

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

FIRST SESSION

PURSUANT TO

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

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

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ANDRIEUS A. JONES, New Mexico.

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INVESTIGATION OF BUREAU OF INTERNAL REVENUE

MONDAY, APRIL 7, 1924

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

The committee met at 2 o'clock p. m., Hon. James E. Watson, chairman, presiding.

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

Present also: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. N. T. Hartson, solicitor, Internal Revenue Bureau; and Mr. S. M. Greenidge, head engineering division, Internal Revenue Bureau.

Present also: Dr. T. S. Adams, tax expert, Yale University.

Senator Couzens. I would like to ask Mr. Hartson a few questions at this time.

STATEMENT OF MR. N. T. HARTSON, SOLICITOR, INTERNAL REVENUE BUREAU—Resumed

Senator Couzens. In the last hearing that we had, Mr. Hartson, Secretary Mellon presented a letter to the chairman in which he said, in part:

I understand from Mr. Hartson that some additional information from me is required by your committee in connection with other companies in which I might be a stockholder. If you will be good enough to advise me the names of the companies and the questions which have been raised with respect to their returns I will be in a position to advise you what, if anything, I can do to facilitate your committee's investigation of these returns.

I have a letter which suggests that we investigate the following Mellon cases and amortization allowances: McClintock-Marshall Co., Ellicott Machine Tool Co., Union Shipbuilding Co., and the Carborundum Co. of Niagara Falls.

I also saw a man here the other day who suggested that the Pittsburgh Plate Glass Co. was in the same category.

The charge in connection with all of these cases is that excessive amortization allowances have been made. This man who refers to these other cases says that—

The whole system is fundamentally wrong, inasmuch as we, as engineers, were not permitted to see that a taxpayer got a square deal, but the big fellows were well taken care of. We were obliged to write a report to please the reviewer or chief of section, and not proceed on facts as found in the field.

When you get Mr. De La Mater on the stand, ask for his little black book in which the Mellon and other interests were listed.

I will be glad to assist you any way I can.

Do you know if those companies are Mellon companies, Mr. Hartson?

Mr. HARTSON. I do not know.

Senator COUZENS. You will ask the Secretary, will you?

Mr. HARTSON. I shall be very glad to ask him. I assume the Senator desires to have the name of the writer of that letter included in the letter?

Senator COUZENS. He asked me not to give his name. He has not disclosed anything in violation of law; he has not given the figures.

Mr. HARTSON. All right, sir.

Senator COUZENS. Where do you live, Mr. Hartson?

Mr. HARTSON. I live at the Bachelor Apartments in Washington.

Senator COUZENS. Where?

Mr. HARTSON. That is at Seventeenth and H Streets.

Senator COUZENS. What is there at 1711 I Street?

Mr. HARTSON. I do not know.

Senator COUZENS. You have never been at 1711 I Street?

Mr. HARTSON. I do not know that I have; no.

Senator COUZENS. Do you know Mr. George E. Holmes, of 15 William Street, New York?

Mr. HARTSON. I do, sir.

Senator COUZENS. Do you know his Washington representative?

Mr. HARTSON. I think I do. I think Mr. Kingman Brewster is associated with him in a law partnership here in Washington. Kingman Brewster used to be chairman of the committee on appeals and review.

Senator COUZENS. He is here in Washington now?

Mr. HARTSON. So far as I know, I have not seen him for some time, but I think he is here in Washington.

Senator COUZENS. When did you last see him?

Mr. HARTSON. I should say may be three weeks ago.

Senator COUZENS. Three weeks ago.

Mr. HARTSON. I happened to meet him at dinner. I was having dinner alone in a tea house on H Street. Mr. Brewster was just leaving as I went in. I have seen him twice, I think, since he resigned from the committee, which resignation occurred in December, 1923.

Senator COUZENS. Have you ever been on the top of that building at 1711 I Street?

Mr. HARTSON. No; I never have. I do not know where it can be.

Senator COUZENS. You do not know where it can be? Well, it is just near where you live.

Mr. HARTSON. Well, that may be. It is on some other street.

Senator COUZENS. Yes. Do you know Mr. Elmont Hazard?

Mr. HARTSON. I think I have met him. It seems to me his name is familiar. I have no personal acquaintance with him.

Senator COUZENS. Do you know whether he represents Mr. George E. Holmes here in Washington?

Mr. HARTSON. Now that the Senator speaks of it, I am inclined to think he is associated in some way with Mr. Holmes. I do not know what the arrangement is, but I am inclined to think he is associated in some way with Mr. Holmes; but I have a very slight acquaintance with him. He has been in the office once or twice, and that is the only time I ever met Mr. Hazard.

Senator COUZENS. Has the controversy in connection with the Hayner Distilling Co. refund claim been discussed generally anywhere?

Mr. HARTSON. I never heard the name before.

Senator COUZENS. You never heard the name before? It has not been in the courts or before your office, so far as you know?

Mr. HARTSON. So far as I know, it has not. It may be in the office, but it has not come within my personal attention. My recollection is that I have never heard the name before the Senator mentioned it.

Senator COUZENS. Have you heard any question about the valuation placed on the stumpage of Babcock Lumber Co.?

Mr. HARTSON. I never heard that name before.

Senator COUZENS. Have you heard anything about the controversy that existed over the Superior Garment Co. case?

Mr. HARTSON. I do know something about the Superior Garment Co. case by way of hearsay. That case, I think, was under consideration in the bureau before I came to Washington.

Senator COUZENS. You have not heard anything about it since?

Mr. HARTSON. No; it has never been under consideration, so far as I know, since I have been here, and my only information with regard to it is hearsay. It was a case that was discussed several years ago.

Senator COUZENS. Is there a Mr. J. W. Beers in the Internal Revenue Bureau now?

Mr. HARTSON. I think there is, and he is present in the room.

Senator COUZENS. I would like to have Mr. Beers take the stand, please, for a moment.

TESTIMONY OF MR. J. W. BEERS, CHIEF, TRAINING SECTION, INTERNAL REVENUE BUREAU, WASHINGTON, D. C.

(The witness was duly sworn by Senator Couzens.)

Senator COUZENS. Will you state your full name for the record?

Mr. BEERS. J. W. Beers.

Senator COUZENS. Are you an employee of the Internal Revenue Bureau?

Mr. BEERS. Yes, sir.

Senator COUZENS. How long have you been such?

Mr. BEERS. Since the 11th of February, 1919.

Senator COUZENS. What positions have you held in the bureau in that time?

Mr. BEERS. For about 10 weeks I was an auditor in the personal income tax; for practically one year in the corporation side of field audit review; then for a year and four months assistant chief of the training section, and for the last two and a half years chief of the training section.

Senator COUZENS. Did you write a book on the workings of the Internal Revenue Bureau?

Mr. BEERS. I wrote a book on invested capital accounting and excess profits.

Senator COUZENS. How did you use the book?

Mr. BEERS. How did I use the book?

Senator COUZENS. Yes.

Mr. BEERS. Senator, I believe you would get more about what you want if I would merely tell the story of the book and then have you question me.

Senator COUZENS. Proceed.

Mr. BEERS. From its inception. It may take me 10 minutes to do so.

Senator COUZENS. Well, we hardly think it is necessary to go into it in that detail; but you wrote the book?

Mr. BEERS. Originally, Senator, it was not a book. It was a mimeographed series of texts, donated to the training section, and made by me in my own home, on my own time, before I was connected with the training section.

Senator COUZENS. Then when you transposed it into a book, was the book sold?

Mr. BEERS. Yes, sir.

Senator COUZENS. And was the book franked out under Government frank?

Mr. BEERS. Of the first edition, no copies were franked. The second edition was distributed by permission of my superior, and some of them were franked. Until I determined that we had a right to frank them they were postage paid. Those that were franked were sent to the revenue agent in charge. They were sent to the individual men.

Senator COUZENS. Was the book advertised?

Mr. BEERS. No, sir. Well, that depends upon what you mean by "advertised." It was announced that there would be an opportunity to subscribe, if they wished, but there was not what you would call general advertising.

Senator COUZENS. What was the price of that book?

Mr. BEERS. \$2.

Senator COUZENS. \$2?

Mr. BEERS. Yes, sir.

Senator COUZENS. Do you know how many subscriptions there were for the book?

Mr. BEERS. I really do not know, Senator. On the first edition there were some 900, and of the second edition I do not know. It is not finished yet at all, by any means, but I will say around 1,300.

Senator COUZENS. Who got the \$2 per book?

Mr. BEERS. The printer got the big share of it; the lion's share. Of the first edition \$90 went into books for the training section library, which we could not obtain otherwise.

Senator COUZENS. I ask who got the \$2 for the books after the first ones you had?

Mr. BEERS. There were none after that. They were all sold.

Senator COUZENS. Well, that is what I say. Who got the fee for the sale price?

Mr. BEERS. Well, the fee was taken by whomever accepted the subscription and turned over to me or turned over to the fund that was in the Exchange Bank, of which I had checking authority.

Senator COUZENS. How much was in that fund?

Mr. BEERS. Assuming that there were 950 subscriptions, there would have been \$1,900.

Senator COUZENS. What did you do with the \$1,900?

Mr. BEERS. Paid the printer and paid the postage.

Senator COUZENS. Well, I understand they were franked out.

Mr. BEERS. The first edition was not. I am speaking of the first edition now. I can not give you the exact figures on the second edition, because it is not finished up yet.

Senator COUZENS. You say there were some 1,400 of the second edition.

Mr. BEERS. About 1,300 subscriptions—in that neighborhood.

Senator COUZENS. That would bring in \$2,600?

Mr. BEERS. Yes, sir.

Senator COUZENS. Where is that \$2,600?

Mr. BEERS. That has either gone to the printer or the postage or in money for training section books.

Senator COUZENS. How many of those books went out under frank for which you charged \$2?

Mr. BEERS. That is hard to answer, Senator, because of the 1,300, assuming that there were 1,300, a great many, or a large number, of those books were delivered right in the unit to the subscriber, and then several hundred that went to the farthest stations were prepaid postage, and the remaining, after it was determined that there was the privilege of franking them as official matter, were sent to the revenue agent in charge. As to how many there were, I do not know.

Senator COUZENS. How did you arrive at the decision that they were frankable when you charged \$2 apiece for them and the money did not go to the Government?

Mr. BEERS. Well, when I came to the view that there was the privilege of franking them—and I came to that view because we were constantly sending stuff to the revenue agent in charge for these same men—I asked my superior, and told him that the money would be put into training section library books. He said that he did not see that there was anything wrong in it.

Senator COUZENS. Do I understand you to say that you made no money out of this book at all?

Mr. BEERS. Personally?

Senator COUZENS. Yes.

Mr. BEERS. Not one nickel.

Senator COUZENS. You are still at the head of the training section?

Mr. BEERS. Yes, sir.

Senator COUZENS. Just tell us what your functions, as head of that section, are. It seems they need quite a lot of training down there, at least some of them. How do you go about that?

Mr. BEERS. They are rather numerous, Senator—to organize classes, induce the best people in the unit to teach classes after hours without pay; to formulate and conduct examinations twice a year; then also have special field service classes once and sometimes twice a month; to induce people who have the ability to write text to do it for nothing, and other things of that sort, that are easy to do.

Senator COUZENS. How many are there in your section?

Mr. BEERS. You mean the personnel?

Senator COUZENS. In the training division.

Mr. BEERS. You mean how many are on the pay roll?

Senator COUZENS. Yes.

Mr. BEERS. Fourteen, I believe.

Senator COUZENS. Do they devote all their time to training?

Mr. BEERS. Yes, sir.

Senator COUZENS. What would you say is the cause of the great dissatisfaction that the business men of the country have with the Internal Revenue Bureau?

Mr. BEERS. Well, I did not know that there was dissatisfaction.

Senator COUZENS. It is perfectly evident, from the press and from the communications that the Senators have received.

Mr. BEERS. I have no means of knowing what they have received.

Senator COUZENS. It is perfectly evident from that that there is a great deal of dissatisfaction, and I ask you, Do you feel that the Internal Revenue Bureau is functioning as efficiently and competently as it is possible to do?

Mr. BEERS. Senator, I will try to be unbiased in my answer to that. I have watched that pretty closely. I have taken some interest in it for five years or more, and my honest conviction is that it is doing to-day many per cent better than it ever did before. I do not hear of any friction now, and it certainly was rampant in years past.

Senator COUZENS. How far past?

Mr. BEERS. Back in 1919 and 1920. I can not give you the dividing line, but it gradually drifted away until it began to run more like a properly lubricated machine. It used to run with jars and kicks. I have not heard of one for a long time.

Senator COUZENS. What lubricated it? You said it ran like a well-lubricated machine.

Mr. BEERS. What lubricated it?

Senator COUZENS. Yes.

Mr. BEERS. Efficient administration.

Senator COUZENS. Have you any suggestion as to what might be done by the bureau to make unnecessary these large expenditures by taxpayers for expert advice?

Mr. BEERS. That is a pretty big question to answer right off, isn't it?

Senator COUZENS. Well, you can say whether you think there are some ways in which that can be done or not.

Mr. BEERS. I had an idea in view a couple of years ago, which was never put forth, that I believe would have overcome it.

Senator COUZENS. What was that?

Mr. BEERS. The training section has a correspondence course that it gives to the field men in tax law and tax accounting and allied subjects. I believe that if we had given that free to every lawyer in the country it would save money to the Government and to the taxpayers.

Senator COUZENS. Would you give that to the lawyers or to the industries who pay the taxes?

Mr. BEERS. To anybody who wants it, free.

Senator COUZENS. Is it too late to start something like that now?

Mr. BEERS. No; I do not think so, because we are in better shape now than before. When I took charge of the training section—that is, prior to my accession to the position—there was not one sheet of instruction of any description to help any training work. There was not a text of any kind, except a service of accounting texts and that had to be written entirely from an accounting viewpoint. The first ones that were written, applicable to our work, I wrote without any suggestion from anyone. We have written entirely from the income tax viewpoint and not from an

accounting viewpoint. There is a very complete line available, and that line would be of great advantage to the American taxpayers if they could get hold of it.

Senator COUZENS. Mr. Nash, have you any idea how that could be carried into effect in a way which would facilitate the taxpayers?

Mr. NASH. It has been the policy of the bureau to keep such instructions for the personnel of the Internal Revenue Bureau. They have not been distributed gratuitously, although during every tax-filing period we have prepared for the newspapers a series of articles relative to the filing of income-tax returns. The meat of those articles that are given to the newspapers is taken from this text.

Senator COUZENS. The Agricultural Department, the Department of Commerce, and others issue instruction pamphlets on subjects which they have charge of, and for which they charge a fee. They invite the people who are interested in commerce and in agriculture to purchase these pamphlets and books. Would it not be a good plan to adopt that policy in the Internal Revenue Bureau?

Mr. NASH. It might be, Senator. I had never thought of it in that way.

Senator COUZENS. Well, will you take that up with your associates and see if something of that kind could not be adopted to facilitate the taxpayer, and so that he will not have as much complaint to make?

Mr. NASH. All right, sir.

Senator COUZENS. Have you ever been to Europe, Mr. Beers?

Mr. BEERS. To Europe?

Senator COUZENS. Yes.

Mr. BEERS. No, sir.

Senator COUZENS. You have never been to Europe?

Mr. BEERS. No, sir.

Senator COUZENS. Did you ever take cognizance of the British system of income tax?

Mr. BEERS. A couple of years ago I got a number of pamphlets on the British tax, particularly along the line of their supertax and excess-profits tax, but I did not go into it deeply enough. I did give it a little thought then, but I am not familiar with it now, as I have paid no attention to it since.

Senator COUZENS. Did you discover in your work any loopholes in the revenue act whereby the taxpayers evaded the payment of taxes?

Mr. BEERS. Not outside of deliberate crookedness. I can see how a taxpayer could fail to report all of his cash receipts.

Senator COUZENS. Well, it would be better to take care of that in the law. I mean where he may be legally evading it.

Mr. BEERS. Well, I would not say that I could. I do not recall anything in particular at the moment. I do recall having a thought once in a while that a man might do this or that, but as to what it was I do not recall just now. My work, Senator, has been more along the line of teaching what the law said rather than what might have been said.

Senator COUZENS. Doctor Adams, do you want to ask the witness any questions?

Doctor ADAMS. I would like to ask Mr. Beers if he believes that they are meeting a number of questions that are important fundamentally and yet unsettled in the law?

Mr. BEERS. There are not so many now, Doctor, as there used to be. I believe our biggest unsettled question five years ago was the question of treasury stock, and that is pretty well settled now. I might add to that the excess profits texts mentioned was the first public utterance in the unit, and when a decided stand was taken on that point and the stand then taken is not now open to question.

Senator COUZENS. Do you have any difficulty with the question of amortization and depletion?

Mr. BEERS. Well, Senator, only in getting the students to grasp the subject. That we find in all subjects and in all branches. I believe that the biggest stumbling block has been inadmissible assets.

Senator COUZENS. If the doctor has no further questions I would like to ask Mr. De La Mater if he is here, to take the stand.

Mr. BEERS. May I be excused?

The CHAIRMAN. Yes.

(Witness excused.)

Senator COUZENS. Will you swear the witness, Mr. Chairman?

TESTIMONY OF MR. STEPHEN T. DE LA MATER, CONSULTING ENGINEER, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

Senator COUZENS. Will you state your full name for the record?

Mr. DE LA MATER. Stephen T. De La Mater, 2700 Connecticut Avenue.

Senator COUZENS. How long were you in the bureau, Mr. De La Mater?

Mr. DE LA MATER. Just four years almost to a day.

Senator COUZENS. Over what period of time?

Mr. DE LA MATER. I think it was November 17, 1919, until November 15, 1923.

Senator COUZENS. What positions did you hold during that time?

Mr. DE LA MATER. I started in as appraisal engineer, became chief appraisal engineer, and then became chief of section.

Senator COUZENS. What salaries did those positions pay?

Mr. DE LA MATER. I think I started in at \$3,600, and as chief I got \$4,800.

Senator COUZENS. Were you at any time at the head of the amortization section?

Mr. DE LA MATER. Yes; I was chief of the amortization section.

Senator COUZENS. What particular training did you have for that particular job?

Mr. DE LA MATER. Well, my education was that of an engineer. I was educated at Cornell University in civil engineering, and my experience after that was the ordinary experience of a civil engineer. I started in with railroad work, with the Illinois Central Railroad. From that I went into general engineering; then with the Osborne Engineering Co., of Cleveland. Then I went with a contracting company in Cleveland on harbor work and river work, bridge foundations, and big buildings, and various works of that kind. I built several manufacturing plants while with the Osborne

Engineering Co. Later I went into the estimating field for contractors, and then I was with what used to be known as D. H. Burnham Co., architects, of Chicago. Then I was out for myself as consulting engineer for a time.

Senator COUZENS. Did you go into the bureau under civil service?

Mr. DE LA MATER. Yes.

Senator COUZENS. How did you come to leave the bureau?

Mr. DE LA MATER. Well, I had been there four years, and I thought it was about time that I got out and tried to make some money to support my family. I liked the work and stayed there as long as I felt I could afford to. I had been ambitious to clean up that work.

Senator COUZENS. What business are you in now?

Mr. DE LA MATER. I am now in the consulting engineer business.

Senator COUZENS. Are you practicing before the Internal Revenue Bureau?

