in the scrutiny of withdrawal permits as well as in the operation of the plant to the end that all tax due is paid. Examining officers should make note of the personal character and attitude of the officers on duty for the reason that indifference as to any element of the officers' duty will not be condoned.

III. REPORTS

It is the intention to have a systematic, thorough, and detailed inspection of each plant as to equipment, operation, personnel, and records, and the examining officers will be expected to spend as much time at the plant as is necessary to accomplish this purpose; after which they will render a complete report covering their inspection, which should be addressed to you for review and transmittal to this office. All reports covering the inspection of dealers and users of specially denatured alcohol should be made immediately upon completion of the investigation, and forwarded to you for review.

It is the purpose to trace the alcohol from the manufacturer to the dealer or user, so you will readily see that it is necessary to make a thorough inspection of the plant and the records thereof, which should be followed by investigation of the dealers and users, to see that all alcohol manufactured is properly disposed of and used in accordance with the provisions of the law.

You will furnish all officers assigned to this work with copies of Regulations 61, and they should familiarize themselves with the same, which will enable them to properly make these investigations. It might be said that the work of this character is covered entirely by these regulations.

You will also furnish each officer engaged upon this work with a copy of this letter in order that he may be guided by the instructions contained herein. Four extra copies are inclosed herewith. Attached are lists of the industrial alcohol plants and denaturing plants now operating throughout the country.

Respectfully,

E. C. YELLOWLEY,
Chief General Prohibition Agents.

JUNE 14, 1922.

Mr. JOHN D. APPLEBY,
Divisional Chief General Prohibition Agents,
1516 Albemarle Building, New York, N. Y.

MY DEAR MR. APPLEBY: It is desired by this office that we begin the new fiscal year with a highly trained, efficient, dependable, and result-getting force. Since a great many of the members are new in the service, it is deemed advisable to give the entire force a week or 10 days' training or schooling for the purpose of preparing them for the work which we have before us during the next fiscal year.

You will therefore make arrangements to have all agents working under your direction called to the divisional headquarters or some other convenient place in your division for several days' instruction at some period from June 19 to June 30. It may not be possible or advisable to have al the men report at one time. It might be best to call them in sections or groups. They should be given intensive schooling and instruction relative to the provisions of the law. At this conference the various sections of the national prohibition act and the internal revenue laws relating thereto should be carefully read and discussed in order that all agents may become thoroughly familiar therewith. This also applies to the regulations, which should likewise be fully

discussed. The matter of securing search warrants should be taken up, with a view of familiarizing each agent with the evidence necessary to procure search warrants, and the evidence necessary to constitute a case warranting successful prosecution. Since a large part of our work consists of inspection of the business operations of permit holders, it is desired that the methods to be employed for the proper inspection of these concerns be fully discussed. It is also suggested that you call on the United States attorney to make a short talk on evidence and methods of procedure in making investigations and rendering reports. The preparation of reports is considered of prime importance, and all agents should be fully acquainted with the manner in which they should be prepared in order that every case may be covered from all angles.

I have issued instructions to Federal prohibition directors to have a similar schooling for the agents working under their direction and desire to begin the new fiscal year with a highly trained and efficient force.

You will please give this matter your careful and immediate consideration and then write me as to your plans in this connection.

With a high degree of appreciation for the splendid cooperation that characterizes our entire organization and with best wishes for your continued success, I am,

Sincerely yours,

R. A. HAYNES,
Prohibition Commissioner.

APRIL 8, 1922.

Mr. JOHN D. APPLEBY,
Albemarle Building, New York, N. Y.

MY DEAR SIR: I have very much desired to see personally each of the 18 men whom I have recently appointed to the newly designated position of divisional chief. I find, however, that it will not be convenient at this time for a few of these men to report to Washington, and I am therefore writing a personal letter to the men whom I have seen and to those whom I have not seen with the request that each divisional chief in turn show this letter to each of the agents assigned to him.

I wish to go over briefly some of the ambitions I have for the newly outlined organization of general agents. When this group of men was first established by me early in my administration, I thought perhaps it would not extend to a larger number than 25 or 30. However, the need for such a force and the effectiveness of its service has been so strongly emphasized that I have increased it to the point where it has now reached a total of approximately 165 men, and will perhaps go to double that number. Therefore area supervision became necessary; first, from the standpoint of a more efficient supervision; and second, a more economic direction.

My confidence in you is reflected in the fact that after many weeks of study and comparison of records and fitness I selected you as one of these 18 men. The outstanding requirements and the standard by which I shall measure your success or failure will be loyalty to the service, integrity in every relationship, high grade of conduct, and productiveness. I must urge that you never get away from the full realization that you are my representative, and that I am depending upon you wholly for every piece of information I should have, through the chief of general agents, of course, concerning all conditions in your territory. Just as I shall require results from you I shall expect that you require of the agents assigned to you that they be producers and reflect the greatest credit upon the service. We have no room for slackers and for men who are disloyal or men who so conduct themselves as to bring disrepute upon the service. If a man's conduct is unbecoming an agent, I expect that you recommend to me at once that he be dissociated from the service.

A system of records, as you know, is being installed from which we will be able to know in Washington, as well as you will be able to know in your office, the relative merits of the men under you. These records will speak for themselves, and every man must abide by the record that he himself will make.

As soon as your office is organized, I am desirous that you call all the men under you for a week or 10 days of intensive instruction. They must know

how to make a case, and they must have uniform instructions as to procedure. They must be familiar with the law and they must be familiar with the policies of this office. Soon the problems of your specific area will become better known to you than to any other man in that area, and, through you, we will be able in Washington to have a picture which will be accurate as to conditions prevailing in your particular area.

I desire that there shall be no friction between the general agents' organization and the State directors' organizations. I want you to be mutually helpful, but, of course, cases of major importance we expect to handle through your force. I desire that the general agents' force shall at all times establish a high standard for the State forces and always be an incentive to the State forces for more strenuous endeavor and a higher percentage of results.

With assurance of highest personal esteem and with best wishes for the success I feel sure will come to you in your conduct of your important office, I beg to remain,

Yours very truly,

R. A. HAYNES,
Prohibition Commissioner.

Mr. BRITT. Field prohibition agents are constantly writing the unit for instructions upon various matters pertaining to their work. If it is a matter of a character likely to become general in its application, attention is given to it of a special sort, so as to involve such instruction as would be valuable to all cases and to the agents generally. If it is instruction about a particular and isolated matter, the tenor of the instruction is of that character. They are also enjoined to read the statutes and various forms of regulation for their enlightment and direction in the prosecution of their work.

An unfavorable comparison of prohibition agents was made at the last session, when, to their disadvantage, they were compared with post-office inspectors and the special agents of the Department of Justice. It was contended, as I recall, that the work done by them was not generally so good or so productive of results in the interest of law enforcement.

As to just what the facts are in that particular, I do not know; nor have I any means of ascertaining, but there is an important fact of which I do have knowledge, and of which I think the committee should take careful cognizance.

The compensation of any sort of investigating officers must necessarily have something to do with the character and ability of the man who finally finds his way into the place. That is inevitable. Prohibition has only been in vogue for five years. The amendment and its enforcing legislation involve a greater variety of difficult legal and administrative questions than any other group of statutes or amendments of which I have any knowledge. In other words, if a prohibition agent knew a correct interpretation of all the law involved in the amendment and the statutes, he would, whether a professional or not, in fact be a considerable lawyer.

Compared with the post-office inspectors, the work of the prohibition agent, in my judgment, in point of difficulty, stands as three to one. I was, for a number of years, counsel for the Post Office Department, and Assistant Postmaster General, and studied the post-office inspectors. There is no other branch of the public service in which the rules of law are so well settled by precedent and experience as in the Post Office Department. In the first place, the Post Office Department is, as it were, a quasi public service corporation, the function of which is to carry the public mails. It does not have

to enforce a constitutional police regulation, as do the prohibition agents. It has existed ever since the Government began; so that its precedents are old, simple, reduced, and well settled. A post-office inspector may know them all, practically, as one knows the multiplication table. Again, they are under civil service, and have been for a long, long time. Again, while the Federal prohibition agent must start his career with a salary of $1,680, the post-office inspector starts his with $2,600.

The CHAIRMAN. You refer to the civil service, Mr. Britt. Do you believe that if the men in the Prohibition Unit were under civil service they would be better type of men.

Mr. BRITT. I most emphatically approve of civil service for the prohibition agents and feel that it would result greatly to their benefit and to the benefit of the service.

As compared with the special agents of the Department of Justice, as I am informed, the Federal prohibition agent starts with a salary of $1,680, as against $2,400. Again, it is an institution of long growth and development.

From these premises, Mr. Chairman, I think it is but just, in determining the relative work of the prohibition agents as compared with post-office inspectors and special agents of the Department of Justice, to take into account the time they have existed as an institution, the meager salary which they get, and the great complexity of the duties which they must perform.

If that be taken into account, in my judgment, prohibition officers stand alongside with the other two classes of officers.

Mr. MANSON. Mrs. Willebrandt, have you ever discussed——

The CHAIRMAN. Just a moment. Have you finished, Mr. Britt?

Mr. BRITT. I have finished on that point.

Mr. MANSON. Pardon me.

The CHAIRMAN. You may continue, Mr. Britt.

Mr. BRITT. The agents of the narcotic service are under civil service. Although the enforcement machinery is connected with the Prohibition Unit they are under a special appropriation, and are also under the civil service with a higher range of salaries, and an older institution, and they naturally stand at that advantage.

There is another consideration in regard to prohibition agents which has been touched upon here, and which I think should be developed, not only in justice to the agents but in the interest of a proper understanding on the part of the public. They have been subjected to deadly and scathing criticisms, not to say abuse. In some instances, I am satisfied this has been deserved, be it said regretfully. In the great bulk of instances, in my sincere judgment—and I look at it from a reasonable vantage ground—I think it is undeserved. Considering the meager salary, the lack of training natural to a new institution, the numerous and almost overpowering temptations to which he is subjected, and the constant barrage of public criticism and denunciation against him, whether deserved or not deserved, in my honest judgment he stands as one of the most interesting and one of the most worthy men in the public service to-day of any class.

How does he get this terrible reputation? He gets it in the main undeservedly, I assert. He gets it through an unfavorable press.

He gets it through those opposed to that which he is doing. He gets it through those whom he hurts. He gets it from those whom he pursues, and all the while he is practically without any means of defense, except such as the department can give him through the channels of law, which have but very little to do in maintaining his social protection or guaranteeing his rights as a citizen, aside from those that come strictly under technical law.

This, Mr. Chairman, is not intended to be a total exculpation of the prohibition agents from fault. Some of them fall by the way, but the great bulk of the entire number are entitled to have their services correctly represented, and to have their good names protected and not to be designated as grafters under any and all occasions, which experience has shown that they are not.

Senator WATSON. How many men are employed in the department now?

Mr. BRITT. You mean field officers?

Senator WATSON. No; I mean in the whole enforcement program.

Mr. BRITT. About 2,600 in the central unit and in the field forces, as I understand.

Senator WATSON. What are the number of replacements per year?

Mr. BRITT. I shall have to refer that to Major Haynes for answer.

Mr. HAYNES. The field force at the present time, I think, is about 1,900, and I presume the replacements would not be over 20 per cent.

Senator WATSON. Twenty per cent?

Mr. HAYNES. Twenty or twenty-five per cent.

Senator WATSON. Major, of that 20 per cent, what proportion are dropped for incompetency or for other reasons?

Mr. HAYNES. The only figure that I have in mind now is the aggregate as of, perhaps, four weeks ago. Since prohibition became operative in 1920, the appointments of all classes represented 10,175, of which about 750 have been dropped for cause.

Senator WATSON. And the others have left the service voluntarily?

Mr. HAYNES. Yes, sir.

Senator WATSON. How many of those were guilty of crimes and were apprehended and punished?

Mr. HAYNES. I am unable to tell you, Senator, from that total. Whenever there is a sufficient basis for it, it is always reported to the Department of Justice.

Mr. BRITT. There was one other point in that connection, Mr. Chairman, to which I wanted to address myself in a word.

It has been alleged they are often raiding private homes. I think this is almost wholly a fiction. When I first came into the service I was myself greatly disturbed at these rumors. I was very indignant at some of the reports that I heard. I endeavored personally to satisfy myself as to their truth. I can not recall a single instance, as a result of my inquiries, where it was ever proved that they did anything more than energetically and within their rights endeavor to discover a violation of the law or to catch an offender. Such things produce great alarm; they are exceedingly unwelcome, when everybody is in a position to exaggerate what is done, and it is, in fact, exaggerated. On the other hand, it is the practice of Commissioner

Blair and Commissioner Haynes and of all concerned to bring all who are reported to have thus violated the rights of individuals and of property to a strict account for it, and, as it has been reflected to me, most of the instances have proved to be untrue.

Mr. MANSON. Mrs. Willebrandt, have you any statistics as to the percentage of convictions in cases of violation of the prohibition law?

Mrs. WILLEBRANDT. I have. I did not know that you wanted that. I have them district by district, and I keep them up to date, month by month. They are only 30 days behind in every district in the United States as to the number of cases filed, the number of nolle prossed, the number convicted, the number of jury trials, and the amount of the sentences, so as to see the improvement in sentences.

Senator WATSON. With the number of acquittals?

Mrs. WILLEBRANDT. I might say that that latter is a very gratifying part of the report. All I have with me here is a summary from those month to month reports, which gives the number of cases filed, trial by jury, convictions, and terminations.

Mr. MANSON. Just give that.

Mrs. WILLEBRANDT. Do you want that?

Mr. MANSON. Yes.

The CHAIRMAN. If you please.

Mrs. WILLEBRANDT. Do you want them year by year since prohibition began or the grand total?

Mr. MANSON. I think the grand total will be sufficient.

Senator ERNST. Mr. Chairman, had we not better let Judge Britt finish his statement? He has been interrupted. He was making a statement, and it has never been finished.

Mr. MANSON. Oh, I thought he had rested.

Senator ERNST. No; he is not through, and I think he ought to be permitted to finish his statement.

The CHAIRMAN. Just read that into the record, Mrs. Willebrandt, while we are on that point.

Mrs. WILLEBRANDT. The grand total of cases filed—criminal cases this is, not injunctions—was 188,650; trials by jury, 18,436; convictions—this relates to individuals—133,229; and terminations, 166,284.

Mr. MANSON. What do you mean by "terminations"?

Mrs. WILLEBRANDT. Either by nolle prossing or acquittals or convictions. That is the grand total of everything cleared off the docket.

Mr. MANSON. Yes; I see.

The CHAIRMAN. You said a while ago that those figures showed a gratifying result. Just what do you refer to by that?

Mrs. WILLEBRANDT. No; these figures do not show the fine result. The fine result that has justified these, as far as my own personal gratification is concerned in these figures for three and a half years, which I have kept, is to see the growth of judicial sentiment toward the infliction of heavier penalties for violations of the liquor laws.

The CHAIRMAN. In what shape is that report that you have just referred to as covering three years and a half?

Mrs. WILLEBRANDT. I just have this total from it.

The CHAIRMAN. Would it be convenient to file that with the committee?

Mrs. WILLEBRANDT. Yes.

The CHAIRMAN. With the consent of the committee, I should be glad to have it.

Mrs. WILLEBRANDT. You want me to add the grand total of the sentences?

The CHAIRMAN. Yes.

Mrs. WILLEBRANDT. In order for you to see the interesting part of it, I think probably I had better give it to you year by year, to show you the growth in the imposition of jail sentences.

Senator WATSON. In other words, to show the progressive development of sentiment in favor of enforcement, as evidenced by the sentences?

Mrs. WILLEBRANDT. Yes; without so very many more cases, you have quite a considerable increase in penalties. That shows one of two things, probably both things—this growth of judicial sentiment toward the imposition of heavier sentences for violations of law of this character, and probably the increased emphasis put upon the larger cases. Of course, the judges will sentence more heavily for greater violations.

The CHAIRMAN. Does Commissioner Haynes want to make a statement?

Mr. HAYNES. In that connection, I think you will find that we filed with the committee, with Mr. Pyle, when he was here, a statement showing the percentage of convictions for the past three years in comparative detail, and my recollection is that for the last fiscal year the percentage was something over 70 per cent of the cases. In the narcotic cases it was something like 93 per cent, and the prohibition cases are showing the same ratio of increased percentage which is indicated in the successive years in narcotics since the beginning. I thought that that would be a partial answer to the question which has just been asked.

Mr. BRITT. On the point of help rendered district attorneys by attorneys of the office, I wish to say a word.

They who work in the unit have no personal knowledge of what actually occurs in the field, but have an opportunity of learning much of what does occur. I happen to know that the district attorneys, to very great numbers, and to a very large extent, request of the Prohibition Unit the preparation of pleadings in given cases, particularly in libel cases and injunction cases, because of the fact that the Prohibition Unit, through its agents, has the facts upon which the charge is based. It would seem to stand to reason that there had been at least a creditable degree of energy and intelligence on the part of the finding officers, or else the district attorneys would not have been willing to trust to their pleadings, based upon the facts as found by the field agents, and have the pleadings drafted by the officers of the Prohibition Unit. There are many letters in the files, a sheaf of which I put into the record at a former hearing. There are also numerous requests that come for the assistance of the attorneys of the Prohibition Unit in the trial of cases. This has been particularly true in Detroit, Mich., New York, Philadelphia, and Chicago. Attorneys are always dispatched, under the instructions of the commissioner, to remain as long as they can be helpful and to be at the service of the district attorneys, but to avoid the intrusion of themselves or their opinions upon district attorneys or the courts.

In the case of the trial of the Guckenheimers and the civil adjustment following it, there was a lengthy revocation hearing conducted in the central Prohibition Unit by officers and attorneys of the unit. It lasted a number of days. Careful attention was given to the development of the case, and whatever other work was done it has seemed to me that the bulk of that case arose from the leads and findings developed at this revocation hearing.

When the time came for this trial, two or three attorneys, very faithful and competent and diligent, were sent to assist. I am informed that they did assist. The results were satisfactory. The prosecution of the case, of course, was by the district attorney, the assistant attorney general, and the law officers of the Department of Justice, but the major part of the work, both as to the findings and preparation, was done by the prohibition officers.

I think no one will claim that this was a police case or a petit case, as it resulted in a number of convictions, 8 out of 12, as my associate informs me, all offenses being serious, and the punishments heavy, followed by the filing of a libel, which is now about to be adjusted with the payment of a civil liability of $175,000, provided the case is concluded after being examined by the Department of Justice.

The CHAIRMAN. With reference to the civil case that you have just mentioned, I still have in mind the Fleischmann case, which I think the committee is of the opinion was settled rather liberally to the offender. In considering these cases is any conference or exchange of views had with the Department of Justice, or is that all confined to the Prohibition Unit?

Mr. BRITT. There is usually a conference with the Department of Justice, and the Department of Justice finally determines whether the case shall or shall not be compromised without there being any suit, the commissioner being without authority to compromise it without the approval of the Department of Justice.

Mrs. WILLEBRANDT. That is only in a case where a suit has been filed?

Mr. BRITT. I said that.

Mrs. WILLEBRANDT. I have never heard of it unless a suit is filed.

Mr. BRITT. I said that.

The CHAIRMAN. Was there a suit filed in the Fleischmann case?

Mr. BRITT. No.

The CHAIRMAN. In that case the Department of Justice had no knowledge of the facts in compromising the case?

Mr. BRITT. Not officially. It was settled by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

In presenting a case in which there is a libel finding, and in the present case—I mean the Guckenheimer case—the final word as to whether there was or was not to be a compromise would have to be by the Department of Justice.

The Remus case in Cincinnati was another large case in which a notorious offender was convicted with a number of his coadjutors; he now being in the Atlanta prison. The prohibition officers had mainly to do with the findings of facts. I do not wish to be understood as saying that in all of these cases they have all to do with it, nor that I in any wise deny full credit to other officers, for I do not

know what part respectively could have been performed; but I do know that chiefly the findings in this important case were by the prohibition officers, and that one of the attorneys of the unit was despatched to the place to aid in the prosecution, and I have had the pleasure of being told by the district attorney that his services to the case were invaluable.

The Gary case, at Gary, Ind., in which there were a large number of convictions of municipal officials and county officials, was another important case in point, and I could enumerate the cases for much of the time of the afternoon, Mr. Chairman, but I have here a number of memoranda files, all of which cases are taken out of what the unit believes to be what those who are pleased to call certain cases "police" cases would call petty cases in these instances, and I should like to offer them for the record in support of the refutation of the suggestion that the major part of the work of the prohibition officers is confined to police or petty cases.

On that point I wish to say again that I hope the prohibition agents will never neglect the small cases. In prohibition it is the day of small things as well as the day of large things, but, of course, I always advise, and this is the most important, that the major part of their time be devoted to conspiracies and other findings, and particularly to notorious and prominent offenders, regardless of their social, political, or business status.

If I may be permitted, without enumerating more of these, I would like to offer them for the record. I will hand them to the reporter. I will also say that these memoranda, rather copious as they are, comprise only a small part of what are known by the Prohibition Unit to be large cases and to have been mainly made by its officers.

(The memoranda submitted by Mr. Britt are as follows:)

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
Washington, April 2, 1925.

Memorandum for Maj. R. A. Haynes, Prohibition Commissioner.

Attached hereto is a list of some of the important cases handled by officers of the Prohibition Unit since June 30, 1921.

E. C. YELLOWLEY,
Chief, General Prohibition Agents.

Cohen, Benjamin S., and eight others. Conspiracy. Los Angeles, Calif. Defendants, Cohen, Vladovich, Quinlin, Chambers, and Ursich, each plead guilty August 2, 1923. Each sentenced $2,500 fine. Total, $10,000.

Downs, John F., and three others. Conspiracy. Trenton, N. J. Conspiracy to ask for and accept bribe under section 36, Criminal Code. Sentenced March 6, 1924. Verdict, guilty on all counts as to Downs, Klein, Stack. Total sentences, $25,000 and five years in penitentiary.

Nounces, John L., and two others. Conspiracy. Galveston, Tex. Verdict, guilty, July 15, 1924, as to Komiskie and Landi. Not guilty as to Nounces. Komislie sentenced; $10,000 fine and 90 days in jail on counts two and three. Landi sentenced to one year and 1 day in penitentiary.

Nounces, John L., and six others. Conspiracy. Galveston, Tex. Verdict, guilty as to all defendants. Nounces sentenced to two years in penitentiary and $5,000; Varnell sentenced to six months and $5,000.

Stafford, Tex, and six defendants. Conspiracy. Seattle, Wash. Section 37, Penal Code, national prohibition act. Scott and Curry plea, guilty. Verdict, guilty against Stafford, Taylor, Bell. Sentenced August 4, 1924. Total of sentences imposed, 15 months at McNeils Island, $1,000, and 12 months in jail.

Wise, Fred, and one defendant. Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Verdict, guilty as to Wise, April 2, 1924. Wise, 15 months at McNeil Island on count 1; two months in jail, count 2; two months in jail, count 5; and fined $250.

Worsham, William E., and four defendants. Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Suit filed March 25, 1924. Juneau and Converse discharged. Worsham, 18 months at McNeil Island and $500, and Vale 18 months at McNeil Island and $500.

Albrecht, Henry, sr., and four defendants. Danville, Ill. Violation of sections 3 to 21, title 2, national prohibition act. Verdict, guilty. Sentenced March 31, 1924. Albrecht, senior and junior, and Maher, three years in jail and $9,000.

Youmans, L. C. Savannah, Ga. Two indictments. Plead guilty; two years in Atlanta Penitentiary (Docket No. 3482; two years in Atlanta Penitentiary); Docket No. 3388, two years in Atlanta Penitentiary.

O'Hearn, Clarence J., Davenport, Iowa. Section 240, Criminal Code, national prohibition act. Plead guilty, April 24, 1924. Sentenced to pay a fine of $5,000 and costs.

Herzog, Bertram P. Milwaukee, Wis. Violation of section 117, Criminal Code, national prohibition act. Suit filed June 24, 1921. Verdict, guilty all counts, December 31, 1921. Sentenced to seven years in penitentiary and $16,000 fine.

Bradshaw, John. Asheville, N. C. Violation of section 65, Criminal Code, national prohibition act. Plead guilty, November 15, 1924. Sentenced to two years in penitentiary.

Goldberg, Samuel, and three others. Conspiracy. Savannah, Ga. Sentenced December 12, 1923. Verdict, guilty as to each. Total of sentences: Four years in penitentiary, three months in jail, and $20,500 fine. (Begun by Prohibition Unit, completed by Department of Justice.)

Biener, Joseph (alias "Joe"). Conspiracy. Cleveland, Ohio. Sentenced March 20, 1923. Verdict, guilty. Two years in penitentiary and $10,000 fine.

Drudzinski, Eddie, and two others. Conspiracy. Toledo, Ohio. Plea of guilty as to each, December 10, 1923. F. Sruizinski, two years in penitentiary and $5,000 fine; L. Drudzinski, 21 months in penitentiary and $2,500 fine.

Allen, Lawrence, and four others. Conspiracy. Fresno, Calif. Verdict, guilty as to Allen, O'Neill, and Thompson. Each fined $10,000 and two years in penitentiary. Total, $30,000 and six years in penitentiary.

Miller, Frank. Conspiracy. Chicago, Ill. Conspiracy to violate section 3296 Revised Statutes. Sentenced February 21, 1924. Verdict, guilty. Two years in penitentiary and fined $10,000.

Raney, George, and three others. Conspiracy. Fresno, Calif. Sentenced May 26, 1924. Verdict, guilty. Each defendant sentenced two years in penitentiary and $10,000 fine. Total, eight years and $40,000.

Monahan, James, and four others. Conspiracy. Albany, N. Y. Dismissed as to Ryan and Windhousen. Verdict, guilty as to Fellows. Monahan and Davis plead guilty. Total sentences, $24,000 and 10 months in jail.

Conigliaro, August J., and six others. Conspiracy. New York City, N. Y. Sentenced April 14, 1924. Verdict, guilty. Each sentenced. Total, $19,000 and five years seven months.

Collett, C. C., and four others. Conspiracy. Fresno, Calif. Sentenced May 28, 1924. Verdict, guilty as to Collett, Bourst, and Pike. Not guilty as to Morgan. Each sentenced to two years in penitentiary and $10,000 fine.

Brown, John, Asheville, N. C. Docket No. 3247. Violation of, possession, retailing, and nuisance, national prohibition act. Information filed November 16, 1923. November 16, 1923, facts submitted to the court; guilty. Sentenced to five years in Atlanta Penitentiary and fined $200. Sections 21, 23, and 25, national prohibition act. (Second offense.) (787, November 21, 1923.)