Mr. DE LA MATER. Well, not practicing in the sense that I have handled cases before the bureau. I have a card that entitles me to practice before the bureau, and I have been before the bureau just to get the status of one or two cases. Most of my work has been confined to consulting work on the outside, advising taxpayers as to how a claim should be prepared; but I have not done a general tax work, and therefore I have not appeared before the bureau much.

Senator COUZENS. When did you get your authority to practice before the bureau?

Mr. DE LA MATER. Where did I get it?

Senator COUZENS. When did you get it?

Mr. DE LA MATER. I have the card with me. It is dated December 19.

Senator COUZENS. December 19 of what year?

Mr. DE LA MATER. Prior to that I had a temporary card. I think it was dated November 19.

Senator COUZENS. What year?

Mr. DE LA MATER. 1923.

Senator COUZENS. They did not require you to wait until two years after you left the bureau in order to practice before it?

Mr. DE LA MATER. No, sir.

Senator COUZENS. Mr. Nash, was any rule in effect requiring two years to elapse between the time of leaving the bureau and the time to practice before it?

Mr. NASH. There is a section of the law which requires an elapse of two years before an employee or an ex-employee can appear in a claim against the Government which was pending while he was an employee.

Senator COUZENS. Mr. De La Mater has not violated that law at all, as far as you know?

Mr. NASH. Not that I know of.

Senator COUZENS. Do you know Mr. Jennings?

Mr. DE LA MATER. Yes, sir, Mr. W. T. Jennings, you mean?

Senator COUZENS. Yes.

Mr. DE LA MATER. Yes.

Senator COUZENS. Was he in the bureau while you were there?

Mr. DE LA MATER. Yes, sir.

Senator COUZENS. How long was he there?

Mr. DE LA MATER. I do not know just when he came in there. He was one of the older men. I think he came in some time early in 1920, but I am not sure.

Senator COUZENS. He came in after you did?

Mr. DE LA MATER. After I did.

Senator COUZENS. Did you not select him as your assistant?

Mr. DE LA MATER. I would have to explain a little bit the process there. When I went in as an engineer the section was very small. I was practically the first engineer, and was immediately followed by Mr. Wheeler, who came in on the same day a little later. Mr. Van Pelt was chief. Two or three months after that, as the section developed or became organized, it was thought necessary to appoint one man as chief of the engineers, because there were two sections, the engineer section and the audit section; so Mr. Van Pelt made me chief. When I became chief, Mr. Fisher was made chief of engineers, and when Mr. Fisher left, Mr. Wheeler was made chief, and Mr. Jennings followed Mr. Wheeler. I think that was about the order in which they came in the department, and Mr. Jennings followed Mr. Wheeler when Mr. Wheeler left the department.

Senator COUZENS. Did you hear of any complaints when you were in the bureau, where engineers were denied an opportunity to appear before the conferences after they had fixed on an amortization?

Mr. DE LA MATER. No, Senator. I am very glad to have an opportunity, if I may speak on that subject.

According to the newspaper reports of the hearings here, which I saw while I was in New York, there has been a reference here to secret conferences. I want to say that there were not any secret conferences, and it was always the policy that, if the engineer who handled a particular case was in town at the time of the conference, he was in on that conference. It was the wish that he be there, and, if possible, conferences were so arranged that the engineer would be in town.

Senator COUZENS. Do you know what the Aluminum Co. of America claimed as an amortization?

Mr. DE LA MATER. If I am not mistaken now, the reason I recall it is because I saw it in the papers the other day.

Senator COUZENS. What was the claim?

Mr. DE LA MATER. Eighteen million dollars and something. I can not recall the exact figures now.

Senator COUZENS. Do you know what the engineers reported?

Mr. DE LA MATER. Fifteen million dollars and something.

Senator COUZENS. Did you ever go out on that particular case yourself?

Mr. DE LA MATER. I was out there with Mr. Whitney; yes, sir.

Senator COUZENS. Was it unusual for the chief of the bureau to go out on an amortization case?

Mr. DE LA MATER. Well, it was not my custom to go out on a case as a general thing. The reason I went out at that time was this: We had about six or eight new engineers that came in about the same time, and we were rushed with work and were very anxious to get those men trained so that they would be available for independent work. There were not enough of the older men to take them all out; so I would go out with one of the older men, and being chief, of course, as a matter of pride, I went out on the largest cases.

Senator COUZENS. Did you go out on any other case besides the case of the Aluminum Co. of America?

Mr. DE LA MATER. Yes; I was out several times. I do not recall just how many.

Senator COUZENS. Do you know the names of the cases that you were out on?

Mr. DE LA MATER. I do not believe I do. I do not believe I could recall them all. I was out on the United States Steel Co. case, because it came in the way of our travels in connection with the Aluminum Co. of America. It was on that portion of it down in Mobile, and I had been out on that before at the New York office of the company.

Senator COUZENS. Then the United States Steel Corporation is the only one you remember outside of the Aluminum Co. of America?

Mr. DE LA MATER. No; I was out on the American shipbuilding case in its inception. I went up to Cleveland on it and met the officers of the company to determine just how the case should be handled and to find out how much of a case it was and how we should handle it.

Then, at their request, I went up to New York to listen to their attorneys in the presentation of the case.

Senator COUZENS. Have you been employed—

Mr. DE LA MATER. I suppose, if I sat down and thought a while, I would be able to think of more cases. I know I was out on more, but I do not recall offhand the names of the cases I was out on.

Senator COUZENS. Have you been retained by any of these corporations in connection with their claims before the bureau since you have been out of the bureau?

Mr. DE LA MATER. I have not been retained by any company which I had any personal or intimate association with while I was in the department. And I might also say, if I may, that I do not take any cases on a contingent fee basis nor on a flat fee basis. I have only been employed on a per diem basis and I have not solicited a case.

Senator COUZENS. Has your undertaking been successful since you have been out of the bureau?

Mr. DE LA MATER. Not as successful as some that I have read about.

Senator COUZENS. You heard me read the letter awhile ago about your having a memorandum book?

Mr. DE LA MATER. Yes, sir.

Senator COUZENS. Have you got such a memorandum book?

Mr. DE LA MATER. I have not.

Senator COUZENS. And you never had such a memorandum book?

Mr. DE LA MATER. I always have a memorandum book. I have a black book now, since I am out of the department, but I never had a black book with a list of the Mellon companies in it.

Senator COUZENS. You never had a book of any kind with a list of the Mellon companies in it, had you?

Mr. DE LA MATER. No, sir. I might say that the only way I ever knew that a case was a Mellon case was from the underground route. There was never anything to indicate that a case was a Mellon case. There was a great deal of gossip circulating through the bureau when it was intimated that a case was a Mellon case.

Senator COUZENS. It was kind of whispered around?

Mr. DE LA MATER. We called it the grapevine route. If anything started anywhere in the bureau it went all through it. I also heard a list a few minutes ago of Mellon companies. At least half of them I never heard of as Mellon cases.

Senator COUZENS. Well, in this grapevine proceeding, through the bureau in which there was mention made of Mellon cases, can you give the names of the companies that were supposed to be Mellon companies?

Mr. DE LA MATER. Can I?

Senator COUZENS. Yes.

Mr. DE LA MATER. Those which I knew were Mellon companies were the Aluminum Co., the Standard Steel Car Co., the Carborundum Co., and the McClintock-Marshall Co.; and the Gulf Oil Co. Of course, we had no connection with the Gulf Oil Co. in our section.

Senator COUZENS. Do you remember the correspondence that we had here the other day, where you addressed some communications to some of the bureau heads to expedite a Mellon case; that is, the Standard Steel Car Co. case?

Mr. DE LA MATER. I saw some reference to that in the Philadelphia Record. What do you want to know specifically about that?

Senator COUZENS. Mr. Hartson, have you got that correspondence here?

Mr. HARTSON. Yes; we have that.

Senator COUZENS. I have a photostatic copy here of a communication dated November 2, 1921, headed:

In re Standard Steel Car Co., Butler, Pa. Memorandum to Mr. Wheeler.

Upon request of Mr. Newton, representing this taxpayer the audit of this case is being postponed by the consolidated returns subdivision. An extension of time has also been granted the taxpayer for the submission of necessary data in support of its amortization claim.

You will therefore remove this case from the expedite file and not assign an engineer to it nor follow up the case until further advised.

That is signed by you, I think. Do you remember that?

Mr. DE LA MATER. Yes; I remember seeing that in the paper.

Senator COUZENS. You do not remember it when you were in the unit?

Mr. DE LA MATER. Oh, yes; I do. I recall the circumstances in connection with all of those memoranda, if that is what you want to know; Senator.

Senator COUZENS. I asked you if you remembered this memorandum, on which a certain part is deleted, which refers to this being a Mellon company.

Mr. DE LA MATER. Yes; I do.

Senator COUZENS. Do you know when that part of the communication referring to the Mellon company was deleted?

Mr. DE LA MATER. I do not know the exact date, but it was after I returned. That memorandum was signed, if I recall, correctly, by Mr. Kishpaugh, acting chief of section in my absence, and when I came back I learned that that case had been requested to be expedited, and as it had previously been requested held, I investigated it from the consolidated, and found that it had been expedited by error, through some misunderstanding, as I recall, between two sections in the consolidated. I therefore issued another memorandum canceling this expedition, and I deleted it purely as a matter

of indicating my disapproval of the use of the Secretary's name for the purpose of expediting a case.

Senator COUZENS. Then, you deleted this yourself?

Mr. DE LA MATER. I deleted it, yes.

Senator COUZENS. You saw this before it was deleted, of course?

Mr. DE LA MATER. Yes. It was not deleted when I returned.

Senator COUZENS. What is your understanding of the meaning of the last paragraph of this memorandum, signed by Mr. Kishpaugh, in which he says:

It seems that what is not to be done is the matter of assessing the tax; but it is desired to find out the amount of the probable assessment as soon as possible.

Mr. DE LA MATER. I can not answer that, for the reason that the case was not desired expedited; so I do not know the reason for that.

Senator COUZENS. What came to your attention when you returned to suggest to you that you cancel the expedite order in this case?

Mr. DE LA MATER. I presume, in getting familiar with the work when I came back, and finding out what was done in my absence, I probably went over the assignment of the case. I knew particularly that that was not to be expedited, because I had been personally called up to Mr. Bird's office on that case. As I recall, we had assigned that case before for investigation. An engineer had gone out on it, and he found that the case was not ready to examine. That happened frequently in the work, and the consolidated having requested us to hasten the case, we naturally would examine it, and would press the taxpayer to get his case in shape so that we could pass on it. I was called up to the consolidated, and Mr. Newton was there. I was introduced to Mr. Newton by Mr. Bird.

Senator COUZENS. Who is Mr. Newton?

Mr. DE LA MATER. Mr. Newton was the representative of the taxpayer.

Senator COUZENS. Was he ever in the bureau?

Mr. DE LA MATER. No. That is another Newton.

Senator COUZENS. Another Newton?

Mr. DE LA MATER. Yes. Mr. Bird said that as they were not going to need our report as soon as they thought, it would not be necessary for us to handle that case, and the taxpayer could therefore be given the necessary time to prepare his case to present it properly. I knew when I found this memorandum that there had been a controversy, a changed plan or a mistake made.

Senator COUZENS. Do you know why Mr. Kishpaugh put in there that this was a Mellon case and therefore to expedite it?

Mr. DE LA MATER. I do not know. I just have an idea that it was done for the purpose of crowding the boys a little more, rather than with the idea that it was especially necessary that they get busy on this case.

Senator COUZENS. What was the purpose of this memorandum of December 19, 1921, signed by you and addressed to Mr. Wheeler?

Mr. DE LA MATER. Because, upon coming back and going over the situation, having known that the case was to be held, I went up to the consolidated to find out if this was correct, and I found that

there had been a mistake, and that the case should not be expedited. So I countermanded that expedite memorandum.

The CHAIRMAN. What does it mean to expedite a case?

Mr. DE LA MATER. It got to be a joke, Senator. As a matter of fact, three-fourths, at least, of the cases in our file were expedite cases. We worked on nothing but expedite cases at one time during that period.

Senator COUZENS. What made them expedite a case?

Mr. DE LA MATER. There were several reasons. I suppose for a year and a half or two years all cases involving claims having any claims for refunds or abatement or credit were expedite cases.

The CHAIRMAN. Who had the authority to mark a case "Expedite"?

Mr. DE LA MATER. Every case that was a claim, for instance, would be marked "Expedite."

The CHAIRMAN. Who marked them?

Mr. DE LA MATER. They were marked automatically.

The CHAIRMAN. Well, if they were marked automatically, who was the automaton in the automatic business?

Mr. DE LA MATER. I do not know as I could name the individual, Senator. We had the organization so arranged that some clerk would do that.

The CHAIRMAN. He would mark it "Expedite"?

Mr. DE LA MATER. In our particular section our system was this: We had a pink card. It was entered on a pink card and put in the file case. The other cases which were expedite cases were those which might be bankrupt cases. Sometimes a request came from the solicitor's office, or if we had any knowledge about a bankrupt case, it was expedited. Then we worked with, and had to work with, the other audit sections closely, and when they wanted the amortization report we tried to have it ready by the same time they wanted to audit the case. They would send us a request for the amortization report, and that immediately became an expedite case in our section.

The CHAIRMAN. The first time you saw the files in this case was when you scratched those words out?

Mr. DE LA MATER. No.

The CHAIRMAN. You had seen them before that?

Mr. DE LA MATER. It was before that. There is a previous memorandum in the department, dated November 2, I think, in which I requested that the case be held up.

The CHAIRMAN. Well, it had been an expedite case up to that time?

Mr. DE LA MATER. It had been an expedite case as I recall, at the request of the consolidated, because it was ready for audit.

The CHAIRMAN. Then, when you came back you struck out or deleted those words, did you?

Mr. DE LA MATER. Yes.

The CHAIRMAN. Why did you strike them out? Why did it seem to be an expedite case?

Mr. DE LA MATER. There is no connection between the two, Senator.

The CHAIRMAN. That is what I want to find out.

Mr. DE LA MATER. It seems to be an expedite case, because having knowledge a month before from Mr. Bird that the case was

to be held and not to be expedited, I checked this up when I returned and found that there had been a mistake made and it was not be expedited. Therefore I canceled that memorandum by another memorandum. As to the deletion, as a matter of course, when I read that over and saw that, I took a blue pencil, that is to say, just to indicate my disapproval of using the Secretary's name for the purpose of expediting the case.

The CHAIRMAN. In that connection, was there ever at any time any intimation or suggestion that came to you as chief of the division to hurry a case because it was a Mellon case?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. By anybody?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. Directly or indirectly?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. Was there ever any intimation or suggestion that came to you as to how a Mellon company case was to be decided or as to what your decision was to be in reference to it?

Mr. DE LA MATER. As to the result, you mean—the amount?

The CHAIRMAN. Yes.

Mr. DE LA MATER. No.

The CHAIRMAN. Never at any time?

Mr. DE LA MATER. Never at any time.

The CHAIRMAN. Directly or indirectly?

Mr. DE LA MATER. Directly or indirectly.

The CHAIRMAN. What difference in the progress of that case did it make after you determined that it was not to be an expedited case? In other words, what was the difference in the progress of a case that was marked "expedite," and one that was not?

Mr. DE LA MATER. A case that was marked "expedite" was followed up every so often, if it was not ready to examine. For instance, the case had to be prepared in a certain form before we sent an engineer out on it, and if it was not ready we would write the taxpayer and send him a guide form and request that he get it in as soon as possible. In the course of anywhere from 10 days to two weeks that would be followed up by a letter if we had not received the information. As soon as it was ready it was assigned to an engineer. The engineer went out, and he would be told it was an expedite case and to get it through as soon as he could. I should say about three-fourths of the cases were expedite, and they were all working on expedite cases for over a year.

The CHAIRMAN. How long were you at the head of the division, Mr. De La Mater?

Mr. DE LA MATER. If I may ask a question, you mean the section?

The CHAIRMAN. Well, the section. I mean the section.

Mr. DE LA MATER. About three years.

The CHAIRMAN. How many men were in that section?

Mr. DE LA MATER. Well, it varied from 50 to about 90.

The CHAIRMAN. You were acquainted with all of those men personally?

Mr. DE LA MATER. Well, in a business way.

The CHAIRMAN. That is what I mean—in a business way.

Mr. DE LA MATER. Yes.

The CHAIRMAN: Did you ever know either in your section or any other section of any case of fraud or corruption?

Mr. DE LA MATER: In my section or any other section? Only those that I have read of in the newspapers.

The CHAIRMAN: I am talking about what you know about?

Mr. DE LA MATER: That I had personal knowledge of?

The CHAIRMAN: Yes.

Mr. DE LA MATER: No, sir.

The CHAIRMAN: Did you know of anybody in your section on the inside that was giving information to anybody on the outside that the person on the outside could use in obtaining business for himself and getting fees for himself?

Mr. DE LA MATER: I did not.

The CHAIRMAN: Have you, since you left the bureau, had any inside connection by which you obtained underground information that you could use to your advantage?

Mr. DE LA MATER: I have not.

Senator COUZENS: I do not recall just what your answer was in connection with the deletion of this letter which I read, (where it said:

It seems that what is not to be done is the matter of assessing the tax—

I do not know just what you said in that connection.

Mr. DE LA MATER: I said I did not write the memorandum, and I could hardly answer that question. When I came back and found that this memorandum was not so, I did not give it much thought as to the reason why it was expedited.

Senator COUZENS: Have you any suggestions to make that would improve the service of the department to the taxpayer?

Mr. DE LA MATER: That is a big question, and I am not a tax expert. I have always had one idea, however, that I would like to express here, if I may, and that is that there is too much opportunity given to the taxpayer to appeal his case. That makes it too hard to ever get through with the cases.

Senator COUZENS: In other words, you think the bureau is too lax with the taxpayer?

Mr. DE LA MATER: I do not think it is the bureau. I think it is the law. The same thing applies to the courts in the country.

Senator COUZENS: There are too many chances to appeal.

Mr. DE LA MATER: Too many chances to appeal.

Senator COUZENS: What creates the disposition to appeal—the advice of some tax expert?

Mr. DE LA MATER: It is not necessarily a tax expert. It may be the taxpayer himself handling his own case. He has the opportunity to appeal. For instance, the one who handled the case can appeal to the conference, and then in conference, if he does not get what he thinks is a square deal, he can appeal to the section chief, and then he can take it up to the committee, and he can ask for a special assessment. It always struck me that there were too many chances for appeal.

Senator COUZENS: Is it not a fact that some of these appeals have been suggested by these tax experts?

Mr. DE LA MATER: Undoubtedly.

Senator COUZENS: Or those soliciting this business?

Mr. DE LA MATER: Undoubtedly.

Senator COUZENS. They would go around and put in the minds of these taxpayers that they could appeal?

Mr. DE LA MATER. Undoubtedly.

Senator COUZENS. Have you ever given any thought to the question of decentralizing some of this work, so that it will not be all handled here at Washington?

Mr. DE LA MATER. No; I really have not. As I say, I am not a tax man. I went into that work after I left construction work. I was in the service during the war, and I went into the bureau as a sort of stop-gap between the war and going back into my old line of work. The only reason I take any tax work now is because it is an opportunity to get a little capital to start into my old line of work.

Senator COUZENS. Do you want to ask him any further questions, Senator?

The CHAIRMAN. Do you know Mr. Brown?

Mr. DE LA MATER. Yes.

The CHAIRMAN. He was in your section, was he?

Mr. DE LA MATER. Yes.

The CHAIRMAN. Did you have any trouble with him?