Smith, George, Asheville, N. C. Docket No. 2881. Violation of section 29, national prohibition act. Manufacturing and possession of material. (Second offense.) Indictment filed November 6, 1922. Plead guilty November 16, 1923, and sentenced to five years in penitentiary and fined $200. (787, November 21, 1923.)

Miller, Isaac, Lexington, Ky. Violation of national prohibition act. Possession. (Third offense.) Docket No. 959. Indictment filed January 6, 1924. Jury trial January 18, 1924. Verdict guilty as to case No. 995. Unable to agree as to other three cases, 994, 959, and 996. Sentenced January 21, 1924, to one year and one day in penitentiary and $20,000 fine. February 23, 1924, order entered

changing sentence of one year and one day and $20,000 fine to two years and $7,500 fine. Paid.

Smith, Grover, and Gregory, E. W., Greenville, S. C. Violation of national prohibition act, sections 3, 6, 29, and 33. Plead guilty April 5, 1924, and sentenced to one year and one day in United States penitentiary, Atlanta, and $2,000 as to E. W. Gregory. Grover Smith transferred to contingent docket April 5, 1924.

Pruitt, Lee, Greenville, S. C. Violation of national prohibition act, sections 3, 6, 25, and 29. Manufacturing and possession. Docket No. 3289. Sentenced to five years in penitentiary at Atlanta and $1,000 fine.

Schwartz, Fred., Asheville, N. C. Violation of sections 23 and 25, national prohibition act. Possession and retailing whisky. Suit filed November 6, 1924. Jury trial; guilty. Sentenced to three years in Atlanta Penitentiary and fined $200.

Albrecht, H., Co., a corporation, East St. Louis, Ill. Plead guilty and sentenced to pay a fine of $5,000 for violation of section 3242, Revised Statutes, and sections 3 to 21, title 2, national prohibition act.

Fox, N. L., Columbia, S. C. Violation of national prohibition act. Possession and transportation. Plead guilty. Sentenced to two years in United States penitentiary at Atlanta, Ga., and $500 fine.

Shiver, L. B., Columbia, S. C. Violation national prohibition act. Manufacture of liquor. Verdict guilty, November 6, 1924. Sentenced to two years and six months in Atlanta, Ga., United States Penitentiary.

Gutirrez, Jose, Santa Fe, N. Mex. Violation section 3, Title II, national prohibition act. Possession. December 1, 1924. Plead guilty. Sentenced two years in Leavenworth Penitentiary.

Carter, Herman, Lexington, Ky. Violation, possessing liquor, national prohibition act, third offense. Plead guilty January 17, 1925, sentenced to two years in Atlanta Penitentiary and $500 fine.

Lay, Ottie, Lexington, Ky. Violation, possessing liquor, national prohibition act, third offense. Plea of guilty, January 16, 1925. January 17, 1925, sentenced to two years in Atlanta Penitentiary and $500 fine.

Cook, Clark, Huntington, W. Va. Violation, illicit distilling. Plead guilty September 19, 1924, and was sentenced to three years in United States Penitentiary, Atlanta, Ga.

Stewart, W. H., Huntington, W. Va. Violation, illicit distilling. Plead guilty September 19, 1924, and sentenced to a fine of $500, no costs, and two years in penitentiary, Atlanta, Ga.

Wagner, Joseph, Kansas City, Mo. Violation section 7, act March 3, 1897, and section 6076, United States Compiled Statutes. Possession strip stamps. May 17, 1924. Jury, verdict guilty both counts. June 16, 1924, sentenced to five years' hard labor Leavenworth Penitentiary and fined $2,000.

Neely, Claut and Grat, Bluefield, W. Va. Violation internal revenue laws, illicit distilling. Verdict guilty as to each. June 21, 1924, each sentenced to United States Penitentiary at Atlanta for six years and fined $1,300; no costs. Judgment suspended 60 days for bills of exceptions to be filed.

Michelotti, Leopoldo, Filidelfo Capelo, and Joe Turce, Omaha, Nebr. Violation sections 3257, 3282, and 3266 Revised Statutes. Defrauding and attempting to defraud the United States of taxes on distilled spirits; making and fermenting mash on premises other than a distillery; distilling in dwelling house. July 3, 1924, defendants Michelotti and Capelo each sentenced to United States Penitentiary, Leavenworth, Kans., for two years on each of counts and to pay a fine of $10,000 on each of said counts and to be committed until paid. Total, eight years penitentiary and $40,000.

Bailey, Cornelius M., and Vernon C. McManigal, Omaha, Nebr. Violation sections 3257, 3282, 3266 Revised Statutes, defrauding and attempting to defraud the United States of taxes on distilled spirits; making and fermenting mash on premises other than a distillery; distilling in dwelling house. Cornelius Bailey sentenced to penitentiary at Leavenworth, Kans., for two years on each of counts 2 and 4 to run consecutively and fined $10,000 each of said counts. Total, $20,000 and four years in penitentiary. Suit filed June 3, 1924. Indictment.

Nastisi, Sam, Omaha, Nebr. Violation sections 3257, 3282, 3266 Revised Statutes. July 10, 1924, defendant plead guilty, sentenced one year and one day penitentiary. Fined $500 on each count. Total, two years and two days and $1,000.

Stathas, John, Omaha, Nebr. Violation sections 3257, 3282, and 3266 Revised Statutes. July 3, 1924, defendant sentenced to United States Penitentiary for two years and fined $10,000. Total, four years penitentiary and $20,000. Sentence for two years on each of counts 2 and 4, to run consecutively.

Pop, Jasper, Bluefield, W. Va. Violation, illicit distilling, internal revenue law. Plea of guilty January 22, 1925. Judgment three years United States Penitentiary, Atlanta, Ga.

Raines, Bryant, Luther Courley, and Jackson McMertie, Nashville, Tenn. Violation section 65, C. C. November 14, 1924, verdict of guilty. Bryant Raines, five years Atlanta Penitentiary and one-third costs. Judgment reserved as to the other defendants. November 17, 1924, judgment reserved until March term as to Luther Gourley and Jackson McMertie on defendants entering into bond in the sum of $500 conditioned to report to the court from day to day as to their conduct. Five years penitentiary and one-third costs.

Mansbach, Morris, and Solomon Feuchbaum, Trenton, N. J. Violation, possession of unregistered stills, sections 3259, 3242, as amended, 3281, 3283, R. S. section 3, national prohibition act. February 24, 1925, sentence Mansbach, two years hard labor United States Penitentiary, Atlanta, Ga., on each of first, second, third, and fourth counts of indictment, to run concurrently; also six months hard labor on fifth count, to run concurrently also; fined as follows: $500 on first count, $500 on second count, $1,000 on third count, $500 on fourth count, and to stand committed until such fines are paid, making two years in all and total fine of $3,000.

Allen, Lawrence, E. J. O'Neill, Harry Thompson, John Doe, Richard Doe, Fresno, Calif. Violation national prohibition act, section 37 P. C. Conspiracy to violate national prohibition act. May 22, 1924, verdict guilty as to Allen, O'Neill, and Thompson. Sentenced each two years Leavenworth Penitentiary and fined $10,000 each.

Miller, Frank, Chicago, Ill. Violation section 37, P. C. Conspiracy to violate section 3296. February 21, 1924, verdict guilty by jury on counts 1 and 2. Sentenced two years in penitentiary and fined $10,000 and costs on first count.

Miller, Frank, Chicago, Ill. Violation section 6, title 2, national prohibition act, and sections 3296 and 3268, R. S. February 21, 1922, verdict guilty by jury on counts 1, 2, and 3, and not guilty on count 4. February 28, 1922, defendant sentenced to three years penitentiary Leavenworth, and fined $5,000 and costs on counts 1 and 2 and $500 and costs on count 3. Sentence in this case to run consecutively with sentence in D. C. 9389 and stand committed until fine and costs are paid.

Baughn, C. Graham, and 10 others, Savannah, Ga. Violation, conspiracy, national prohibition act. December 7, 1923. C. G. Baughn sentenced one year and one day Federal penitentiary and fined $10,000 on first count; one year and one day Federal penitentiary and $5,000 on count 2, sentence concurrent; Kramer, $500; Minton, $500; bond four months, jail, and $500; B. bond, four months jail, and $500; J. H. Thomas, two years penitentiary and $5,000 on each of counts 1 and 2, to run concurrent; Floyd, six months penitentiary and fined $1,000; and McInnis, six months penitentiary and $1,000. (Begun by Prohibition Unit, completed by Department of Justice.)

Raney, George (Ramey), Harry Schuttenhelm, John Doe, Richard Doe, Fresno, Calif. Suit filed May 9, 1924, Ind. Violation section 37, P. C., conspiracy to violate national prohibition act. May 26, 1924, verdict guilty. Each defendant (two) sentenced to two years in penitentiary and fined $10,000 each.

Bushey, James A., John A. Donder, and William G. Domer, Binghamton, N. Y. Violation section 3, title 2, national prohibition act and section 37, Penal Code. September 13, 1924. Defendants Bushey and Donder convicted and Defendant Domer acquitted. Bushey sentenced to United States penitentiary, Atlanta, for two years and to pay a fine of $11,000 and stand committed until paid; being two years, $10,000 on first count and $500 on counts 2 and 3. Donder sentenced to United States penitentiary one year and 1 day and $11,000, being $10,000 on first count; $500 each counts 2 and 3.

Ratliff, James E., Chas. H. Allwood, Otto W. Martin, and J. A. Patterson, Charleston, W. Va. Violation section 37, Criminal Code.—Comp. national prohibition act, November 26, 1923. Plead guilty as to Patterson. Verdict

guilty as to Chas. H. Allwood and Otto W. Martin. Judgment as to each $5,000 fine and no costs, and two years United States penitentiary.

Sabbatino, Charles and Ralph, Brooklyn, N. Y. Violation sections 37-39, Criminal Code. Conspiracy and attempted bribery of prohibition employees for the illegal withdrawal of intoxicating liquor. June 14, 1923. Verdict guilty as to each defendant. Each defendant sentenced to two years in penitentiary, Atlanta, and pay a fine of $10,000. Two other defendants.

Bailey, Richard, Chester Tuten, Christian Schwartz, H. V. Schaaf, J. D. Dillard, J. F. Williams, and J. B. Bailey. Violation national prohibition act. Conspiracy. Savannah, Ga. December 3, 1923. Verdict guilty, J. B. and Richard Bailey, Tuten, Schwartz, Dillard, and Williams. Sentenced, R. Bailey, one year Federal penitentiary and $10,000; J. B. Bailey, two years penitentiary and $10,000; Tuten and Williams, two years Federal penitentiary and $10,000 each; Schwartz, two months in jail and $500; Dillard, fine, $500; nolle as to Schael.

Demas, John G., John Croft, Toledo, Ohio. Violation national prohibition act, section 37 Criminal Code. Conspiracy. Demas plead guilty September 8, 1923. Sentenced 21 months United States penitentiary and $6,000 fine.

Callahan, William (mayor), Otis Turley, chief of police, both of Bicknell, Ind. Sentenced to two years and fined $1,500 and 15 months and $500, respectively. Nine others received sentences ranging from six months and $300 to one year and one day and $500.

Illario, Anthony, and five others. Trenton, N. J. Violation section 37, Criminal Code, national prohibition act. July 5, 1921. Morris Marter fined $5,000 and nine months hard labor penitentiary. Fine paid. Morris Springer fined $5,000 and nine months hard labor United States penitentiary. Fine paid.

Guckenheimer & Bro., A. (Co.), et al., Pittsburgh, Pa. Violation section 29 national prohibition act. June 14, 1924. A. Guckenheimer & Bro. Co. fined $10,000; Louis Farkas fined $10,000 and two years in penitentiary, Atlanta; Louis Brown fined $10,000 and two years in penitentiary; Edw. C. Little fined $2,000 and one year and one day in penitentiary; William J. Ferris imprisoned in Federal penitentiary for two years; George Beck, six months in jail; William Dickerson fined $2,000 and one year and one day in penitentiary. Petition of A. Guckenheimer & Bro. for writ of error and order allowing writ of error and fixing supersedeas bond in sum of $15,000.

Simpson, Charley, Rex Chapman, and S. C. Horton, Charleston, W. Va. Violation section 37, Criminal Code, national prohibition act. Verdict guilty as to each defendant. Judgment as to Simpson, $5,000 fine, no costs, two years in United States penitentiary Atlanta. Judgment as to Chapman, 2 years in United States penitentiary, Atlanta. Judgment as to Horton, 18 months in United States penitentiary, Atlanta. Total, $5,000, and 5½ years in penitentiary.

Stewart, Alexander B., et al., Los Angeles and San Diego, Calif. Violation—conspiracy to violate tariff act and national prohibition act, February 14, 1925. Stewart fined $2,500 on second count and fined $5,000 and four months in Orange County jail on third count. Total fine, $7,500, and four months in Orange County jail; 10 days' stay granted. Stay vacated and supersedeas bond fixed at $10,000. Miller sentenced to two years in Leavenworth and fined $5,000, each on first and fourth counts concurrent and fined $2,500 on each of second and third counts. Claude V. Dudrey fined $5,000 and sentenced to 18 months in Leavenworth Penitentiary on each of first and fourth counts concurrent. Oscar Lund sentenced to nine months in Los Angeles County jail and fined $2,500 on first count; $1 on second count and $50 on each of third and fourth counts. Larry Talbot sentenced to nine months in Los Angeles County jail and fined $2,500 on first count. Lewis E. Dudrey fined $500 on first count; $1 on second count; $50 on third count; six months in Los Angeles County jail on fourth court. W. E. Knowlton sentenced to six months in Los Angeles County jail and $500 fine on first count; $1 on second count; $50 on each of third and fourth counts. Frank Kobota sentenced to two years in Leavenworth and fined $5,000 on first count; $2,500 on each of second and third counts. Chaney sentenced to 10 days in Los Angeles County jail on fourth count. February 16, Nagai sentenced to 10 months in Los Angeles County jail on each of first, soecnd, and third counts.

Sibley Warehouse & Storage Co., Harders Fireproof Storage & Van Co., a corporation, and 26 other defendants, Chicago, Ill. Sections 3 and 6, Title II, national prohibition act. Section 37, Criminal Code. Suit filed May 29, 1924.

Smith, Mrs. Mary, and Wacker & Birk Brewing Co., Chicago, Ill. Section 21, national prohibition act. December 4, 1923. Decree of permanent injunction; issued decree.

Standard Beverage Corporation, Chicago, Ill., and four other defendants. Sections 3–25, national prohibition act. Suit filed February 5, 1924.

Steiner, Frank, and eight other defendants, Chicago, Ill. Section 37, Criminal Code, national prohibition act. Suit filed October 24, 1924.

Van Briggle, William D., Chicago, Ill. Section 39, Criminal Code. Bribing Federal prohibition officer. Plead guilty January 31, 1924. Sentenced to pay $1,000 fine and costs and 30 days in jail.

Wysochi, J., East St. Louis, Ill. Violation sections 3 and 21, Title II, national prohibition act. Verdict guilty, May 26, 1924. Sentenced to one year in jail and $2,000 fine.

McFadden, Joseph, and six other defendants, Danville, Ill. Violation sections 3 and 21, national prohibition act. Nolled as to McFadden. Other defendants sentenced April 1, 1924, totaling five years in jail and $8,500.

The Malt Maid Co. and Louis Herzon et al., Chicago, Ill. Section 21, national prohibition act. Suit filed October 6, 1924.

Schlitz Brewing Co. and Jerry Morris, Chicago, Ill. Section 21, national prohibition act. Suit filed September 30, 1924.

O'Bannion, Dean, and two other defendants, Chicago, Ill. Section 37, national prohibition act. Unlawfully conspiring to possess and sell and transport intoxicating liquor. Suit filed April 25, 1924.

O'Bannion, Dean, and 38 other defendants, Chicago, Ill. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Suit filed May 27, 1924.

O'Brien, Edward F., alias F. Murphy, and six other defendants, Chicago, Ill. Section 3, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Suit filed October 3, 1924.

Porter Products Co., E., Chicago, Ill. Violation section 21, national prohibition act. Plea of guilty March 3, 1924. Corporation fined $1,000.

Quateman, William L., president Hospital Product Co. (Inc.), Chicago, Ill. Violation section 39 Criminal Code, bribing Federal officer.

The Siebon Corporation Brewery, known as "Frank Brewery," the Old Sieben Brewery, and seven other defendants, Chicago, Ill. Section 21, national prohibition act. Pending.

Friedman, Irving S., and five other defendants, Chicago, Ill. Section 37 Criminal Code. Conspiracy national prohibition act. Suit filed October 30, 1924.

Entertainers Café and two defendants, Chicago, Ill. Sections 3 and 6, Title II, national prohibition act, and section 37 Criminal Code.

Juffra, Nick, and five defendants, Chicago, Ill. Conspiracy. Section 37, Criminal Code. National prohibition act. Conspiring to violate section 3.

Loveland, Frank, and five defendants, Chicago, Ill. Section 37 Penal Code. National prohibition act. Violation section 3. Suit filed October 10, 1924, October 28, 1924. Pending.

Cyco Medicine Co., a corporation, and nine defendants, Chicago, Ill. Section 37, Criminal Code; to violate section 3, national prohibition act. Suit filed October 30, 1924. (Two cases pending against these defendants.)

Ex, Harry, and five defendants, Chicago, Ill. Section 37 Criminal Code; conspiracy to violate section 3, national prohibition act. Indictment filed October 24, 1924. Pending.

Fenwick, George E., alias C. E. Fenwick, alias G. E. George, alias E. E. George, Peoria, Ill., and nine defendants. Section 37 Criminal Code. Conspiracy. National prohibition act. Suit filed November 25, 1924.

Fischback Brewery Co. and two defendants, St. Louis, Ill. Violation national prohibition act. Possession, manufacture, and transporting. Suit filed May 9, 1924.

Sarafino, Hugo, and nine defendants, Seattle, Wash. Violation section 37, national prohibition act. Indictment filed June 12, 1924. Pending.

Atlas Brewing Co., a corporation, and five defendants, Chicago, Ill. Violation sections 3 and 6, Title II, and section 15, Title II, national prohibition act, to evade tax on alcohol. Suit filed. Pending September 23, 1924.

Banner Products Co. and three defendants, Chicago, Ill. Section 21, national prohibition act. Pending.

Neach Pharmacy, a corporation, and two defendants, Chicago, Ill. Section 3, Title II, national prohibition act, December 29, 1923. Pending.

John S. Bielfeldt Brewing Co., a corporation, Chicago, Ill., and five defendants. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Plea of guilty by Bellfeldt Brewing Co., Bieki, Kecter, Graf, Detmer, and Westfall, nol. pros. Two other cases against these defendants. Bielfeldt Brewing Co., $2,000 fine; Graf and Kecter, each $400 fine; and Bieal, $100 fine.

Chicago Heights Beverage Co., a corporation, Chicago, Ill., and three defendants. Section 21, national prohibition act. Suit filed November 12, 1923.

McCafferty, Albert A., and 10 defendants, Seattle, Wash. Violation section 37, Criminal Code, national prohibition act. Suit filed February 7, 1924. Pending.

Otness, Robert L., alias Robert Larson, and four defendants, Seattle, Wash. Violation section 37, Penal Code. Conspiracy, national prohibition act. Lenberg and Otness plead guilty. Lenberg, 30 days in jail. Otness, one year and one day, McNeils Island.

Orsatti, Morris, and J. R. Johnson, Los Angeles, Calif. Bribery of national prohibition agent. Suit filed June 15, 1923. Verdict, guilty, November 1, 1923. Sentenced. Fine of $21,000 and 20 years in penitentiary.

Alvarez, Ike, and 62 other defendants, Indianapolis, Ind. Violation section 37, Criminal Code, national prohibition act. Sentenced. Fine of $16,700 and 22 years 5 months 27 days.

Holcombe, Robert L., and 71 other defendants, Mobile, Ala. Conspiracy, section 37, Criminal Code, national prohibition act. Sentenced July 7, 1924. Total, 11 years 6 months 4 days in penitentiary, $150, and 1 year and 3 months in jail.

Gamache, Camile, and two other defendants, Syracuse, N. Y. Violation of section 3, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Nolled as to Siddon. Gamache and De Greche sentenced. Fine of $6,000 and four months in jail.

King, Farris, Asheville, N. C. Violation of section 29, national prohibition act (second offense). Verdict, guilty, November 16, 1923. Sentenced to five years in penitentiary and fined $200.

Smith, George, Asheville, N. C. Violation of section 29, national prohibition act (second offense). Plead guilty November 16, 1923. Sentenced to five years in penitentiary and fined $200.

Pruitt, Lee, Greenville, S. C. Violation of sections 3, 6, 25, and 29, national prohibition act. Jury trial April 16, 1924. Sentenced to five years in penitentiary and fined $1,000.

Krogman, William, Tell City, Ind. Eighteen parties were indicted. All of the parties were convicted, including every one from the distiller to the laborer. Krogman was fined $2,000 and sentenced to two years in Federal penitentiary at Atlanta, other parties' sentences ranging from 4 months in jail to 18 months in Federal penitentiary at Atlanta.

Clark, Dave, and nine defendants, Lexington, Ky. Section 37, Criminal Code, national prohibition act. Verdict, guilty as to Clark, O'Hara, Kincaid, Turner, Sartin, Drake, and Rose. Not guilty as to Ashurst. Sentenced June 30, 1923. Each sentenced to 2 years in penitentiary; total, 14 years, United States penitentiary.

Ewan, Charles, Covington, Ky. Conspiracy, section 37, Criminal Code, national prohibition act. Sentenced November 7, 1924, to two years in penitentiary and $5,000.

Gillam, Isom, and two defendants, Catlettsburg, Ky. Conspiracy, section 37, Criminal Code, national prohibition act. Sentenced June 6, 1923. Gillam, two years in penitentiary; Hutchinson, 2 years in penitentiary; and Johnson, six months in jail.

Flood, Irvine, and Nathan Selzer, Frankfort, Ky. Violation of section 37, Penal Code. Conspiracy to possess and transport. September 22, 1924. Alias capias and cont. as to Selzer (defendant sentenced to two years in penitentiary, Atlanta, and forfeited his appearance bond, Selzer).

Spilman, Robert, and Reed Williams, Richmond, Ky. Conspiracy, possession and transporting. Section 37 Criminal Code, national prohibition act. Verdict guilty April 26, 1923. Sentenced April 26, 1923. Sentenced two years penitentiary each. Total, four years penitentiary.

Faulkner, Raleigh, and two defendants, Seattle, Wash. Violation section 37 Penal Code, national prohibition act. Not guilty as to Anderson. Verdict guilty as to Faulkner. Faulkner sentenced two years penitentiary and $3.

Hagan, Edward J., and three defendants, Seattle, Wash. Conspiracy, national prohibition act. Section 37 Criminal Code. Verdict guilty as to Hagan, Pielow, and Gibbons. Not guilty as to Brown. Hagan, two years, McNeil Island, hard labor; Pielow, two years McNeil Island, hard labor; and Gibbons, six months in jail.

Huth, M. E., and five defendants, Covington, Ky. Conspiracy, section 37, Criminal Code, national prohibition act. Huth and Carey plead guilty. Lipschutt and Langley verdict guilty. Jury disagreed as to Slater. Sentenced two years United States penitentiary each. Total, eight years penitentiary.

Keith, Joe J., and two defendants, Lexington, Ky. Conspiracy, section 37, Criminal Code, national prohibition act. Verdict guilty. Sentenced May 13, 1924. Total of sentences, $8,700 fine.

D. L. Moore Distilling Co., and six defendants, Covington, Ky. Conspiracy, section 37, Criminal Code, national prohibition act. Suit filed April 9, 1923. Conspiracy to transport liquor. Pending.

Raffel, Ed., and eight defendants, Catlettsburg, Ky. Section 37, Criminal Code, national prohibition act. Verdict guilty as to Raffel, Fox, and Jones. Not guilty as to Murphy and McNeil. Sentenced June 6, 1923. Total of sentence, four years penitentiary, six months jail, and $7,500 fine.

Green, Frank Jeff, and eight defendants, Savanah, Ga. December 5, 1923. Indictment, conspiracy to violate national prohibition act. Verdict guilty as to each. Evans, two years penitentiary and fine $10,000. Hardwick, three months and $500 fine.

Haar, Frederick H., sr., Savanah, Ga., and nine defendants. August 16, 1923. Indictment, conspiracy to violate national prohibition act. Sentenced 7 years and 11 months and fined $35,000.

Russo, Sam and John Pellegrini, October 9, 1924. Violation of section 39, Penal Code, national prohibition act and internal revenue, St. Louis, Mo. Verdict guilty as to each, $2,000 and five years penitentiary.

Ventola, Thomas, and Lela Eaton, alias Alice Brown, Kansas City, Mo. Violated sections 3266, 3257, 3281, 3282, R. S. Verdict guilty, May 12, 1924. Total of sentences, $6,000 fine and two years penitentiary.

Bond, Frank, and two defendants, Charleston, W. Va. Violated internal revenue laws, illicit distilling. Luther Temble plead guilty. Verdict guilty as to Frank and Edna Bond. Each defendant sentenced. Total, 21 years penitentiary and $18,000 fine.

Birnaco, Tony, and Jim Costello, defrauding Government of tax. Setting up still in or near dwelling. Possessing and manufacturing mash in place other than distillery. April 25, 1924, verdict guilty. First count, not guilty. Each sentenced $500 and two years penitentiary. Total, $1,000 fine and four years penitentiary.

Cook, Clark, Huntington, W. Va. Violated internal revenue laws, illicit distilling. Plead guilty September 19, 1924. Sentenced three years penitentiary.

Wagner, Joseph, Kansas City, Mo. Violated section 7, act March 3, 1897. Violated section 6076, United States Compiled Statutes. Possessing strip stamps. Verdict guilty, May 17, 1924. Sentenced five years penitentiary and $2,000 fine.

Stathas, John, Omaha, Nebr. Violated sections 3257, 3282, 3266, R. S. Defendant sentenced July 3, 1924. Four years penitentiary and $20,000 fine.

Downs, John F., and three defendants, Trenton, N. J. Conspiracy to ask for and accepted bribe, section 36, Criminal Code. Sentenced. Verdict guilty on all counts as to Downs, Klein, Stack. Total sentences, $25,000 fine and five years penitentiary.

Biener, Joseph, alias Joe Biener, Cleveland, Ohio. Conspiracy. Sentenced March 20, 1923. Verdict guilty, $10,000 fine and two years penitentiary.

Dixon, Edward F., and 21 defendants. Conspiracy. Cleveland, Ohio. Sentenced June 9, 1924. Pleas guilty by Dixon, Hettler, Hager, Shure, Munc, Roche, O'Lonnell, Carlin, Sansbury, Coughlin, Rudd, Levine, Hine. Verdicts guilty, Scanlon and Walzer. Verdict not guilty, Adams. Eight years seven months six days and seven hours in penitentiary and $11,050 fine.

Miller, Philip, and two defendants, Toledo, Ohio. Conspiracy. Sentenced June 19, 1923. Plea guilty, Jasak. Vedict guilty, Miller and Greenberg. Fine of $18,200 and 13 years and 6 months in penitentiary.

Chafin, Don, Charleston, W. Va. Conspiracy. Sentenced April 23, 1924. Verdict guilty. Fine of $10,000 and two years in penitentiary.

Lahr, Nicholas A., Fergus Falls, Minn. Conspiracy. Sentenced May 16, 1924. Plea guilty; six years in penitentiary.

Goldberger, Isadore, Wilmington, Del. Conspiracy. Sentenced July 18, 1924. Three years and three months hard labor in penitentiary.

Bailey, Cornelius M., and Vernon C. McManigal, Omaha, Nebr. Conspiracy. Fine of $20,000 and four years in penitentiary.

Harrison, Curley, and Earley Harrison, Greenville, S. C. Conspiracy. Sentenced October 7, 1924. Plea guilty. Four and one-half years in penitentiary for Curley Harrison; $3 fine and five months for Earley Harrison.

Burpee, Harry F., and four defendants, Bangor, Me. Conspiracy. Violation section 37 prohibition act, conspiracy to violate national prohibition act and tariff act of 1922 by transporting and importing large quantity of intoxicating liquor unlawfully.

Cheblak, Stanley, Grand Rapids, Mich. June 5, 1924. Indictment, violation national prohibition act. Verdict guilty. Sentenced three years in Leavenworth Penitentiary and $200 fine.

Shamp, Delano R., Grand Rapids, Mich. January 10, 1923, indictment, violation section 97 prohibition act and section 85 national prohibition act. Verdict guilty. Sentenced two years in penitentiary.

Granger, Ben S., and 13 defendants, Galveston, Tex. June 11, 1924. Indictment, conspiracy to violate sections 436, 591, 593b, section 21, 1922, and the national prohibition act. Violation section 37 Penal Code of 1919. Verdict guilty as to seven of the defendants. Seven defendants sentenced five years and five months in penitentiary and fined $16,000; others pending.

Wood, James Mallory, Portland, Oreg. Sentenced October 9, 1924. Plea guilty. Section 32 Penal Code. Three years McNeil Island.

Schwartz, Fred, Asheville, N. C. Violating sections 23-35, national prohibition act. Verdict guilty. Sentenced November 14, 1924, three years penitentiary and $260 fine.

Bailey, Cornelius M., and Vernon C. McManigal, Omaha, Nebr. Violating sections 3257, 3282, 3266 Revised Statutes. Sentenced four years penitentiary and $20,000 fine.

Nastisi, Sam, Omaha, Nebr. Violating sections 3257, 3282, 3266 Revised Statutes. Plead guilty July 10, 1924. Sentenced two years two days penitentiary and $1,000 fine.

Hart, Ameda, and Jack Valoys, Syracuse, N. Y. Violating section 37, Criminal Code, and section 3, national prohibition act. Verdict guilty as to Hart. Sentenced two years penitentiary and $11,001 fine. Dismissed as to Valoys.

Kirchnopf, Matt, Minneapolis, Minn. Violating national prohibition act. Sales, section 37, Criminal Code. Suit filed December 20, 1924. Plead guilty. Sentenced three years in Leavenworth Penitentiary.

Pullman porters and conductors case, Chicago, Ill. Forty-four persons were involved and indictments were returned charging conspiracy, section 37, Criminal Code, national prohibition act, for illegal transportation of liquor on trains operated between New Orleans and Chicago. Thirty-two of these parties were successfully prosecuted in the Federal court.

Pershing warehouse case, Brooklyn, N. Y. Four parties were indicted. All of them were convicted (Ralph and Charles Sabbatino, Lewis Katz, and Samuel Cross) for conspiracy to bribe Federal officers in connection with the proposed unlawful withdrawal of large quantities of bonded liquor from the Pershing warehouse. Each of these parties were sentenced to two years in the Federal penitentiary at Atlanta.

George Remus and eight others, Cincinnati, Ohio, conspiracy. Indictment filed April 15, 1922. Sentences from three months to two years. Each fined $1,000. Remus, in addition to being fined and sentenced for conspiracy, was fined $1,000 and sentenced to imprisonment for one year for maintaining a nuisance under section 21, national prohibition act.

TEN SENTENCED IN INDIANA DRY CASE—PENALTIES SEVERE FOR FORMER OFFICIALS OF TOWN AND TWO LODGES—POLICE CHIEF AT BAR

INDIANAPOLIS, IND., March 31.—Federal Judge Robert Baltzell to-day disposed of the Bicknell (Ind.) liquor conspiracy cases which resulted last week in the conviction of Mayor William Callahan, Otis Turley, chief of police; other municipal officials and representatives of the Moose and Eagles lodges. Callahan, who was sentenced to prison for two years and fined $1,500, has appealed to the higher courts.

Turley was sentenced to prison for 15 months and fined $500. A similar sentence and fine were given to Oscar Dodds, former Bicknell policeman and

later a trustee of the Eagles lodge. Jay Bonham, another trustee of the Eagles, was sentenced to prison for a year and a day and fined $500. George Stines, Thomas Cullen, and George Bailey, all members of the house committee of the Moose lodge in Bicknell, were sentenced to prison for a year and a day and fined $300 each.

Thomas Kinney, who was custodian of the Eagles lodge and who had pleaded guilty, was sentenced to jail for seven months and fined $100 and costs. William Bradley, former dictator of the Moose lodge, was sentenced to jail for five months and fined $100. Patrick Hagerman, of Terre Haute, who had confessed providing money for the manufacture of liquor sold to the two lodges, was sentenced to jail for eight months and fined $300, and Peter Zopels, who had pleaded guilty of having provided liquor for the lodges, was sentenced to jail for six months and fined $300.

THE GARY (IND.) CONSPIRACY CASE

One of the most sensational trials in the State of Indiana since the effective date of the national prohibition act was held in the United States District Court of Indianapolis, as a result of a conspiracy to violate the national prohibition act on the part of prominent officers and other persons of Gary. Seventy-five persons were indicted and 55 were convicted March 31, 1923, including Rowell C. Johnson, mayor, William M. Dunn, judge of the city court, a local attorney, prosecuting attorneys, a former sheriff, police officers, deputy sheriffs, bootleggers, and soft drink proprietors. On April 28, 1923, sentences were imposed, the mayor being fined $2,000 and sentenced to 18 months in the United States penitentiary at Atlanta. The city judge was fined $1,000 and sentenced to one year and one day in the Federal penitentiary. The others received fines ranging from $100 to $1,000 and sentences ranging from one day in jail to one year and one day in the United States penitentiary at Atlanta. The case was one of the most important in the history of prohibition enforcement and stands out as an example of prosecution of prominent men having official positions.

Pennsylvania.—In the case of United States against Isaac Lipschutz, a former permit holder in Philadelphia, Pa., a seizure of intoxicating liquors, valued at approximately $100,000, was made after the commission of violations of the law by this permit holder. Although a motion was granted by the court suppressing the evidence in this case, a libel for the forfeiture of the liquor was filed. This libel proceeding was tried in February, 1924, and a representative of this unit, at the request of the United States attorney, assisted in the trial. Upon the closing of the argument, the Government's brief, at the request of the United States attorney, was prepared by the representative of the Prohibition Unit, and the liquors were subsequently forfeited to the United States and ordered destroyed.

Pennsylvania.—In February, 1924, Herman Plotnick and Patrick Kelly were sentenced to four months' imprisonment and a $500 fine each for conspiracy to obstruct justice by endeavoring to influence a Government officer to falsely testify before a grand jury in a prohibition case. This case was worked up exclusively by prohibition agents, and in addition, the indictments were drawn by a representative of this office at the request of one of the assistant United States attorneys in Philadelphia, and a representative of this office assisted in the trial of the case.

West Virginia.—Joe Freeman convicted January 20, 1925, for illicit distilling of liquor. Freeman sentenced to two years in Atlanta. Case made by prohibition agents under the Federal prohibition director at Charleston, W. Va.

Arkansas.—Willie Grisham convicted January 30, 1925, for illicit distilling; sentenced to one year and a day in Atlanta on plea of guilty. Case made by prohibition agents under the prohibition director at Little Rock, Ark., cooperating with State police.

Washington.—William Worsham and Frank Vale sentenced January 26, 1925, to 18 months each in McNeil Island Penitentiary for conspiracy to violate the national prohibition act. Evidence obtained exclusively by prohibition agents operating under the Federal prohibition director at Seattle, Wash.

Arizona.—Walter Smith sentenced November 12, 1924, to one year and one day in Leavenworth for violating the national prohibition act. Evidence obtained by prohibition agents operating under the Federal prohibition director at Phoenix, Ariz.

Ohio.—On February 4, 1925, John and Steve Seaman were each sentenced to serve 21 months in Atlanta for violation of the national prohibition act. Case made jointly by Federal prohibition agents under the prohibition director at Columbus, Ohio, and the deputy United States marshal.

West Virginia.—Ed. Saunders sentenced January 14, 1925, to 18 months in Atlanta for violating the national prohibition act. Evidence obtained by prohibition agents under the prohibition director at Charleston, W. Va., in cooperation with State police.

Illinois.—P. D. Pinkussohn and Joseph Wurtzburg convicted of conspiracy to violate the national prohibition act. Pinkussohn sentenced December 30, 1924, to two years in Leavenworth. Evidence procured jointly by general prohibition agents under the divisional chief at Chicago, special agents of the Special Intelligence Unit of the Treasury Department, and officers of the Chicago police department.

Ohio.—On January 12, 1925, Thomas McGinty, Joseph McGinty, John Farry, Mike Whitman, and six other defendants pleaded guilty of conspiracy to violate the national prohibition act and were given sentences ranging from 60 days to 18 months in the Atlanta Penitentiary and fines ranging from $300 to $8,300 each. Evidence in this case was procured by prohibition agents operating under the divisional chief of general prohibition agents at Cleveland, Ohio.

Washington.—The liquor-smuggling conspiracy case of Roy Olmstead et al., in the State of Washington, was worked up by Federal Prohibition Director Roy C. Lyle, of that State, investigations having been carried on for more than two years. Numerous agents were constantly engaged in tracking the conspirators. Indictments were returned in this case against Olmstead and 89 others. This is believed to be the largest number ever indicted in any single liquor case in any court in the United States. (Docket 9165, Roy Olmstead et al., northern division, western district of Washington, January 19, 1925.)

California.—The case of United States *v.* Alexander B. Stewart, tried in Los Angeles, Calif., docket 6552, is considered one of the largest conspiracy cases in the West. On February 14, 1925, Alexander B. Stewart, Claude V. Dudrey, Oscar Lund, Larry Talbot, Lewis E. Dudrey, W. E. Knowlton, Frank Kobota, and others, after conviction, were sentenced in some cases to as much as two years in the Federal penitentiary and fined as high as $7,500. This case was investigated by prohibition agents operating under the Federal prohibition director for the State of California.

Oregon.—In the Portland (Oreg.) court, docket No. 10878, a case is pending against Oscar Lund et al., who are charged with conspiracy to violate the national prohibition act. In this case two large boats and a Reo speeed truck were seized from the defendants while being used for the transportation of illicit liquors. Defendant Oscar Lund in this case is the same man who is charged in the Alexander B. Stewart case, California.

Kentucky.—Fred Betts sentenced October 26, 1922, to two years in the penitentiary and a fine of $10,000 for conspiracy to violate the national prohibition act. Case made by prohibition agents operating under Federal prohibition director.

IMPORTANT CRIMINAL CASES DEVELOPED BY BUREAU AGENCIES

Burks Springs Distillery, Kentucky (Ernest A. Brady, Lawrence Howard, Virgil Morton). Reported by collector and divisional chief for conspiracy to remove bonded liquors from distillery warehouse. Each defendant convicted and sentenced to two years' imprisonment and fined $10,000.

Hoover & Moore Distillery, Pennsylvania. Criminal case developed by general agents and State forces. Charges involved diversion of large quantity whisky withdrawn from distillery free warehouse. J. T. Hoover, proprietor distillery, convicted in State court, fined $2,000, and given 18 months' imprisonment.

Krogman Distillery, Indiana. Case developed by general agents exclusively. Offense charged illegal diversion intoxicating liquor from distillery warehouse. Krogman, distiller, convicted, sentenced two years' imprisonment and fined $2,000, and 17 coconspirators received sentences varying from four months to one year and one day imprisonment.

Suffolk Export Co., Massachusetts. Case developed by collector's office and general agents. Frank E. Bell, president, convicted and fined $2,000 on

account of illegal diversion and redistillation large quantities denatured alcohol. Two other defendants were fined $1,500 and $1,000, respectively. Civil liability compromised in the amount of $35,000.

Hammond Distilling Co., Indiana. Case developed by collector's office and general agents. Angelo Provenzano pleaded guilty and was fined $1,500 on charge involving illegal transportation of whisky from distillery premises.

New Hellam Distilling Co., Pennsylvania. Charges involve conspiracy to remove liquors from bonded distillery. Alfred Grossman and Benjamin Mundis fined $500 each. Michael Fox, Charles Hudson, William Shea, Joseph Kelly, Larry Gillen, William Brown, and William Barrett fined $250 each. Case developed by collector's office and special intelligence agents.

Cyco Medicine Co., Illinois. Case developed exclusively by general agents. Corporation and nine individual members or employees indicted for conspiracy to divert to beverage purposes whiskey withdrawn under manufacturer's permit. Outcome of criminal trial not known at this time.

Banner Chemical Co., Ohio. Case developed by bureau agents. Charges involve illegal diversion intoxicating liquor withdrawn under permit. Two defendants convicted and fined $500 with imprisonment for two years, another defendant fined $5,000 with six months' imprisonment.

Auerbach Barber Supply Co., Ohio. Case developed by general agents and report charged large diversion alcohol withdrawn under manufacturer's permit. Louis Auerbach fined $10,000 and two years' imprisonment, Federal prison, additional punishment in State prison. Similar sentence for Abe Auerbach; defendant Limbert given two years Federal prison and fined $250; also sentenced in additional count State prison; defendant Cohen sentenced one year eight months Federal prison and fined $250; defendant Moss similar sentence.

General Bonded Warehouse No. 2, Pennsylvania. Case developed by collector's office, general agents, and Special Intelligence Unit. Charges involve illegal removal whisky from bonded warehouse. Joyce, proprietor, Donohue, Carson, Shiffer, Brown, and Lauder indicted. Criminal case still pending.

Hens W. Haverman, Andrew M. Freiman, Albert Ross (case of the National Products Co.), Detroit, Mich. Violation section 3, Title II, national prohibition act.

Morris Orsatti, J. R. Johnson, Los Angeles, Calif. Bribery of national prohibition agent. Suit filed June 15, 1923. Verdict guilty, November 1, 1923. Sentenced, $21,000 and 20 years in penitentiary.

Ike Alvarez and 62 other defendants, Indianapolis, Ind. Violation section 37, Criminal Code, national prohibition act. Sentenced, $16,700 and 22 years 5 months 27 days.

James F. Daves, Mobile, Ala., violation section 39, Criminal Code. Bribery of national prohibition officer. Plead guilty. Sentenced August 22, 1924, to one year and one day in Atlanta Penitentiary.

Thomas C. Dews, Birmingham, Ala., violation section 32, Penal Code. Impersonating national prohibition officer. Verdict guilty, Febraury 22, 1924. Sentenced, 15 months in United States penitentiary, Atlanta.

Robert L. Holcombe and 71 other defendants, Mobile, Ala. Conspiracy, section 37, Criminal Code, national prohibition act. Sentenced July 7, 1924. Total, 11 years 6 months 4 days in penitentiary, $150, and 1 year 3 months in jail.

Lewis Abramson, John Johnson, Hartman Archer, Catlettsburg, Ky. Violation section 37, Criminal Code. Conspiracy to violate national prohibition act. Verdict guilty as to Abramson and Johnson. Sentenced June 6, 1923. Total, two years and two days in United States penitentiary.

Thomas C. Barnes, James Upton, John Upton, and Harley Cook, Frankfort, Ky. Violation section 37, Criminal Code national prohibition act. Barnes sentenced to two years in penitentiary.

Fred Betz, Covington, Ky. Violation section 37, Criminal Code, national prohibition act. Sentenced November 7, 1924. Total, two years in penitentiary and $10,000.

Morris Zevin, alias Sevin, Isaac Caplin, Irving Royack, H. Heller, John Doe, Albert E. Bennett, and Bernard R. Rumps, Chicago, Ill. Violating section 37, Criminal Code, national prohibition act. Suit filed October 24, 1924.

Albert S. Zwick, Lillian Zwick, Benjamin Black, Warren E. McCrary, Thomas E. Griffiths, and Adolph Martin Swanson, Chicago, Ill. Section 37, Criminal Code, national prohibition act. All defendants entered pleas of not guilty September 16, 1924.

Hugo Weiss, Milton Fox, Robert Frabini, Edward P. Croeninger, Theodore Weiss, James Van Natta, Daniel Lichterman, Harold H. Stamps, and Carl M. Henrews, Chicago, Ill. Violating section 37, Criminal Code, national prohibition act. Conspiracy to violate sections 6 and 29, national prohibition act. Suit instituted December 4, 1922. Pending.

John F. Downs, Le Roy Davis, Jacob Klein, and Louis Stack, Trenton, N. J. Conspiracy to ask for and accept bribe. Section 36, Criminal Code. Sentenced. Verdict guilty on all counts as to Downs, Klein, and Stack. Total sentences, $25,000 and five years in penitentiary.

John L. Nounces, Jack Komiskie, and ——— Landi, Galveston, Tex. July 15, 1924, verdict guilty as to Komiskie and Landi; not guilty as to Nounces. Komiskie sentenced, $10,000 fine and 90 days in jail on counts 2 and 3. Landi sentenced 1 year and 1 day in penitentiary.

Arthur Livingston, Philip Livingston, Alberta Livingston, Theodore Glover, Arthur Fields, Carl Drake, Louis Bennett, and Penfield Smith, Charleston, S. C. Sentenced June 13, 1923. Verdict guilty as to Arthur Livingston, L. S. Drake, Arthur Fields. Continued remaining. Total sentences, $1,200 and 18 months in penitentiary and four months in jail.

David Montgomery and David L. Potts, Greenville, S. C. Sentenced October 7, 1924. Verdict guilty, David Potts. Transferred, David Montgomery. Five years in penitentiary.

Bryant Raines, Luther Courley, and Jackson McMartie, Nashville, Tenn. Verdict guilty. Sentenced November 15, 1924. Judgment reserved as to Courley and McMartie. Five years in penitentiary and one-third costs.

Joe Robillo, Andrew Wallace, Robert Berryman, and Cyril Oursler, Memphis, Tenn. Verdict guilty. Sentenced January 25, 1924. Eighteen months in penitentiary as to each.

James Mallory Wood, Portland, Oreg. Plea guilty; section 32, Penal Code. Sentenced, October 9, 1924, three years McNeil Island.

James Downey, Nick Radvinski, John Radvinski, Michael Olaa, John Murin, Michael Herga, Stephen Kender, Frank Kender alias "The Slim Kid," and "Buddy," Dayton, Ohio. Pleas guilty. Sentenced January 23, 1924, 3 years, 5 months, 60 days, 2 hours in penitentiary; $3,000.

Herman Joelson, Jake Tarchious, and Nathan Lubitsky, Toledo, Ohio. Verdicts guilty. Sentenced April 23, 1923. Joelson and Tarchious, two years in reformatory; $400 each; Lubitsky, two years in penitentiary, three months in jail; $800.

Joseph Kanary, William Kramer, O. Gardner, and Fred Miller, Toledo, Ohio. Pleas guilty. Sentenced June 11, 1924, $5,800, and four years and three months in jail.

George R. Landen, Sidney H. Miller, and Otto Katz, Cincinnati, Ohio. Verdicts guilty. Sentenced February 15, 1923, $5,000 and one-third costs each.

Philip Miller, Jake Greenberg, and W. Jasak, Toledo, Ohio. Plea guilty Jasak. Verdict guilty, Miller and Greenberg. Sentenced June 19, 1923, $18,200, and 13 years and 6 months in penitentiary.

Benjamin Vail, Minneapolis, Minn. Verdict guilty. Sentenced October 29, 1924, $2,000 and five years in penitentiary.

Isadore Goldberger, Wilmington, Del. Verdict guilty. Sentenced July 18, 1924, three years and three months hard labor in penitentiary.

Berty Reynolds, George Pabst, and Ella Shultz, Council Bluffs, Iowa. Verdict guilty, Pabst and Shultz. Total sentence for Pabst and Shultz, $3,500 and two years in penitentiary. Sentenced October 31, 1924.

Cornelius M. Bailey and Cernon C. McManigal, Omaha, Nebr. Plea guilty. Sentenced July 3, 1924, $20,000 and four years in penitentiary.

William J. Furlong, Omaha, Nebr. Verdict guilty. Sentenced July 22, 1924, $1,500 and four years and 3 days in penitentiary.

Rudolph J. Kreifels, William E. Welter, and James Griffin, Lincoln, Nebr. Sentenced October 13, 1923. Verdict not guilty, Griffin. Verdict guilty, Kreifels and Welter. $2,000 and one year and one day in penitentiary, 30 days in jail.

Charles Mitchell, Edith Brown, and Alice Ennis, Omaha, Nebr. Sentenced July 3, 1924. Verdict not guilty as to Edith Brown; verdict guilty as to Mitchell and Ennis; $900 and four years and six months in jail.

Charles Murray and Ray Latham, Lincoln, Nebr. Sentenced December 30, 1922. Plea guilty. Eighteen months in penitentiary as to each.

Sam Nastisl, Omaha, Nebr. Sentenced July 10, 1924. Plea, guilty; $1,000 and two years and two days in penitentiary.

John Ruffino, Omaha, Nebr. Sentenced July 3, 1924. Plea, guilty; $500 and three years in penitentiary.

John Stathas, Omaha, Nebr. Sentenced July 3, 1924. Plea, guilty; $20,000 and four years in penitentiary.

Gurley Harrison and Earley Harrison, Greeneville, S. C. Sentenced October 7, 1924. Plea, guilty. Four and one-half years in penitentiary for Gurley Harrison and $300 and five months for Earley Harrison.

David Albert and Arthur Damour, Portland, Me. Violation section 37, Penal Code, conspiracy to sell intoxicating liquor, national prohibition act. April 16, 1924, verdict guilty. Total, two years and two days penitentiary.

Harry F. Burpee, Charles A. Haycock, Hugo Sachs, Mina Sachs, and Bernard J. Plunkett, Bangor, Me. Violation section 37, Penal Code. Conspiracy to violate national prohibition act and tariff act of 1922 by transporting and importing large quantity of intoxicating liquor unlawfully. July 22, 1924, nol pros as to Mina Sachs upon request of attorney. Others plead guilty July 23, 1924. Total, $20,000 fines.

Albert Gowen, William McInnes, Raymond McPhee, Charles McPhee, Lewis Frances, Thomas Powers, Alton Carr, John Peterson, and Vincent Reardon, Portland, Me. Violation section 37, Penal Code. Conspiracy to violate national prohibition act and tariff act by selling, transporting, and importing liquor unlawfully. September 20, 1924, plead guilty. Nol pros as to Thomas Powers. Total of sentences, $5,500 and four years and four days penitentiary.

Edmund W. Grant, Willard S. Lewin, and Guy E. Crosby, Bangor, Me. Violation section 37, Penal Code. Conspiracy to violate section 3, Title II, of national prohibition act. January 1, 1924, verdict guilty. Nol pros as to Guy E. Crosby. Total of sentences, four years penitentiary.

Germania Beverage Co. and John Kazmaier, Pittsburgh, Pa. Violation national prohibition act. Manufacturing beer; possession beer; deliver beer; maintain nuisance. June 23, 1923, plead nolo contendere. Total of sentences, $4,200 fines.

Keystone Brewing Co., a corporation, Michael J. Dempsey, William W. Walsh, and William Flicker, Scranton, Pa. Violation section 25, Title II. Libel of seizure, confiscation, and condemnation, national prohibition act. September 3, 1924, judgment in contempt. Total, $2,000 and six months. Three other cases pending, in one of which there is a $2,000 fine.

Atlas Brewing Co., a corporation, Thomas C. Bridgeman (deceased), Buy Wyckoff, J. B. Robbins (deceased), Stephen Michnick, John Krason, Chicago, Ill. Violation of sections 3 and 6, Title II, and section 15, Title II, national prohibition act, to evade tax on alcohol. Suit filed. Pending September 23, 1924.

Banner Products Co., Frank J. Hinkemp, Frank W. Willenbrink, Frank P. Decker, Chicago, Ill. Section 21, national prohibition act. Pending.

Beach Pharmacy, a corporation, Samuel Schullman, Mathew M. Dartt, Chicago, Ill. Section 3, Title II, national prohibition act. December 29, 1923. Pending.

John S. Bielfeldt Brewing Co., a corporation, Henry Detmer, Edward Graf, Conrad Biehl, George Westfall, William Kecter, Chicago, Ill. Violation of sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Plea of guilty by Bielfeldt Brewing Co., Biehl; Kecter, Graf, Detmer, and Westfall nolle-pros. Bielfeldt Brewing Co., $2,000 fine; Graf and Kecter, each $400 fine; Biehl, $100 fine. Two other cases against these defendants.

Chicago Heights Beverage Co., a corporation, James Ward, Richard Seeley, Central Trust Co. of Illinois, Chicago, Ill. Section 21, national prohibition act. Suit filed November 12, 1923.

Tom Wenslow, East St. Louis, Ill. Violation of sections 3 and 25, national prohibition act. Verdict, guilty, January 25, 1921. Sentenced to 15 months in penitentiary and $3,000 fine.