Mr. DE LA MATER. I never had any trouble with him. At the time that he came in the service there was a six months' probationary period for all civil-service appointees, and at the end of four months Mr. Wheeler, who was my chief engineer at that time, came to me and said that Mr. Brown was not making the grade and suggested that I have a talk with him. So I called him into the office and told him that he would have to get up on his toes or we would have to drop him at the end of the six months' period; that he did not seem to be grasping the work. At the end of the six months' period Wheeler said that he guessed we would have to drop him because he did not show that he was making the grade.

The CHAIRMAN. Who was Wheeler?

Mr. DE LA MATER. He was the chief of engineers at that time. I talked it over with him, and Mr. Jennings, who was then assistant to Mr. Wheeler, said that the boys had been working with Mr. Brown trying to teach him; some of them had been up to his house at nights trying to get the idea into his head, and that he thought that if we would give him a little longer chance he would be able to do the work. So we gave Mr. Brown a chance. That is the only trouble I have had with him.

Senator COUZENS. Who was the solicitor when you were there?

The CHAIRMAN. Let me ask this further question, please.

Senator COUZENS. Surely.

The CHAIRMAN. Why was he dismissed from the department?

Mr. DE LA MATER. He was one of, I think, eight or nine who were dropped.

The CHAIRMAN. Why?

Mr. DE LA MATER. Because of lack of money we had to cut down the force, and those six or seven or eight, whichever it was, were at the bottom of the list, as they rated them.

The CHAIRMAN. And you struck off the bottom ones?

Mr. DE LA MATER. We struck off the bottom ones.

The CHAIRMAN. Yes.

Mr. DE LA MATER. I think, if I mistake not, due consideration was given to military preference, however, in that selection.

The CHAIRMAN. Did he ever talk to you about any frauds in the department?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. Never at any time?

Mr. DE LA MATER. He never mentioned it to me.

The CHAIRMAN. Do you know a Mr. Adams?

Mr. DE LA MATER. Yes; he was one of the engineers also who was dropped.

The CHAIRMAN. Yes. Tell us about him.

Mr. DE LA MATER. Well, I have not much to say about him, because I never—

The CHAIRMAN. Why was he dropped?

Mr. DE LA MATER. Because I never had any words with him whatever. There was never any question about dropping him at the end of the probationary period. Nothing ever came up with regard to him.

The CHAIRMAN. He was dropped at the same time Mr. Brown was?

Mr. DE LA MATER. No; not at the same time. I think he was dropped the last time. Mr. Brown was dropped with six or eight along in July, I think, or earlier.

The CHAIRMAN. Was he dropped on account of inefficiency?

Mr. DE LA MATER. Mr. Adams?

The CHAIRMAN. Yes.

Mr. DE LA MATER. Mr. Adams was one of 15 dropped in October, again to cut down the force, and he was dropped from the bottom of the list. The force was cut practically in two.

The CHAIRMAN. And these men were not dropped because of any hostility to them, were they?

Mr. DE LA MATER. Absolutely not.

The CHAIRMAN. Or because of any trouble that they had created about discovering things in the department?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. There was nothing of that kind?

Mr. DE LA MATER. Absolutely not.

The CHAIRMAN. That is all, Senator.

Senator COUZENS. Who was the solicitor of the bureau when you were there?

Mr. DE LA MATER. I was there under more than one. Previous to Mr. Hartson there was Mr. Mapes. I do not know, but I think Mr. Johnson was solicitor when I went in. I do not recall that. He preceded Mr. Mapes, I think.

Senator COUZENS. That is all.

The CHAIRMAN. Have you ever appeared personally in the department since you left it?

Mr. DE LA MATER. Yes; I have appeared to ask the status of a case and to file a waiver in a case.

The CHAIRMAN. Those are the only times?

Mr. DE LA MATER. Those are the only times.

The CHAIRMAN. You have not appeared there for the purpose of arguing any case?

Mr. DE LA MATER. No, sir.

The CHAIRMAN. Before a board or an individual?

Mr. DE LA MATER. No.

The CHAIRMAN. Have you taken any case since you left the department that was pending while you were in the department?

Mr. DE LA MATER. Yes; I think they were pending while I was there.

The CHAIRMAN. You know there is a statute against anybody going out and taking a case within two years after he has left any department of the Government as an officer or employee, if the case was pending while he was in the department, although there is no penalty attached to it.

Mr. DE LA MATER. Well, these were cases that I had no personal connection with.

The CHAIRMAN. No personal connection?

Mr. DE LA MATER. No.

The CHAIRMAN. So you have not personally taken any case for money, as a lawyer, or for the purpose of representing their side of it, that was pending in the department while you were associated with the department?

Mr. DE LA MATER. Well, it might have been pending, yes; I should say it was, perhaps, pending, but not that I had personal connection with it.

The CHAIRMAN. Yes.

Mr. ADAMS. Do you mean pending in your section?

Mr. DE LA MATER. I assume he means by "pending" that it was in the department.

The CHAIRMAN. Yes. Of course, the statute is broader than that, as you know, Mr. De La Mater; but it seems to have been a statute that nobody ever read, or those that did read it apparently did not understand it. It became more or less obsolete, because there was never a penalty attached to it. It was declared to be the policy of the country, and nothing more.

Doctor ADAMS. Well, it is embodied, Mr. Chairman, in the conditions of enrollment at the present time. It is just a question of the interpretation of its meaning. They have been very conscious of it in the department for the last three or four years and have very carefully considered it, and it is a part of the conditions of enrollment now.

The CHAIRMAN. Now?

Doctor ADAMS. And has been for probably two years.

The CHAIRMAN. I did not know that.

Doctor ADAMS. That is to say, when a man now goes into the department in any capacity that is read to him or brought to his attention. He must sign the application in which full consideration is given to the departmental interpretation of that statute. It is embodied as one of the prerequisites to admission to practice.

The CHAIRMAN. When was that made the rule?

Mr. HARTSON. I think it might clear the atmosphere a little to state that that statute referred to prosecuting a claim against the United States.

The CHAIRMAN. It does?

Mr. HARTSON. It is an old statute.

The CHAIRMAN. Yes; it was passed in 1870 or 1872.

Mr. HARTSON. The department construed a claim therein referred to be a claim for money or a claim for refunds. That is the departmental interpretation of that.

The CHAIRMAN. Yes.

Mr. HARTSON. A very large share of the work involved in practicing before the department has nothing to do with the prosecution of a claim for a refund or a claim for money against the United States. That, at least, has been the departmental interpretation, and I think that lawyers and representatives generally have thought that they have not prosecuted claims within the two-year period, but have appeared in tax questions before the department within the two-year period when a claim for a refund was not involved.

Doctor ADAMS. When that tax question had never been personally before them.

Mr. HARTSON. That is true.

The CHAIRMAN. When was this embodied in the application to practice before the department?

Mr. HARTSON. Since I have had any knowledge of it, which has been several years.

The CHAIRMAN. Is that so?

Mr. HARTSON. Yes. Now, recently—that is to say, in the last two or three months—the rules of practice have been amended in what is now known as the second supplement to Circular No. 230, which requires every practitioner to secure the consent of the Secretary of the Treasury before he can appear in any matter, claim, or otherwise, before the department which was pending within the two-year period.

The CHAIRMAN. Well, that clears the situation.

(Witness excused.)

Senator COUZENS. I will ask Mr. Mapes to take the stand, if he is here.

Mr. MAPES. Yes, sir.

Senator COUZENS. Mr. Chairman, will you swear the witness.

TESTIMONY OF MR. CARL A. MAPES, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

Senator COUZENS. Will you state your full name and address for the record?

Mr. MAPES. Carl A. Mapes; 1317 F Street is my office address, and I am engaged in the general practice of the law.

Senator COUZENS. You were in the Internal Revenue Bureau at one time?

Mr. MAPES. I was, yes, sir.

Senator COUZENS. Will you give us your connection with the bureau, how long you were there, and what position you held?

Mr. MAPES. From 1920, I think, about the middle of April or thereabouts, at which time I went into the service of the bureau as a special attorney in charge of the criminal division, until November of 1920, when I was made solicitor of the Internal Revenue Bureau. The appointment expired automatically on March 4, 1921, when I was reappointed about a week or two later by President Harding.

Senator COUZENS. How long did you remain under that regime?

Mr. MAPES. I resigned January 1, 1923.

The CHAIRMAN: When did you first go into the bureau?

Mr. MAPES: About the middle of April, I think, of 1920, Senator.

Senator COUZENS: Whom did you succeed as solicitor?

Mr. MAPES: Wayne Johnson.

Senator COUZENS: Was he a relative of yours?

Mr. MAPES: He was not; no, sir.

Senator COUZENS: Is he now?

Mr. MAPES: Well, he has married a sister of my wife.

Senator COUZENS: Where is Mr. Johnson now?

Mr. MAPES: In New York.

Senator COUZENS: Was Mr. Wayne Johnson in the bureau long?

Mr. MAPES: I do not know just how long he was there, Senator.

I believe he was there for a while and resigned, and then came back, or at least he intended to do something of the sort. I do not know.

I would rather have you ask Mr. Johnson, because my recollection of that is not very clear. He was in the Army and when he came out of the service I think he went in the internal revenue.

Senator COUZENS: When you went into the bureau, how did you get your position?

Mr. MAPES: Well, I did not get my position. They got me. I was at the time assistant to Judge John Barton Payne, who was general counsel of the Railroad Administration, a position which I held for a year or a year and a half.

After Johnson went into the bureau and Mr. Robert N. Miller was solicitor, he endeavored several times to get me to come over there from the Railroad Administration.

I did not want to because I wanted to get out of the Government service. I had been in it for approximately 15 years, but after Johnson was appointed solicitor, succeeding Robert N. Miller, he persuaded me to come over there.

I went over there with the idea, of course, of staying for a year or two and then getting into private practice.

Senator COUZENS: Mr. Johnson got you to come over there?

Mr. MAPES: Yes, sir.

Senator COUZENS: Who was responsible for your promotion to solicitor of the department?

Mr. MAPES: Well, that is pretty difficult to say. I went in there as assistant in charge of the criminal division, and that brought me in contact with the Commissioner of Internal Revenue a great deal.

The CHAIRMAN: Who was the then commissioner?

Mr. MAPES: William M. Williams—and to a lesser extent with the Secretary of the Treasury. Of course, on these important criminal cases they were sometimes discussed with the Secretary.

My understanding is—and you will have to verify this from Mr. Williams himself, because it is all hearsay—several names were considered for the position of Solicitor of Internal Revenue at the time Johnson resigned, and I was among those several, and because of my contact with Mr. Williams and because he knew me and because I had acted as solicitor in the absence of Johnson, he made a favorable recommendation.

I think also, Senator, that Judge Payne also probably had something to do with it; that is, the fact that I had worked for him and had satisfied him.

Senator COUZENS: Who recommended you for appointment by President Harding?

President Harding?

Mr. MAPES: Well, the Secretary of the Treasury and the Attorney General. You see, the position of the Solicitor of Internal Revenue is a presidential appointment, and is under the jurisdiction of the Department of Justice. As a matter of courtesy, however, the departmental solicitors are recommended by the Secretary in charge of the department.

Senator COUZENS. Then you continued under the Harding administration from March 4 of 1921 to when?

Mr. MAPES. Well, it was later than March 4. I think I was one of the first presidential appointments. It was a little later than March 4—until January 1, 1923.

Senator COUZENS. Then you resigned?

Mr. MAPES. I resigned; yes, sir.

Senator COUZENS. When you resigned, did you go into partnership with anybody?

Mr. MAPES. My intentions were, when I resigned, to associate myself with Johnson in New York, but because Mrs. Mapes objected to living in New York City I opened up my offices here in Washington. I am associated with Johnson now. My arrangement, however, was not specific and definite until December of last year. I am associated with other firms also.

Senator COUZENS. What is the name of the Johnson firm?

Mr. MAPES. It is now Johnson & Shores. It was until the 1st of January, 1924, Crocker, Johnson & Shores.

Senator COUZENS. You are not a partner in the firm, then?

Mr. MAPES. I am an associate; yes, sir. I represent the firm here.

Senator COUZENS. Were you in Mr. Commissioner McChord's office, of the Interstate Commerce Commission?

Mr. MAPES. I never was; no, sir. Do you want me to give my connection with the Interstate Commerce Commission?

Senator COUZENS. You did have some connection with it?

Mr. MAPES. Oh, yes.

Senator COUZENS. What was your connection with it?

Mr. MAPES. I went with the Interstate Commerce Commission in 1915, with the then chairman, Henry C. Hall, and I left the Interstate Commerce Commission in September of 1918, I think, to go with the railroad administration, to go with Judge Paine.

Senator COUZENS. Have you handled any cases before the bureau?

Mr. MAPES. Yes, sir.

Senator COUZENS. When was the first case that you handled in the bureau after you left it?

Mr. MAPES. Well, shortly after—I suppose within a period of three months.

Senator COUZENS. Were you required to sign an application which drew your attention to that section?

Mr. MAPES. Yes, sir; I am very familiar with it.

Senator COUZENS. And you did not think that that stood in your way of practicing before the bureau?

Mr. MAPES. No, sir.

Senator COUZENS. Why did you not think that that stood in your way?

Mr. MAPES. Because, Senator, the statute merely prohibits the appearance in any claim against the United States, and I have never appeared in any case involving a claim against the United States.

Senator COUZENS. Do you consider a claim for a reduction in taxes a claim against the United States?

Mr. MAPES. No, sir; I consider that a claim by the United States against the taxpayer.

Senator COUZENS. And a claim to remit that assessment is not a claim against the Government, in your interpretation of it?

Mr. MAPES. Well, I think the presentation of facts and of law to the department in opposition to a proposed additional assessment against the taxpayer is not a claim against the Government.

Senator COUZENS. Well, if the tax has passed the point of the proposed assessment and becomes a real assessment?

Mr. MAPES. Then it becomes a claim in abatement.

Senator COUZENS. That is a claim against the United States, is it not?

Mr. MAPES. No, sir. Until that money is paid by the taxpayer it is not a claim against the United States. It is a claim by the United States against the taxpayer.

Doctor ADAMS. A claim for a refund to the taxpayer?

Mr. MAPES. Exactly.

Senator COUZENS. I hardly see the difference between a claim for a refund and a claim against the United States.

Mr. MAPES. One is a claim by the United States against the taxpayer, and the other is a claim by the taxpayer against the United States.

Senator COUZENS. When the bureau makes a claim against the taxpayer, then, to have that abated, it is certainly a claim against the Government, because you object to the claim in the first instance. It makes no difference, it seems to me, whether the money had been paid or not; the results are the same.

Mr. MAPES. Yes; but I think we differ on that, Senator.

Senator COUZENS. Did you ever discover any leakage or evidences of graft or inside information when you were in the bureau?

Mr. MAPES. I did not; no, sir. I would qualify that by saying in those cases where there was a full disclosure made to the department and followed by prosecution.

Senator COUZENS. Did you represent the Superior Garment Co. in their case?

Mr. MAPES. I did not; no, sir.

Senator COUZENS. Was Mr. Johnson interested in that case, do you know?

Mr. MAPES. Yes, sir; I think he was. That is hearsay.

Senator COUZENS. You did not join with him in that?

Mr. MAPES. I did not; no, sir.

Senator COUZENS. And you did not share in the profits of that particular deal?

Mr. MAPES. I did not; no, sir.

Senator COUZENS. Did you observe, when you were solicitor, any opportunities for tax evasion?

Mr. MAPES. Do you mean legal avoidance?

Senator COUZENS. Yes.

Mr. MAPES. Yes, of course.

Senator COUZENS: Will you describe them?

Mr. MAPES: Senator, that is a pretty big order, because there are legal ways of doing things to avoid taxes, and there are legal ways of doing them that will incur a tax. I think, perhaps, the most common form of tax avoidance is the dividing between the husband and wife of their capital assets, so that the income flows to both instead of to one.

Senator COUZENS: That brings down the surtax?

Mr. MAPES: Yes, sir.

Senator COUZENS: Was that quite prevalent?

Mr. MAPES: Well, I do not know how extensive it was. I rather think it was; yes, sir.

Senator COUZENS: In the new revenue bill there is a section—I think it is known as section 219—which attempts to close up the hole created by making trust agreements. Do you know whether that was generally used?

Mr. MAPES: Well, it was used, but I do not know just how extensively. That is a pretty difficult question to answer.

Senator COUZENS: Do you know the section I refer to in the new act?

Mr. MAPES: I do not, unless you refer to the section on gifts. Is that it?

Senator COUZENS: Well, there are two sections—one is the section on gifts and the other is the section where, if a donor or grantor creates a trust, and it is a revocable trust, all of the income from the trust during its existence is assessed against the donor.

Mr. MAPES: Yes, sir.

Senator COUZENS: You remember that section?

Mr. MAPES: Yes, sir.

Senator COUZENS: Was that put in there to avoid the creation of trusts which are created ostensibly for the purpose of tax avoidance?

Mr. MAPES: Well, I rather imagine it was, Senator, but I would think that would be a more appropriate question to be put to the people who put it in there, because I do not know exactly what they had in mind.

Senator COUZENS: Outside of this division of the capital assets between man and wife and the question of creating trusts to divide up the capital assets among heirs, etc., do you know of any other means of legally avoiding taxation?

Mr. MAPES: The only other means I know of, Senator, is not to sell your property—hold on to it.

Senator COUZENS: In that case, of course, it is not income, is it?

Mr. MAPES: That is right.

Senator COUZENS: Did you participate in any of the conferences which arranged the matter of depletion on oil wells?

Mr. MAPES: Basically, no; but I participated, of course, in a number of discussions on questions of construction later on. As Doctor Adams well knows, every one around the office was discussing that question more or less from time to time, along with others.

Senator COUZENS: When you were solicitor was the question of depletion for lessees presented to you for decision?

Mr. MAPES: Yes, sir.

Senator COUZENS: Did you decide it?

Mr. MAPES: Yes, sir.

Senator COUZENS. How did you decide it?

Mr. MAPES. I decided it in favor of the lessees.

Senator COUZENS. What time was that?

Mr. MAPES. Some time during 1922.

Senator COUZENS. Did you know of any depletion credits being allowed to the lessee prior to that decision by you?

Mr. MAPES. I do not know that I did, Senator.

Senator COUZENS. When you decided it, you thought it was an entirely new question, and that it had not been determined by the bureau before; is that right?

Mr. MAPES. That was my impression; yes, sir. The questions were not supposed to be presented to the solicitor unless they were questions of original impression.

Senator COUZENS. Do you know of any other case outside of the question of depletion for lessee where the bureau acted before a decision was rendered by the solicitor?

Mr. MAPES. I do not know of any, Senator, but I have no doubt that there were a great many questions of that character which were not formally brought to the attention of the solicitor until a long time after the cases had been audited. That is, the law itself was in a formative stage, and I think the administrative officials in the early days of the administration acted without the advice of the solicitor. Obviously, the solicitor could not advise on every case, because, if he did, he would have to have a staff of attorneys over there as large as the administrative unit itself.

Senator COUZENS. What do you believe to be the reason for submitting these cases to the solicitor after the bureau, through its different units, had already decided them?

Mr. MAPES. That is an individual question. Those questions largely arise with an individual auditor, accountant, or division chief, and if he feels he needs legal advice he will send them to the solicitor.

Senator COUZENS. In other words, if he does not think it necessary to get legal advice, he may pass upon the question himself?

Mr. MAPES. Oh, certainly.

Senator COUZENS. Do you remember how soon after these conferences on the question of lessee depletion took place that you were requested to pass upon the question legally?

Mr. MAPES. I do not recall, Senator, that I ever had any conference on the lessee question; that is, an arranged conference. If you would like the history of that opinion, I would be very glad to give it to you.

Senator COUZENS. I think Solicitor Hartson gave us the history of it, where it was decided previous to your decision differently.

Mr. MAPES. Well, I do not know as it had ever been decided differently.

Senator COUZENS. Mr. Hartson, did I not understand you to say that prior to the decision favorable to depletion to the lessee it had been decided the other way through the solicitor?

Mr. HARTSON. No; I am sure it was not. The first time that the solicitor's office shows any record of having passed on this question occurred in the cases which gave rise to this law opinion 1103. Prior to that the regulations did not allow for it, but so far as the solicitor having passed on it formally is concerned, I do not know that that

was ever done. There is no record in the office of its having been passed on.

Senator COUZENS. I think perhaps I am in error. I should have said that attorneys from the solicitor's office had rendered separate opinions.

Mr. HARTSON. Well, I think up to the time of law opinion 1103 there were differences of opinion in the office about it.

Mr. MAPES. Unquestionably there was a great difference of opinion there.

Doctor ADAMS. Mr. Chairman, at the proper time I would like to be heard on this particular point. I think I can throw some light on it.

Senator COUZENS. Do you remember the specific case that came to you for decision when you decided in favor of the lessee?

Mr. MAPES. Yes, sir.

Senator COUZENS. What was the case?

Mr. MAPES. It was the Britton-Johnson Gas & Oil Co., or some such name as that. I remember the Britton-Johnson being in it, and I think it was a gas and oil company or a coal and oil company, or something like that.

Senator COUZENS. That was the first case that came to you?

Mr. MAPES. Yes, sir.

Senator COUZENS. And in that case the precedent was established of allowing lessee credit?

Mr. MAPES. Yes, sir.

Mr. HARTSON. That was the Britton-Johnson Oil Co.

Senator COUZENS. Did you know the names of the attorneys who rendered the opinion opposed to lessee depletion prior to your having decided it?

Mr. MAPES. The only one I know was Mr. George R. Davis. He wrote the opinion, which came to me.

Senator COUZENS. And with which you disagreed?

Mr. MAPES. With which I disagreed; yes, sir. I might also say, Senator, if you do not already know it, that since, and within a very recent time, the United States Circuit Court of Appeals for the Eighth Circuit has not only affirmed that opinion but has extended it to apply to solids as well as to oil.

The CHAIRMAN. I did not get the last sentence of your statement. What was that?

Mr. MAPES. It has already ruled that lessee depletion is allowable in the case of mines, as well as including oil wells, and has cited with approval the decision of the department on that question.

Senator COUZENS. Do you want to ask any further questions of this witness, Mr. Chairman?

The CHAIRMAN. You entered the department in April, 1920, did you?

Mr. MAPES. Yes, sir.

The CHAIRMAN. And then were retained after the Harding administration came in?

Mr. MAPES. I was, Senator.

The CHAIRMAN. Are you a Democrat or a Republican, Mr. Mapes?

Mr. MAPES. Well, I do not know, Senator. There are lots of people that would like to find that out, as well as myself.

The CHAIRMAN. Well, I do not know about that, but I am trying to find it out now.

Mr. MAPES. Well, I have been——

The CHAIRMAN. The reason I ask that is not to inquire into your politics, but you served under a Republican administration, and I am trying to find out whether it was a matter of politics which caused you to be appointed by President Harding, or the recommendation of the Secretary, or whether it was because of your service and efficiency.

Mr. MAPES. It was my service and efficiency, if I may be permitted to say that. I have lived in Washington since I was a boy 18 years of age.

The CHAIRMAN. And therefore have no politics?

Mr. MAPES. I have some ideas on that subject.

The CHAIRMAN. Now, after you got into the department, you succeeded your brother-in-law, Wayne Johnson?

Mr. MAPES. He is not my brother-in-law, Senator. He has just displayed sufficiently good judgment to persuade my wife's sister to marry him, and I could not help it.

The CHAIRMAN. Well, you married sisters.

Mr. MAPES. Yes; we did, Senator.

The CHAIRMAN. That makes you brothers-in-law in the law, does it not?

Mr. MAPES. No; it does not, technically. It is just as bad, though.

The CHAIRMAN. It has been freely charged up here on the Hill and about that after Wayne Johnson had gone out and you stayed, there was a sort of grapevine connection between you two. I suppose you heard of those charges?

Mr. MAPES. I have heard them for years—plenty of them.

The CHAIRMAN. Yes; and that there was an arrangement that, by having headquarters here and ramifications all over the country, a man could come to Washington, and he could not have a hearing that was anything like favorable; in fact, he could not get a hearing at all unless he hired some of a certain coterie on the outside of certain big Democrats. Do you know anything about that?

Mr. MAPES. I think that is piffle. That is my judgment.

The CHAIRMAN. Well, I say——

Mr. MAPES. I think that is the merest sort of piffle.

The CHAIRMAN. You have heard of that, though?

Mr. MAPES. Oh, absolutely.

The CHAIRMAN. You deny it en toto?

Mr. MAPES. Absolutely.

The CHAIRMAN. After you became solicitor on the recommendation of Secretary Mellon, did you have conferences with him occasionally?

Mr. MAPES. Frequently.

The CHAIRMAN. Very often?

Mr. MAPES. Yes, sir.

The CHAIRMAN. Did Mr. Secretary Mellon ever say anything to you at any time about any case that he had, or any corporation in which he was interested, pending in the department?

Mr. MAPES. Never.

The CHAIRMAN. Never at any time?

Mr. MAPES. Never at any time.

The CHAIRMAN. Did he ever send anybody to you, or send any note to you, or a memorandum to you, indicating that he wanted a case in which he was interested decided in any way?

Mr. MAPES. Never, sir.

The CHAIRMAN. Or expedited?

Mr. MAPES. Never.

The CHAIRMAN. He never did. These conferences that you had with the Secretary were all relating to the policies of the department or the law with regard to certain cases, etc.?

Mr. MAPES. (Yes) in connection with the question of regulations in the enactment of the 1921 act, and frequently, when taxpayers would come to him and complain that they had not been given a square deal in my particular office, he would call me over there and make me listen to them.

The CHAIRMAN. What is the criminal division of the Income Tax Unit?

Mr. MAPES. That is simply a branch of the legal division.

The CHAIRMAN. What do they do?

Mr. MAPES. Well, they furnish the brains for the United States attorneys, mostly.

The CHAIRMAN. What do you mean by that?

Mr. MAPES. I mean that these men are skilled men in tax laws, and that the average practitioner, the average lawyer, and the average United States attorney, with a few exceptions, knows absolutely nothing about it, and they have to call on a trained lawyer who understands the law to assist them in the presentation of their cases.

The CHAIRMAN. Well, does that have reference to criminal or civil actions?

Mr. MAPES. Criminal actions.

The CHAIRMAN. Criminal actions?

Mr. MAPES. They have a civil division also.

The CHAIRMAN. But this has reference to criminal actions?

Mr. MAPES. Yes, sir.

The CHAIRMAN. How many experts did you have in that particular division when you were there?

Mr. MAPES. Well, we never had more than seven or eight, I suppose.

The CHAIRMAN. Were they lawyers, as a rule, or tax experts?

Mr. MAPES. They were all lawyers. We had nothing but lawyers in the solicitor's office excepting the clerks who took care of the details.

The CHAIRMAN. Let me ask you this question: Is that in any wise related to some sort of secret service in the bureau?

Mr. MAPES. No; not at all, excepting when the special intelligence unit uncovers a criminal case they generally call upon that office for advice, or they did so when I was there.

The CHAIRMAN. Your particular business, then, was to prosecute those crimes?

Mr. MAPES. To assist the United States attorney in the prosecution of cases.

The CHAIRMAN. Yes. Well, did you do it?

Mr. MAPES. Well, we tried to do it.

The CHAIRMAN. How many cases do you suppose you had, as near as you can remember, at any one time of a criminal nature—cases of attempted fraud or corruption, in that department?

Mr. MAPES. Senator, that is very hard to say. They were not relatively a great number. My judgment was then, and has been, that the great majority of taxpayers are honest.

The CHAIRMAN. And what about the fellows on the inside?

Mr. MAPES. I believe, from my experience in other departments as well as the Bureau of Internal Revenue, that from the viewpoint of character, ability, and integrity this is unquestionably the most perfectly organized branch of the Government service.

The CHAIRMAN. And what is your opinion of the integrity and honesty of those that were working in there at the time that you were working there?

Mr. MAPES. The men with whom I came in contact, I think, were beyond question. I never heard a breath of suspicion against any of them.

The CHAIRMAN. Were there any prosecutions of any individuals employed in the department while you were there?

Mr. MAPES. Oh, yes; occasionally someone would crop up with a case, but not very many, considering the size of the service. The strange thing about it is not that there were violations of law, but that there were not more.

The CHAIRMAN. How many Treasury employees were prosecuted while you were there for fraud?

Mr. MAPES. I could only make a rough guess, but I suppose not more than a half a dozen.

The CHAIRMAN. Were any of them convicted?

Mr. MAPES. I think most of them pleaded guilty. I do not think we went to trial.

The CHAIRMAN. Can you tell what the nature of that fraud was in any particular case? Did it have reference to amortization or depletion?

Mr. MAPES. Oh, no.

The CHAIRMAN. To what?

Mr. MAPES. These frauds were generally detected at their inception. I think most of the cases were turned in by taxpayers themselves who were approached, and who were honest, and the Government then just went ahead with the scheme and got the man that was trying to do it.

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

Senator COUZENS. Did you have any conferences with Mr. Johnson after he went out and you were solicitor?

Mr. MAPES. Well, I saw a great deal of him, and if you know internal revenue lawyers, you know that taxes are the sole subject of their conversation; that is, the construction of the revenue act. I will say, however, to the best of my knowledge and belief, I never handled a case that Johnson was interested in while I was in the department, and I gave specific instructions when I became solicitor that his cases were not to be brought to my attention.

Senator COUZENS. With your wide experience in the bureau and since you left the bureau, have you any suggestions to make that would help to facilitate the work in the bureau?

Mr. MAPES. I think the greatest help, Senator, would be to give them a decent house to live in and pay them a salary to live on.

Senator COUZENS. You think that would expedite the work there?

Mr. MAPES. I think it would expedite it, unquestionably. They are scattered around to the seven winds. It takes as much as two or three days to get a file across Washington. I might tell you that one of my lawyer friends the other day made the suggestion that tax lawyers should practice on roller skates.

Senator COUZENS. Have you any idea what it is necessary to do or what it would be desirable to do to clean up the bureau? Evidence has been introduced here to show that there are quite a number of 1917, 1918, and 1919 cases yet to be disposed of, and there is a good deal of discontent among the taxpayers because of delays.

Mr. MAPES. I think my first suggestion would facilitate it greatly. I think further that if the bureau was given the whole hearted support of Congress and the Government and if it were not criticized for attempting to do things which it thinks are right, it would have a great deal of effect. I think you will find two types of men on the job—one man who is afraid of his shadow and who will decide every question against the taxpayer, and another type of man who is courageous and willing to assume the responsibility for his decisions. There are too few of the latter.

Senator COUZENS. You think that the system under which a claim now proceeds through the bureau is the best that can be devised?

Mr. MAPES. Well, I would not say it is the best that can be devised, Senator. I have always felt this way though. You have a very delicate machine down there and you had better be quite sure of your ground before you attempt to disturb it. In other words, this organization has done pretty well for a mushroom. And, as I understand it, they are now getting quite current with their returns. They have completed their 1917 and 1918 cases, which are the big years. I think undoubtedly if the bureau is left alone it will clear itself.

Senator COUZENS. How soon?

Mr. MAPES. Well, that is pretty hard to say. I do not know.

Senator COUZENS. Do you not think it is a rather unsatisfactory condition when taxpayers are still fighting and quarreling over their 1917 assessments?

Mr. MAPES. Yes, I do. But I think that is the fault of the system.

Senator COUZENS. While the percentage, of course, is small, the percentage really has no relation to the job, because the ones that are left are the large and controversial ones, and the ones which cause the most work to the department.

Mr. MAPES. Exactly so, Senator, and you will find also that they are practically undertaking to do for every industry in the country what the Interstate Commerce Commission has attempted to do for the railroads of the country, and it has not got started on it yet, and has been at it for 10 or 15 years.

Senator COUZENS. Do you want to ask any questions, Doctor Adams?

Doctor ADAMS. I want to ask this question: Did not cases involving refunds for a certain stated amount come for settlement to the solicitor's office?

Mr. MAPES. They were supposed to, yes. I think when cases involved a claim in excess of a certain amount they were to go through the committee on claims, and as you will recall one attorney in the solicitor's office is a member of that committee on claims. They did not go to the solicitor proper.

Doctor ADAMS. The testimony shows that there are a number—perhaps a dozen or 20 cases—involving recognition of depletion on leaseholds taking place, say, from January 1, 1921, approximately—I do not know when they began—until the issuance of the Treasury decision of August, 1922. Now, such as those, involving refunds of a certain amount, would come through the solicitor's office, or through this committee on claims.

Mr. MAPES. Well, they would go through the committee on claims. I do not understand that they ever went to the solicitor proper; but the attorney in charge of the claim, wherever a new or novel legal question had been raised, or where he could detect it in connection with his examination of that claim, was supposed to refer it to the solicitor for decision.

Doctor ADAMS. My inquiry was really as to that particular point, because I understood that where there was a debatable and disputed question, whether it was referred formally to him for decision.

Mr. MAPES. I think you may say that those old regulations on lessee depletion were somewhat ambiguous. My own idea is that they lent themselves to a construction against lessee depletion, but I think it would be a debatable construction of the regulations themselves. If there is any question as to the correctness of that decision, I would like to have put in the record the decision of the Circuit Court of Appeals of the Eighth Circuit.

Doctor ADAMS. Well, that has been quoted here.

Mr. MAPES. It has?

Doctor ADAMS. Yes.

Mr. MAPES. That is not only an opinion in favor of my decision, but it is also very complimentary to it. It goes much further than most court decisions do.

Doctor ADAMS. What has been the status, or ruling, in all cases decided which recognized depletion on leaseholds when the regulations provided it was not recognized? I mean by that, you had regulations which, in the decision of the circuit court, to which you have referred, were interpreted as prohibiting depletion on leaseholds.

Mr. MAPES. That was in the case of solids?

Doctor ADAMS. No; it was in the case of both.

Mr. MAPES. That applied to both, yes.

Doctor ADAMS. And there was also a mimeograph, as I understand it, in existence specifically stating that depletion of leaseholds could not be taken. Now, under those circumstances, (there were 15 or 20 cases, perhaps—some of them important—in which depletion on leaseholds was permitted. My own feeling is that allowances under those circumstances are both improper and unlawful, possibly, because the regulations of the department are binding, so long as they are signed by the commissioner and approved by the Secretary, and those regulations up to that time had not been changed.

Mr. MAPES. Well, if I am to concede that the regulations themselves would lend themselves to no other construction—that is, that

the allowances of these contentions were clearly against the regulations and the man who passed on the case in the department was conscious of the fact—I should say that it was irregular.

Doctor ADAMS. Well, either whether he was conscious or unconscious, so far as the regulations provided that depletion on leaseholds should not be recognized, and as there was an official mimeograph out I can not see how the assessments are at all binding.

The CHAIRMAN. Well, you do not claim, of course, that the violation of departmental regulations is a crime?

Doctor ADAMS. Oh, no; not a crime.

The CHAIRMAN. No.

Doctor ADAMS. The revenue laws, however, provide that the statute shall be enforced and applied under regulations signed by the commissioner and approved by the Secretary.

The CHAIRMAN. Yes.

Doctor ADAMS. Such regulations were in existence. So far as the ultimate decision is concerned, I think it is very wise, and I hope it will be upheld as proper; but I do not see how those assessments could be made, in view of the regulations.

The CHAIRMAN. Well, did that matter come up to you for decision?

Mr. MAPES. No; it did not. I did not know anything about it. As a matter of fact, I did not know how many cases had been decided one way or the other until I read those in the newspapers the other day.

The CHAIRMAN. Doctor Adams, were you in conference with Mr. Mapes occasionally on the subject of lessee depletion?

Doctor ADAMS. The question of lessee depletion has been discussed for years, and that is the only point I want to put in the record.

The CHAIRMAN. Yes.

Doctor ADAMS. And I might put it in now.

The CHAIRMAN. Yes.

Doctor ADAMS. The question of whether depletion should be recognized on leaseholds and could, under existing conditions, be recognized was a question that had been debated and discussed by the officials of the Bureau of Internal Revenue, including the Solicitor of Internal Revenue and his principal assistants, to my personal knowledge, and discussed at great length since the autumn of the year 1917. The strong argument that could be adduced for the recognition of depletion on leaseholds were canvassed, and the decision was reached, and later approved by the Secretary, that in the revenue act of 1918 the department should make every effort that could be made to have lessee depletion recognized, but at that time it was the opinion of the solicitor and his principal advisers and others that in all probability lessee depletion was not recognized under the previous laws and existing decisions and Regulation No. 33, as well as the mimeograph to which I refer, were based upon that belief. Matters got to the solicitor not only in individual and particular cases formally presented to him for ruling, but points of this kind get before the solicitor when the adoption of regulations is under discussion and debated, and to my personal knowledge, the regulations bearing on this subject were discussed by the solicitor's office and the members of the bureau interested in legal questions at very considerable length. I think I could locate somewhere in the files a number of printed

briefs which were filed with the department prior to the adoption of the revenue act of 1918 in which the desirability of recognizing lessee depletion was filed with the department. I am perfectly certain that I can mention one name of a man who presented such a brief. That is Mr. Vanderlip, who was interested in mining questions in the Northwest, and, if I might say, his contention was denied.

I want to bring that in because, in addition to the oil cases formally presented to the solicitor, attitudes doubtless have to be taken and positions taken when regulations are adopted, and when large refunds are approved.

That is the only point I wanted to bring out.

Senator COUZENS. Do you know a Mr. Mattison?

Mr. MAPES. M. W. Mattison, of New York City?

Senator COUZENS. Yes.

Mr. MAPES. Yes, sir.

Senator COUZENS. Was he ever in the department?

Mr. MAPES. I do not know.

Senator COUZENS. Is he a practicing lawyer now?

Mr. MAPES. He is not a lawyer. I think he is a certified public accountant.

Senator COUZENS. Is he practicing before the bureau, do you know?

Mr. MAPES. I assume he is, but I do not like to answer questions that I do not know of my own personal knowledge.

Senator COUZENS. Do you know Mr. James Darnell?

Mr. MAPES. Yes, sir.

Senator COUZENS. Is he in New York, too?

Mr. MAPES. Yes, sir. He is an engineer.

Senator COUZENS. Is he with Mr. Johnson?

Mr. MAPES. No, sir.

Senator COUZENS. Do you know if he ever practiced before the department?

Mr. MAPES. Well, he is a valuation engineer. I do not know to what extent he has practiced.

The CHAIRMAN. He was connected with the department hitherto?

Mr. MAPES. Darnell was.

The CHAIRMAN. And the other man was not?

Mr. MAPES. No, sir; I do not think Mattison was, unless it was in an advisory capacity, gratis, during the war, or something of that sort.

Senator COUZENS. What is Mr. Johnson's address in New York?

Mr. MAPES. No. 100 Broadway.

Senator COUZENS. Do you know Mr. Claude Powell, 145 Broadway, New York?