Henry Fay, William Reushal, Walter Wilkins, Alfredo Cannaci, Burlington, Vt. Violation of section 3, Title II, national prohibition act. Pleas of guilty by each March 21, 1922. Each fined $1,500; total, $6,000.

Romeo E. Cadieux, Burlington, Vt. Violation section 3, Title II, national prohibition act. Fined $1,000 on April 19, 1923.

Nicki Calchunnic, Albany, N. Y. Section 3, Title II, national prohibition act (second offense). Sentenced June 28, 1923. Plead guilty. $3,000 and 30 days in jail.

Sam Margolies, James J. Fowler, Leigh McPeake, Louis Friedman, Edward Moore, Detroit, Mich. Violation of sections 3 to 6, Title II, national prohibition act. McPeak and Friedman plead guilty and each fined $1,000 or 30 days in house of correction. Nolle-prossed as to Margolies. Moore plead guilty; 30 days in house of correction.

John Brown, Asheville, N. C. Violation, possessing, retailing, and nuisance, national prohibition act. Verdict, guilty. November 16, 1923, sentenced (second offense) to five years in penitentiary and $200 fine.

Farris King, Asheville, N. C. Violation of section 29, national prohibition act. (Second offense.) Verdict guilty. November 16, 1923, sentenced to five years in penitentiary and fined $200.

George Smith, Asheville, N. C. Violation of section 29, national prohibition act. (Second offense.) Plead guilty November 16, 1923. Sentenced to five years in penitentiary and fined $200.

Arthur Brown, Burlington, Vt. Violation of section 3, national prohibition act. Plead guilty November 9, 1923. Fined $1,000; paid.

Isaac Miller, Lexington, Ky. Violation of national prohibition act, possession. (Third offense.) Verdict, guilty, January 18, 1924. Sentenced to one year one day in penitentiary and $20,000 fine. Order entered February 23, 1924, changing sentence to two years and $7,500 fine.

Grover Smith, E. W. Gregory, Greenville, S. C. Violation of sections 3, 6, 29, 33 national prohibition act. Plead guilty April 5, 1924. Sentenced to one year one day in penitentiary and $2,000 fine for E. W. Gregory. Grover Smith transferred to contingent docket.

Alfred Rogers, Utica, N. Y. Violation of section 3, Title II, national prohibition act. Plead guilty April 17, 1924. Sentenced to 30 days in jail and $3,000; stand committed until paid.

Raffo Ballard, Sidney Clark, Louisville, Ky. Sections 3 and 25, national prohibition act. Each plead guilty. February 19, 1924. Ballard, $750 and 60 days in jail; Clark $1,000 and 60 days in jail; total, $1,750 and 120 days in jail.

J. R. Souza, San Francisco, Calif. Sections 3 and 25, national prohibition act. Verdict, guilty, April 9, 1924. Sentenced to one year in jail and $1,000.

James Greenan, San Francisco, Calif. Violation of sections 3, 21, and 25, national prohibition act. Defendant sentenced April 23, 1924, to 18 months in jail and $1,000.

Joseph McFadden, Edward J. Nicholson, Richard Morgan, Edward Newton, Barney Kechel, Tom McQuire, Jack Upton, Danville, Ill. Violation of sections 3 and 21, Title II, national prohibition act. Verdict, guilty, March 22, 1924, as to each defendant. Sentenced to a total of $8,500 and 5 years in jail.

Pruitt Lee, Greenville, S. C. Violation of sections 3, 6, 25, and 29, national prohibition act. Jury trial April 16, 1924. Sentenced to five years in penitentiary and $1,000 fine.

Victor Brewing Co., Pittsburgh, Pa. Violation, manufacturing, possession, and transportation of beer. Defendants plead guilty. Sentenced to $7,500 fine.

John Aiken, Little Rock, Ark. Violation of section 3, Title II, national prohibition act. (Second offense.) Plead guilty May 12, 1924. Sentenced to $1,000 fine and six months.

John C. Stafford, Baltimore, Md. Violation of sections 3, 25, and 29, national prohibition act. Suit filed September 28, 1923. Plea of guilty. Sentenced to two years in penitentiary and $200 fine and costs. Docket No. 5187.

John C. Stafford, Baltimore, Md. Violation of sections 3, 25, and 29, national prohibition act. Suit instituted November 2, 1923. Plea of guilty May 28, 1924. Sentenced to two years in penitentiary and $200 fine and costs. Docket No. 5366. Sentences to run concurrently, Nos. 5187 and 5366.

J. J. Mulcahy, Memphis, Tenn. Violation of national prohibition act. Plead guilty May 28, 1924. Sentenced to 90 days in jail and $1,000 fine and costs.

Thomas Brennan and Henry Mitchell, Cleveland, Ohio. Violation of national prohibition act; possessing, selling, and maintaining a nuisance. Brennan sentenced to four months in jail and $1,000 fine; Mitchell, 90 days in jail and $500 fine. Total, seven months in jail and $1,500 fines.

John Powell, alias Polesky, East St. Louis, Ill. Violation of section 21, national prohibition act. Verdict guilty. Sentenced to $1,500 fine and one year in jail.

J. Wysochi, Danville, Ill. Violation of sections 3 and 21 national prohibition act. Verdict, guilty, May 26, 1924. Sentenced to one year in jail and $3,000 fine.

John Welling, Leonard Bromback, Detroit, Mich. Violation of national prohibition act. Verdict, guilty, November 24, 1923. Welling, $1,000 and one year in Detroit House of Correction. Bromback, $1,000 and one year in Detroit House of Correction. Total, $2,000 and two years in house of correction.

Jesse A. Bradley, Raleigh, N. C. Violation of sections 3, 18, 21, 25, 26, 29, and 33. Verdict, guilty, June 18, 1924, as to selling and not guilty as to other counts. Sentenced to three years in penitentiary and $1,000 fine.

J. P. Sullivan, Prescott, Ariz. Violation of section 3, Title II, national prohibition act. Plead guilty. Auto ordered forfeited and sold. Sentenced to $1,000 fine.

Peter McDonough, Harry Rice, San Francisco, Calif. Violation of sections 3 and 21, national prohibition act. Verdict, guilty each defendant. McDonough sentenced to $1,000 and 18 months jail; Rice $1,000 and 18 months; total, $2,000 and 36 months in jail.

Mike Janiseski, Detroit, Mich. Violation of sections 6 and 21 national prohibition act. Docket Nos. 8405 and 8965. Plead guilty. Docket No. 8405, sentenced to pay a fine of $1,000; Docket No. 8965, sentenced to pay a fine of $2,000.

Julius Spanach, Jacob Gafke, Mary Gafka, Detroit, Mich. Violation of national prohibition act. Plead guilty November 16, 1923, as to Spanach. Nolle prossed as to other defendants. Spanach fined $1,000 and seven months in house of correction.

Pasquale Cirpriano, Cleveland, Ohio. Violation of section 3, national prohibition act and section 21. Plead guilty June 18, 1923. Sentenced to six months in jail and $1,000 fine.

John Ruffino, Omaha, Nebr. Violation, sale of intoxicating liquor (second offense), and possessing liquor (first offense). Defendant sentenced July 3, 1924, to three years in penitentiary and $500 fine.

William J. Furlong, Omaha, Nebr. Violation, sales of intoxicating liquor and common nuisance (second offense). Verdict guilty July 17, 1924. Sentenced one year one day in penitentiary and $1,500 fine.

Joe Strewder, Omaha, Nebr. Violation, sales of intoxicating liquor (second offense). Plead guilty July 8, 1924. Sentenced two years two days in penitentiary.

Charles Mitchell, Edith Brown, and Alice Ennis, Omaha, Nebr. Violation, sales, and possession intoxicating liquor and maintaining common nuisance. Verdict guilty July 3, 1924, as to Charles Mitchell on seven counts; Edith Brown discharged. Charles Mitchell sentenced to 30 days in jail and $500 fine; Alice Ennis sentenced to one year in jail and $400 fine.

Charles Miller and Jessie Miller, Omaha, Nebr. Violation, sales, and possession intoxicating liquor and possessing mash. Verdict guilty July 1, 1924. Sentenced. Fined $1,000 each, total $2,000.

John N. Wilson and Grace Wilson, Omaha, Nebr. Violation, sales, and possession intoxicating liquor and possessing mash. Verdict guilty July 3, 1924, as to Grace Wilson. John Wilson discharged. Grace Wilson sentenced 12 months in jail and $1,000 fine.

Nellie Brownlow, alias Marie Dalton, alias Lola Keyes, alias Clare Michael, Seattle, Wash. Violation sections 3 and 21 national prohibition act. Sentenced eight years women's reformatory and $4,500 fine.

Peter Hand Co., John F. Heuer, Joseph Watry, Harry P. Heuer, George Schlar, Eddie Grasso, and Elvin Heuer, Chicago, Ill. Violation sections 3, 6, and 21, Title II, national prohibition act. Pleas of guilty. Defendants John F and Harry Heuer dismissed. Total of sentences, $4,500 fines and $72.75 costs.

Clarence D. Woods, alias C. B. Woods, Chicago, Ill. Violation national prohibition act. Sentenced August 16, 1924, to three years in penitentiary and $3,600 fine.

Davis Montgomery and David L. Potts, Greenville, S. C. Violation sections 3, 6, 25, 29, national prohibition act. Verdict guilty. Case against Montgomery transferred to contingent docket. Potts sentenced to five years in United States penitentiary.

Gurley Harrison and Earley Harrison, Greenville, S. C. Violation sections 3, 6, 29, and 33, national prohibition act. Gurley Harrison sentenced to

four and one-half years United States penitentiary; Earley Harrison sentenced to five months or $500 fine.

Timothy Butler and James Crooks, Syracuse, N. Y. Violation section 3, Title II, national prohibition act. Dismissed as to Butler. Crooks sentenced to $3,000 and 30 days jail.

Camile Gamache, Wilfred De Greche, and William Siddon, Syracuse, N. Y. Violation section 3, Title II, national prohibition act, and section 37 Criminal Code, national prohibition act. Nolled as to Siddon. Gamache and De Greche sentenced. Total, $6,000 and four months jail.

Fred Schwartz, Asheville, N. C. Violation sections 23 and 25, national prohibition act (third offense). Verdict guilty. Sentenced to three years in United States penitentiary and $200 fine.

H. Albrecht Co., a corporation, East St. Louis, Ill. Violation sections 3-21, national prohibition act. Plead guilty November 10, 1924. Sentenced to $5,000 fine.

M. Fox, Columbia, S. C. Violation national prohibition act, possession and transporting. Plead guilty November 6, 1924. Sentenced to two years in penitentiary and $500 fine.

L. B. Shiver, Columbia, S. C. Violation of national prohibition act, manufacturing of liquor. Verdict guilty. Sentenced November 6, 1924, to two years and six months in United States penitentiary.

Alfred Stewart and J. W. Bynum, Anderson, S. C. Violation sections 3, 6, 25, and 29, national prohibition act. Verdict guilty. Sentenced. Stewart, five years United States penitentiary; J. W. Bynum, six months or $500 fine.

A. D. Carey and Cora Carey, Fort Worth, Tex. Violation sections 3, 6, 10, national prohibition act. Pleas of guilty (third offense). A. D. Carey, five years Leavenworth Penitentiary; Cora Carey, $1,000 fine.

Thomas Ventola and Lela Eaton, alias Alice Brown, Kansas City, Mo. Violation sections 3266, 3257, 3281, 3282 R. S. Verdict guilty May 12, 1924. Total of sentences, $6,000 and two years in penitentiary.

Frank Bond, Edna Bond, and Luther Tremble, Charleston, W. Va. Violation internal revenue laws. Illicit distilling. Luther Tremble plead guilty. Verdict guilty as to Frank and Edna Bond. Each defendant sentenced. Total, 21 years in penitentiary and $18,000 fine.

Tony Birnaco and Jim Costello. Defrauding Government of tax. Setting up still in or near dwelling, possession and manufacturing mash in place other than distillery. April 25, 1924, verdict guilty, first count; not guilty, counts 1 and 2. Property destroyed. Each sentenced $500 and two years in penitentiary. Total, $1,000 fine and four years in penitentiary.

Clark Cook, Huntington, W. Va. Violation internal revenue laws. Illicit distilling. Plead guilty September 19, 1924. Sentenced to three years in penitentiary.

W. H. Stewart, Huntington, W. Va. Illicit distilling. Plead guilty September 19, 1924. Sentenced to two years in penitentiary and $500 fine.

Isador Goldberger, Wilmington, Del. Having counterfeit revenue stamps in his possession. Verdict guilty July 15, 1924. Sentenced to three years and three months in Atlanta Penitentiary.

John Blando and Louis Presto, Kansas City, Mo. Violation sections 3257, 3281, 3282 R. S. May 27, 1924, Presto plead guilty. Nolled as to Blando. Sentenced, $2,000 fine and seven months in jail.

John Vella and Mrs. Joseph Rima. Violation sections 3266, 3257, 3281, 3282, R. S. Operating still. Verdict guilty as to each. Sentenced. Total, $6,000 fine and one year one day in penitentiary, six months in jail.

Vincent Locascio, Kansas City, Mo. Violation sections 3266, 3257, 3281, 3282, R. S. Plead guilty May 23, 1924. Sentenced to $2,100 fine and seven months in jail.

Joseph Wagner, Kansas City, Mo. Violation section 7, act March 3, 1897, and violation section 6076, United States Compiled Statutes. Possessing strip stamps. Verdict guilty, May 17, 1924. Sentenced to five years in penitentiary and $2,000 fine.

S. O. Rider, Scott Lusher, Catherine Lusher, and N. D. Payatts, Bluefield, W. Va. Illicit distilling. Each plead guilty June 18, 1924. Sentenced. Total of sentences, six years in penitentiary, 20 months in jail, and $1,500 fine.

Claut Neely and Grat Neely, Bluefield, W. Va. Illicit distilling. Verdict, guilty as to each. Sentenced. Total, 12 years in penitentiary and $2,600 fine.

Tony Ansulana, Kansas City, Kans. Violation sections 3266, 3257, 3281, 3282, R. S. Plea of guilty, June 16, 1924. Sentenced to $2,500 fine and seven months in jail.

Rocco Macchio, alias Roy Macchio, Seattle, Wash. Violation sections 3266, and 3281, R. S. Verdict guilty, May 28, 1924. Sentenced to eight months in jail and $1,000 fine.

Sam Degeorge, Omaha, Nebr. Violation sections 3257, 3282, and 3266, R. S. Verdict guilty, June 17, 1924. Sentenced to three years and three days in penitentiary and $2,000 fine.

Leopoldo Michelotti, Filidelfo Capelo, and Joe Turce, violation sections 3257, 3282, 3266, R. S. Omaha, Nebr. Sentenced July 3, 1924, as to Michelotti and Capelo. Total, eight years in penitentiary and $40,000 fine.

M. E. Huth, Walter B. Carey, Milton Lupschutz, Albert F. Slater, Hiram W. Benner, and John W. Langley, Covington, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Huth and Carey plead guilty. Lipschutt and Langley verdict guilty. Jury disagreed as to Slater. Sentenced to two years United States penitentiary each. Total, eight years penitentiary.

Joe J. Keith, Steeling Johnson, and John McCormack, Lexington, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Verdict guilty. Sentenced June 13, 1924. Total of sentences, five years United States penitentiary.

John Kloecker, Lexington Brewing Co., John J. Calvin, James Skain, Charles Wickline, Joe Dodson, and Theodore Lassig, Lexington, Ky. Violation section 37, Criminal Code, national prohibition act. Suit filed June 14, 1922. Sentenced January 19, 1923. Total of sentences, $8,700 fine.

D. L. Moore Distilling Co., Peter Bitzer, Edward H. Stickrod, Edgar Wallace, alias "Blondy," George A. Tenner, E. L. Ebster, and R. B. Reis, Covington, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Suit filed April 9, 1923. Conspiracy to transport liquor. Pending.

Ed. Raffel, Leon Fox, James Jones, Walter Ramsey, Chester Thicklin, Phillip Hecht, Jack Kitchner, J. H. Murphy, and G. S. McNeil, Catlettsburg, Ky. Section 37, Criminal Code, national prohibition act. Verdict guilty as to Raffel, Fox, and Jones; not guilty as to Murphy and McNeil. Sentenced June 6, 1923. Total of sentences, four years in penitentiary, six months in jail, and $7,500 fine.

Irvine Flood and Nathan Selzer, Frankfort, Ky. Violation of section 37, Penal Code. Conspiracy to possess and transport. September 22, 1924. Alias capias and continued as to Selzer (defendant Selzer sentenced to two years in penitentiary, Atlanta, and forfeited his appearance bond).

Robert Spillman and Reed Williams, Richmond, Ky. Conspiracy to possess and transport. Section 37, Criminal Code, national prohibition act. Verdict guilty, April 26, 1923. Sentenced two years in penitentiary each.

Raleigh Faulkner, Dewey Anderson, and Owen Jones, Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Not guilty as to Anderson. Verdict, guilty as to Faulkner. Faulkner sentenced to two years in penitentiary and $3.

Edward J. Hagan, Edward W. Pielow, Charles Andrew Gibbons, and Christopher Brown, Seattle, Wash. Conspiracy, national prohibition act, section 37, Criminal Code. Verdict, guilty as to Hagan, Pielow, and Gibbons. Not guilty as to Brown. Hagan and Pielow, two years at McNeil Island, hard labor; Gibbons, six months in jail.

Cline Ledgerwood, Thomas Barker, J. Guy Dungan, Jesse B. Cooke, R. F. Carpenter, LeRoy Powers, and John Woods, Spokane, Wash. Violation of section 37, Criminal Code, national prohibition act. Sentenced January 4, 1923. Total, two years and two days at McNeil Island and $2,000 fine.

Wilbur Lewis and Albert Serges, Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Verdict, guilty. Sentenced April 28, 1924. Total sentences, 30 months at McNeil Island.

Ernest A. (Buck) Brady, Lawrence Howard, and Virgil R. Morton (alias Martin, Covington, Ky. Conspiracy to possess and transport. Section 37, Criminal Code, national prohibition act. Verdict guilty as to each. Sentenced April 12, 1923. Total, six years in penitentiary and $30,000.

Dave Clark, Uberter Gritton, Pat O'Hara, Omer Kincaid, Theodore Turner, Lee Sartin, James W. (Bill) Drake, Jos. C. Barnes, James C. (Toppy) Rose, and Otis Ashurst, Lexington, Ky. Section 37, Criminal Code, national prohibition act. Verdict guilty as to Clark, O'Hara, Kincaid, Turner, Sartin, Drake,

and Rose. Not guilty as to Ashurst. Sentenced June 30, 1923. Each sentenced to two years in penitentiary; total, 14 years in United States penitentiary.

Charles Ewan, Covington, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Sentenced November 7, 1924, two years in penitentiary and $5,000.

Samuel Friedman, Max Morris, Arthur Johnson, Larry Odonthal, William Meyers, Charles G. Fisher, Charles Waiters, Jewell Lyttle, and A. B. Fisher, Covington, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Indicted April 3, 1923. Case still pending.

Isom Gillam, Charles Hutchinson, and Watt Johnson, Catlettsburg, Ky. Conspiracy. Section 37, Criminal Code, national prohibition act. Sentenced June 6, 1923. Gillam, two years in penitentiary; Hutchinson, two years in penitentiary; and Johnson, six months in jail.

Charles Brown and W. C. Buck, Toledo, Ohio. Violation of section 37, Criminal Code—conspiracy to violate national prohibition act. November 29, 1924, plead guilty. Sentenced each to 13 months in Atlanta Penitentiary.

Harry Collin, William Dillard, Charles Kamp, Henry St. Clair, John Cooper, Lawrence St. Clair, Roy O'Neil, Sylvester St. Clair, James P. Dailey, Sarah Dillard, "Clifton," and "Carl" (true names unknown), Cincinnati, Ohio. Violation of section 37, Criminal Code—conspiracy to violate national prohibition act. Plead guilty October 22, 1924. Sentences total $5,800 fines and 11 months 7 days in jail. (Harry Collins was sentenced to Atlanta Penitentiary, but report does not give length of term.)

Fred Heldeman, C. Glaviano, Johnny Cheevers, and Mitchell Tian, Galveston, Tex. Suit filed January 12, 1923. Violation of sections 3, 6, 25, Title II, national prohibition act, and section 37, Criminal Code. Verdict of guilty as to each defendant. Sentences totaled two years four months in penitentiary and $14,250.

Elton Apt, Arthur L. Curran, Ray Kirk, Isaac E. Martin, Benno Grauenbaum, Harvey Storms, and Manning Wilcox, Kansas City, Mo. Violation of section 37, Criminal Code—national prohibition act. December 15, 1924, Defendants Apt, Curran, Storms, and Wilcox fined $2,000 each and two years in penitentiary; total, eight years in penitentiary and $8,000. (Prohibition agents; three other dockets pending.)

Matt Kirchnopf, Minneapolis, Minn. Violation of national prohibition act. Sales. Section 37, Criminal Code. Suit filed December 20, 1924. Plead guilty. Sentenced to three years in Leavenworth Penitentiary.

Fred Schwartz, Asheville, N. C. Violation sections 23–25, national prohibition act. Verdict guilty. Sentenced November 14, 1924, three years in penitentiary and $200.

T. W. Simpson and David Graft, New Bern, N. C. Sentenced April 30, 1924. Verdict guilty. Section 65, Criminal Code. Total sentences, three years and two days in penitentiary.

Home City Beverage Co., a corporation: Julius Bossart, Robert C. Lowenthal, Fred M. Kramer, and Charles Anderson, Cincinnati, Ohio. Section 21, national prohibition act. December 20, 1924, order for temporary writ of injunction.

Cornelius M. Bailey and Vernon C. McManigal, Omaha, Nebr. Violation sections 3257, 3282, 3266, Revised Statutes. Sentenced, total, four years in penitentiary and $20,000.

Sam Nastisi, Omaha, Nebr. Violation sections 3257, 3282, 3266, Revised Statutes. Plead guilty July 10, 1924. Sentenced two years two days in penitentiary and $1,000 fine.

John Stathas, Omaha, Nebr. Violation sections 3257, 3282, 3266, Revised Statutes. Defendant sentenced July 3, 1924, to four years in penitentiary and $20,000 fine.

Ameda Hart and Jack Valoys, Syracuse, N. Y. Violation section 37, Criminal Code, and section 3, national prohibition act. Verdict guilty as to Hart. Sentenced to two years in penitentiary and $11,001. Dismissed as to Valoys.

Morris Orsatti and J. R. Johnson, Los Angeles, Calif. Violation section 39, Federal Penal Code, bribery of Federal officer. Verdict guilty. November 1, 1923. Orsatti fined $100 on each of 21 counts and 20 years McNells Island. Johnson sentenced three months in jail on each count and $5,000 fine.

L. C. Youmans, Savannah, Ga. Two indictments. Plead guilty. Docket No. 3482, two years in Atlanta Penitentiary. Docket No. 3388, two years in Atlanta Penitentiary.

Clarence J. O'Hearn, Davenport, Iowa. Violation section 240, Criminal Code, national prohibition act. Plead guilty April 24, 1924. Sentenced to pay a fine of $5,000 and costs.

Bertram P. Herzog, Milwaukee, Wis. Violation section 117, Criminal Code, national prohibition act. Suit filed June 24, 1921. Verdict guilty all counts, December 3, 1921. Sentenced to seven years in penitentiary and $16,000 fine.

John Bradshaw, Asheville, N. C. Violation section 65, Criminal Code, national prohibition act. Plead guilty November 15, 1924. Sentenced to two years in penitentiary.

Bryant Raines, Luther Courley, and Jackson McMertie, Nashville, Tenn. Violation section 65, Criminal Code. Verdict guilty November 14, 1924. Bryant Raines sentenced to five years in penitentiary and one-third costs. Judgment reserved as to the other defendants.

Albert S. Clair, St. Louis, Mo. Violation act March 3, 1897, use, sale, and possession of counterfeit strip stamps. Verdict guilty, November 18, 1924. Sentenced to two years in penitentiary and $100 fine.

John L. Nounces, Joe Vernell, Theodore Owen, Morris K. Ross, Joe Marrero, Tom Lera, and H. J. Kraiger, Galveston, Tex. Verdict guilty as to all defendants. Nounces sentenced to two years in penitentiary and $5,000; Vernell sentenced to six months and $5,000.

Windber Products Co., a corporation; John M. Gastmann, Herman J. Wildman, and John L. Simler, Pittsburgh, Pa. Manufacturing and removing beer on December 9, 1922, and March, 1923, possession and transportation of beer and maintaining a nuisance on March 9, 1923. Plead guilty October 20, 1923. Sentenced, total, $2,200 fines.

J. W. Johnson, W. H. Lawless, and Paul Lawless, Carson City, Nev. Section 37, Criminal Code, and 3258, 3281, Revised Statutes. Conspiracy to violate national prohibition act. Plead guilty October 2, 1924. Total of sentences, $1,000 and one year and four months in jail.

Lee Rickman, Louis Svec, Jack Wirt, T. J. Grant, and W. L. Hacker, Carson City, Nev. Violated section 37, Penal Code. Conspiracy, national prohibition act. Sentenced August 13, 1924. Total of sentences, $3,200 and 5 years and 10 months in jail.

R. J. Wheat, Carson City, Nev. Violated section 135, Federal Criminal Code. Intimidating witness on national prohibition act case October 25, 1924. Verdict guilty. Sentenced to one year in jail and $500 fine.

George Ford and 28 other defendants, San Francisco, Calif. Violated section 37, Criminal Code. Suit filed November 13, 1924. Each gave bail. Anderson forfeited to United States his bail of $10,000. Case pending.

Charles M. Shelton, Keller Johnson, and Jeff Johnson. Indicted January 15, 1924. Violation section 37, Penal Code, and national prohibition act. Verdict guilty as to all. Sentenced to two years each, Atlanta Penitentiary.

E. A. Edenfield, B. P. Walker, R. L. Warren, and Sam E. Evans. Indictment November 13, 1924. Verdict guilty as to Edenfield; four years United States penitentiary (two dockets on Edenfield; each four years penitentiary).

Frank Jeff Green, Arthur Wilson, Julian Beech, Carey B. Davis, Homer V. Evans, Ed Theus, C. E. Hardwick, Richard Sullivan, and Roosevelt Smith. December 5, 1923, indictment, conspiracy to violate national prohibition act. Verdict guilty as to each. Evans two years penitentiary and fine of $10,000. Hardwick three months and $500 fine.