Mr. MAPES. I knew him. He was chief of the natural resources section while I was solicitor. I do not think I have seen him more than once or twice since he left the service.

Senator COUZENS. I think that is all I have to ask this witness, Mr. Chairman.

The CHAIRMAN. That is all.

(Witness excused.)

Senator COUZENS. I have one further witness, and it will not take long. Is Mr. Bell here?

Mr. BELL. Yes, sir.

Senator COUZENS. Will you swear the witness, Mr. Chairman?

TESTIMONY OF MR. F. B. BELL, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you give your full name and address for the record?

Mr. BELL. F. B. Bell, 801 Smith Building.

Senator COUZENS. You are in the Internal Revenue Bureau now?

Mr. BELL. No; I am not now.

Senator COUZENS. Were you ever in the bureau?

Mr. BELL. Yes, sir; I was.

Senator COUZENS. Will you tell us when you went to the bureau and when you left, and what you did in the bureau?

Mr. BELL. I think I went in on the 1st or 2d of May, 1919. I resigned on the 31st of October, 1923.

Senator COUZENS. What services did you perform in the bureau?

Mr. BELL. I first went into the bureau in the revenue agent's section as an auditor. I think it was in July, 1919. I was transferred to the special assessment section as an auditor. Sometime after that I was promoted to assistant chief of that section. I have not got the exact date, but I think it was somewhere in 1920—October, 1920, possibly—that I was made chief of the special assessment section. I held that position, with the exception of three months in 1922 and 1923—I think from November to March, or the middle of November or 1st of December until March 15, I was detailed to the special committee on appeals and review. Then on the 15th of March I was sent back to the special assessment section as chief of the section, and on the 10th of September, 1923, I was detailed again to the regular committee on appeals and review, which position I held up until October 31, when I resigned.

Senator COUZENS. What are you doing now, Mr. Bell?

Mr. BELL. I am an accountant associated with a firm of lawyers here.

Senator COUZENS. What is the name of that firm of lawyers?

Mr. BELL. McCabe & Tressler.

Senator COUZENS. Your position with them is as an auditor?

Mr. BELL. I am accountant and auditor for the legal firm.

Senator COUZENS. Did you ever have to do with the division in the bureau which handles the so-called personal service corporations?

Mr. BELL. No, sir.

Senator COUZENS. You never dealt with that?

Mr. BELL. No, sir.

Senator COUZENS. Did you have any experience with that division?

Mr. BELL. No; none whatever.

Senator COUZENS. Do you know the points that are taken into consideration to determine whether a corporation is a personal-service corporation or not?

Mr. BELL. Only in a general way.

Senator COUZENS. Only in a general way?

Mr. BELL. That is all.

Senator COUZENS. Who did look after that division in the bureau when you were there?

Mr. BELL. There was a gentleman by the name of D. W. Bell. I think he has been chief of that section.

Senator COUZENS. D. W. Bell?

Mr. BELL. D. W. Bell.

Senator COUZENS. Mr. Hartson, is that Mr. Bell, D. W. Bell, with you now?

Mr. HARTSON. Yes.

Senator COUZENS. Is he the head of the personal-service corporation section?

Mr. HARTSON. I think there is no personal-service section.

Mr. BELL. That section was known as the personal-service section. I do not know anything about the arrangements now.

Mr. HARTSON. If the Senator desires to question the other Mr. Bell, we will be glad to have him here at any time.

Senator COUZENS. If you will make a memorandum, I would like to have you bring him the next time we have a meeting.

Mr. HARTSON. Very well.

Senator COUZENS. Have you been over to Europe recently?

Mr. BELL. No, sir; I never have been.

Senator COUZENS. Have you studied the British system of taxation at all?

Mr. BELL. No, sir.

Senator COUZENS. I do not think I have anything else to ask. Have you any questions, Mr. Chairman?

The CHAIRMAN. No.

Mr. BELL. May I be excused?

Senator COUZENS. Yes.

(Witness excused.)

Senator COUZENS. If convenient to the committee, I would like to adjourn over until 2 o'clock on Wednesday.

The CHAIRMAN. Very well, the committee will stand adjourned until 2 o'clock on Wednesday afternoon.

(Whereupon, at 4.20 o'clock p. m., the committee adjourned until Wednesday, April 9, 1924, at 2 o'clock p. m.)

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

WEDNESDAY, APRIL 9, 1924

UNITED STATES SENATE, SPECIAL COMMITTEE TO INVESTIGATE THE BUREAU OF INTERNAL REVENUE,

Washington, D. C.

The committee met at 2 o'clock p. m., Hon. James E. Watson, chairman, presiding.

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

Present also: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. N. T. Hartson, solicitor, Internal Revenue Bureau; and Mr. S. M. Greenidge, head, engineering division, Internal Revenue Bureau.

Present also: Dr. T. S. Adams, tax expert, Yale University.

The CHAIRMAN. The committee will be in order.

Senator COUZENS. I would like to have Mr. Hartson take the stand for a moment.

STATEMENT OF MR. N. T. HARTSON, SOLICITOR, INTERNAL REVENUE BUREAU--Resumed

Senator COUZENS. Mr. Hartson, there were some companies that were referred to in the last hearing.

Mr. HARTSON. Yes; and I have just handed the chairman of the committee a communication from the Secretary of the Treasury in reference to those companies.

The CHAIRMAN. All right; I will read it.

TREASURY DEPARTMENT,
Washington, April 9, 1924.

MY DEAR MR. CHAIRMAN: At the hearing of your committee investigating the Bureau of Internal Revenue on last Monday Senator Couzens requested Mr. Hartson to inform me that the returns of certain companies were desired, mentioning the McClintock-Marshall Co., Ellicott Machine Tool Co., Union Shipbuilding Co., Carborundum Co. of Niagara Falls, and the Pittsburgh Plate Glass Co.

Of the Ellicott Machine Tool Co. I have never heard before; of the other companies mentioned I am not a director nor officer but only a minority stockholder.

It has been the practice of the Bureau of Internal Revenue when the names of taxpayers have been raised before your committee in this investigation to address each taxpayer direct if the adjustment of its tax liability has been questioned, asking if it would waive its right to privacy and permit the Bureau to submit its returns to the inspection of your committee. The same policy has been followed with regard to the companies referred to above, and I trust favorable responses will be received, as has been the case in other inquiries of this kind. In addition to this, if you desire, I shall be glad to supplement the action of the Bureau with a personal letter to the companies mentioned in which

I own stock in order that they may know of the committee's desires. It is, however, a matter for the board of directors of each company, representing as they do all the stockholders, finally to decide whether or not such a waiver is to be submitted.

When we have heard from these companies, if I can be of further services let me know.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

Senator COUZENS, I want to read into the record also a letter from the Pittsburgh Plate Glass Co., signed by Mr. W. L. Clause, chairman board of directors. It is addressed to myself and it reads:

APRIL 8, 1924.

Senator JAMES COUZENS, Washington, D. C.

Mr DEAN SENATOR: I notice in the morning papers that you are quoted as having referred to the Pittsburgh Plate Glass Co. as being a "Mellon interest," also suggesting that this company, through Mr. Mellon's influence, has received "excessive amortization" allowances in its Federal taxes.

This company has not received any special allowances in amortization either since or before Mr. Mellon became Secretary of the Treasury. I might say also that Mr. Mellon's interest in this company is relatively very small, being less than 3 per cent of our capitalization. Mr. Mellon has never at any time endeavored to exercise any influence in the management of this corporation. Mr. Mellon has never been consulted either directly or indirectly about any tax matter concerning this company.

Yours, respectfully,

W. L. CLAUSE,
Chairman Board of Directors.

The CHAIRMAN. Now, if you want to pursue that, Senator, I would suggest that the best you could do would be to ask Mr. Hartson, or direct a letter to the Commissioner of Internal Revenue, and ask him to write to these companies, as to whether or not they will waive their privilege and permit their returns to be brought here before the committee.

Mr. HARTSON. Senator Couzens, the letter from the Secretary, which was just read, indicates that has already been done. His letter contains the statement that the Secretary of the Treasury would be glad to supplement the bureau's request by a personal letter to the companies.

The CHAIRMAN. That is what I understood the letter to mean.

Senator COUZENS. I think it would be very helpful to the committee if the Secretary would display his interest in the matter by writing to the companies referred to.

Mr. HARTSON. He indicates in his letter that if the committee desires he will be glad to supplement the action of the bureau with a personal letter to the companies.

Senator COUZENS. Yes; I noticed that.

Mr. HARTSON. Is it the desire of the committee to have me inform the Secretary of the Treasury that he write to these companies mentioned, to such of these companies as he owns stock in?

Senator COUZENS. Yes.

Mr. HARTSON. Ask that they waive the right of privacy and submit returns to the committee?

The CHAIRMAN. Yes, that is all right.

Senator COUZENS. While you are here, Mr. Hartson, I want to read a memorandum that was handed to me as coming from San

Francisco. I think it was handed to me by a newspaper man, if I am not mistaken, or, rather, handed to my secretary. It says:

SAN FRANCISCO, CALIF., April 6, 1924.

Mayock says Henry Miller, of Miller and Lux, died 1916 about month after enactment Federal estate tax law leaving thirty-five to fifty millions. In 1919, Government sued estate claiming total of about six millions as tax. To prevent seizure of property by Government to satisfy tax claim, estate deposited two and a half millions with Treasury Department. Estate then sued Government for return of deposit. In May, 1922, on order of Attorney General, Government's suit against estate was dismissed. Short time later Treasury refunded to estate the two and a half million deposit plus accumulated interest, all totaling over three millions. Dismissal on ground that Miller executed will and deed of trust in 1918 prior to enactment estate law. Mayock says deed probably executed at time Miller's death and dated back to evade tax. Mayock went to Washington last September and proposed amendment to revenue act that would enable Government reinstate suit against Millers and also prevent recurrence such frauds or blunders. Nelson Hartson, Solicitor Internal Revenue, and others told him Miller dismissal and refunding colossal blunder and approved amendment. Under Secretary Winston verbally and Mellon in letter to Mayock opposed amendment, thereby blocking revival Miller suit and leaving present act open to future concealments and evasions. Mayock interested because as attorney for minor beneficiary of Miller estate he discovered evasion.

Do you know anything about that case?

Mr. HARTSON. I am very familiar with it, Senator.

Senator COUZENS. Will you tell us what you know about that case?

Mr. HARTSON. I must rely upon my recollection, which should be supplemented by a reference to our records.

Henry Miller died, as the telegram says, in October, 1916; if my dates are correct. In September of that same year, about a month prior to his death, the Federal estate tax law became effective.

That law based a tax upon the gross estate that was possessed by the decedent at the time of his death.

Along in 1914, at least two years prior to the enactment of an estate tax law, Henry Miller had created a trust in favor of certain of his children and conveyed to that trust practically 100 per cent of his assets. I think the figures ran up to \$40,000,000 in property that he conveyed to the trust.

Senator ERNST. He conveyed legal title?

Mr. HARTSON. He conveyed legal title of his interest in the property. He conveyed it to the trust. It should be borne in mind that this was done two years before there was any Federal estate tax law.

At the time of his death the Government took the position that this gift was made to take effect at or after death, and that it was made in contemplation of death, and, therefore, all of the property should become a part of the gross estate at the time of his death and a tax should be paid upon the full \$40,000,000.

At the time this position was taken, the case of *Schwab v. Doyle* had been started through the Federal courts. That case is one that has already been referred to by me and by others who have testified before the committee. The question in that case involved the retroactivity of the Federal estate tax law. In that decision, which went to the Supreme Court of the United States, it was held that the act did not apply to transfers made before its passage.

As the result of that decision, this instrument having been created in 1914, two years before the Federal estate tax law became effective, and because the Supreme Court held that the estate tax law had no retroactive effect on such conveyances, the money was refunded. They had paid about \$2,500,000, as I remember the figures, and the Government had instituted suit to collect the difference between the \$2,500,000 that they had paid and the amount that the Government claimed was due if all of this property was a part of the decedent's gross estate, and on the authority of the case of Schwab v. Doyle dismissed this suit.

So that we have a situation where the Government paid back \$2,500,000 as the result of the decision in Schwab v. Doyle, and dismissed the suit for the collection of the balance of the tax that therefore had been alleged to be due.

That litigation was in charge of a former Solicitor of Internal Revenue, by the name of D. M. Kelleher—I think his initials are D. M.—who was specially retained to conduct that case against the Millers, or the court action against the Millers. There was another lawyer from the Bureau of Internal Revenue who was assigned to duty to assist him, Colonel Hendler. Both of those gentlemen were in California, and Mr. Hendler spent some months out there representing the Government in this litigation, which ultimately was dismissed as the result of the Schwab v. Doyle decision.

Last summer Mr. Mayock, who was referred to in the telegram that the Senator has read, came back to Washington with information to the effect that the trust instrument itself was void on its face; that it was void because it was in violation of the California rule against suspended alienation, or the rule against perpetuities, and that the trust being void, no valid transfer had ever taken place, and that the property that had been sought to be conveyed by this trust instrument should all have been a part of the decedent's gross estate, and should have been taxable by the Federal Government.

He came back as an informer.

The invalidity, or the alleged invalidity, of this trust was never known, so far as we are able to discover, to any of the people who considered it, either at the time the litigation was being considered or by the trustees themselves, and there has never been any litigation in the State of California which attacks the validity of this trust.

Senator ERNST. The estate is standing by what is done?

Mr. HARTSON. Yes.

Senator ERNST. And recognizes the validity of the trust?

Mr. HARTSON. Yes. The State officials never have questioned the validity of the trust.

Mr. Mayock's attention, however, was called to the statute of limitations, which prevents the Government from now attempting to collect that tax, if any were due. The statutes put a limit of five years within which suit may be brought to collect any internal revenue tax, and that five years since this tax became due, if it was due, has long since elapsed. The decedent died in 1916. The tax has been held to accrue a year after death, and five years from the year following the death of the decedent have long since gone.

Senator KING. May I interpose this, that the statute of limitations would not begin to run until the discovery of the fraud.

Mr. HARTSON. That is not the law, Senator, and that is one of the suggestions that Mr. Mayock made here, that the statute of limitations would start running at the time of the discovery of the evidence leading to any additional tax. Now, until the Senator read the telegram which was just read, there never was any suggestion made by Mr. Mayock or anybody else that any fraud had been perpetrated by anybody, that the trust instrument, for instance, had been dated back. To my knowledge it was never even suggested. At no time have I ever made the statement, and, to my knowledge, no one else connected with the bureau, has made the statement that a colossal blunder has occurred, or some great mistake has been made. Senator ERNST. Or anything like it?

Mr. HARTSON. It is true, Senator Ernst, that a question has now been raised which was not raised at that time, namely, the validity of this trust instrument. The litigation conducted was predicated entirely upon the retroactive effect of the estate tax law.

The CHAIRMAN. You say this question has now been raised. When was it raised?

Mr. HARTSON. By Mr. Mayock when he came on last summer with this information.

Senator COUZENS. While we have a quorum here, Mr. Chairman, I would like to introduce a resolution. Since these hearings have begun all sorts of information has piled in upon the Senators, and particularly myself, which I have had no opportunity to analyze. I have hesitated to bring it up in open meetings because of the possibility of injuring reputations that should not be injured, and the possibility of bringing people into public disgrace who should not be brought in; but I have recognized, through my experience of years in police work, etc., that much of this information is reliable and much of it is not reliable.

I have prepared this resolution, therefore, which I would like to introduce:

Whereas the time of the various members of this committee has been so occupied with other urgent committee work as to render it impracticable for any one of them to secure and prepare the evidence for presentation to this committee which is proper and necessary to enable it to make a satisfactory investigation of the matters included within the resolution of the Senate under which it was appointed; and

Whereas Mr. Francis J. Heney, of California, an attorney at law, has signified his willingness to undertake, without charge against this committee or the Government of the United States for compensation, the work of securing and preparing such evidence and of securing the attendance and conducting the examination of witnesses before this committee in relation to all matters which it is so authorized to investigate;

Resolved, That said Francis J. Heney is hereby authorized and empowered to secure and prepare all proper and necessary evidence relating to the subject matter of its inquiries and investigations under the resolution of its appointment and to secure the presence and conduct the examination of all witnesses in relation thereto.

The CHAIRMAN. Are there any remarks?

Gentlemen, personally I am very much opposed to that. In the first place, I know of no reason why an attorney should be employed to sift out all of these rumors that come here. I do not exaggerate it when I say that I have a drawer full of letters from people about this, that, and the other thing, relating to some misfeasance or malfeasance or mistakes made in the department here.

or there or yonder. Even if very much of what is contained in these letters were true, it would not prove anything that we are seeking to find out.

My understanding is that we were not appointed for the purpose of finding out whether or not crimes have been committed by individuals, but to elicit such facts and information as would enable us to better improve the service of this particular bureau, to simplify the methods of filing tax returns, and, if possible, to simplify the law itself by a change in policy, and all that sort of thing.

I know Mr. Heney. I have known him for a good while, and I do not think to be very frank about it, as I would say to him if he were here, that he is the type of man that should be selected to conduct this sort of thing, because he is just a prosecutor, pure and simple.

I am of the opinion that, if we go into an investigation, we ought to go into it for the purpose of bringing about helpful constructive legislation, and not for the purpose of besmearing and besmirching anybody, or ruining the reputation of anybody, or blackening characters, or anything of that kind. In other words, I am opposed to making a muckraking committee out of this. I do not think we started out to do that. I do not think that you, Senator Couzens, intended to do that, or that in this resolution you have that in mind; but I know Mr. Heney well enough to know that that is what he would do if we would give him a chance.

Now, what I wanted to come to is this—and I talked it over with you, Senator Couzens, the other day, and with Doctor Adams—that on account of the lack of time, it being very apparent that we have not the time to go into all of these questions, we appoint ourselves a committee of experts, of whom Doctor Adams should be one, and I would suggest Mr. Gregg, or any others that we might select, for the purpose of investigating these questions and reporting back to us as a committee later on.

It seemed to me that that would be the wise and helpful thing to do, because if we dig out all of these things that these letters tell us about we will then be no farther along toward the real thing that we started out to do than we are now.

That is the reason that I am opposed to this resolution.

Senator COUZENS. Of course, Mr. Chairman, in digging into these matters we have to find out the extent to which these situations exist, and whether the proposed amendments to the law are justified in order to overcome the evil, if evil exists. There may be amendments proposed to the law because of one or two or several errors of judgment, or on account of crimes which would not be justified because the remedy was worse than the disease.

So it seems to me it is obvious that we have to find out to what extent these things exist. The chairman himself was handed the information, and has said that I ought to subpoena—

The CHAIRMAN. No, not information—accusations.

Senator COUZENS. Well, accusations, yes.

The CHAIRMAN. Information is a different thing.

Senator COUZENS. Then, if you call them accusations—

The CHAIRMAN. Yes.

Senator COUZENS (continuing). I stand corrected—in which the chairman suggested that I subpoena the accusers. I have not done

any of that, yet in so far as any out-of-town witnesses are concerned, because of the inability to get a quorum—the inability to get the attention of the committee, and, I have recognized the fact that it would be a great source of trouble and possible expense to bring those people here from Kansas City and Chicago and other places, and then have them here without a quorum or without ability to do business.

I want to say that the chairman is correct in saying that when I introduced the resolution I had no idea of engaging an easy muckraking. I knew that the bureau was not satisfactory to the public; I knew that the bureau was away back in its work. I have had many conferences with Doctor Adams, in which he said that the department, he thought, was overoptimistic about when it would clean up these records, and that something ought to be done. Now, since then a great deal of purported information and multitudines of accusations have come to myself as well as to other Senators; I have a long list of things here that Senator Jones handed me, and I have others that Senator Copeland handed me, as well as things from other Senators, and I have reached the conclusion, Mr. Chairman, that we would be remiss in our duty, we would be negligent, if not culpable, if we permitted all of these things to be within our hands at this time and took no cognizance of them at all. We can not conceive of the committee, with this information or alleged information in regard to charges in hand, reaching a conclusion to sit by and say, "We will ignore them all and pay no attention to them." I am not a lawyer, and the lawyers on the committee are engaged in other important work. Somebody has to work constantly on this job of getting information together, and I feel safe in saying that it will not be a muckraking committee even with this work in hand. It will be an effort to correct conditions, to find out how much the Federal Government loses through improper collections or failure to collect taxes, or for allowing amortization and depletion charges and credits unwarranted by law or the rules.

Therefore, Mr. Chairman, I would like to have the resolution put to the committee.

THE CHAIRMAN. I want to say that if you are going to take up all of these rumors that come in here, Senator, you will never come to a conclusion; you will be just as remiss on the 1st of June as you are now, because like begets like, and as this is heard about all over the country you will have thousands and tens of thousands of these things.

Senator COUZENS. There will be no hearsay presented. I can assure you of that. We will have documentary evidence presented into this committee. It will not be hearsay testimony, nor will it be testimony of discredited employees or of criminals, or anything of that sort.

THE CHAIRMAN. May I ask you why you happen to choose Francis J. Heney to do this thing?

Senator COUZENS. I do this largely because he was known as a very thorough investigator.

THE CHAIRMAN. I do not think so.

Senator COUZENS. Well, you are entitled to your opinion, Mr. Chairman.

The CHAIRMAN. Yes, I know Francis J. Heney. I have known him for years. I know about him.

Senator COUZENS. I think he is a thorough investigator, and it is difficult to get thorough investigators, and that is what we want, and not a prosecutor.

The CHAIRMAN. That is what he is, pure and simple.

Senator COUZENS. Well, he may have been a good prosecutor, but he had to be a good investigator to make a good prosecutor.

The CHAIRMAN. I think you ought to consult the two Senators from California on that question.

Senator JONES of New Mexico. Mr. Chairman, I regret very much to say that it has been impossible for me to attend the sessions of this committee and to go into the various matters which have been suggested. My duty on other committees, and especially on the Finance Committee, has taken all of my time practically. I have been here on a few occasions, but I have realized that I have not been able to do any effective work as a member of the committee. Senator Couzens has shouldered the burden, and if he asks for assistance, I think it should be given him, and especially assistance which is not to cost the Government anything. I realize the importance of his having the assistance of some attorney who can weigh and sift it out and only present the committee the pertinent and material things.

I have realized that Senator Couzens has been, to an extent, groping in the dark, because he has not had time to make an examination of the testimony and to ascertain what should properly be presented here as evidence. That is largely due to the physical impossibility of any one who has other responsibilities in the Senate, such as the rest of us have.

I can not agree with our chairman that we should not go ahead with this work and that we should not have this assistance.

I know Mr. Heney; I have known him for a number of years. He is an able lawyer. Some people, perhaps, have had differences in view as to his effectiveness.

The CHAIRMAN. Senator, what do you suppose induced Francis J. Heney to offer to give his services to this committee for nothing, to come here and pay his own expenses and do all of this work?

Senator COUZENS. I want to correct that. The resolution does not so state, Mr. Chairman.

The CHAIRMAN. Well, I so understood it.

Senator COUZENS. The resolution states "without expense to the Government."

Senator JONES of New Mexico. I thought I read between the lines as to what that resolution meant.

The CHAIRMAN. I did not so understand it.

Senator EMMETT. Senator Couzens, I will ask you if you are going to pay the expenses of Heney?

Senator COUZENS. Yes, sir; I will pay them if he is employed. Senator Jones, I think was the first Senator on this committee to suggest to me that we ought to have counsel.

Senator JONES of New Mexico. Several days ago, in fact, soon after the committee began its work, I suggested the advisability of having some one who could take up these matters and sift the testimony. I did not suggest the engagement of Mr. Heney or any one else. In fact, I did not know until this morning that Mr. Heney

was in town. I saw it in the newspapers, but I had understood from the newspapers that he was here in connection with some other matters.

Senator KING. Mr. Chairman, I can briefly express my view in regard to this resolution.

First, I offered a resolution last December, in which I stated, or rather the resolution stated:

Whereas it is alleged that there is a waste, inefficiency, and extravagance in the administration of the Bureau of Internal Revenue, due in part to the disorganized and demoralized condition of the bureau, caused by attempts to replace and reassign personnel for partisan purposes; and

Whereas it is alleged that the work of the recovery and collection of delinquent taxes, amounting to hundreds of millions of dollars, has been delayed by reason of assigning personnel to the work of auditing claims against the Treasury for the refund of taxes already collected, and of claims for tax exemption, and that such claims are being injudiciously allowed to the detriment of the Government; and

Whereas it is claimed that numerous tax attorneys, agents, specialists, advisers, and lobbyists in the employ of claimants for refunds and exemptions, some of whom, it is claimed, pretend to have partisan political influence, are carrying on negotiations with officers of the Bureau of Internal Revenue in regard to the allowance of such claims, which negotiations preclude a judicious examination of and action upon such claims, and will result in scandal and the disadvantage of the Government: Now, therefore, be it

Resolved, That the Committee on Finance of the Senate, or any subcommittee thereof, is authorized and directed to investigate the aforesaid matters and to report to the Senate whether or not it be advisable to make a public record of tax exemption and tax refund claims which have been decided or which are pending before the Bureau of Internal Revenue, and whether or not it be advisable to establish a court or public tribunal for the handling and allowance of claims for tax exemptions and refunds filed with the Bureau of Internal Revenue; and to recommend effective measures to relieve the Bureau of Internal Revenue from the influence of partisan politics. The committee is authorized to administer oaths, to send for persons and papers, and to employ such clerical and professional assistance as may be necessary, payment therefor to be made out of the contingent fund of the Senate upon the order of the chairman of the committee.

Mr. Chairman, I believed from the information which had come to me—not from Democrats alone, but largely from Republicans—that the conditions in the Internal Revenue Bureau are such as to call for immediate rectification. I therefore offered that resolution.

Soon afterwards Senator Couzens offered a resolution. I had mine referred to the Committee on Finance, of which I was a member. My thought was that the Committee on Finance would take up the examination which my resolution called for.

As stated, Senator Couzens subsequently offered a resolution, and in his resolution he stated the fact that there was alleged corruption in the Internal Revenue Bureau. I had a conference with Senator Couzens, and knowing of my duties on other committees, and because of lack of time, I stated I would be entirely willing to let his resolution pass, and that mine should not be acted upon.

His resolution then went to the Committee to Audit and Control the Contingent Expenses of the Senate, then to the Finance Committee, and the resolution which he offered was modified in some respects, and reported out by the Finance Committee and passed.

His resolution called for the appointment of a committee of five by the President pro tempore. The President then appointed Senator Watson, Senator Ernst, Senator Couzens, Senator Jones, and myself. We met, I am sure, with the view of doing constructive work.

10. What Senator Jones says respecting his activities are true with respect to myself, and I know with respect to the other members of the committee.

11. Just a personal allusion as a member of the Finance Committee. We have been holding night sessions as well as day sessions for weeks. I have also been a member of the Committee on Immigration, and I have been compelled to attend hearings of that committee, being the ranking Democratic member. I am also the ranking Democratic member on the Committee on the District of Columbia, as well as the ranking Democratic member of the Committee on Privileges and Elections, and I have had to give attention to the work of those committees. As a result, I have been working never less than 14 hours a day and sometimes as many as 16 or 18 hours a day, Sundays included, ever since the beginning of this session.

12. It has been impossible, then, for me to give attention to the activities of this committee, and Senator Couzens has been here a great deal of the time without any help whatever.

13. Now, both of the resolutions, that of Senator Couzens and my own, contemplated an investigation of the Internal Revenue Bureau for corrective purposes. That meant, as I concluded, that if transgressions were found there, if the administration had been improper, if it was demoralized, as I charged in my resolution, if partisan politics had determined the selection of the personnel, those things clearly were involved and are comprehended in the resolution that we passed; but I will say primarily the object is to remedy the evils if evils are found to exist.

14. That does not mean, in order to recommend constructive legislation, we may not inquire into obvious transgressions, delinquencies, mistakes, and irregularities upon the part of officials in the department. To do that would not be muckraking, but would be a calm, judicial, fair investigation of the work of the department. We already know from the limited testimony which has been offered here that there have been some irregularities in the bureau. We have already learned that a great many men have left the department and have gone out and solicited, and have prosecuted claims for the department. As to the wisdom of that, as to the morality of that, I express no opinion now, as I want to learn the facts here, and pass upon the facts, as a judge ought to pass upon any case which is brought to his attention.

15. I have felt for some time that we could not give the attention to this matter that we should, that it needed some able counsel's aid in the preparation of the evidence submitted, and to permit nothing to come before the committee that should not be presented, so that we might have presented to us testimony that would be legitimate, pertinent, and relevant to the activities of the committee.

16. Therefore, I am in favor of the employment of Mr. Heney.

17. In reply to what Senator Watson has said, permit me to say that Mr. Heney does not deserve the criticism that my good friend has suggested.

18. Mr. Heney first won his spurs at the bar in California when he was prosecuting, as the Senators will recall, Ruel and others, who had prostituted their positions in the municipality of San Francisco. As you will recall, Mr. Heney was shot and had to retire from the case, at which time Senator Johnson, then a budding young lawyer,

took his place, winning his spurs and gaining the prominence which he subsequently attained, and which made him governor. Mr. Heney was appointed by Mr. Roosevelt, because Mr. Roosevelt had confidence in him, to prosecute land frauds, and he vindicated the wisdom of Mr. Roosevelt in selecting him. I have never heard anything derogatory at all to the integrity of Mr. Heney, but I am sure that he will conduct this matter fairly and impartially.

There is just one suggestion that I would like to make with respect to the resolution. The resolution would seem to give Mr. Heney or whoever is named too much authority to act without the direction of the committee. I would prefer that a proviso would be inserted that in his activities in connection with preparing the case his work should be done under the direction of the committee. Senator Jones of New Mexico. I took it that that would be assumed. Senator King. Of course, that is implied, you know. There is no doubt about that. With that understanding, I shall vote for the adoption of the resolution.

Senator Eanser. Mr. Chairman, I had supposed that when this committee was appointed to undertake the work it was to be a constructive work. If anything has been done along that line since the committee began discharging its duty, I do not know what it has been. I have been sick all week, and I can not speak, therefore, of what has been done during the few days of my absence; but so far as I have been able to understand what has been done, the effort has been mainly to find if in some certain cases fraud can not be developed. For that purpose witnesses have been put on the stand, witnesses who knew very little about those facts which are necessary for us to have, in order to help out the work of the bureau, but their testimony has been directed to some specific case to learn whether or not in that case there has been fraud.

It seems to me that if this committee really wishes to accomplish what it set out to do when it was appointed, and which was said to be its purpose, it can do that without much raking, and I use that term advisedly, because that is bound to follow the action of appointing Mr. Heney to undertake the work which this committee was appointed to perform.

I want to say to you, first, that I have not the remotest idea that this committee has any authority to bestow upon Mr. Heney the powers set forth and the authority set forth in this resolution. Let me read it. I will read the second: "whereas,"

"Whereas Mr. Francis J. Heney, of California, an attorney at law, has signified his willingness to undertake, without any charge against this committee or the Government of the United States, for compensation, the work of securing and preparing such evidence and of securing the attendance and conducting the examination of witnesses before this committee in relation to all matters which it is so authorized to investigate."

Senator Jones of New Mexico. Suppose we just insert there

Senator Eanser. Let me follow this up, if you please.

Resolved, That said Francis J. Heney is hereby authorized and empowered to secure and prepare all proper and necessary evidence relating to the subject matter of its inquiries and investigations under the resolution of its appointment and to secure the presence and conduct the examination of all witnesses in relation thereto.

"You might as well say: 'We resign from this committee and ask Mr. Heney to discharge its duties.'"

"Here is a committee far better qualified to pass upon constructive measures for the Bureau of Internal Revenue than is Mr. Heney. I have the first thing to hear of his qualifications, by knowledge or experience, of the work that has gone on in that department. He is known to be a criminal lawyer, to pursue criminals. We are now proposing to get from under and to let Mr. Heney summon the witnesses he desires, and to pursue the investigation just as he chooses, and to say 'Amen.' This is something I shall never do."

"I have been very much chagrined at the turn which this testimony has taken heretofore. I am still more chagrined to find that a member of this committee proposes to employ an attorney and pay him out of his own pocket, a noted criminal lawyer, who is supposed to aid in the constructive work of building up this bureau. This is certainly not the object, and it will not be so understood by anybody either in this room or out of it. The object is simply to enter into a muckraking, cesspool performance, and we are all sick and tired of it."

"There has been delay in this bureau, but that has grown out of conditions which no bureau could correct in a short while. We have had evidence before this committee that the working of the bureau has been greatly improved. You have a gentleman here, Doctor Adams, who thinks that from time to time improvements are being made in the methods by which the business there is transacted."

"If it had been the intention of this committee simply to ascertain how the affairs of the bureau are run and to suggest better ways, it would not be necessary to investigate this company or that company. We could take the facts in regard to any one corporation or any individual case, and learn how that case has been handled from start to finish, and then make our recommendations as to how it might be improved. But we are entirely overlooking the fact that because of thousands upon thousands of cases which have been coming in upon that bureau, there has been great congestion and it has suffered in consequence."

"Instead of performing that service, which I was hoping we were going to perform, it is urged that the committee employ a noted criminal lawyer, a man whose reputation has been gained by unearthing crimes, to tell us how to reconstruct the workings of the bureau. That is all piffle. He does not know how, and he will not know how when he gets through with his examination. With the heads of the different sections of the department here, we can ascertain for ourselves how that work has been conducted, where the delay has taken place, and where there has been fraud. Nobody wants to cover up the fraud where there has been fraud. The perpetrators, of course, should be brought before the court and held responsible for it. To hunt for fraud is not what this committee was appointed for."

"Mr. Chairman, I want to question the authority of this committee, no matter what qualifying words may be placed in the resolution, to the effect that Mr. Francis J. Heney shall do this work under the direction of the committee. I want to say that, even with that provision there, this committee has no right to authorize him to go on

with this work. The Government can not accept his services, paid for by one of the Senators.

You have just heard Senator King say that he had no time to give to this work; you have just heard Senator Jones say the same thing. Senator Couzens says that he is unable to get the proper attention, and has not the knowledge. Now, if that is not a getting from under, to let the work be done by Mr. Heney, I do not know what it is.

I am in favor of the committee pursuing this constructive work. I am against any other action, and repeat that if such action be taken, the United States will understand that it is another muck-raking performance. We are all tired of it, and I think we ought to stop it right here, and ought to pursue the objects for which this committee was appointed, namely, to do a constructive work, without hiring a criminal lawyer to select the witnesses and to do just as he pleases with the Bureau of Internal Revenue. I think it would be a mistake. Further, we have no authority to do it without the express authority of the Senate. I ask the chairman to consider that matter.

The CHAIRMAN: Are there any further remarks?

Senator JONES of New Mexico: I have nothing further, Mr. Chairman.

The CHAIRMAN: Do you wish to say anything further, Senator Couzens?

Senator COUZENS: I just want to comment on something that Senator Ernst stated, and that is that I do not think there is any disposition on the part of any member of this committee to get from under. I have never said that I want to get from under. I have never said that I did not have time. I have said that I am not a lawyer; I am not an investigator, and I thought we ought to have counsel to do this investigating for us.

The original suggestion was made to me by Senator Jones, when he saw that I was floundering around here, without the training of a lawyer, and without the knowledge of how to prepare evidence or to ask the questions. He came to me and said that he thought we ought to have assistance. As I remember it, that was several weeks ago.

I have had the greatest difficulty in getting attendance at the committee, and I find no fault with that, because I know that the Senators have a great many other things to do. I resented the idea in the first place that the President of the Senate should take four members of this committee from the Finance Committee, when he knew that the Finance Committee was working night and day on the revenue bill. I suggested that we ought to have some Senators who were not so involved with work. There are plenty of Senators who are not so heavily laden with committee work as are the four members of this committee who are now members of the Finance Committee.

I am perfectly willing to have this resolution amended in such shape that Mr. Heney will do the work under the supervision of this committee. I have no desire to take responsibilities from the committee; neither have I any desire to take away from the committee its proper authority; but I want to say this to you, gentlemen, that this work is not going to be stopped here. There is no Senator anywhere that

is going to stop the prosecution of the work that we have undertaken. This committee has proper authority to proceed. There is no question about authority to get as much help as we want to get. I want to say that, if there is any disposition on the part of this committee not to carry on and to carry through, we will go to the country with the question of whether or not this committee has done its duty.

I for one, as the instigator of this resolution, do not propose to be blocked, sidetracked, or diverted by any Senator or group of Senators in the United States Senate, and I am just as sincere and earnest about that as I ever was about anything in my life. I am going to carry on, and if the committee does not propose to assist me in carrying on, I will select my own means of carrying on. I want a vote on this resolution to find out whether the committee wants to get at the bottom of these charges which are piling up or whether they want to whitewash them and ignore them.

I have made no charges against anyone. I have purposely refrained from saying out in meeting here anything about the volume of evidence that have come to me, because it is my disposition to be fair and square with those who are interested. However, I want that evidence sifted and investigated, so that, if the committee concludes that it is proper evidence to come before it, we may have it, and if the committee concludes that it is not proper evidence and not relevant to the inquiry, it may be thrown out.

I do not ask to boss the committee; I do not ask—

The CHAIRMAN. But your resolution does not provide that.

Senator COUZENS. I will amend it, then, so that it will suit the committee, so that we will have the necessary help to get at the purposes of this investigation.

Senator ERNST. Mr. Chairman, as to whitewashing anybody or any department, if there has been anything thus far brought out before this committee that deserves whitewashing, or that you could whitewash, I have not been able to find it out. Everything that has looked big in the beginning has faded away under explanation, just as in the case that has been explained to us to-day. The explanation given has made it absolutely impossible to think that there was anything about it that was not straight.

Senator COUZENS. Well, that may be so; but if this was locked into before it was brought out before the committee it would not be presented to us.

The CHAIRMAN. Of course, I make no reflections upon the integrity of Mr. Heney at all, on Mr. Heney as an individual, as I know him and his work; but how did you happen to hit upon him, Senator, if you are free to say?

Senator COUZENS. Well, I do not know how it came about.

The CHAIRMAN. Let me ask you the blunt, plain question: Did Senator Jones suggest it to you?

Senator COUZENS. No, sir.

The CHAIRMAN. Did Senator King?

Senator COUZENS. No; no Senator of the committee suggested him to me.

The CHAIRMAN. Did you talk to these two Senators this morning, or at any time, about this resolution?

Senator COUZENS. No, sir; I did not.

The CHAIRMAN. Did they not know that you were going to bring up this resolution?

Senator COUZENS. I think they did, through Mr. Heney.

The CHAIRMAN. Through Mr. Heney?

Senator COUZENS. Through Mr. Heney. The Senators are here, and can answer for themselves. I have never discussed it with them.