Frederick H. Haar, sr., Frederick H. Haar, jr., Carl Haar, Johnny Harris, Cleve A. Ellis, Charles Barbour, Buck Walker, Charles Mell, Alfonso Irwin, and William Haar. August 16, 1923, indictment, conspiracy to violate national prohibition act. Sentenced to 7 years and 11 months and fined $35,000.

Sam Russo and John Pellegrini. October 9, 1924. Violation section 39, Penal Code, national prohibition act, and internal revenue. St. Louis, Mo. Verdict guilty as to each; $2,000 fine and five years in penitentiary.

Stanley Cheblak, Grand Rapids, Mich. June 5, 1924, indictment, violation national prohibition act. Verdict guilty. Sentenced to three years in Leavenworth Penitentiary and $200 fine.

William Margoles, Grand Rapids, Mich. October 5, 1923, indictment, verdict guilty; sentenced to three years in Leavenworth Penitentiary and $200 fine.

Harry Megdoli and Edward B. Patterson, jr., Grand Rapids, Mich. March 6, 1924, indictment, violation section 37, Penal Code; conspiracy to violate national prohibition act. Each plead guilty; each sentenced to two years in Leavenworth Penitentiary.

Mount Clemens Beverage Co., George Cudworth, John F. Frieman, Percy Walker, and John Silhavy, Grand Rapids, Mich. June 17, 1923, indictment, violation of sections 3–21, Title II, national prohibition act. Each plead guilty. Sentenced, $800 fines.

Philip Peterson, Grand Rapids, Mich. June 5, 1924, indictment, national prohibition act. Plead guilty; sentenced to three years in Leavenworth Penitentiary and fined $200.

Delano R. Shamp, Grand Rapids, Mich. November 10, 1923, indictment, violation section 97, Penal Code, and section 85, national prohibition act. Verdict guilty. Sentenced to two years in penitentiary.

John Wozinski and Stanley Cheblak, Michigan. June 5, 1924, indictment, violation section 37, conspiracy to violate national prohibition act. Verdict guilty as to each defendant. Each sentenced to two years in Leavenworth Penitentiary; total, four years.

Ben S. Granger, George R. Canada, Archie Hamilton, Yock Adams, Jesse Dyson, Tom Cobb, W. H. Farrell, R. D. Thompson, James Miller, Bonyon Walter, Antonio Morales, Relphen Tibbetts, Charlie Bowden, and Dillar Bowden, Galveston, Tex. June 11, 1924, indictment, conspiracy to violate sections 436, 591, 593b, section 21, 1922, and the national prohibition act. Violation section 37, Penal Code of 1919. Verdict guilty as to seven of the defendants. Seven defendants sentenced to five years and five months in penitentiary and fined $16,000; others pending.

Camille Gamache, Wilfred De Greche, and William Siddon, Syracuse, N. Y. Violation of section 37, Criminal Code, sections 593–594. Conspiracy to violate national prohibition act. Possessing, transporting, and smuggling. De Greche and Gamache each plead guilty. De Greche sentenced to 30 days in jail and fined $6,000. Gamache sentenced to three months in penitentiary and fined $3,000. Siddon nolle prossed.

Richard Warner and Dorothy Swartout, Schenectady, N. Y. Violation of section 37 and section 3, Title II, national prohibition act. Indictment dismissed as to defendant Swartout. Warner pleads guilty. Sentenced to three years in United States Penitentiary, Atlanta, Ga., and fined $14,001 and stand committed until paid.

William Baugh et al., Indianapolis, Ind. Violation of section 37, Criminal Code. Conspiracy to violate national prohibition act. William and Harry Baugh, verdict not guilty; 6 years 3 months and 1 day and fine of $100 as to others.

John G. Crosland et al., Trenton, N. J. Violation of section 37, United States Criminal Code, and section 2865, Revised Statutes of the United States. Sentenced to two years in penitentiary at Atlanta, Ga., and fined $10,000.

John F. Downs, Leroy Davis, Jacob Klein, and Louis Stack. Conspiracy to ask for and accept bribe, section 36, Criminal Code. Verdict guilty as to all. Sentenced to six years in Atlanta Penitentiary and fined $30,000.

Edmund J. La Breque et al. Violation of section 37, Criminal Code, and section 3, Title II, national prohibition act. Bail fixed at $20,000; pending.

Peter Rulovitch and eight others. Violation of section 37, Criminal Code. Conspiracy to possess and transport and sell intoxicating liquors. Verdict guilty as to all. Sentenced to 26 years in Atlanta Penitentiary.

Richard Burrell and Lawrence J. Crowley, Chicago, Ill. Violation section 39, Criminal Code, offenses against operations of Government, and section 37, Criminal Code, conspiracy to violate national prohibition act and conspiracy to bribe Federal prohibition agent. Plea of guilty by each February 27, 1924. Sentenced to 12 months in house of correction and $20,000 fine and costs, $621.71.

Citizens Products Co., a corporation, Charles Hanley, Herman Busch, Marcus C. Maegerline, John Reardon, Alfred C. Murr, Henry Schul, and George Falturn, Chicago, Ill. Violation of sections 3 and 21, Title II, possessing, transporting, and manufacturing of intoxicating liquor and maintaining a common nuisance. March 6, 1924, verdict guilty as to corporation. March 8, 1924, fined $1,500. Not guilty as to individuals. Another case pending on these same defendants.

Elgin Ice & Beverage Co., James Sherwood, James E. Dunn, L. Lyons, Richard J. Burrell, and Lawrence J. Crowley, Chicago, Ill. Violation of sections 3, 21, and 25, Title II, national prohibition act, possessing, manufacturing, and delivering intoxicating liquor and maintaining a common nuisance. Plea

of guilty by corporation, Dunn, Burrell, and Crowley. Dismissed as to Sherwood and Lyons on motion of United States attorney. Sentenced February 28, 1924. Fines of $3,750 and $62.15 costs. There are other cases pending against these defendants.

Joliet Products Co., a corporation, William G. Rub, J. E. A'Hearn, George Cummings, Monard Schmelzer, Blas Kuglitsch, Anton J. Infeld, William O'Beil, and Fred Wagner, Chicago, Ill. Violation sections 3 and 21, Title II, national prohibition act, possessing, manufacturing, and transporting of intoxicating liquor. Plea guilty by all. Three defendants fined $2,700 and $71.40 costs. Six defendants dismissed. Other cases pending on these defendants.

James E. Ratliff, Charles H. Allwood, Otto W. Martin, and J. A. Patterson, Charleston, W. V. Verdict, guilty. Sentenced November 26, 1923. Five thousand dollar fine and two years in penitentiary each.

Charles Sabbatino and Ralph Sabbatino, Brooklyn, N. Y. Verdict, guilty. Sentenced June 14, 1923. Ten thousand dollars fine and two years in penitentiary each.

Benjamin S. Cohen, George Vladhovich, Thomas M. Quinlin, Will R. Chambers, Earl Radcliffe, alias Freeman Radcliffe, Vincent Sevetoch, alias Vincent Seventich, Nick Ursich, Vincent Festini, and Frank Ursalovich, Los Angeles, Calif. Defendants Cohen, Vladhovich, Quinlin, Chambers, and Ursich each plead guilty August 2, 1923. Each sentenced to $2,500 fine. Total, $10,000.

James A. Bushey, John A. Donder, and William G. Domer, Binghamton, N. Y. Domer acquitted. September 13, 1924, Bushey two years in penitentiary and $11,000 fine; Donder one year in penitentiary and $11,000 fine. Total, three years in penitentiary and $22,000 fine.

Samuel Goldberg, Charles Hamm, Tom Williams, and J. H. Thomas, Savannah, Ga. Verdict, guilty as to each. Sentenced December 12, 1923. Total of sentences, four years in penitentiary, three months in jail, and $20,500 fine.

Joseph Biener, alias "Joe," Cleveland, Ohio. Verdict, guilty. Sentenced March 20, 1923, to two years in penitentiary and $10,000 fine.

Eddie Drudzinski, Frank Marciniak, and Lee Drudzinski, Toledo, Ohio. Plea of guilty as to each. December 10, 1923, F. Sruizinski, two years in penitentiary and $5,000 fine; L. Drudzinski, 21 months in penitentiary and $2,500 fine.

Lawrence Allen, E. J. O'Neill, Harry Thompson, Joe Doe, and Richard Doe, Fresno, Calif. Verdict, guilty as to Allen, O'Neill, and Thompson. Each fined $10,000 and two years in penitentiary. Total, $40,000 and six years in penitentiary.

August J. Conigliaro, Salvatore Conigliari, Gregory Ventre, James Murphy, Frederick Munlenbruck, Louis Solomon, and Robert J. Dervin, New York City, N. Y. Verdict guilty. Sentenced April 14, 1924. Total, $19,000 and five years and seven months.

C. C. Collett, Fred Boust (alias Freddy Lane), W. E. Pike, John Doe, and Richard Roe, Fresno, Calif. Verdict guilty as to Collett, Boust, and Pike. Not guilty as to Morgan. Sentenced May 28, 1924. Each sentenced to two years in penitentiary and $10,000 fine.

Hugo Sarafino, Louis Fontana, Louis Pozzi, James Flynn, Charles Dolstrum, John Doe Van Diece (alias John Doe Devies), Andy Olson, Morris Tadeen, John Ferri, and John Polo (alias Rimer), Seattle, Wash. Violation of section 37, national prohibition act. Indictment filed June 12, 1924. Pending.

Tex Stafford, Ivan T. Scott, Dick Huey, Leo Davis, Walter Taylor, E. S. Bell (alias Richard Bell), and Tim Currie, Seattle, Wash. Section 37, Penal Code, national prohibition act. Scott and Curry plead guilty. Verdict guilty against Stafford, Taylor, and Bell. Sentenced August 4, 1924. Total of sentences imposed, 15 months at McNeil Island, $1,000 fine, and 12 months in jail.

Fred Wise and George Walthers, Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Verdict guilty as to Wise, April 2, 1924. Wise, 15 months at McNeil Island on count 1; 2 months in jail on count 2; 2 months in jail on count 5; and fined $250.

William E. Worsham, William Juneau, Frank Vale, Ed. R. Delaney, and Cleveland C. Converse, Seattle, Wash. Violation of section 37, Penal Code, national prohibition act. Suit filed March 25, 1924. Juneau and Converse discharged. Worsham, 18 months at McNeil Island and $500; Vale, 18 months at McNeil Island and $500.

Henry Albrecht, sr., Henry Albrecht, jr., Louis H. Oldenburg, Frank Ellis, and Thomas Maher, Danville, Ill. Violation of sections 3 to 21, Title II, na-

tional prohibition act. Verdict guilty. Sentenced March 31, 1924. Albrecht, senior and junior, and Maher, a total of three years in jail and $9,000 fine.

Pullman porters and conductors case, Chicago, Ill. Forty-four persons were involved, and indictments were returned charging conspiracy. Section 37, Criminal Code, national prohibition act, for illegal transportation of liquor on trains operated between New Orleans and Chicago. Thirty-two of these parties were successfully prosecuted in the Federal court.

Eddie Campbell et al., Peoria, Ill. Fourteen parties were involved. The records of this office show that they entered into a conspiracy at Crandall, Ill., by holding up and robbing a train by means of four automobile trucks and two automobile touring cars of 23 barrels and 25 cases of alcohol. As a result of close cooperation between this unit and the officers and agents of the railway company, 12 of the robbers were apprehended. The case is pending.

George Frank, Michael F. Sieben, William F. Sieben, Bernard F. Sieben, Theodore S. Sieben, Dean O'Bannion, John Terrio, the Sieben Corporation Brewery, known as "Frank" Brewery, and the Old Sieben Brewery, Chicago, Ill. Section 21, national prohibition act. Pending.

Irving S. Friedman, Louis Greenberg, Edward Prival, Morris Gerber, Albert E. Bennett, and Bernard R. Rumps, Chicago, Ill. Section 37, Criminal Code. Conspiracy. National prohibition act. Suit filed October 30, 1924.

Joe Gorman and Lillian Calhoun (entertainers café), Chicago, Ill. Sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code.

Nick Juffra, Joe Fusco, Joe Robilotta, Tony Espositto, Mike Loprasti, and Max Weisman, Chicago, Ill. Conspiracy. Section 37, Criminal Code. National prohibition act. Conspiring to violate section 3.

Frank Loveland, Morris J. Simansky, Sam Levin, Herman W. Leven, Albert E. Bennett, and Bernard R. Rumps, Chicago, Ill. Section 37, Penal Code. National prohibition act. Violation section 3. Suit filed October 24, 1924. October 28, 1924, pending.

Lawrence Allen, E. J. O'Neill, Harry Thompson, John Doe, and Richard Roe, Fresno, Calif. Violation of section 37, Federal Penal Code. Conspiracy to violate the national prohibition act. Verdict guilty as to Allen, O'Neill, and Thompson. Each of above defendants sentenced to two years in penitentiary and fined $10,000 each and to stand committed. May 22, 1924, six years in penitentiary and $30,000 fines.

Ben S. Cohen, George Vladhovich, Thomas M. Quinlin, Will P. Chambers, Earl Radcliffe (alias Freeman Radcliffe), Vincent Seventoch (alias Vincent Seventich), Nick Ursich, Vincent Festini, and Frank Ursalovich, Los Angeles, Calif. Violation of section 37, Federal Penal Code, and section 3082, Revised Statutes. Defendants Cohen, Vladhovich, Quinlin, Chambers, and Ursich each plead guilty. August 2, 1924, fines $12,500.

C. C. Collett, Fred Boust (alias Freddy Lane), W. E. Pike, John Doe, and Richard Doe (Harry Morgan), Fresno, Calif. Violation of section 37, Federal Penal Code. Conspiracy to violate national prohibition act. May 28, 1924, verdict guilty as to Collett, Boust, Pike; not guilty as to Morgan. Fines, $30,000, and six years in penitentiary.

George Ramey, Harry Schuttenhelm, John Doe, and Richard Roe, Fresno, Calif. Violation of section 37, Federal Penal Code. Conspiracy to violate national prohibition act. June 25, 1924, verdict, guilty as to Ramey and Schuttenhelm. Sentence, four years in penitentiary and $20,000 fines

Aurora Products & Ice Co., John S. Rich, Edward Scheal, Julius Hausman, Herman Mauser, Constantine Burgart, Frank Paul, and Harry De Miller, Chicago, Ill. Violation of sections 3, 6, and 21, Title II, possession, transporting, and manufacturing intoxicating liquor and maintaining a common nuisance. November 26, 1923, plea, guilty. November 27, 1923, fined $3,000 Aurora Products Co. and dismissed as to other defendants, and costs, $91.55.

August Pope, Henry Pope, Leo Pope, and Freda Pope, Pittsburgh, Pa. Section 37, Criminal Code, selling, having, and possessing intoxicating liquor and conspiracy. November 22, 1924, verdict, all defendants guilty. Total of sentences, $3,600 fines and 2 years and 11 months.

William Reilly, Harry Morris, William Phelin, R. C. Pond, Max Jacobs, Bert Whalen, Ray Sparks, and Leslie Miller, Pittsburgh, Pa. Sections 3268, 3296, Revised Statutes; section 37, Criminal Code; destroy locks of distillery warehouse; open locks, gain access to distillery warehouse; removed and aided in removing distilled spirits from warehouse; conspiracy. Nolle-pros as to Wil-

liam Reilly, Max Jacobs, Bert Whalen, and Leslie Miller. February 13, 1923, others plead guilty. Total of sentences, three years and $3.

Walter M. Townsend and Harry Smith (alias Cort Smith), Scranton, Pa. Violation of section 37, Penal Code. Conspiracy to rob the William Foust Distillery, York Pa., June 6, 1923. Plead guilty. Total of sentences, $5,100 fines and one year and one day in penitentiary.

Isreal Alpern, Sarah Alpern, Sam Chaperson, Norman Schekman, Jacob Weisberg, and Nels T. Nelson, St. Paul, Minn. Verdict, guilty. Sentenced January 5, 1924. Total sentences for all, $22,900 and five years six months two days in penitentiary.

Louis Barnett, Mose Barnett, Sam Lomberg, Joseph Rosenhause, Saul Rosenhause, Leo Glickman, J. L. Schwartz, and Meyer Brotski, Minneapolis, Minn. Plea guilty. Sentenced November 11, 1922. Glickman, Saul Rosenhause, Mose Barnett. Nolle, Louis Barnett, Sam Lomberg, Jos. Rosenhause, J. L. Schwartz, and Meyer Brotski. Sentences of each remaining, 18 months in penitentiary and $5,000.

Frank Crawford and Carl E. Hopkins, Minneapolis, Minn. Plea guilty. Sentenced October 20, 1924. Sentence, Crawford, two years and three months in jail. Sentence, Hopkins, $2,000 and three years and three days in penitentiary.

Martin O. Gerrick and Anton Rogman, Minneapolis, Minn. Sentenced October 30, 1924. Plea, guilty, Gerrick; nolle, Rogman. $2,000 and three years in penitentiary.

Peter M. Glader, Minneapolis, Minn. Plea, guilty. Sentenced October 23, 1924. $1,000 and three years in penitentiary.

Claut Neely and Grat Neely, Bluefield, W. Va. Verdict guilty. Sentenced June 21, 1924, $1,300 and six years in penitentiary as to each.

James E. Ratliff, Charles H. Allwood, Otto W. Martin, and J. A. Patterson, Charleston, W. Va. Plea guilty, Patterson. Verdict guilty, Allwood and Martin. Sentenced November 26, 1923, $5,000 and two years in penitentiary as to Allwood and Martin.

S. O. Rider, Scott Lusher, Catherine Lusher, and N. D. Payatts, Bluefield, W. Va. Plea guilty. Sentenced June 19, 1924, $1,500 and six years in penitentiary and one year and eight months in jail; total sentences.

Lydia Shrewsbury, M. A. Kesterson, and Mrs. M. A. Kesterson, Wheeling, W. Va. Verdict guilty. Sentenced November 5, 1924, $2,700 and one year and one day in jail as to Mrs. Kesterson and Lydia Shrewsbury.

Louis Ungerleider, alias Louis Stark, and Harold A. Hill, Wheeling, W. Va. Verdict guilty. Sentenced November 6, 1924. Total sentence, two years six months and one day in penitentiary.

Frank Bond, Edna Bond, and Luther Tremble, Charleston, W. Va. Plea guilty, Luther Tremble. Verdict guilty, Frank and Edna Bond. Luther Tremble and Frank Bond sentenced each seven years in penitentiary and $6,000; Edna Bond, seven years in reformatory and $6,000. Sentenced November 24, 1924.

Don Chafin, Huntington, W. Va. Verdict guilty. Sentenced October 14, 1924, $10,000 and two years in penitentiary.

Lyda Fisher, Edw. L. Cabell, and Robert Johnson, Charleston, W. Va. Plea guilty, Robert Johnson. Verdict guilty, Fisher and Cabell. Total sentences, $2,100 and four years in penitentiary. Sentenced April 23, 1924.

Harry Hoke and Rodney Hoke, Huntington, W. Va. Plea guilty. Sentenced September 19, 1924, 18 months in penitentiary as to each.

Walter McClung, Flossie Helms, S. F. Stanley, Huntington, W. Va. Plea guilty, McClung and Stanley. Total sentence for McClung and Stanley, three years and three months in penitentiary. Sentenced September 19, 1924.

Alfred Belcher, Huntington, W. Va. Verdict guilty. Sentenced September 28, 1923, $1,000 and six years in penitentiary.

Ed. J. Sindelar, Sam Stept, Ira Hollman, Isadore Course, Edward Hoffman, and Charley Goldberg, Cleveland, Ohio. Pleas of guilty. Sentenced April 17, 1923. Total sentences, $2,200 and four years seven months and one day.

F. A. Sainz, Raoul Teran, Ernesto Teran, Jose Delgado, Juaquin Canedo, Jack Lewis, Ignacio Sambrano, and Terese Talementes, Phoenix, Ariz. Verdict guilty. Delgado sentenced November 5, 1923, $1,000 and two years in penitentiary.

R. C. Valencia, Jesus Diaz, and Felesardo Flores, Tucson, Ariz. Verdict guilty, Valencia. Dismissed, Diaz and Flores. Sentenced March 10, 1923, 15 months in penitentiary.

George C. Martin, Hiram Block, Charles Foust, William A. Brosnan, Fred W. Bardeley, William Rozenberg, and Joseph Kochanski, Scranton, Pa. Pleas guilty. Sentenced June 12, 1924. Total sentences, $3,225.

Joseph Biener, alias Joe Biener, Cleveland Ohio. Verdict guilty. Sentenced March 20, 1923, $10,000 and two years in penitentiary.

Herbert E. Campbell, Joseph Dayton, and Harry B. Gilchrist, Columbus, Ohio. Plea guilty. Sentenced September 5, 1924, $1,825 and costs and 13 months in jail.

John G. Demas, Rudolph Hardin, and E. Hayner, Toledo, Ohio. Plea guilty. Demas sentenced October 5, 1923, two years in penitentiary and $7,500. Hayner's sentence vacated.

John G. Demas and John Croft, Toledo, Ohio. Plea guilty. Demas sentenced October 5, 1923, $6,000 and 21 months in penitentiary.

Joseph B. Diener, Louis Limbert, and Reuben Epstein, Cleveland, Ohio. Plea guilty. Sentenced December 12, 1922, $500 and one year and eight months in penitentiary each.

Edward F. Dixon, Gerhart W. Hettler, C. W. Hager, Peter Adams, Thomas Hine, A. J. Gecan, Pat. J. Scanlon, Joseph B. Shure, Joseph Munc, jr., Mike Roche, Dan O'Donnell, Leo Carlin (alias Frank Martell), Frank P. Sansbury, Thomas E. Coughlin, Frank J. Rudd, William J. Walzer, Carl Struass, Irving Levine (alias Bozo Levine), Herbert Mannie, and Bert Heath, Cleveland, Ohio. Pleas guilty by Dixon, Hettler, Hager, Shure, Munc, Roche, O'Donnell, Carlin, Sansbury, Coughlin, Rudd, Levine, and Hine. Verdicts guilty, Scanlon and Walzer. Verdict not guilty, Adams. Sentenced June 9, 1924, eight years, seven months, six days, and seven hours in penitentiary and $11,050.

Albert A. McCafferty, James E. Grove, Charles Brown, Ben Zelinsky, Joseph Barnes, John Bassett, William S. Bergner, James H. Fitzpatrick, Albert Williams, Barney Mack, and John McCann, Seattle, Wash. Violation section 37, Criminal Code, national prohibition act. Suit filed February 7, 1924. Pending.

Robert L. Otness, alias Robert Larson, Elmer Lenberg, alias Elmer Linderberg, alias Elmer L. Rugs, Lester B. King, Ernest W. Peterson, and John Bass, alias Jack Bass, Seattle, Wash. Violation section 37, Penal Code, conspiracy, national prohibition act. Lenberg and Otness plead guilty. Lenberg, 30 days in jail. Otness, one year and one day McNeils Island.

Vittoria Rossilini, alias Victor Rossilini, Frank Guisto, Giovanni Porcari, alias Lorenzo Pellicoiatti, Antone Lorenzo, John Rossi, George Stoetzer, alias Geo. Sheldon, G. Banacasta, and John Doe Hanover, Seattle, Wash. Violation section 37, Penal Code, national prohibition act. Suit filed April 30, 1924. Pending.

Neal C. Rowles, William Halpin, William D. Cleveland, Harry Day, and W. B. Hyman, Seattle, Wash. Violation section 37 Penal Code, national prohibition act. Dismissed as to Hyman, Day, and Cleveland. Rowles, 15 months McNeil Island.

Mrs. Mary Smith and Wacker & Birk Brewing Co., Chicago, Ill. Section 21, national prohibition act, December 14, 1923. Decree of permanent injunction; issued decree.

Standard Beverage Corporation, B. J. Bowman, Richard Curtiss, Terrance Drugan, and Ignatius Kremer, Chicago, Ill. Sections 3-25, national prohibition act. Suit filed February 5, 1924.

J. Wysochi, East St. Louis, Ill. Violation sections 3 and 21, Title II, national prohibition act. Verdict guilty May 26, 1924. Sentenced one year in jail and $2,000.

Fischback Brewery Co., Jacon Fischback, and John H. Fischback, St. Louis, Ill. Violation national prohibition act. Possession, manufacturing, and transporting. Suit filed May 9, 1924.

Harold L. Smith, Matthew F. Griffin, Herbert H. Simon, John M. McTamany, John Friedrich, Thos. Kane, Geo. I. Kheiralla, Andrew T. Hamilton, Louis H. Acton, Martin Levy, Joe Kleinman, Sam Gottesfeldt, and Louis Levy, Philadelphia, Pa. Violation section 37, Criminal Code. Comspiracy to defraud and to commit an offense against United States. June 13, 1924, verdict guilty. Total of sentences, 4 years 10 months and 1 day.

Victor Brewing Co., E. Nannini, J. F. Lutz, C. E. Sunder, C. Ventz, M. A. Nicholas, Frank Maddas, Jos. Frank, and Henry Stonebecker, Pittsburgh, Pa. Manufacturing, possession, and transporting beer. Violation national prohibition act. April 11, 1924, plead guilty. Total of sentences, $7,500 fines.

Westmoreland Brewing Co. (Inc.), Max Friedman, Henry Friedman, Jacob Roth, Maurice Friedman, Louis Brown, James Braun, Chas. Messner, Maurice Farkes, otherwise known as Morris Farkua, and Louis Farkas, Pittsburgh, Pa. Contempt of court sur violation of injunction. National prohibition act. March 2, 1923, sentenced. Total of sentences, $2,500 fine and 90 days.

Matt Hoffman and Joseph Lackmer (alias Joseph Blackmer), St. Paul, Minn. Verdict guilty. Sentenced June 5, 1924. Five hundred dollars fine and one year and five months as to each.

Nicholas A. Lahr, Fergus Falls, Minn. Plea guilty. Sentenced May 16, 1924. Six years in penitentiary.

Frank Manning and Roy Wilson (alias John Ryan), Minneapolis, Minn. Plea guilty. Sentenced October 15, 1924. Five thousand dollars fine and one year and one day in penitentiary each.

Harriet Petran, James Massa, John Lawrence, and Dorothy Woods, Minneapolis, Minn. Plea guilty. Sentenced October 15, 1924. Two thousand four hundred dollars fine and three years in penitentiary and six months in jail.

Mathias Pitsl, Norbert J. Pitsel, and George Gisch, Fergus Falls, Minn. Plea guilty. Sentenced May 9, 1924. Two thousand dollars fine and one year and seven months in jail.