The CHAIRMAN. That is to say, you talked to Heney about it?

Senator COUZENS. Yes.

The CHAIRMAN. And told him that you were going to bring up the resolution?

Senator COUZENS. Yes.

The CHAIRMAN. And you told him to see them?

Senator COUZENS. No; I asked Mr. Heney to see such members of the committee as he could. I told him that I thought Senator Ernst was ill, but I would be glad if he would see the Senators of the committee and talk to them and see what they thought about it, that I did not want to appear to be pushing him upon the committee.

I will ask the Senators here whether or not I conferred with any of them in reference to Mr. Heney?

Senator KING. I will promptly say, no.

The CHAIRMAN. We are just talking now in the family. Had it occurred to you that it might have been proper for you to consult your two Republican colleagues on the committee before you consulted the Democrats, or sent a lawyer to consult with the Democrats?

Senator COUZENS. I did not send a lawyer to consult any particular Senator, except the Senators of the committee. Let me say right here that I do not recognize my Republican colleagues or any other individual on the committee when it comes to getting at a matter of Government business. They all look alike to me then.

Senator JONES of New Mexico. I move the resolution.

The CHAIRMAN. Let me make this statement, and I do it in all kindness, of course, because I have not anything in the world against my friend from Michigan.

It was perhaps unfortunate that having had an altercation in the newspapers with Secretary Mellon, the Senator from Michigan introduced the resolution, because it gave to all the Senators, as well as to the people of the country, the idea that he was simply trying to pursue the Secretary, that he wanted in some way or other to find something on the Secretary, whether he had violated the law or had obtained favors because of his influence in the department, and so forth and so forth.

I at no time, as the Senator will readily agree, have placed any obstruction of any kind in the way of his ascertaining to his heart's content anything that he has wanted, so far as the law would allow. He has been permitted to have it without any objection. Not only that, but the Secretary himself has said that he would gladly, as far as he could, assist in that sort of investigation. We have no objection to that and have not had at any time, and there is nobody who has tried to lay a straw in the way of the Senator in going on with his investigation.

Senator COUZENS. I want to say, Mr. Chairman, that I have never charged the chairman with obstructing it in any way.

THE CHAIRMAN. I know you have not, Senator.

Senator COUZENS. I want to say the chairman has been most agreeable.

The CHAIRMAN. And I want to thank you.

Senator COUZENS. And he has cooperated in the work.

The CHAIRMAN. I have tried to in every way.

Senator COUZENS. But I do say that Senator Ernst has done all that he could to obstruct, and has interposed objection to taking up anything when we seem to dig up any graft or crookedness. Senator Ernst has openly and in a manly manner said that he was here to protect the interests, and I find no fault with him for that. I want to say that I am here to protect no one, the interests or others, who misuse the Government in any manner, shape, or form. Neither do I want to punish the interests or any individual who should not be punished.

I want to say that there is nothing personal between the Secretary and myself. It may be as the chairman has said; it may appear on the surface, unfortunately, but the facts are that the correspondence I had with the Secretary developed so many misstatements, so many misleading conclusions, that I thought we ought to go into the Internal Revenue Bureau to see whether or not these estimates and the arguments advanced by the Secretary were correct.

The CHAIRMAN. If this resolution is to be adopted, then I imagine you are going to vote it through here.

Senator ERNST. Are you through?

The CHAIRMAN. No; I just want to make this statement.

Senator ERNST. All right.

The CHAIRMAN. As to whether or not certain evidence is to be admitted, I think that question should be settled by the committee in executive session.

Senator COUZENS. I have no objection to that.

The CHAIRMAN. That is to say, if there is a lot of stuff or slush dumped in here, and if Mr. Heney is to be permitted to come here and spread it all out, whether it is evidence or innuendo, no matter how base and unfounded it might be, there will be no limit to what might go on; but if this resolution is passed, and if he is to be employed, and the committee will meet in executive session and go over what he has to say to determine whether or not it can be admitted as evidence, genuine evidence, that, of course, would be a modifying circumstance.

Senator COUZENS. I am entirely agreeable to that. I said that I at no time wanted to defame or injure anyone's character.

The CHAIRMAN. I do not believe you do.

Senator COUZENS. It is very hard to build one up, and I certainly do not want to tear it down.

Senator KING. I assent to the chairman's statement.

Senator ERNST. Mr. Chairman, I did not understand myself as the Senator from Michigan understood me, when I spoke the other day. If I said that I wanted to protect the interests, I was not aware of it, or if I said anything from which that impression could be drawn, I am very much surprised. What I did say at that time, and what I repeated a little while ago, and what I repeat now, is that I have not seen anything before this committee which did not appear as if Mr. Couzens were after somebody. Every time the

name of Mellon or a Mellon company was mentioned, up he went, like a horse at a county fair, with his head and tail in the air, to find out about Mellon. He wanted the books brought in, and he wanted everybody brought here that knew anything about it.

Now, I am one of those that believe that Mr. Mellon is honorable, is capable, is efficient, and I do not think, simply because he spanked our good friend in an argument over taxes, he ought to be pursued. I think the Senator ought to confine his constructive efforts to this bureau, and nobody having found anything that it was necessary to protect, I do not see why it is necessary for me to protect anything or anybody. I have not found anything that needed whitewashing, even if we were so disposed. I am one of those who believe that the American people are sick and tired of muckraking, and I repeat that this is another muckraking performance.

Having personally employed an attorney at your own expense, I leave the ethics of that performance for you to consider, Senator. I am finding fault with everything that looks to making this an investigation simply one to find fraud; and I am not saying that because I am a Republican. So far as I know, these gentlemen who are here as the heads of these sections are Democrats. They are not Republicans. I believe the majority of those who have been here to testify are Democrats; so that if I were whitewashing I would have to whitewash a Democrat. I want to protest as strongly as I know how against this proposed investigation, and I would block it entirely if I could.

Senator COUZENS. I am sure of that.

Senator ERNST. With great pleasure, because I do not believe it is the constructive work for which this committee was appointed. If through honest efforts here we can find ways and means by which that bureau can improve its work, I would be only too happy to support it.

Senator COUZENS. I want to draw the Senator's attention to the fact that the Senator has not been here 10 per cent of the time.

Senator ERNST. That is not correct.

Senator COUZENS. The records will show it, I think. You have not heard or read 10 per cent of the testimony.

Senator ERNST. Yes, I have.

Senator COUZENS. Have you heard what Doctor Adams and the others said about depletion on leaseholds on oil reserves?

Senator ERNST. I have a very full statement on that. I do not know whether I heard Doctor Adams, but I am quite well posted on that question.

Senator JONES of New Mexico. Mr. Chairman, I would like to pour some oil on these troubled waters if I could. I do not know that I can, however; but I do want to refer to just one remark about the ethics of Senator Couzens employing, at his personal expense, an attorney to help out in this matter. I can not conceive that there is anything outside the purest ethics in that act of his. To the contrary, I think he should be commended for being willing to get assistance to carry on this work under the supervision of the committee. I agree with what has been said, that the committee should not abdicate, but that the committee should perform its functions, and in the resolution here recognizing Mr. Heney as an assistant I do not think we are abdicating any of our powers at all. When it comes to

a consideration of the evidence and the recommendations, each member of the committee will perform his full duty, I am sure.

I therefore move an amendment to the resolution, so as to insert the words "under the supervision of the committee," so that the resolution will read:

Resolved, That the said Francis J. Heney is hereby authorized and empowered, under the supervision of the committee, to act.

Senator KING. That is the point I made.

Senator ERNST. I do not oppose that.

Senator KING. Of course, I think that was implied.

The CHAIRMAN. The Senator from Michigan accepts the amendment. The question is now on the original motion. As many as are in favor of the motion will say "aye."

(Senators King, Jones of New Mexico, and Couzens voted "aye.")

Senator ERNST. I want it on the ayes and noes, Mr. Chairman.

The CHAIRMAN. As many as are opposed will say "no."

Senator ERNST. No.

The CHAIRMAN. I want to be recorded as voting "no." Senator Jones, Senator King, and Senator Couzens vote "aye." Senator Ernst and Senator Watson vote "no." The motion is agreed to.

Is there anything else?

Senator COUZENS. I think Mr. Hartson might continue with his statement. I wanted to get this out of the way while we had a full meeting, because I know the Senators have other work that they must attend to.

I want to remark at this particular point that I expect to show, as a result of this inquiry, that millions and millions of dollars have been lost to the Government through failure of the Internal Revenue Bureau to collect taxes. That is something that I have not brought up because I have not felt that I was sufficiently grounded in what I expected to prove. I think if an opportunity is given I can prove that millions and millions of dollars have been lost, and that will be a constructive inquiry, so that that situation may be remedied in the future.

The CHAIRMAN. So that the leak may be stopped in the future.

Senator COUZENS. Will you proceed, Mr. Hartson, and finish your recital of the facts in regard to that case?

Mr. HARTSON. I do not know at what point I left off. As I recall it, I had reached the point where Mr. Mayock, of San Francisco, had come back to Washington and was met with the suggestion by the bureau officials, of whom I was one, that, conceding the invalidity of this trust instrument, the Government was without any real remedy which could be enforced under the law to collect the estate tax, because five years had elapsed.

Mr. Mayock then, as I understood it, attempted to bring before the proper authorities, including the Ways and Means Committee, which was considering at that time the revenue bill, an amendment to the revenue bill which would, under certain circumstances, permit the collection of a tax under situations similar to this one. The amendment was not made.

Senator COUZENS. Just what kind of an amendment was that?

Mr. HARTSON. It was an amendment to the estate tax title to the revenue bill, which permitted the assessment and collection of a tax at any time within a limited number of years, and my recol-

lection is not accurate as to what particular number of years after the discovery of new evidence or facts which were not before the department at the time the tax accrued.

Senator COUZENS. Why did the Secretary oppose that amendment to the law, do you know?

Mr. HARTSON. I am unable to state, except that as a matter of policy I think the Secretary has been opposed, in my judgment, to the further extension of limitation periods, feeling that the Government ought to be prevented from reopening or collecting a tax beyond a given number of years, just as the taxpayer under present circumstances is prohibited from getting any money back from the Government after a limited number of years; so that the Secretary felt, I believe, that the limitation period should work equally against the Government as against the taxpayer. There are many situations, as the Senator knows, in which taxpayers are unable to get back money that may have been unlawfully collected simply because of the expiration of the statute of limitations. As the Senator will remember, I spoke of the Spanish War tax, where many years had gone by, and the taxpayers who paid money unlawfully at that time have been unable to have it refunded simply because the statute of limitations has run.

Senator COUZENS. Do you remember that proposed amendment, Doctor Adams, which, as I understand it, provided that the statute of limitations should date from the date that the fraud was discovered?

Mr. HARTSON. Senator Couzens, there is no limitation upon the Government in making an assessment in any case where fraud has been discovered, and that brings me to comment again upon the suggestion I made a moment ago, that Mr. Mayock, at the time he was in Washington—and I had frequent conferences with him in person—made no claim that there had been any fraud shown in this Miller case.

Senator COUZENS. He did not bring up the question at that time that the trust had been dated back?

Mr. HARTSON. The suggestion was made to him, and it was discussed at the time, that if fraud could be shown there would be no necessity to amend any limitation portion of the act, because if fraud should be developed the Government would not have been barred; but I am satisfied that Mr. Mayock at that time took the position, and I personally agreed with him, that it would be next to impossible, or practically impossible, to show fraud, the evidence being entirely in the hands of the people interested, and the man who made the instrument is dead. I think personally it would be utterly impossible to show fraud in that case.

Senator COUZENS. Do you know whether the witnesses to the document were asked as to the dating of it?

Mr. HARTSON. I do not, Senator. I have a copy in my office of the trust instrument, which shows the names of the witnesses, as well as the signature of the creator of the trust, and I should be glad to bring it here and show it to the committee.

Senator COUZENS. As I recall it, you were going to submit some data as to the amount of claims that has been allowed for amortization and depletion on leaseholds. Is that here?

Mr. HARTSON. Yes, sir; Mr. Greenidge is prepared, I think, to submit those figures.

TESTIMONY OF MR. S. M. GREENIDGE, HEAD ENGINEERING DIVISION, INTERNAL REVENUE BUREAU—Resumed

Senator COUZENS: You may proceed with your statement, Mr. Greenidge.

Mr. GREENIDGE: As of April 4, 1924, there have been received in the bureau 3,056 original amortization claims. I use the word "original" there because secondary claims are put in.

Senator COUZENS: What do you mean by "secondary claims"?

Mr. GREENIDGE: The taxpayer puts in an original claim, and during the process of the department's acting on it, or during the process of the taxpayer himself reviewing it, if he finds that there should be changes made therein, he makes an amended claim, and although it does not alter that original number of claim, it increases our work.

The amount claimed on those original claims has been \$868,449,447.24.

The amended or supplemental claims, if we wish to call them such, have raised that figure to \$960,537,727.31.

The amount allowed on original claims has been \$403,787,692.13.

The amount allowed on original claims plus amended or supplemental claims has been \$504,028,927.05.

The amount disallowed on original claims—not proved, I mean by that, sir, not having conformed with the law or the regulations—has been \$464,661,785.11.

The amount disallowed on original claims and redeterminations has been \$396,508,800.26.

To date there have been actions in the department in the old amortization section, now appraisal subsection, on 3,589 claims, of which 533 were claims for redetermination. Under the revenue act, Senator, the taxpayer is granted the right to ask for a redetermination.

The total number of claims now remaining in this section is 380. The total amount of the claims now remaining in this section is \$178,183,035.38.

Senator COUZENS: Now, at that point, let me ask you if those claims were allowed, what proportion of them would be refunds in cash by the bureau to the taxpayer, and what proportion would be credited on taxes owing by the taxpayer to the Government?

Mr. GREENIDGE: You have asked a question, Senator, which we attempted to answer for ourselves a month ago, probably, and when I say it is impossible for us to answer it I am not exaggerating it, because of the various differences in taxes, owing to the surtax brackets in which these allowances would place a taxpayer; but it has been roughly estimated that between 10 per cent and 15 per cent of that will be refunds.

Senator COUZENS: And the rest would be credits to taxes owing by the taxpayers to the Government?

Mr. GREENIDGE: Not all of it, because some of these claims remain, and will be rejected entirely; others will be rejected in part only. It might be that the major portion of it will become deductible by the taxpayer; that is, allowed to be deducted by the taxpayer as the deduction from income.

Senator COUZENS: From income in those particular years, or from income which accrues in later years?

Mr. GREENIDGE. From income in the years in which the amortization is claimed, 1918, 1919, and 1920.

Senator COUZENS. That means, then, that these companies have not paid their taxes during those years?

Mr. GREENIDGE. Yes; they have paid. I do not know just how much of it, but probably most of it. I do not know exactly what the percentage of the refund runs, but it seems to me that it is about one-thirteenth or some such sum of additional tax.

Senator COUZENS. Can you say from your record there, showing these 3,500 and some odd claims for amortization, how many of those claimants had contracts with the Government?

Mr. GREENIDGE. (No, sir.) I think we could determine that because we have been preparing a large number of sheets. There are 39 in all. I brought them up the last time, but I did not bring them up this time, thinking it would not be necessary. I think it would be possible for us to get that information. I will make a note of it, if the Senator wishes.

Senator COUZENS. I would be glad to have you do so, because I evidenced an interest sometime before as to how you arrived at your conclusions to allow amortization during those years.

Mr. GREENIDGE. Yes, sir. That is the number of claimants which had Government contracts.

May I ask a question of Mr. Clark?

Senator COUZENS. Yes.

Mr. GREENIDGE. Mr. Clark, do you know whether the majority of them or the lesser portion of them have claims?

Mr. CLARK. I would say that unquestionably the majority of them have claims.

Mr. GREENIDGE. In addition to those claims, Senator, I might mention, if it is pertinent here, and it can be extracted, of course, from the record, if it is not, that there are about 18 cases on hand involving loss of useful value, obsolescence, retrospective appraisals, and about 50 amortization claims in protest, which may increase the foregoing figure about \$23,445,120.

The excess amount claimed in those 68 cases which I have just mentioned is conjectural, because the protests do not in all cases indicate the amount claimed in the protest separate from the amount claimed heretofore in an original claim. This estimated sum of \$23,445,120 is a ratio based on the amortization claimed on the 380 claims, which clearly indicate the sum claimed. You see, we have taken a proportion. We know what the claims are on these 380, and we are taking the average of that and applying it to the remaining number of cases, 68.

That statement, Senator, is the result of the work of from 15 to 20 people for about three weeks, working nights and Sundays.

Senator COUZENS. Have you a statement concerning depletion there, too?

Mr. GREENIDGE. We have some figures on the depletion. That is a very large piece of work to complete, but we have some such figures.

Senator COUZENS. You have not completed them yet?

Mr. GREENIDGE. No; but if you wish to have some of the preliminary figures we will be glad to give you them.

Senator COUZENS. All right.

Mr. HARRISON: Senator Couzens, I would like to make a suggestion here. I have not talked to Mr. Greenidge about these figures. It might be that preliminary figures would be misleading.

Senator COUZENS: How did you arrive at these preliminary figures there? I asked that because it may be that those will be sufficient and it will not be necessary to go into it any further.

Mr. GREENIDGE: From the results of figures that we had been keeping and have been brought up to date of the amounts of depletion allowed in an entire year. These figures are the results in gross of the work of the oil and gas valuation section of the Income Tax Unit for the year January 1, 1923, to January 1, 1924, of one section; that is, the section handling the values of oil and gas wells.

During that period we examined and passed upon 19,581 case years, a case year meaning each year of each taxpayer.

As the result of such action, it was found that taxpayers whose cases were thus examined had a gross income from oil of \$8,860,119,674. The depletion claimed thereon by taxpayers was \$784,743,885.

Senator COUZENS: Do I understand that that was claimed on leasehold depletions?

Mr. GREENIDGE: Yes, sir, exclusively on leaseholds.

Mr. GREENIDGE: Well, it is claimed in every way, by lessor and lessee, on discovery, 3/1/13 value, cost, etc., this being a summary of the work which was passed through in bulk, so to speak, just as if there was no distinction and it is this distinction which is taking so much time.

Now, of that \$784,743,885, the department determined that there was allowable \$489,580,656.

Senator COUZENS: Including all of the allowances?

Mr. GREENIDGE: Yes, sir, including all of the allowances. The section also determined the profit from sale of capital assets, meaning, of course, oil assets, of \$175,500,546.

The section also discovered income not reported by taxpayers during that period of \$45,395,921. This is a credit directly to the earning power of the department.

Senator COUZENS: In other words, you say that had the department not investigated these cases it would have lost that forty-five million and odd dollars of unreported earnings of these oil companies?

Mr. GREENIDGE: Yes, sir. Of course, the same thing obtained in other departments, you understand.

Senator COUZENS: Yes, I understand.

Mr. GREENIDGE: The percentage of depletion allowable to the depletion, as claimed by taxpayers, was 66.7. The percentage of depletion allowable to the gross income of taxpayers was 12.7.

That, I think, concludes the information that I have on the sheet which is, of course, the summary of a large number of sheets, probably several hundred.

Doctor AZAMS: That covers how many years, Mr. Greenidge?

Mr. GREENIDGE: In the major, that would cover the years 1917, 1918, some of 1919, a lesser amount of 1920, and an insignificant amount of 1921.

Senator COUZENS: I may not have been observing closely enough, but I did not get in my mind what proportion of this entire amount was allowed to leaseholds.