Fred Tevick and Kate Tevick, Minneapolis, Minn. Plea guilty. Sentenced October 24, 1924. Total sentences, $1,400 and three years in penitentiary.

Thomas Madden and 43 other defendants, Chicago, Ill. Violation sections 3, 6, and 33, Title II, national prohibition act. Conspiring to possess, transport, and sell intoxicating liquor, and section 37, Criminal Code. Pleas guilty and verdicts guilty; 20 nol prossed. Fines one year, one day, and three hours, and $8,000. and $100.54 costs.

Puro Products Co., John Torris, W. R. Strook, and Timothy F. Mullen, Chicago, Ill. Violation sections 3, 6, and 21, Title II, national prohibition act. Possession, transporting, and manufacturing intoxicating liquor, and maintaining a common nuisance. Plea of guilty by each defendant November 1, 1923, sentenced to $5,000 fine. Another case against these defendants.

William A. Sadler and 21 other defendants, Chicago, Ill. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code. Conspiring to sell and transport intoxicating liquor. Eight defendants dismissed, five plead guilty and total fines $1,350. Pending as to the other nine defendants.

Ben Smith and 14 other defendants, Chicago, Ill. Violation section 3, Title II, national prohibition act. Section 37, Criminal Code. Possession and selling intoxicating liquor. Conspiracy to violate national prohibition act. Fourteen defendants plead not guilty. Case pending. Other cases on these defendants.

Star Union Brewing Co., a corporation, Henry Horner, Rudolph Bender, Marshall Koebel, Charles Link, and J. Holsinger (deceased), Chicago, Ill. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code, conspiring to manufacture, transport, and possession intoxicating liquor. Plea of guilty June 26, 1923. Sentenced. Fines, $1,350.

Edmund E. Walsh, sr., and Edmund E. Walsh, jr., Chicago, Ill. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code. Possession and sale intoxicating liquor. Plea guilty, October 17, 1923, senior and dismissed as to junior. Fine, $3,000 and $44.75 costs.

Joseph McFadden, Edward J. Nicholson, Richard Morgan, Edward Newton, Barney Kechel, Tom McQuire, and Jack Upton, Danville, Ill. Violation sections 3-21, national prohibition act. Nolled as to McFadden. Other defendants sentenced April 1, 1924, totaling five years in jail and $8,500 fine.

The Malt Maid Co. and Louis Herzon, et al., Chicago, Ill. Section 21, national prohibition act. Suit filed October 6, 1924.

Schlitz Brewing Co. and Jerry Morris, Chicago, Ill. Section 21, national prohibition act. Suit filed September 30, 1924.

Dean O'Bannion, Dan McCarthy, and Earl Weiss, Chicago, Ill. Section 37, national prohibition act. Unlawfully conspiring to possess, sell, and transport intoxicating liquor. Suit filed April 25, 1924.

Dean O'Bannion and 38 other defendants, Chicago, Ill. Violation sections 3 and 6, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Suit filed May 27, 1924.

Edward F. O'Brien (alias F. Murphy), David Farrell, Robert Malmquest, Emil J. Feindt, Louis Bittner, P. David Pinkussohn, and Martin Strug, Chicago, Ill. Section 3, Title II, national prohibition act, and section 37, Criminal Code, national prohibition act. Suit filed October 3, 1924.

E. Porter Products Co., Chicago, Ill. Violation section 21, national prohibition act. Plea of guilty March 3, 1924. Corporation fined $1,000.
William L. Quatman, president Hospital Product Co. (Inc.), Chicago, Ill. Violation section 39, Criminal Code. Bribing Federal officer.

UNITED STATES V. GEORGE REMUS ET AL.

This was a prosecution against George Remus and 13 codefendants for conspiracy to withdraw large quantities of whisky from Government warehouses in and about Cincinnati, Ohio.
The defendants were arrested in October, 1921, as a result of a very thorough investigation made by the agents of the Prohibition Unit acting under General Prohibition Agent Simons. In addition to the arrest of these defendants certain liquor was seized at the Death Valley Farm, and the withdrawals of whisky from many warehouses in Indiana, Ohio, and Kentucky, of which these defendants had secured the control, were terminated and said distilleries placed under seizure.
Following the arrests, the United States attorney at Cincinnati, Ohio, requested the assistance of an attorney from this unit and additional agents. This request was complied with, and Mr. H. W. Orcutt, of this unit, assigned to assist the United States attorney at his request.
The facts were presented to the Federal grand jury, and in April, 1922, an indictment was returned against all of these defendants, and in May of said year the trial was had, lasting substantially the entire month in the United States district court at Cincinnati, Ohio. By request of the United States attorney the above-mentioned Mr. H. W. Orcutt, an attorney in the Prohibition Unit, was sent to Cincinnati to assist him in preparing said case for trial and to assist in the presentation of said case to the petit jury. The trial resulted in the conviction of all defendants, who were sentenced from two years and $10,000 to a year and a day and $1,000 in the Federal penitentiary at Atlanta, Ga. This case was thereafter appealed to the circuit court of appeals and the decision of the district court affirmed.
Defendants are now serving or have served their respective sentences in the penitentiary at Atlanta, Ga.
A large force of agents from this office, together with counsel, as aforesaid, remained at the services of the United States attorney throughout this trial at his request, and the United States attorney has expressed his great appreciation of the assistance thus rendered him.

UNITED STATES V. THE SIBLEY WAREHOUSE & STORAGE CO. ET AL.

The Sibley Warehouse & Storage Co. and some 20 other persons were indicted under section 37 of the Criminal Code and charged with removing large quantities of whisky on forged permits from the Sibley Warehouse & Storage Co., Chicago, Ill.
The investigations which resulted in the indictment were conducted by agents of the Special Intelligence Unit. The trial of the case in December, 1924, resulted in the conviction of some 15 of the defendants and acquittal of the others. Large fines and jail sentences running into a number of years were imposed by Judge Walter Lindley.

UNITED STATES OF AMERICA V. GEORGE REMUS ET AL.

In the United States District Court for the Eastern District of Missouri

Following an investigation by agents of the Special Intelligence Unit and general prohibition agents, an indictment for conspiracy to violate the national prohibition law was returned in June, 1925, at St. Louis, Mo., but the case has not yet been tried.
The indictment charges the illegal removal of 891 barrels of whisky from the Jack Daniels warehouse, and among the 17 defendants are George Remus, an

extensive violator of the prohibition law, now serving a term in the Atlanta Penitentiary; William J. Kinney, deputy collector of internal revenue, St. Louis, Mo.; the prior owners of the distillery company; and various persons used in the illegal removal of the whisky from the warehouse.

This case was presented to the grand jury by John C. Dyott, special assistant to the Attorney General, and John B. Marshall, special attorney of the Prohibition Unit.

UNITED STATES OF AMERICA *v.* HAVEMAN ET AL.

In the United States District Court for the Eastern District of Michigan, Southern Division

The defendant above named and two associates operated in the city of Detroit, under the name of National Products Co., a large brewery. An indictment charging conspiracy was filed against the operators of said brewery, one Silverman, who acted as a distributor of the product; the mayor; commissioner of public safety; and a lieutenant of police of the city of Hamtranck, Mich., and various saloon keepers.

The evidence was secured as the result of investigations carried on by agents of the Department of Justice and the Michigan State police. At the request of the United States attorney, John B. Marshall, a special attorney of the Prohibition Unit prepared the case for trial, and the same was tried by the United States attorney, his assistant, C. J. Morse, and the said Marshall, the trial continuing over a period of four weeks. All of the defendants who were brought to trial, with the exception of a few saloon keepers against whom the proof was lacking in some detail, were convicted and sentences imposed ranging from a fine of $3,000 and two years' imprisonment in the penitentiary to a fine of $1,000 or 30 days in the Detroit House of Correction. This case is now on appeal to the United States Circuit Court of Appeals.

UNITED STATES OF AMERICA *v.* NATIONAL PRODUCTS CO.

In the United States District Court for the Eastern District of Michigan

This was a libel suit based upon the same testimony which resulted in the conviction of the operators of this brewery and others in the case of United States *v.* Hans Haveman et al., including the mayor and other officials of Hamtranck and the operators of this large brewery.

A judgment was rendered ordering the destruction of the entire equipment of said brewery, and this order has been carried out.

The pleadings in the case were prepared by John B. Marshall, special attorney of the Prohibition Unit, who also represented the United States in some preliminary motions in the case but was not present during the trial.

UNITED STATES *v.* GEORGE R. LANDEN, SIDNEY H. MILLER, AND OTIS KATZ

George R. Landen, Sidney H. Miller, and Otis Katz, officers of the Independent Drug Co., were indicted in the southern district of Ohio, western division, in February, 1923, and charged with having conspired to violate the national prohibition act. The conspiracy charge involved 1,000 offenses of selling whisky and alcohol without obtaining permits, failing to keep records open and subject to inspection at reasonable hours, of failing to properly label whisky sold, of soliciting and receiving orders for intoxicating liquor, and of selling intoxicating liquor in excess of the amount authorized by their permit. They were convicted and each fined $1,000 and one-third of the costs.

The investigation was made entirely by prohibition agents. Mr. V. Simonton, an attorney from the office of the Prohibition Commissioner, assisted in preparing the indictment and at the trial of the case. Owing to the fact that the trial court excluded the testimony of an attorney on whose advice the officers of the company claimed they relied, the circuit court of appeals reversed the decision of the trial court.

UNITED STATES V. CHARLES SABBATINO, RALPH SABBATINO, SAMUEL GROSS, AND LOUIS KATZ

A prosecution for conspiracy to bribe Government officials in an effort to procure the unlawful withdrawal of whisky from the Pershing Warehouse Corporation, Brooklyn, N. Y.

The defendants in the above case were arrested on March 23, 1923, by John A. Murphy, a prohibition agent, who, together with Lester A. Reeves, a prohibition agent, prior thereto had been making an investigation in connection with the offense charged. These agents had not been assisted by any other departmental representatives. Following the arrest, and prior to April 3, 1923, the facts were presented to the Federal grand jury, and on April 3, 1923, an indictment was returned, charging the above offense. The indictment returned was prepared in the prohibition office.

Mr. Joseph A. Crooks, an assistant United States attorney, was assigned by the United States attorney at Brooklyn to this case, and he, in conjunction with Julian Sharpnack and James D. McNeal, special attorneys of the Prohibition Unit, presented the facts to the grand jury, prepared the indictment, and tried the case in the district court before a jury, which trial lasted for approximately six days, and resulted in the conviction of all the defendants. Thereafter, the defendants were each fined $10,000 and sentenced to serve two years in the Federal prison. The cases were thereafter appealed to the circuit court of appeals and affirmed. A transfer to the Supreme Court of the United States was thereupon sought by the defendants, but denied. Defendants are each now serving, in the Federal prison at Atlanta, Ga., the sentence imposed.

Charles and Ralph Sabbatino were the owners of the Pershing warehouse, located in Brooklyn, N. Y., and the owners of a large amount of whisky stored therein. Samuel Gross was a director in a New York bank, the owner of a large amount of whisky stored in the Pershing warehouse, and reputed to be quite wealthy. Louis Katz was a former saloon operator, and an apparent go-between for the other parties. Twenty thousand dollars in currency, paid as bribe money, was introduced in evidence at the trial of the case, and was ordered impounded with the clerk of the court.

UNITED STATES V. GUCKENHEIMER BROS. & CO.

As a result of a very thorough and extended investigation of the activities of the A. Guckenheimer & Bros. Corporation, Freeport, Pa., agents of the Prohibition Unit presented to the counsel's office of said Prohibition Unit a large mass of evidence, consisting of 312 forged and fraudulent permits taken from said distillery premises, together with a great mass of other evidence, which evidence, after being carefully reviewed, was used as a basis of the revocation proceeding in the unit against said distillery, for the purpose of revoking its distillery permits.

After a very extended trial of the charges preferred in said citaton, extending over a period of a little over a month, the Prohibition Unit revoked all of the permits held by this distillery. The case disclosed the withdrawal of some 96,000 gallons of whisky on forged and fraudulent permits by the officers of this distillery and the diversion of the whisky to nonbeverage purposes.

The evidence produced at this revocation proceeding, and the entire record of this proceeding, were presented to the Department of Justice for the purpose of presenting the case to the Federal grand jury at Pittsburgh. At the request of the Department of Justice Mr. Vincent Simonton, of the Prohibition Unit, proceeded to Pittsburgh to assist in the presentation of such evidence to the grand jury and to assist in drafting the very voluminous indictment against this corporation and its officers. Subsequently, at the request of the Department of Justice, Mr. H. W. Orcutt, Mr. Vincent Simonton, and Mr. Charles R. Burgess, were assigned to render any assistance requested by the United States attorney in the preparation of this case for trial and in the trial thereof. The said attorneys of this unit were at the service of the United States attorney at Pittsburgh for some six weeks or more.

As a result of this trial, which lasted about five weeks, eight of the defendants were convicted and sentences were imposed ranging from two years

and $10,000 to a year and a half and $5,000, and thereafter the case was appealed to the circuit court of appeals and the judgment of the court in the district court of the United States affirmed.

A large part of the evidence which was successfully used in the trial of th criminal case, and which resulted in the conviction of the defendants, was secured by the attorneys of the Prohibition Unit in the cross-examination of the directors of the corporation produced by the respondent as its witnesses in the revocation proceeding.

Mr. BRITT. On the point of seizure or injunction in beer cases, I think I need make no comment whatever. The Prohibition Unit and the bureau heartily and unreservedly accept the finding of the Attorney General as to that matter of policy, and as indicated by the Secretary's letter to the Attorney General will fall in and carry it out to the very best of their ability. They entertained views diametrically opposite. The Attorney General was good enough to give them an opportunity to express those views. I trust he gave the views consideration. His decision was against the unit, and that decision stands without question. My contentions on that point were put into the record of your hearings on a former occasion and will be available to anyone desiring to get our views on that point.

Whatever the policy adopted by the Department of Justice may be, we will do, as we have always done, our very best to make cases under it. I can not, however, be separated from the conviction that it is of tremendous importance that where what are known as violating cereal beverage plants or so-called breweries have been caught in flagrant violation of the law—I can not, I say, forbear from saying that no means short of depriving them of their instrumentalities for violation will ever keep them from violating more than a very short while at any one given period.

But whatever policy the Secretary has stated to the Attorney General and to the unit and the bureau, it will be carried out without question. So that question is now practically closed and academic.

The CHAIRMAN. May I ask Mr. Britt if under the injunction procedure there are any violations while the injunction is still outstanding?

Mr. BRITT. There are many reported, and that is the gravamen of the situation, Mr. Chairman.

The CHIRMAN. Have you completed your statement, Mr. Britt?

Mr. BRITT. I think that is all, Mr. Chairman. I thank you.

The CHAIRMAN. Do you want to make a statement, Mr. Haynes?

Mr. HAYNES. No; thank you. I think not, Mr. Chairman.

The CHAIRMAN. Have you completed, Mr. Manson?

Mr. MANSON. Yes.

The CHAIRMAN. Have you any further statement to make, Mrs. Willebrandt?

Mrs. WILLEBRANDT. I think not.

The CHAIRMAN. I think we are through, then, if that is the case, unless the members of the committee have something.

Senator ERNST. Yes; I would like to ask Mr. Britt a question or two.

Mr. Britt, has the Government tried a case on a bond involving the question of whether the permit bond is or is not a forfeiture bond?

Mr. BRITT. I think the Department of Justice, through the district attorneys, has tried some cases involving that question, but I do not know with what result.

Senator ERNST. Has that ever been appealed to the Supreme Court?

Mr. BRITT. Not to my knowledge.

Mrs. WILLEBRANDT. Do you want me to give you the answer on that?

Senator ERNST. We would be very happy to have you do it.

Mrs. WILLEBRANDT. There were three that were decided against its being a forfeiture bond, and one was decided for. Two are on appeal. The two that were decided against are on appeal. The defendants did not appeal, although we very much wanted them to, when the court decided for the forfeiture.

Senator ERNST. Have you had any cases carried up on appeal to test the validity of the present assessment method or machinery under section 35 of the national prohibition act?

Mr. BRITT. The Bureau of Internal Revenue has been enjoined either from holding hearings under the so-called Lipke case, or from collecting tax, the assessment of which was based upon it in a number of instances, and the unit has endeavored very energetically to get a case before the Supreme Court in order that the constitutionality of the hearings machinery might be tested, but, so far as I am informed, no case has been filed on appeal.

Senator ERNST. We will be glad to hear from you on that, Mrs. Willebrandt.

Mrs. WILLEBRANDT. On these legal matters, I could probably enlighten you.

There is a case now where the Commissioner of Internal Revenue has recommended an appeal, involving that point, and it is before the Solicitor General. Mr. Jones was telling me about some other cases. The point I wanted to leave in the record is that the recommendation for appeal before our department now pending, the recommendation coming to us from the Treasury Department in a case that purportedly will test this procedure of assessment under section 35, and will allow the Supreme Court to explain what it meant by the Lipke case, about which there is a great deal of legal doubt and difference of opinion.

Mr. Jones called my attention to two or three other cases, and I will let him state them for the record.

Mr. JONES. There is one in Washington, one in Missouri, and one in New Orleans, La., in which the assessment procedure was involved, and in which the ruling was against the contention of the Government; also one in Minnesota, but it was in such shape that it was not appealed.

Mr. BRITT. May I ask Mr. Jones whether the case of Joe Diedek, from Washington is on the way to the Supreme Court?

Mr. JONES. That is the one that is before the Solicitor General.

Mr. BRITT. That, I think, is a very poor case for determining the point at issue.

Senator ERNST. From what was said yesterday, I desire to hear from Mr. Britt on the question of what the character of cooperation is that you have with the district attorneys. Do you have the full-

est cooperation or half-hearted cooperation, or what is the fact in the case?

Mr. BRITT. That is a question that can hardly be answerd, for the reason that one in my position can not have the standpoint of judging. My own opinion is that the very great majority of the district attorneys are cooperative to assist in law enforcement, but being most of the time in the Prohibition Unit and having my information second hand, reflected to me from somebody else, I would not be in a position to pass an opinion upon them collectively, or in many instances individually. I do say, however, that I believe the great bulk of them are striving to do their duty. I think there are some exceptions to that.

Senator ERNST. Do the United States marshals take proper care of these seized breweries and contraband?

Mr. BRITT. There has been much complaint about the failure of one or two to take thorough care of the seized property. Whether that difficulty lies in the lack of storage room or other facilities I do not know. I do know there has been considerable complaint, and I think some of it well founded.

Senator ERNST. I have just one other question here. However, I believe that it has been fully answered, so I do not have anything else.

Senator WATSON. It looks to me as though the Prohibition Unit wants to enforce the law and the Department of Justice wants to enforce the law. It is simply a question of the most effective method, because certain conditions have been thrown into the enforcement itself; but so far as the desire to enforce the law is concerned, you all have that desire. That is true, is it not?

Mrs. WILLEBRANDT. Yes.

Senator WATSON. Let me ask you this question, Mrs. Willebrandt: Do you know of any legislation that this committee can recommend that will strengthen the prohibition enforcement in the United States?

Mrs. WILLEBRANDT. Yes.

Senator WATSON. Tell us, if you please.

Mrs. WILLEBRANDT. Fix up section 938 of the Revised Statutes, which provides that in case of a vessel seized—it is under the admiralty section—such vessel may be released, and the bond which is put up for it made a substitute bond, so that finally, when that case comes on for trial, the only point for determination will be whether the Government shall have the money involved in that bond or not. As a result of that, bootlegging ships that are caught put up these bonds, and they get them down as low as possible, of course, and then the ship goes out and engages again in the same trade. When finally there is a decision of forfeiture the only thing forfeited is the bond. The instrumentality still remains in the illegal traffic, there not being in that instance, as there is in the injunction, for instance, the power of the court to forfeit.

Senator ERNST. When was that law enacted, Mrs. Willebrandt?

Mrs. WILLEBRANDT. It is an old statute. It is in the Revised Statutes back as far as 1878, anyway. It goes back that far.

Senator WATSON. That proceeds on the theory, does it, Mrs. Willebrandt, that violations of this law are far more numerous in in-

stances, in quantity, and in value by bootlegging from abroad than in the illicit manufacture within the limits of the United States?

Mrs. WILLEBRANDT. No; I do not think the violations are more numerous. It is just that the land laws are more adaptable. These admiralty statutes are quite fixed, and in some instances, notably this one of 938 of the Revised Statutes, they permit the reseizure and reseizure, but amount only to the giving of a fine each time, and there is no absolute destruction.

I can give you an example of a seizure. That was a boat by the name of *Underwriter*, which was seized four times in three months. Each time it put up a forfeiture bond.

Mr. MANSON. How much of a bond was put up in that case, do you know?

Mrs. WILLEBRANDT. Do you remember, Mr. Henderson?

Mr. HENDERSON. No; I do not believe I do.

Mr. MANSON. Is the bond based upon the value of the ship?

Mrs. WILLEBRANDT. It is supposed to be based upon the value of the ship. Of course, they shade those things down.

Mr. MANSON. But do they usually have an appraisal, such as they would have in a collision case?

Mrs. WILLEBRANDT. Yes.

Mr. MANSON. In admiralty?

Mrs. WILLEBRANDT. Yes; there is an admiralty appraisal.

Mr. MANSON. Is there a regular admiralty appraisal?

Mrs. WILLEBRANDT. I will let Mr. Henderson reply to those questions.

Mr. HENDERSON. Section 938 provides for appraisement by three men appointed by the court. That is a separate appraisement from the customs appraisement, and then the bond is given in that sum, and if there is subsequently a forfeiture, the bond is forfeited in that amount. It is not conditioned on the return of the property. The bond, under section 26 of Title II of the national prohibition act is in the total value of the property, and is conditioned on the return of the vehicle to the person at the time of trial.

Mr. MANSON. So it can not be destroyed?

Mr. HENDERSON. It can not be destroyed, but it is sold.

Senator ERNST. The Government has to sell it, though, does it not?

Mr. HENDERSON. Under the act passed by the last Congress, the Secretary of the Treasury is allowed to take the vehicles and vessels for use of the Treasury Department.

Senator ERNST. Yes; I recall now. But that was formerly the law.

Mrs. WILLEBRANDT. Those same conditions that apply to section 938 are applicable, as explained by Mr. Henderson, to section 26 of the national prohibition act.

Another very bad feature of that section, which causes congestion in the courts, is that when you seize a vessel or a vehicle, the section provides that criminal proceedings shall be instituted against the driver, and at the conclusion of the case—the criminal case against the driver—the court may determine what shall be done with the car. It may either be sold or returned to its owner, depending upon the

evidence adduced; but the courts have held that there is no power under the wording of section 26 for the court to determine the equities that may be involved in the car or in the vehicle prior to the termination of the criminal case.

Of course criminal cases, as this committee well knows, lie on the docket quite a period of time, when you consider rights of appeal and all that sort of thing. Therefore, when the defendant does not give a bond for his car the Government holds the sack, so to speak, paying storage on that car for such a period of time that when the final equities are decided you have nothing but an old wreck and the Government is out. Oftentimes it will not sell for the amount of the storage bill, and we pay out immense sums of money uselessly in that way.

Another very much needed amendment to the law is that Congress should make it a crime for American vessels to transport liquor under the American flag outside of the 3-mile limit. At the present time there is no such law. The Supreme Court has held that American bottoms do not constitute territory, and therefore we can not invoke the territorial laws. Consequently when you have an American ship that is seized just as we seized the British parent ship lying off rum row, but before it reaches the 3-mile limit, it constitutes their territorial waters. The Coast Guard bring her in, and we have a hot scramble finding some kind of law by which we can condemn her. We are not always successful.

Some courts have strained the construction of the statutes and have condemned some small boats on the ground of not being enrolled. Is not that right?

Mr. HENDERSON. Under the navigation laws.

Mrs. WILLEBRANDT. Yes; under the navigation laws, but we have to hunt around and find some libel, and the evidence does not always fit into that. The evidence is transporting liquor on American bottoms, and we have no law that will meet that fact.

Mr. MANSON. That is only where you seize them outside of the 3-mile limit?

Mrs. WILLEBRANDT. Yes; and of course they are based on seizures, and the seizures have to come outside the 3-mile limit.

Mr. MANSON. Yes.

Mrs. WILLEBRANDT. The Coast Guard is doing good work. You have rum row out there, and the Coast Guard has the names of the vessels in rum row. The Coast Guard can watch rum row. It is not in violation of the law when they are 15 or 20 miles off for those boats to lie there, the way our international law now stands. The only way they can prevent the smuggling is to watch the American boats that come out from the shore and get their cargoes from the parent ships of foreign registry. If they wait until they get the cargo, they can not possibly pursue them into the 3-mile limit, because they have not the boats which are equal in speed to those rum-running craft. Consequently the only thing they can do is to hope that some other craft will pick them up when they get back to the 3-mile limit. That is like scattering shot; but if the Coast Guard boats could lie off rum row and patrol rum row and catch our own boats when they get out there, we would have an effectual remedy.

Mr. MANSON. What becomes of the 3-mile limit jurisdiction?

Mrs. WILLEBRANDT. The 3-mile limit is the rule of international law.

Mr. MANSON. Yes; that is quite true.

Mrs. WILLEBRANDT. For the purpose of national protection, which we maintain for the service of our own nationals, but it does not apply to our own ships. What I would suggest is that you extend the power to the United States Government to punish an American bottom that transports liquor under the American flag, but which may be outside of the 3-mile limit.

The CHAIRMAN. Does that cover all of your suggestions for remedies, Mrs. Willebrandt?

Mrs. WILLEBRANDT. There is the lack of regulation of motor boats under the navigation law, and I will ask Mr. Henderson to state that.

Mr. HENDERSON. There is practically no regulation now under the law for small motor boats up to 5 tons burden. They do not have to enter, and they do not have to clear. There is nothing that makes it unlawful for them to carry freight; so that there is practically nothing you can do to those little fellows when you catch them with a load of liquor out beyond the 3-mile limit. You are absolutely helpless, and my suggestion would be that there be some act passed regarding those boats, so that they could be handled, if not under the prohibition law under the navigation law, because that is the way we have to handle the boats of larger capacity.

The CHAIRMAN. Judge Britt, do you wish to make any further statement?

Mr. BRITT. Yes. I think I have previously made this suggestion to the committee, Mr. Chairman, and that is the requirement that a denaturing plant by an alcohol distillery shall be permissible only on the premises of the distillery.

The CHAIRMAN. Yes; I remember you put that in the record before.

Mr. BRITT. Yes.

Mr. HAYNES. Mr. Chairman, it will not be necessary with reference to these suggestions for legislative enactment, I suppose, to repeat what we have already put in the record; for instance, as to the matter of counterfeiting permits and things of that kind.

The CHAIRMAN. No; we will extract those and put them in our report.

If there is nothing further now, it is in order to adjourn.

Senator WATSON. Yes.

The CHAIRMAN. Then we will adjourn now, subject to the call of the Chair.

(Whereupon, at 4.15 o'clock p. m., the committee adjourned, subject to the call of the chairman.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

MONDAY, MAY 18, 1925

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

The committee met at 10 o'clock a. m., pursuant to adjournment of Saturday, May 16.

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

The CHAIRMAN. I want to explain to the committee just what we have done so far in connection with the Prohibition Unit of the Bureau of Internal Revenue.

When we started the investigation we got a man by the name of Mr. Storck from the Department of Justice to go over the records of a large number of cases that had been dealt with in the Prohibition Unit. By "cases" I mean cases of permit revocations, hearings on proposals to revoke permits, cases dealing with charges against State directors, prohibition agents, and others. Let me say at this point that if I am in error, I hope Judge Britt will correct me, because I think he was in touch with these matters from the beginning.

Mr. Storck got the complete files, as I recall, of all of these cases, numbering somewhere nearly 80, I think. He went over the records carefully and pointed out what appeared, to him at least, a lack of thorough handling of these cases and failure to revoke permits when permits should be revoked, the granting of new permits when he thought the permits should not have been granted, and the retaining of prohibition officers when he thought they should not have been retained, and he made substantial reports on those cases. The hearings that we had with the officials of the Prohibition Unit were based substantially, I think, on that type of cases. The representatives of the Prohibition Unit were at all our hearings and heard the kind of testimony that was introduced and the criticisms that were made.

The matter of organization was somewhat considered, as well as the disagreements arising between the Department of Justice and the Prohibition Unit of the Bureau of Internal Revenue. Those matters were also gone into somewhat largely through Mrs. Willebrandt's statement of her relations with the Prohibition Unit.

We received quite a number of letters, some anonymous and some signed, complaining about the methods of the Prohibition Unit and

dealing with charges of graft and mismanagement; but I want to say that I assumed largely the responsibility for determining that the committee could not deal with these cases like a grand jury, and that therefore we were not justified in attempting to conduct a grand-jury investigation.

We brought in no outside witnesses, although numbers of people offered to appear as witnesses. We did not take up alleged charges of graft and mismanagement.

We confined our investigation to the employees of the committee, in cooperation with the employees of the bureau and with the Department of Justice, so that we would, as I stated, not simply conduct a hearing on charges not substantiated and charges which did not appear in the records at all. In other words, we reduced the investigation to an examination of the records in the bureau here, and did not attempt to go out into the States and investigate the conditions in the States or in the State directors' offices.

Since we have been devoting most of our time to the Income Tax Unit, Mr. Carson, the secretary of the committee, and also my secretary, has been reviewing these charges of what occurred to Mr. Storck to be errors of judgment or inefficiency, and has reduced into brief form these cases. I have personally gone over a great number of them, and in most of them I think I agree with Mr. Storck that they had been very badly handled and that there has been a lack of proper organization, and perhaps more of what appears to be a lack of judgment in the distribution of Federal agents or the employees of the unit throughout the country, too much attention having been devoted to doing minor police work in the States rather than an effort being made to stop the source of supply, where it was known to the bureau that the source existed, as, for example, in alcohol plants, denaturing plants, breweries, and distilleries.

Speaking for myself, I have reached the conclusion that perhaps the greatest weakness is in the failure of the Prohibition Unit to stop the supply at the source and devoting too much time to police work.

The result of these reports, after a careful examination, seemed to indicate that that is the weakness, and if the committee would like to have it, Mr. Carson is prepared to enumerate some of these cases this morning, so as to indicate what I have just now said.

Senator JONES of New Mexico. I understand that, without objection, during the call of the unanimous-consent calendar at the last session of Congress, a provision of law requiring the gauging of all liquors in bond every seven years was repealed, and by reason of that fact it prevents the committee and the Congress from getting the information which such gauging would furnish, and I should like to know who recommended that legislation and the reason for its passage.

Mr. Britt, of the Prohibition Unit, is present, and I would like to have him give us the history of that, if he can.

Mr. BRITT. Mr. Chairman, I do not know whether the suggestion originated with the Prohibition Unit, but, as far as I understand it, the bill was drafted in the audit division of the Prohibition Unit. It went its regular course through the committees, and the usual in-

quiry was made of the secretary as to the grounds for the proposal, and they were submitted as they are furnished upon a question in the case of all other bills.

Senator WATSON. What committee of the Senate was it that passed that?

Senator JONES of New Mexico. As I recall it, it was the Finance Committee.

Senator WATSON. There are four members of that committee here. I have no recollection of it.

Senator KING. It must have been the Judiciary Committee.

Senator WATSON. Probably it was the Judiciary Committee.

Senator KING. Or the Committee on Commerce.

Senator JONES of New Mexico. I would like to interpolate here that if it ever came before the Finance Committee, I knew nothing of it.

Mr. BRITT. I am not sure as to which committee it was, but it was probably, as the Senator suggests, the Senate Judiciary Committee.

The bill had for its purpose, as I understand it, a duty of justice to the owners of long-kept spirits in the warehouse. Under what was known as the Carlisle law, a bill passed many years ago, spirits might remain in the warehouse for seven years, and within the seven years, or prior to the expiration of the seven years, upon the request of the owners of the spirits, the Commissioner of Internal Revenue would have a regauge of the spirits made, and then the distiller would be allowed ullage or wantage free of tax to the amount of what had accrued, based upon a certain decreasing scale; but if the request was not made, there was no allowance made at all.

In many instances since prohibition, in fact in most instances, the spirits have passed as a matter of title into the hands of the certificate holders, who had little or no knowledge of the law. The result was that the seven years expired without their knowledge and without their availing themselves of the advantage of getting a regauge made, and thus getting an ullage or wantage that had accrued, tax free.

This bill, as I recall its provisions—and I might say that it was not drafted by me, although I read it—allowed or provided for the allowance of such wantage as actually occurred whenever the spirits were removed. For instance, if it was a 45-gallon barrel, and there was found to have been an accrued wantage greater than that allowed by the Carlisle scale, that fact being made to appear from an initial gauge, the owner of the spirits would be entitled to a remittance of the tax.

Senator WATSON. What do you mean by "wantage," Judge Britt?

Mr. BRITT. The barrel was full when it was originally warehoused, and it lost, naturally, by evaporation and other causes, a decreasing amount from time to time, on which, under the law, the owner was not required to pay the tax, if that fact were made officially to appear.

Senator WATSON. Is that technically called "wantage"?

Mr. BRITT. Wantage or ullage.

Senator WATSON. The amount it wants of making a full barrel?

Mr. BRITT. That is, what it lacks of being full.

The CHAIRMAN. What was the experience of seven years as to wantage?

Mr. BRITT. The experience as to what accrued?

The CHAIRMAN. Yes.

Mr. BRITT. The experience, as far as it has been reflected to me, Mr. Chairman, is that all of the allowance on the scale accrues, and probably more.

Senator KING. What is the scale?

Mr. BRITT. It is a graduated scale; I think the allowance is possibly 15 gallons out of 45 in a barrel.

Senator JONES of New Mexico. For what length of time?

Mr. BRITT. For seven years.

Senator KING. Within what time will a barrel of liquor, the ordinary barrel, lose itself?

Mr. BRITT. I should say that a 40-gallon barrel would, under normal conditions, lose itself in 20 years, and it becomes woody and useless before that time.

Senator WATSON. How much would that evaporate in 20 years?

Mr. BRITT. It will all go in 20 years.

Senator WATSON. It will all go in 20 years?

Mr. BRITT. Yes.

Senator KING. Then, when they speak of its being held for a hundred years it is not held in barrels?

Mr. BRITT. In such cases it is not held in barrels, but in glass and metal containers.

Senator JONES. Have you any method now of ascertaining how much liquor there is in store?

Mr. BRITT. Yes; we have as exact a method as we ever have had, Senator, when it is brought into requisition, and that is the actual regauge or remeasurement by an official gauger.

Senator KING. That law was not for the purpose of preventing a regauging when the liquors were withdrawn?

Mr. BRITT. Not in any sense at all, as I understood it, but, I say once again, I was not the author of it, but it was simply to prevent what seemed to be an unfair advantage being taken of those who did not know their rights. I think the bill went through its regular channels, and I think the documentary evidence will show that.

Senator KING. The department approved it?

Mr. BRITT. Yes, sir.

Senator WATSON. Did you approve the bill, Judge?

Mr. BRITT. I did not give a formal opinion, because I did not have the province of——

The CHAIRMAN. But do you approve it?

Mr. BRITT. Yes; I do. I understood the Senator to ask did I approve it.

Senator WATSON. You read it.

Mr. BRITT. I approved the policy.

The CHAIRMAN. Have you any objection now, Senator Jones, in view of the explanation?

Senator JONES of New Mexico. None at all, but it has just occurred to me that if the liquor were regauged it would furnish very definite information as to how much had disappeared, either through evaporation or otherwise, and I understand the "otherwise" has been a

very important factor. My view is based on mere hearsay and rumor and that sort of thing. I have no actual knowledge of the facts at all.

Mr. BUTT. I should be glad to furnish the committee a copy of the bill, and also the various proceedings as it went through the committees. As far as I know it was regular in every way, and had the object, as I understood it, as I have indicated here, but not being so intimately connected with it there might be something in connection with it on which I have not definite information.

Senator KING. Mr. Chairman, reverting to the suggestion as to Mr. Carson presenting those reports, I think we ought to receive them, but it seems to me that preliminary to that I would like to know just what further work the committee feels that it should do under the resolution in investigating the Prohibition Unit. Speaking for myself, I am not satisfied with what we have done. I do not know just what the defects in the unit are, and I am not quite ready from the testimony which we have received to make any recommendations, which we ought to make to Congress, if we feel that the evidence warrants it, for additional legislation. I think that many Senators expected there should be hearing, and the evils, if evils exist, and defects and inefficiencies of the bureau discovered, pointed out, and brought to light. I do not think that we have gone into this matter with that fullness that we should, and yet I am not clear just what course we should pursue, nor the method which should be followed, as to whether we should get outside witnesses and let them testify, or confine ourselves, as we have, to statements of men from the unit, witnesses from the unit, and the statements of our investigator or investigators. I am in an entirely receptive mood and open minded in this matter. I just want to discharge the duties which the Senate has placed upon me in connection with my colleagues: that is all.

Senator JONES. In view of the limitations upon the hearings of the committee, do you think it would be practicable to enter upon a series of hearings at this time?

Senator KING. Does that limitation attach to the Prohibition Unit?

Senator JONES of New Mexico. Oh, I think so.

Senator WATSON. So do I. I have not any doubt about that.

Senator KING. I do not have the resolution before me.

Senator JONES of New Mexico. It was framed, I think, with direct reference to the Income Tax Unit of the bureau, but I am inclined to believe that its terms are broad enough to include the prohibition investigation.

The CHAIRMAN. That is my understanding of it, Senator.

Senator ERNST. Oh, yes,: that is clear. It was talked about at the time.

Senator WATSON. I feel this way about it, as far as prohibition is concerned:

The matter of prohibition enforcement is yet in its incipiency; that is to say, it is something new. It was started as a nation-wide project; it was a new field; they did not know just how to go about it. I was present at the first meetings that were held about the organization, how to get organization, and how to start it. There

was a diversity of opinion. Mr. Blair was there, as were Mr. Haynes and others, and the matter was discussed at some length.

Finally, they evolved a plan of organization, by which they would take charge of this work, subject always to such changes as experience might warrant. They know and everybody knows that there are defects in this system. Everybody knows that prohibition is not being enforced and everybody knows that the law is being wantonly violated wholesale, and a good many people are of the opinion that the lack of funds, a sufficient amount of money placed in the hands of these gentlemen, is one of the causes for that. They have not been able to get the requisite number of investigators on proper salaries. They have been compelled to go here and there and yonder and pick up men wherever they can get them, as a rule. They have taken them on the recommendations of Senators and Representatives and all that sort of thing. They have been compelled to do that in selecting these men. That is one of the weaknesses that are involved here, and they are recommending that the service be put under the civil service. Of course, that is a matter that is always subject to debate, and it would not be necessary to go into it here.

My understanding is that in order to tighten the enforcement of prohibition, and, as Senator Couzens suggested, to stop it at the source, is this: They have established this cordon of vessels up and down the Atlantic coast, and they are seeking in that way to shut off this foreign supply. So far as the internal enforcement is concerned, they have appointed General Andrews. I never saw that gentleman; I do not know him at all, but I have inquired about him, and my understanding is that he is especially proficient in the matter of organization; he knows how to organize and direct a force of this kind.

Of course, the whole thing is problematical. I do not know, and it will have to be determined whether he is a fit and qualified man.

It is a tremendous task. It reaches into millions of homes all over the United States, and these men are compelled to feel their way and do the best they can with the circumstances surrounding them. Of course mistakes have been made and weaknesses have been displayed. Inefficiency everywhere has developed. Everybody knows that. That is not a secret. That is patent; everybody knows it. The department acknowledges it; they are doing the best they can, they say, to correct these inefficiencies and strengthen the enforcement of these weak places. I have no objection at all to these weaknesses being pointed out or to have these inefficiencies displayed. I have not the slightest objection in the world to that. It might be of some value to somebody; but when a thing is manifest, and when everybody knows the situation, there is not very much to be gained by an investigation, unless we can suggest how it is to be strengthened, and that the department itself is constantly endeavoring to do. I can say this, that from the President down they have determined to make a tremendous effort to enforce prohibition in the United States, and they are going to use all the agencies at their command to enforce it to the limit. Then, if after it is enforced to the limit, the people will not stand for it, it is for the people to say so, and it can be modified.

The CHAIRMAN. In connection with what Senator Watson has said I think it is generally sound, but it has been shown in the hearings—and I am not sure but that Senator Watson was here at all of the hearings—that there is a good deal of friction between the Department of Justice and the Prohibition Unit, and at the last hearing we had on prohibition General Andrews was here.

Senator WATSON. I never saw him.

Senator ERNST. Mrs. Willebrandt was here, too, was she not?

The CHAIRMAN. I think so.

Senator WATSON. I saw Mrs. Willebrandt.

The CHAIRMAN. At one of the hearings—I think it was the last one—General Andrews was here.

Senator WATSON. I did not know it.

The CHAIRMAN. And on his way out, he said there would be no more lack of cooperation between the Department of Justice and the Prohibition Unit. Just how he intended to eliminate that friction and lack of coordination, I do not know; but if anybody would take the trouble to read the record, they would find that something ought to be done to compel better cooperation and coordination between the department, or the responsibility should be placed somewhere, on one department or the other, it seems to me, and whether it can be so placed by law is a matter for the committee to determine and recommend to the Congress.

However, there is one thing that has been manifest in the hearings, and it has been affirmed by thet witnesses for the Department of Justice, and that is that the whole problem has not been approached in the proper manner to secure the best enforcement. I think that is due to what I have pointed out previously, that they have not so assigned the staff that they have gotten, nor have they spent the money that has been appropriated, in the best possible way to secure enforcement.

Senator KING. If you will permit the inclusion of a thought there, Mr. Chairman, I think one of the great evils has been that they have made political appointments. I have suggested in one or two instances that the appointees would feel that they had been political, and I protested against the assignment of a man in Colorado, who was a politician and nothing else, and they had to remove him. He was indicted, and then they did not prosecute him.

Senator WATSON. In Colorado or Utah?

Senator KING. Colorado.

The CHAIRMAN. We have some records, although I have not got them here, which indicate that Mr. Wheeler, the attorney for the Anti-Saloon League, on a number of occasions, stated that after he and Commissioner Haynes had agreed upon the dismissal of a director or other prohibition agent, by the influence of Members of Congress, the employee has been retained, in spite of the opposition of Mr. Wheeler. I want to say in that connection that I think Mr. Britt has testified, at least someone on his staff has testified, that the Members of Congress have had no influence in the selection of employees, unless the appointee himself was a sound and proper person to have employed.

Is that correct, Mr. Britt?

Mr. BRITT. I am glad you mentioned that, Mr. Chairman.

What I have testified to is my own knowledge of the situation, and that is that while I have every reason to believe, and do to some extent know, that appointments have been urged by Senators and Representatives, in no instance that has ever come to my knowledge has there been an urging of an appointment against what, in so far as I knew the facts, seemed to me against the public interest. What has resulted, of course, I would not be able to say, and whether the judgment which I give here is general or not I would not be able to say. I only express this as it has been reflected to me.

The CHAIRMAN. Who is the best informed person in your unit to advise the committee about how much the influence of Members of Congress has affected the enforcement of prohibition?

Mr. BRITT. How much effect has it had on enforcement generally?

The CHAIRMAN. Yes; is there anybody in the unit who is better informed on that than you are?

Mr. BRITT. I should say that the person best informed as to the extent of political influence in making appointments would be the person who deals with the matter generally. He would know what final effects would flow from it, and that would be the Prohibition Commissioner.

Senator WATSON. And, of course, they are in favor of placing this whole thing under civil service.

Mr. BRITT. Decidedly.

Senator WATSON. And they have advocated it.

Senator KING. Is it not a fact that substantially all appointments and certainly all appointments of the heads in the various parts of the service have been political appointments?

Mr. BRITT. Not all, Senator. In the State of Nebraska, as I recall, a Democrat was appointed director, while there were many Republicans that sought the place, and he was appointed because those making the appointment thought he was the best man for the place. As I understand it, he retains that position yet. I have known of some other appointments that have gone the same way. That rule has not been the uniform rule.

I want to say in this connection that I have been in the Government service always under a Republican administration, unless it was just the termination of one, or at some particular angle of it, of the opposite party, and I have never seen political influence play as small a part as it has in the administration of the Prohibition Unit, in so far as it has touched anything with which I have had either connection or knowledge.

The CHAIRMAN. I think Mr. Haynes ought to come down here and tell us how much political influence has interfered with the matter of prohibition enforcement, because, as Senator King has said, a large part of the public believes that the interference of Members of Congress has deterred a proper enforcement of the prohibition act, and we should know from official sources.

Senator WATSON. Do you mean interfered in the appointment or interfered down here in the department?

The CHAIRMAN. Both.

Senator WATSON. Well, I do not know about that. I do not know how that could be possible.

Senator JONES of New Mexico. Mr. Chairman, you have told us briefly what Mr. Carson has here. Shall we listen to that more in detail?

The CHAIRMAN. Let him put in a few cases.

Senator WATSON. Yes; that will be all right.

The CHAIRMAN. Mr. Carson, read off a few cases to us there.

The CLERK. Mr. Storck prepared——

Senator KING. Is Mr. Storck a lawyer?

The CHAIRMAN. No; he was a Secret Service man connected with the Department of Justice.

The CLERK. He is back there now.

Senator KING. Oh, yes; I remember him.

The CLERK. He took the files of the Bernheim Distilling Co. of Louisville and the Schenley Products Co. of Midway, Ky., but for this purpose they were both combined, because they both relate to the same thing.

The reports showed that both these companies were investigated relative to sales on fraudulent permits. These fraudulent permits secured the delivery, illegally, of much whisky to New York druggists.

Finally a report was made on June 27, 1922, by John D. Appleby, a prohibition agent at New York, who wrote to Mr. Yellowley, of the Prohibition Unit in Washington, to the effect that druggists there had obtained from the Bernheim Co. some 4,500 cases of whisky; that the druggists were advised that the deal was all fixed up, and that they had nothing to fear, because, in part, the profits went to make up a part of the Republican campaign fund and went to some of the officials.

All of this testimony was brought out in the hearing, and the report shows that finally one of the druggists went to the Association of Druggists. He was threatened by one of these agents, or supposed agents, of the Bernheim Distilling Co. that unless he went through with this deal they would get him in trouble with the Prohibition Unit in Washington. He went to the Association of Druggists, and the Association of Druggists took the matter up with the prohibition agent, and that is the way the investigation began.

Then, later on throughout the hearings the druggists testified at length as to the deal and how it was put over.

In Mr. Storck's report he says that it seems indisputable that the liquor came by express from the Bernheim and Schenley companies direct to the druggists, that the permits in every case were fraudulent, and that the agents selling to the druggists were the agents of the Bernheim and Schenley companies.

The point that he made particularly was that the Prohibition Unit seemed to make no attempt at all to show whether these agents were, in fact, agents of the Bernheim and Schenley distilleries. In fact, one of these supposed agents testified that he was bonded by the Bernheim Co., and one of the druggists testified that he knew one of these agents for six years as an agent for the Bernheim Co.

Finally, in the case of the Schenley Co., there was a proposal to revoke the permit, and Mr. Storck's report on this was that, after the hearing, Mr. Britt wrote an opinion which said, in part, "that while

there was indication of passive guilt on the part of the company, there was no proof of active guilt, and that it was impossible to believe that this company would take such a chance," that it would be guilty knowingly, and he recommended the restoration of the permit.

Mr. Storck suggested that the committee might desire to know what effort was made to trace the connection between these agents and the distillery and why no effort was made to see whether there was a conspiracy in order to establish the responsibility of the distilleries, and whether or not it occurred to the unit that there was a conspiracy between the companies and these agents to violate the law, as well as to learn what effort, if any at all, was made to ascertain the facts. He also suggested an inquiry as to whether the Department of Justice was ever consulted on this case and why were these cases just permitted to drop after it was established that some 4,500 cases went from Bernheim Distilling Co. and 1,500 plus cases went from the Schenley Products Co., of Midway, Ky.

The Schenley Products Co. also had a Brooklyn office.

The CHAIRMAN. What is the difference between passive knowledge and actual knowledge of a violation of the law, Mr. Britt?

Mr. BRITT. I do not recall the language used, Mr. Chairman, nor did I know that this case was going to come up at this time. I remember reviewing the case some two and a half years ago, and my present recollection is that there was a failure to establish the agency of these men for the principals, and that there was also failure to establish knowledge on the part of the principals of what had been done and was being done by the agents.

My resolves, as in the rule, were against them at all times—that is, in favor of prevention of discussion—but I do not remember all of the colorings.

If I could be satisfied in my own mind as a lawyer, and as a reviewer of the case, that they were their agents, and had knowledge, and I would have gone as far as I could to revoke, for my resolves were against them and not for them.

The CHAIRMAN. This quotation of passive but not actual knowledge was taken from the records, and I do not understand now how a man can have passive knowledge of a violation of the law but not actual knowledge of it.

Mr. BRITT. The language is not mine, Mr. Chairman.

The CHAIRMAN. That is what I understand, that the language is from Mr. Britt's report.

Mr. BRITT. It is a quotation——

Senator ERNST. As to this question of permits, have they not now gotten that pretty well under control?

Mr. BRITT. Yes; I think that is pretty well under control.

Senator ERNST. My information is, Mr. Chairman, that the fraudulent permits, which at one time were so common, are now rarely met with.

Mr. BRITT. We have practically no forged permits now at all.

The CHAIRMAN. That is not the point that I am raising.

Mr. BRITT. No; I am trying to answer your question.

The CHAIRMAN. It occurred to me from this report that there was a lack of diligence in connecting these companies up with these agents and the druggists and in the continuing of the permits of

these distilleries, when it seems from the record to have been conclusively proven that they were guilty of participating in this distribution of liquor fraudulently.

Mr. BRITT. When you say conclusively guilty, you are viewing one side of the case only, and I do not express an opinion of the case now, because I do not remember the facts, and before I do speak of the merits of it I want to review the case, but what I evidently meant was what appeared from the record, but it seems that the officials were not as actively diligent as they should have been in establishing the facts as to agents and responsibility. I am speaking now of the officials of the company. Here is an active business concern, of a good deal of importance, that has not paid the proper attention to this matter. That is what I meant by active responsibility and the passive responsibility, I should say.

Senator KING. As I understand this report, it is not a report of one side of the case, Mr. Britt. It is a report of the evidence on both sides in your bureau, and this man Storck has attempted to fairly produce for the consideration of the committee the facts in the case and his deductions. Now, his deductions may be wrong from the facts, but it is not one sided.

Mr. BRITT. I was addressing myself to the points made by the clerk at this time, and he was stating his objection to the findings.

These cases, Mr. Chairman, come to the chief counsel's office, and invariably the examiner says, "Why did not this agent pursue that line; why was not that point ascertained; why did you not go farther," etc.; but, as you will readily see, he who sits as a reviewer can do nothing except make the best case he can out of the record. He can not follow the case up.

The CHAIRMAN. That is not the question. We are not interested in passing the buck from one official to the other as to who is responsible for not following these things up. We understand the responsibility for it, but we want to know who is responsible for it.

Mr. BRITT. And I am saying now that the person who makes the investigation should follow every angle of it to its last conclusion and make the case as strong as he can.

The CHAIRMAN. Who forces him to pursue it?

Mr. BRITT. He is the field agent, and, of course, the first above him is the divisional chief, then the chief of prohibition agents, and last the Prohibition Commissioner and the Commissioner of Internal Revenue.

The CHAIRMAN. Then, last of all, it is in the Bureau of Internal Revenue.

Mr. BRITT. Surely.

The CHAIRMAN. And in numerous cases there has been a lack of diligence somewhere in the handling of and in the pursuing of these cases; I mean the large cases, where the supply comes from. That is the weakness of all of these cases that I have read, the lack of somebody to push these cases to a final conclusion. Now, the mere fact that you did not have the evidence before you does not answer the witness's criticism.

Mr. BRITT. No; but I am giving you the best information I have in this case.

The CHAIRMAN. Yes.

Mr. SIMONTON. I recall this case, the Schenley case. I had it and I reviewed it some year or year and a half ago, and I have not seen it since. There was a hearing held and the facts were brought out. I think some 26 druggists testified out of 92, and the attorney admitted that the others would say the same thing if they testified.

My recollection is rather vague, because, as I say, I have not seen the case for two years; but it was developed, as I recall it, that when these shipments were made the director's copy of the spurious permit was mailed to the director, Hart or Day, one of the directors up there in New York. It was rather an odd thing, or rather a peculiar thing, that a man who was guilty would send a copy of his permit, a spurious permit to the director if he were engaged in a guilty transaction. I can remember that one particular point that bore on the question of the guilt of the Schenley distillery.

The CHAIRMAN. Have you had any difficulty with these distilleries since that time?

Mr. SIMONTON. I have not had any connection with this case at all.

Mr. BRITT. None to my knowledge, Mr. Chairman.

The CHAIRMAN. Will you please look up and see what the record of this distillery has been since the time of this case?

Mr. SIMONTON. Yes, sir.

The CLERK. Mr. Chairman, with reference to the statement of Mr. Britt, there is a memorandum to Mr. Blair written by Mr. Britt, under date of January 15, 1922, in which he says:

I have reached these conclusions for the reasons, first, that there is no proof of active violation, the offense being passive negligence.

Mr. BRITT. Yes; that is right.

Mr. SIMONTON. There is another angle to that matter, and that is that the then director in New York, who heard the cases, stated that while there were grounds for the revocation of the permits he thought there were no grounds for criminal action against the company. I remember that distinctly. I remember that peculiar statement, that there was enough violation of the law to revoke the permit, but there was not enough for criminally prosecuting the man.

Mr. BRITT. Following what several witnesses have said, Mr. Chairman, it is entirely true that there are defective inquiries. It seems to be perfectly useless to dwell upon that; and there have been defective inquiries from the beginning, a greater or less number, but I think the agents are improving in the art of making investigations from time to time. They are receiving instructions from the courts and from the bureau as to how to follow up a particular point.

For instance, recently some agents were before me, and I put a case somewhat like this, where it seemed that there had been some very ugly things done:

But you have not developed it. You ought to go and plant yourself in a convenient place and get some facts, and you will never make a case unless you find out what is being done. I believe what you say is being done, but we can not act on it unless we get better proof.

In that way impressions are being made on the agents, and reports are becoming better from time to time.

I am entirely frank to admit that the inquiries are not what they should be always. That is beyond any question; but I think they are improving, Mr. Chairman.

The CHAIRMAN. I read the report in one case, the case of some consolidated company, where the case was brought against the New York company and it should have been against the Baltimore company, and no change was made.

The CLERK. That was the case of the Continental Distributing Co. In the Continental Distributing Co. case, according to Mr. Storck, this company was organized and incorporated in Maryland, with New York offices, chiefly for the distribution of wines for sacramental purposes. A man named A. Musher was president of the company.

Attention seems to have first been directed to this company because of the importation of a great quantity of Spanish wines in 1920 and 1921, and it seemed that such wines were not suitable for sacramental purposes at all. However, they were imported and the company never got them. They were held in the customs officers' bonded warehouse, and finally arrangements were made to send them back to the owners in Spain. A bank over there had control over it.

Out of that transaction the agents began to pay some attention to this company. They first got a truck loaded with wines from this company. They got the delivery list from the driver of the truck and went with him to these places, and found deliveries being made to some places of business, to gentiles and so on, for sacramental purposes. They showed that the agents of the company were out soliciting orders for wines for sacramental purposes, and finally they show that this company was advertising in Jewish newspapers, and it was opening branch houses to sell sacramental wines, listing some 12 or 14 stores.

The agents recommended the revocation of the permit of the Continental Distributing Co. of New York, and revocation proceedings were held before R. C. Harper, a Federal prohibition agent, who decided that this company in New York was inactive, and that the charges should have been made against the Continental Distributing Co of Baltimore, and that therefore the case should be dropped. He also decided that the evidence was insufficient to connect the Continental Distributing Co. of New York with the frauds in the case.

In Mr. Storck's report he pointed out that there was no doubt that this company was distributing this wine to gentiles and to places of business, and that they were out soliciting orders. They employed a man who signed the permits as a rabbi, and it was questioned whether he was a rabbi or not; but he was in their employ constantly to sign these permits.

The CHAIRMAN. The point I wanted to raise in that connection was that there was nothing in the record that shows that after the hearings had before this prohibition agent, when he technically determined that the case should have been brought against the Continental Distributing Co. of Baltimore instead of New York, no effort was made to connect the Baltimore company with it. In other words, because of a technical error in bringing a complaint for a revocation of the permit, the whole matter was dropped and no action was taken against the Baltimore company. That is one of the things I mean when I say lack of following up in the department.

If you have any more cases like these you may put them in, Mr. Carson.

The CLERK. I have another little case here. Of course, there are quite a few of the cases, but these are just typical of all, and I have just picked out one here and there.

This is a little case to show that Mr. Storck contended that they did not follow up the evidence. This is the case known as the George Conrad case, of Baltimore, Md.

On April 1, 1924, Prohibition Agents Albrittain, Ely, Stevens, Beall, Ford, Bratten, and Flinchum got a tip from the Baltimore police that a carload of beer was being unloaded there, and they went to the place designated and seized 6,582 cases of beer in a warehouse at 1201 Block Street, Baltimore, the seizure having been made on March 24, 1924.

The railroad waybill in this case, as shown by the railroad company, was for delivery to George Conrad, a fictitious name used in other shipments.

The beer was illegal, was 4.5 per cent of alcohol by volume.

The waybill was from the Pennsylvania Railroad Co., the shipment having been made from the Engleside station in North Philadelphia, and the shipper was designated as the Deepdock Beverage Co., owned by one B. F. Jones.

Mr. Storck said there was nothing to indicate in the report that an effort was made to identify the brewing company, B. F. Jones, the consignee, or to develop any other facts leading to prosecution. They did not go back to find out who was guilty in the shipment of the beer, and that is what he brought that case in to show.

Senator KING. They contented themselves with the seizure, and did not prosecute?

The CLERK. Yes. It is practically the same situation as in the Bernheim case.

I do not know, Mr. Chairman, whether you want the report in the Burlington case; that is, the case of the Burlington Industrial Alcohol Co., to show that they knew that this company was at least suspected of violating the law, and never put any agents there.

The CHAIRMAN. I think you might read that.

The CLERK. That is a rather typical case.

The CHAIRMAN. And I understand that that company is still running?

The CLERK. It is still running. The unit says that they suspect this company yet, but have not been able to catch it. I have Mr. Storck's report on this, and it covers a tremendous volume.

Mr. BRITT. That is the case in which the unit has been twice enjoined from interfering with the permittee, and there is court action pending now.

The CHAIRMAN. If that is the case, I do not think there is any use of putting it in the record, if the unit has been enjoined twice from interfering. It seems to me, if that is the case, you must have lacked proper information. Otherwise the court would not have enjoined you.

Senator KING. The injunction might have been the result of your failure to do your duty as a lawyer—and when I say "you" I mean the department—in presenting the evidence.

Mr. BRITT. Well, sir, the case was presented by the district attorney in Philadelphia, and I must assume that he did it as well as he could.

The CLERK. There was only one thing that was particularly interesting to me in that case as I went over the file, and that was the report of Mr. Whitehead, the agent who handled the case.

The CHAIRMAN. You might read that.

The CLERK. Mr. John Whitehead, one of the agents, was constantly in touch with the Burlington Industrial Alcohol Co., and on February 4, 1924, he made a report to Mr. Sams, who was the divisional chief at Philadelphia. In this report he reminds Sams of a check that resulted from putting agents in constant and daily check on distilleries and says, since they were taken off, "We believe Burlington has run wide open."

Again, he says that from December 20, 1923, to January 6, 1924, a couple of weeks there, while Agent Connolly was on the job constantly at the plant of the Burlington company, the Burlington company kept 10 carloads of alcohol on the railroad siding because they could not store it and could not get rid of it, as Connolly was watching, and they finally transferred it to the Consolidated Ethyl Solvents Co.

He points out that the agent spent 10 days at the Consolidated Ethyl Solvents plant, and shows how difficult it was during that time to get rid of the alcohol illegally, and that during that period the company made not more than five shipments, and the largest shipment was for 25 barrels.

Whitehead says:

> It is perfectly apparent that this company can not live on its present business. They have received heavy shipments from distilleries for the last six months, and we found the warehouse practically empty. They appeared to have had means of disposing of the alcohol in the past which they do not enjoy at present.

That is, while an agent was on the job. He says, again, that two agents made constant watch on Burlington for two weeks and nothing was shipped out in more than a week's time.

His final conclusion is that he recommends as follows:

> I would respectfully suggest that the commissioner should, if possible, give you additional men, so that one agent could be placed at each of the distilleries and denaturing plants in the city. If this were done I am satisfied that we would have the alcohol situation in this city under control. I am reliably informed that when we cut off the supply of the Burlington Distillery, which was going out for illicit purposes, we stopped the biggest leak in eastern Pennsylvania.

When this report got into the office finally the head of the industrial alcohol and chemical division wrote to Mr. Yellowley saying that Mr. Whitehead's report "as a whole indicates clearly this fraud can be stopped with proper policing."

The CHAIRMAN. I think this case demonstrates what we have had pointed out by Mrs. Willebrandt particularly, and I think it is clear from some of these other cases, that if the Prohibition Unit really puts men at these places it can be stopped; but they do not put the men there. They may put them there for 10 days and stop it, and then they take them away and these people start over again.

Senator JONES of New Mexico. It seems to me that that is what really ought to be done—to stop this business at the source.

Senator WATSON. But you have to have more men to do it.

The CHAIRMAN. That is only an excuse, Senator, because these men are now running around the cities where there are no distilleries and where there is no source of supply, doing policing work. In some of these western States, where there are no distilleries at all, they have a quota of men watching individuals in little towns with the hope of catching the individuals, instead of stopping the leaks at the big sources of supply.

Senator WATSON. Of course, what they are trying to do is that when they arrest a man they make him tell where he got it, and trace it to the original source of supply.

Mr. BRITT. There is a divided authority between the collectors and the directors, and there is not always harmonious action. Just now we have prepared and have before the Secretary new regulations as to alcohol, in which the alcohol distillery and the denaturing plant will be under the supervision and control of the director from the very beginning, with full power to receive the distiller's reports and the denaturer's reports, so that there will be but one medium of communication and of inquiry between the distiller and the denaturer and the unit. We believe it is a centralizing of responsibility that will enable us to ferret out many of these serious wrongs, where they are now are through so much divided authority.

I think the sentiment expressed that it requires actual supervision and responsibility for a particular case is the central idea, and that to take one of these large concerns and devote a number of men to that particular thing, hold them there, whatever the time and wherever the breaks, until that one is stopped, is the advice that we are giving to the field agents, and they are improving in that respect. It is but justice to say, however, that the salaries paid these men do not command the best men. I know it does not answer the fault at all; it does not make the remedy; but it is true, nevertheless, that it is hard to get men for the compensation to do the things that we have under consideration here.

Senator WATSON. How did this case get into court that you have been talking about? You say it got in there a couple of times?

Mr. BRITT. It was brought in one time on a petition for an injunction—brought and allowed against the commissioner for reducing the allowance. He was enjoined from continuing to reduce the allowance of alcohol. In the other instance I think it involved a question of the permit.

The CHAIRMAN. Do you believe that our insufficient ingenuity, brains, and ability in the Prohibition Unit, as shown by what appears in the records, to prevent the operations of a concern for years and years and years? It seems to me that the records clearly indicate, if anybody will take the trouble to read them, that there is a lack of ability in the organization somewhere when a concern can continue and have a permit year after year, continuing to violate the law, as they have in this case, and no power on the part of the Government to stop it?

Mr. BRITT. That seems quite true, and yet they are tremendously difficult to catch. They are very powerful, with great circles of

friends, watchers, and informers, and the task is very much more difficult than we are inclined to think from the inside.

Reverting back to my own experience, when I was out in the field as a revenue agent, I had to resort to actual physical watching for nights and days in order to succeed in getting it, and I did succeed in doing it.

The CHAIRMAN. In this case the power of the Government is insufficient to control such activities, is it not?

Mr. BRITT. I would not say that.

The CHAIRMAN. Well, it has not been sufficient up to date.

Senator WATSON. What case is that?

The CHAIRMAN. The Burlington company.

Senator WATSON. There is no use trying to stop prohibition enforcement, and I believe it can be done.

Mr. BRITT. I think it is done to a much greater degree than admitted. I do not admit that there are wholesale wanton violations generally; not at all. I think there is very much enforcement at present, and I agree with the committee that it can be made stronger. I have never made the contention that we can not improve the service. I think the Senator from Indiana hits the matter exactly in saying that we do not always know how to approach it, but I say we are advancing. I think conscientious efforts have been made and are now being made to make it stronger and more effective, to a greater extent than have ever been made before.

Senator ERNST. You are referring to the activities along the coast?

Mr. BRITT. Generally, on the coast and internally.

Senator WATSON. I believe that.

Mr. BRITT. That is the fact.

Senator KING. I still entertain the view that I entertained when the bill was drawn. I was on the subcommittee that prepared the Volstead Act. I voted against it. It is not necessary, however, now to give the reason. I then insisted that the matter be taken away from the Treasury Department and placed in the Department of Justice. Our Government has provided for a Department of Justice as the law-enforcing, the law-advising department of the Government, and there is no reason in the world why this law should not be enforced by the Department of Justice. I feel confident that if it had been taken over by the Department of Justice in the beginning many of the evils which we are now seeking would not have existed. If I had my way about it, I should take from the Treasury Department, the tax-collecting department of the Government, the enforcement of the prohibition law, and I shall make that recommendation in any report——

Senator JONES of New Mexico. In that connection I would like to make an inquiry.

Senator KING. Let me complete my sentence.

I shall make a separate recommendation, if my brothers do not join with me when we file a report, that the enforcement of this law be transferred to the Department of Justice.

Senator JONES of New Mexico. I should like to make this observation: I think that any lawyer would say that, superficially at least, the enforcement of the penal supervisions of the law should rest with the department of the Government charged generally with

that duty, but here we have the question of the issuing of permits. It seems that these alcoholic beverages are authorized for certain purposes, under certain conditions and restrictions. Would it be practicable to charge the Department of Justice with the administrative duty of issuing permits?

Senator KING. No; I would

Senator JONES of New Mexico. And as long as these permits are to be issued, is it not reasonable to suppose that the people who engage in the issuing of the permit will first inquire into the circumstances surrounding the issuance that they would be in touch with, and would there not necessarily be a duplication somewhat of effort?

The CHAIRMAN. In that direction, may I tell you my experience as mayor of Detroit for four years? I found that that was an entirely practicable system. In other words, it seemed to me a perfectly clear division of responsibility. The permit agency examines the applicant and issues the permit if it comes within the rules and the law, and the law enforcing agent then sees that they comply with the law and the terms of the permit, and if they do not comply with the terms of the permit they may prosecute, the same as the prosecuting attorney does. The Department of Justice may prosecute if they violate the permit and upon a proper showing the permit issuing department may cancel the permit because of the violations which the Department of Justice has found against the permittee. That is a perfectly clear line of division of authority.

Senator WATSON. Of course there is the tax collection, too.

The CHAIRMAN. That belongs in the Bureau of Internal Revenue. There is no question about that.

Mr. BRITT. Then that would be separated from the Bureau of Internal Revenue?

The CHAIRMAN. No; I am talking about the police department of the Government. There is one department for administering the law, and there is another department that sees that the law is obeyed. That situation exists in every county and in every political subdivision.

Senator WATSON. What is your view about having a separate bureau and department for this one thing?

The CHAIRMAN. I think it is ridiculous, because you can not have a district attorney, a law-enforcing officer, and then separate that one particular law in all the district from any other law. I see no reason for having a district attorney to enforce one law and another district attorney to enforce another law. The enforcement of all laws should be in the Department of Justice, and the Department of Justice ought to see that every law is carried out.

Senator WATSON. On the other hand, Senator, you do not have the Treasury Department enforcing any other law or attempting to.

The CHAIRMAN. No; it does not belong in the Treasury Department. I think that is obvious. There never was any good reason for putting the law enforcement in the Treasury Department.

Senator JONES of New Mexico. My mind is open on this question.

Senator WATSON. Mine, too.

Senator JONES of New Mexico. But I understand there is considerable agitation concerning this question, and I am wondering if it is the province of this committee to make some recommendation. If

so. I think we ought to go very carefully into the problem and hear the evidence and the arguments both pro and con on this question. I had assumed that the Judiciary Committee would probably deal with this question; but inasmuch as this committee is investigating the whole unit down there, query: Whether we should not fortify ourselves so as to justify a recommendation to the Judiciary Committee.

Senator KING. Or to Congress, which would then be referred to the Judiciary Committee.

Senator JONES of New Mexico. Or to Congress and deal with this thing in rather a fundamental way.

Senator WATSON. I think it is entirely feasible, Senator, for us to do that. It would have been a good thing if we had been able to do that before the Judiciary Committee considered the Cramton bill.

Senator KING. Yes; I think so.

Senator WATSON. And we had better do it, if we can. I think it should be done.

The CHAIRMAN. I see no reason why we can not do it, because the Cramton bill is not before Congress now, the new Congress.

Senator KING. It is dead.

The CHAIRMAN. That is dead; and we are supposed, under the resolution, Senator, to make recommendations for changing and improving the law, as well as to find fault with the administration of it. It seems to me, if we reach a conclusion, and after finding the conflict that exists between the different governmental activities, we should recommend a change in that policy.

Senator JONES of New Mexico. I was wondering if the Judiciary Committee had held hearings on the Cramton bill?

Senator WATSON. Yes; they did have.

Senator JONES of New Mexico. Perhaps it has been gone into rather fully by that committee.

Senator WATSON. They had hearings on it. I do not know just how extensively. Do you know, Judge?

Mr. BRITT. They had hearings before the House Committee, and a week or more before the Senate Judiciary Committee.

Senator ERNST. Was this question gone into carefully?

Mr. BRITT. The question of removing it to the Department of Justice was only touched on incidentally. The question was whether the bill should pass on its merits.

Senator WATSON. And the bill provided for a separate bureau?

Mr. BRITT. The bill provided for a separate bureau in the Treasury Department.

Senator WATSON. A separate bureau.

Mr. BRITT. In the Treasury Department.

Senator WATSON. In the Treasury Department.

Mr. BRITT. Yes, sir.

The CHAIRMAN. Separate from the Income Tax Unit?

Mr. BRITT. Yes.

Senator WATSON. But, just as Judge Britt says, the question of going over to the Department of Justice instead of the Treasury Department was not debated?

Mr. BRITT. Not at all.

Senator WATSON. But was considered only incidentally?

Mr. BRITT. Yes.

Senator KING. I think the Cramton bill differs from the present situation largely as the difference between tweedledee and tweedledum. It only means power to get new machinery—not more machinery, but to get more offices in the higher grades, in the higher positions. The men engaged in enforcing the prohibition law, the Prohibition Unit, aside from Mr. Blair, are not engaged in the tax matters. They are not engaged in collecting income taxes so you just simply create more offices without increasing the efficiency of the present organization by putting through the Cramton bill.

Mr. BRITT. You give the head of it more independent action and remove an intermediate officer between the Secretary and the head of this office, to wit, the Commissioner of Internal Revenue—a more centralizing responsibility; that is all.

Senator WATSON. What authority has General Andrews?

Mr. BRITT. He is an Assistant Secretary, designated by the Secretary of the Treasury, to supervise and oversee prohibition. The work of the department, as you know, is divided up among the various Assistant Secretaries.

Senator WATSON. I understand that. But he is made an Assistant Secretary?

Mr. BRITT. He has been made an Assistant Secretary.

Senator WATSON. Has a new position of Assistant Secretary been created for him?

Mr. BRITT. No; he succeeds Mr. Wadsworth.

Senator WATSON. Did Mr. Wadsworth, before this, have this matter under his jurisdiction?

Mr. BRITT. No; it was under the jurisdiction of Assistant Secretary Moss.

Senator WATSON. And it is not under Mr. Moss now?

Mr. BRITT. No.

Senator WATSON. General Andrews has taken it over.

Mr. BRITT. Mr. Andrews takes over what are believed to be the related matters of administration, of prohibition, customs and Coast Guard, all believed to be related, and I think it is an excellent idea.

Senator KING. Are his powers with respect to the enforcement of these prohibition statutes superior to those of Commissioner Blair?

Mr. BRITT. No; they are only superior in that the Secretary can supervise the Commissioner of Internal Revenue, and this Assistant Secretary supervises him for the Secretary, as the Secretary's appointment. That is all.

Senator KING. And he is superior to Commissioner Blair?

Mr. BRITT. He is his superior officer.

Senator ERNST. He is an Assistant Secretary of the Treasury.

Mr. BRITT. Yes, sir.

The CHAIRMAN. In other words, any instructions that General Andrews may issue must be complied with by the Commissioner of Internal Revenue and Commissioner Haynes?

Mr. BRITT. Precisely.

Senator WATSON. Has Commissioner Haynes's authority been changed?

Mr. BRITT. No. You see, he has never had any other official authority other than as delegated by the Commissioner of Internal

Revenue. The responsibility for the administration of the law is to be committed specifically, and with full power, to Assistant Secretary Andrews. Of course, it is manifest that the Secretary can not directly do it, on account of his numerous duties, and, as I understand it, he is given the job, and is held accountable for it.

The CHAIRMAN. That is the interpretation of it in the public press, too.

Mr. BRITT. Yes, sir.

Senator KING. So that a failure now to enforce the law will rest upon the shoulders of General Andrews, rather than upon Commissioner Haynes or Commissioner Blair?

Mr. BRITT. Yes, sir; as that supervisory and controlling head. That is as I understand it. I am just giving you the impression that I have gathered.

Senator KING. That is to say, General Andrews would outline a program, and then Commissioner Blair and Commissioner Haynes and their subordinates would have to carry out his instructions?

Mr. BRITT. I so understand.

Senator KING. Of course, to the extent that they fail to carry out the instructions of General Andrews, then the responsibility would rest on them.

Mr. BRITT. Precisely.

The CHAIRMAN. Does the committee desire to hear any more of these cases?

Senator JONES of New Mexico. I would like to make this observation: The Members of the Senate have their special lines of work designated through the various committees of which they are members, and it has been my custom not to try to take up for consideration in advance of consideration by the Senate these various matters which come up for legislative action unless they fall within the duty of the committee of which I am a member, and I take it that that is the general procedure of Senators. For that reason I have never given any special consideration to the so-called Cramton bill. If, however, this committee is to make any recommendations upon the subject at all, I should like for this committee to go into that question in detail and find out the difficulties in the road of any of these suggestions which have been made.

I might say that if the committee of the House and if the Judiciary Committee of the Senate have already investigated this subject, and have had full and complete hearings, perhaps that would be sufficient, with the hearings already held, if we were to examine them.

Senator KING. Mr. Senator, I would suggest that the chairman, who has been so diligent and faithful in the matter, look over those hearings and examine the resolution a little further and more carefully, and then, if he feels the matter has been covered, we need not go into it. If he feels that the resolution requires that we make a recommendation, and it has not been properly covered, then, upon his recommendation, we proceed and take some testimony on it.

Senator JONES. I am quite content with that, Senator.

The CLERK. Senator Jones, I looked over those hearings, and as I recall it, there was just a reference to the question of placing it in the Department of Justice. That was made by one of the representatives of the drug trade. There was a very violent protest by

Senator Reed of Missouri, who wanted to call Mrs. Willebrandt, and they would not let him, to testify as to the proposal; so they did not have any testimony from the representatives of the Department of Justice. Apparently Senator Reed wanted to bring out that point. He believed that it should be in the Department of Justice.

The CHAIRMAN. I might say, if the committee is agreeable, that unless they want to hear any more of this type of cases, we will not present any more of them at this time, because they are generally of the same kind of criticism. There may be a different kind of detail, but the whole criticism is as to a lack of prosecution by the officials of the unit. Unless the members of the committee have some suggestions as to how we might proceed further, or the officials of the Prohibition Unit, I think we might as well suspend the hearings until the fall, at which time I will make arrangements to have some one come before the committee and discuss whether we should recommend it staying where it is or going to the Department of Justice.

Senator KING. That is agreeable to me.

Senator WATSON. That is entirely agreeable.

Senator JONES. Yes.

Senator KING. In the meantime, you can look at the records of the hearings before the committees of the House and Senate.

The CHAIRMAN. Yes.

Senator KING. And see whether we should go into it or not

The CHAIRMAN. Yes.

Senator KING. All right.

Mr. BRITT. May I make this observation, Mr. Chairman?

While you have had these cases brought here which the committee has criticized, I hope it will not be forgotten that you have not here the thousands of cases which have been actively prosecuted and the great many which have been brought to a very successful issue.

I think it is due to the unit that that should be said.

The CHAIRMAN. Now, let me say this in that connection: I think there is a mistaken impression in your mind, and also in the minds of some of the officials of the Income Tax Unit. I do not understand that an investigation of a bank, for instance, or of a trust company, or of a department, means that you are to go through any item and commend every item which is found to be O. K. We are to assume that some of them are O. K. An investigation does not analyze every transaction. An investigation points out what is wrong, and that is all it does point out, and if the people making the investigation find nothing wrong, they say so.

Mr. BRITT. Yes; but I do not want the inference drawn, if the criticisms that you have made are well founded, those criticisms must go to all cases that have been handled.

The CHAIRMAN. Well, I do not think the committee; at least I, as chairman, who have read over the reports in these cases, would reach any such conclusion with respect to all these cases. I think a lot of them have not been handled properly in my judgment, and I think there should be more vigor and energy displayed in the prosecuting of these cases and more thoroughness in developing the testimony, so that a stop may be put to these cases, and so that they may not run on for years and years.

Mr. BRITT. I agree with that.

Senator ERNST. Mr. Chairman, Senator Watson and I have been urged to go to St. Louis to attend the funeral of Senator Spencer.

Senator WATSON. And Senator King, too, and what I desire to know is what you have in mind for this week.

The CHAIRMAN. Will you be back by Wednesday?

Senator WATSON. No; we can not possibly do that.

Mr. BRITT. Will you hear me one minute before you adjourn, Mr. Chairman? I want to ask this question: Some time ago I submitted to you, in December, an exhibit showing the organization of the office of the chief counsel in the Prohibition Unit, and if it is the intention to make that a part of the record I would like to say that recently the office has been entirely reorganized in every particular. If there is to be a comment or report upon that, may I ask whether it would not be well to submit the new plan of organization?

The CHAIRMAN. In that connection, one of the gentlemen that I have sent down to the bureau is from an auditing and accounting firm in Detroit, and the other is a member of the Detroit bureau of governmental research. I am sending them to your department, and you can give them such information as develops.

Mr. BRITT. The office has been entirely reorganized.

The CHAIRMAN. We will adjourn to 10 o'clock on Wednesday morning.

(Whereupon, at 11.55 o'clock a. m., the committee adjourned until Wednesday, May 20, 1925, at 10 o'clock a. m.)