Mr. GREENIDGE. Do you mean leaseholds prior to the passage of the 1921 act, sir, or by leaseholds alone?

Senator COUZENS. I mean that the evidence disclosed that there were considerable allowances made for depletion to leaseholds, which was against the regulations of the bureau, which regulations were not promulgated until August, 1922. What I am trying to find out is, in this depletion that has been allowed, what percentage of the depletion was allowed to leaseholds. If you have that, I would like to have it, because these figures appear to cover the period to the promulgation of the rule of August, 1922.

Mr. GREENIDGE. I am afraid, Senator, that I have not those figures, and I do not think we have attempted to make that segregation. I did not understand it that way. However, we should be very glad to make an effort to get that information. As I understand it the amount of depletion you wish to know now is the amount that was allowed to lessees on the 3/1/19 value, prior to the issuance of Treasury Decision 3886.

Senator COUZENS. Of August, 1922?

Mr. GREENIDGE. Of August, 1922, yes.

Senator COUZENS. Yes.

Doctor ADAMS. Senator, I think here you might have your attention called to this: This applies to work that has been done subsequent to the issuance of that order. So far as these cases fell in the years 1918 and 1919, that would not be legally allowable, if the valuation was made, but there remain the years 1916 and 1917, to which lessee depletion would not be permissible under that order, is not that correct?

Mr. GREENIDGE. Yes; I think I get your point.

Doctor ADAMS. The Senator wants the allowance for 1916 and 1917 particularly.

Senator COUZENS. Yes. That is the idea, because you will remember the testimony disclosed that there were some 20 companies that received lessee depletion for 1916 and 1917, when it was against the Treasury rulings. Is not that correct?

Doctor ADAMS. Yes, that is correct; but even the Treasury rules and regulations, if they are making valuations, now impose a great difficulty. If they are making a valuation now, it is allowable for 1916 and 1917.

Senator COUZENS. Oh, yes; but I mean it was the Treasury decision of August, 1922.

Mr. GREENIDGE. Of course, we did not pursue our search further, Senator, after we had found the twenty-odd cases which had been allowed. We assumed it was the principle that we were after, and not the amount; but we can continue that search and find the total number which were allowed prior to the issuance of that Treasury decision of August, 1922.

Senator COUZENS. Could you get the number that were disallowed?

Mr. GREENIDGE. I think we could; yes, sir.

Senator COUZENS. You must have some system of filing down there whereby you can locate these oil cases.

Mr. GREENIDGE. Oh, yes; we have them segregated up to a certain point. After that they are mixed.

Senator COUZENS. Is that all you have to say in that connection?

Mr. GREENIDGE: You asked a minute ago for further figures that showed—

Mr. HARTSON: Senator Couzens, may I interrupt here to make certain about this information which you want, so that there will be no mistake about it; no dispute about it? For the years 1916 and 1917, for those two years, the law as interpreted by the bureau in its regulations before August, 1922, did not permit of the allowance of lessee depletion.

Senator COUZENS: That is correct.

Mr. HARTSON. Yes; that is correct. That is, to start with. However, after August, 1922, for those same years, it was permitted, due to the change in the regulations. Now, for the years following 1917 we all recognized that the law then specifically allowed it.

Senator COUZENS: I understand.

Mr. HARTSON: Yes. Now, the Senator wishes to know, if I understand him correctly, what amount was allowed for lessee depletion by the bureau for the years 1916 and 1917 before August, 1922, when the regulations were changed to authorize it or legalize it.

Senator COUZENS: That is correct.

Mr. HARTSON. Now, the Senator has asked how many were disallowed for those years.

Senator COUZENS: That is correct.

Mr. HARTSON: I think the testimony has brought out that the oil cases for those years were not settled, and a volume of them was held in abeyance even for those years in which the regulations were changed, due to the fact that the bureau was getting at that work and making valuations. It would surprise me very much—I do not know the figures now, but it would surprise me very much if any oil companies were denied the benefit of that ruling in August, 1922.

Senator COUZENS: I would be pleased to find if that was not the case.

Mr. HARTSON: Yes.

Senator COUZENS: But I think you ought to look into it.

Mr. GREENIDGE: I can state with some degree of certainty that the amount allowed to the lessee before the issue of Treasury Decision No. 3886 is going to be insignificant. The twenty-odd cases that we found, I think, amount to considerably less than \$150,000.

Doctor ADAMS: May I ask one question of Mr. Greenidge there?

Senator COUZENS: Yes.

Doctor ADAMS: Mr. Greenidge, referring to that figure of gross income, \$3,860,000,000, would that include the gross income of refining companies?

Mr. GREENIDGE: No.

Doctor ADAMS: That is to say, in case a large company the major portion of whose income was from refining but which had one subsidiary doing productive work, the refining income would not get into this figure?

Mr. GREENIDGE: No; this is the income from oil as crude bit.

Senator COUZENS: Is that all, Doctor?

Doctor ADAMS: That is all.

Mr. GREENIDGE: Is that all?

Senator COUZENS: Yes. I would like to have Mr. Nash take the stand.

STATEMENT OF MR. O. B. NASH, ASSISTANT TO THE COMMISSIONER OF INTERNAL REVENUE—Continued

Senator COUZENS. In the first discussion that I had with Mr. Blair, Mr. Bright, and yourself, before this investigation was authorized, I raised the question whether at any time the bureau could say how much taxes were owing to the Government.

Mr. NASH. Yes, sir.

Senator COUZENS. And if I remember correctly, you said that that could not be determined. Is that correct?

Mr. NASH. No; I do not think I made that statement, Senator Couzens, because we can determine it.

Senator COUZENS. As I remember the testimony that was given before the Ways and Means Committee of the House, you were asked by a Representative to say how much taxes were outstanding, and you said you could not segregate that which was outstanding from that which was assessed and not paid, or something to that effect.

Mr. NASH. I think the Senator refers to a question which was asked me as to how much we had collected on our assessments on back taxes, and I stated that we did not make an attempt to segregate the collections of back taxes from the collections on current taxes.

Senator COUZENS. Yes; I think that is correct.

Mr. NASH. Yes, sir.

Senator COUZENS. Now, can you tell the committee how much taxes are owing the Government as of April 1?

Mr. NASH. I can not tell the committee how much is owing as of April 1, because the March accounting reports are not yet in. I can tell them up to February 29.

Senator COUZENS. Will you tell us, then, how much was owing as of February 29?

Mr. NASH. I have not the figures with me, Senator, but I can bring them to the committee.

Senator COUZENS. Yes.

Mr. NASH. We have that record in our accounts and collections unit.

Senator COUZENS. In presenting these figures, can you tell how much of these taxes are owing for the years from 1916 on up?

Mr. NASH. Yes, sir; I can segregate them by years as to any class of tax. Does the Senator just want income tax or all taxes? We have capital-stock tax, estate tax, sales tax, miscellaneous tax, tobacco tax, etc.

Senator COUZENS. I see no reason why there should be a back tax on tobacco or the excise tax, because there is little dispute about those; but can you tell us the probable amount that the Government will collect on those taxes?

Mr. NASH. On income taxes and sales taxes, which are the two big sources of revenue, I can show how much is outstanding, what is covered by claims, and what is presumed to be collectible.

Senator COUZENS. Have you devised any system yet whereby you can tell how much a taxpayer owes and for what years he owes it?

Mr. NASH. We have that system now.

Senator COUZENS: How is it that you could not tell the Ways and Means Committee of the House how much you had failed to collect on assessments?

Mr. NASH: I do not recall that I was asked that question.

Senator COUZENS: That is what I understood you to say a while ago, that the House committee asked you what proportion of the assessed tax you had collected, and you said you could not tell, because you did not segregate the other taxes from the assessed taxes.

Mr. NASH: I was asked if I could tell them how much had been collected on our assessments for back taxes. I might say that the term "back taxes" applies to taxes for prior years which are discovered either as a result of the audit in the bureau or investigation by field employees, and that when the collections went through the collectors' offices we did not segregate or keep any statistics as to which applied to back taxes and which to current taxes, on account of the fact that collections have to be deposited very hurriedly, and the collectors' forces were not adequate to make that separation prior to deposit. However, since January 1, or since the reports for January, we started it some time in February, we have been having the collectors report each month on income tax the amounts that apply to prior years and the amount that applies to the current year.

Senator COUZENS: I think that is very desirable, don't you?

Mr. NASH: Yes, sir. Well, I might say, Senator Couzens, that prior to this appearance before the Appropriations Committee we had never been previously requested for that information and we had never made an attempt to keep it.

Senator COUZENS: Have you any figures to show what taxes have been lost to the Government by bankruptcy cases?

Mr. NASH: We have figures to show how much is outstanding on back tax for the fiscal year ended June 30, 1923, and for the present fiscal year up to February, and the amount that is involved in bankruptcy proceedings. I have not any figures that would show what has happened on current taxes in that respect.

Senator COUZENS: Back of that period, then, you have no segregated items to show what the Government has lost in bankruptcy cases?

Mr. NASH: Prior to the additional tax assessments for the fiscal year ended June 30, 1923, it has not been segregated.

Senator COUZENS: I would like to ask Mr. Hartson if there is any way in which this committee can get the personal tax returns from any corporation that does not volunteer to give them without an order from the President and the Secretary.

Mr. HARTSON: The present regulations, which have recently been amended pursuant to Executive order, permit either House of Congress to inspect any taxpayer's return upon a proper resolution being passed to that effect. Beyond that I know of no way, unless the taxpayer waives the right under the present law.

Senator COUZENS: As a matter of fact, then, this committee has not had any way of getting the returns on any other cases than Mr. Mellon's cases, and only then when Mr. Mellon volunteered, is that not correct?

Mr. NASH: No, Senator Couzens. We have had several cases in here that have been mentioned where the bureau has written to the

taxpayers and they have agreed. One of them was the Berwind-White Coal-Mining Co.

Senator COUZENS: Yes; where the taxpayer waived it.

Mr. NASH: Yes.

Senator COUZENS: So we have had cases here where the taxpayer has waived?

Mr. NASH: Yes.

Senator COUZENS: Which have not been Mellon cases?

Mr. NASH: Yes; two or three of them.

Senator COUZENS: Have you had any reply to the request of the Standard Oil Co.?

Mr. NASH: No; the reply has not reached us from the Standard Oil Co.

Senator COUZENS: Do you want to ask him any questions, Doctor Adams?

Doctor ADAMS: I want to ask Mr. Nash one question. The proportion of back taxes has been a matter of considerable interest for many years and I had been wondering how you could get around this difficulty. There is a considerable number of additional assessments made when the statute of limitations is about to run that are rather perfunctory, are there not?

Mr. NASH: Yes; that is, that happened a year ago last March, the closing of the 1917 cases.

Doctor ADAMS: It has happened this year again in lesser volume, has it not?

Mr. NASH: To a minor extent; yes.

Senator COUZENS: Is not the aggregate figure there very large?

Mr. NASH: In March of 1928 there were somewhere around a hundred million assessments made to prevent the tolling of the statute, and claims for abatement were immediately accepted on those cases, practically resulting in a reworking of the cases.

Doctor ADAMS: Then you could correct any figures in this connection, for this one difficulty, if you knew how much it amounted to?

Mr. NASH: We can show the amount involved in the assessments that were made and the amount involved on abatement claims that were accepted on those terms.

Doctor ADAMS: Yes.

Mr. NASH: And on the additional assessments, I have very carefully analyzed them, showing the amount that are in court, the amounts involved in bankruptcy proceedings, and the amount involved in compromises, etc.

Senator COUZENS: Does the revenue received from the excise tax, the tobacco tax, the automobile tax, automobile tires and parts, and whisky come under your supervision?

Mr. NASH: In my position as assistant to the commissioner, everything in the bureau comes more or less under my direction.

Senator COUZENS: I think that is all we will have to-day.

Mr. NASH: Senator Couzens, I have brought Mr. Bell with us to-day, whom you asked for the other day, on personal service.

Senator COUZENS: Oh, yes; I would like to inquire of Mr. Bell.

**TESTIMONY OF MR. DAVID W. BELL, HEAD, SECTION 23,
INTERNAL REVENUE BUREAU**

(The witness was duly sworn by Senator Couzens.)

Senator COUZENS. Will you state your full name for the record?

Mr. BELL. David W. Bell.

Senator COUZENS. Are you an employee of the bureau now?

Mr. BELL. Yes, sir.

Senator COUZENS. Will you tell us when you entered the bureau and what position you have occupied since you have been in the bureau?

Mr. BELL. I entered the Bureau of Internal Revenue, I think it was, on March 29, 1915, as an auditor and correspondence clerk. I was immediately assigned to the corporation section of the Bureau of Internal Revenue, auditing and handling income-tax returns at that time, under the excise act of 1909 and the revenue act of 1913. I continued as auditor and correspondence clerk up until 1919, the first part of 1919, having in the interim served not only as an auditor but having specialized in the railroad returns rendered under those several heads.

On March 1, 1919, I was designated as chief of the transportation and public utility section, in which capacity I served until, I think, it was the latter part of 1921, when the personal service subsection was merged with the public utility, at which time the designation was changed from transportation and public utility to public utility and personal service section. That continued until just recently, when the designation of the section and the work generally were changed. The section is now known as section 23, which embodies a certain geographical group of States.

Senator COUZENS. I was particularly anxious to have you tell us, Mr. Bell, what the difference in taxation would be, to use a hypothetical case, on an income of a thousand dollars as between a personal-service case and an ordinary case of income.

Mr. BELL. Senator, that would be rather difficult unless we had all of the factors that enter into not only the income but also the profits tax, and also the brackets the individuals would fall in in their individual capacity. Now, a personal-service corporation per se is not taxable.

Senator COUZENS. Tell us what a personal-service corporation per se is?

Mr. BELL. Just a moment. I would like to qualify that, if I may. A personal-service corporation itself is not a taxable entity. The distributable interest, whether distributed or not, is taxed to the individuals in the proportion of their shareholdings. Now, the individuals may, according to the surtax rates that they may fall in, pay a tax considerably in excess of what the corporation would pay, and it is only in personal-service cases allowed where the interests of the Government, in my experience, would in any way be jeopardized.

Senator COUZENS. There was a considerable advantage to the taxpayer at times and under certain circumstances when to be determined a personal-service corporation was of great advantage to the taxpayer; is not that correct?

Mr. BELL. Well, as I say, it depends entirely upon the conditions and the facts in each particular case.

Senator COUZENS. Yes, I understand that; but even taking into consideration these facts the bureau had some discretion, did it not, in determining whether a corporation was a personal-service corporation or otherwise?

Mr. BELL. I could not say that we have had any discretion there. The statute generally defines a personal-service corporation as one whose income is ascribable primarily to the activities of the stockholders or owners who are themselves regularly employed in the business, and in which capital, either invested or borrowed, is not a material income-producing factor. Those are the general qualifications.

Then it follows in the statute that there are certain ones which are excluded, namely, foreign corporations, and then those corporations 50 per cent or more of whose incomes, gains, or profits are derived from trading as a principal, and also those corporations 50 per cent or more of whose gross income is derived from Government contracts entered into between the 6th of April, 1917, and November 11, 1918.

Doctor ADAMS. Senator, your first question, I think, could be answered quite accurately in a general way. Is it not true, Mr. Bell, that the personal-service idea was incorporated in the statute for the purpose of preventing the imposition of an excess profits tax on the classes of cases where it would be excessive?

Mr. BELL. Exactly; on that class of cases which came within the purview of section 200 of the revenue act of 1918.

Doctor ADAMS. So it may be said in general that that part of the statute was designed to prevent the imposition of what may be regarded as an excessive tax?

Mr. BELL. Yes.

Doctor ADAMS. If, therefore, the typical personal-service corporation had been subjected to an excess-profits tax it would have been very much higher than the tax which, under ordinary circumstances, it did pay?

Mr. BELL. Exactly.

Doctor ADAMS. Does that answer your question, Senator?

Senator COUZENS. I think so. What I was trying to get at was whether any case came to your attention, where the question was close as to whether it was a personal-service corporation or otherwise.

Mr. BELL. There have been one or two recently which have been brought to my attention, and one which I might say has been mentioned in the proceedings here as a border line or marginal one. In my opinion, from my recollection of the facts in the case, I think it is a clearly defined personal-service corporation, and I might state generally the facts, if there is no objection to it, Mr. Hartson, without mentioning any names.

Mr. A operated a tugboat for 30 or 35 years. He had several sons and some sons-in-law. They incorporated in an amount not in excess of, I will say, \$1,600. The stock was issued to these in certain proportions, and it was invested in office furniture, fixtures, and supplies, and there was \$300 in cash.

The functions of this corporation were to secure contracts and undertakings with towing concerns, lighterage, and barge affairs, and things like that, charging them a commission on the amount of the gross receipts, and they also agreed to make the necessary repairs

and look after the operation and certain maintenance, all of which was included in this commission or fee charge.

Now, in looking at that proposition as I stated it there, all of the stockholders were actively engaged in rendering that service to its clientele. There was no capital that was invested that was a material income producing factor.

Senator COUZENS. You say they had some tugs?

Mr. BELL. No; I think not. The corporation had no title to any of the boats that were used in producing income. However, some of the stockholders had, I will say, one eighth or a one-fourth or a one-sixth interest in some of the tugboats that were employed; I mean that were used under contract. Now, that was regarded as a marginal case, because the auditor wanted to go beyond the corporate veil and say that because of the fact that the title vested in the stockholders, that that itself was an investment of capital which materially influenced income. That is all there was to that proposition.

Senator COUZENS. Just what difference did it make in the tax in that particular case that you have just mentioned?

Mr. BELL. I never looked into that, Senator. I could not because I do not know whether those men were in a high surtax bracket in their individual capacities or not.

Senator COUZENS. But in all cases of personal-service corporations the excess-profits brackets are not used, but rather the surtax brackets.

Mr. BELL. The individuals are taxed at the surtax rate; yes, sir.

Senator COUZENS. But there was no corporation tax.

Mr. BELL. No; there was no tax against this particular corporation. I prepared this morning a synopsis, which was filed as evidence of the class, which warranted an allowance of personal service in that case without giving any names or any figures or anything like that other than general figures.

Senator COUZENS. You stated it awhile ago, though, in substance, did you not?

Mr. BELL. Yes; I stated it in substance.

Senator COUZENS. There is nothing in that synopsis that you have not stated orally?

Mr. BELL. No; except some details. There was one salient fact, too. This particular corporation was incorporated under that provision of the law relating to agency, and did not qualify under the transportation clause of that statute; so it could not have operated as a towing or as a barge or as a lighterage corporation but merely as an agency. The charter of itself limited its activities to that of an agency.

Doctor ADAMS. Did they hire the tugs in question?

Mr. BELL. No; they did not hire them. They simply conducted it. That is all they did.

Doctor ADAMS. Did they manage the vessels or actually run them?

Mr. BELL. No; the captain and the crew were in the employ of the owners of the boats, and they had no title in any boats at all; that is, the corporation.

Doctor ADAMS. The corporation simply secured traffic for transportation?

Mr. BELL. That is all.

Senator COUZENS. Have you had any other close cases like that to deal with?

Mr. BELL. There is one that came to my attention a day or two ago in which I was not in accord with the auditor handling the case. My recollection of the facts is substantially this, that there were five stockholders engaged in growing citrus fruits. They organized a selling agency. One of the stockholders acted as the manager and sales agent. The other stockholders simply developed their orchard or grove property and consigned all of their goods to this sales agency.

The income to the corporation was in the form of commissions on the basis of sales.

The auditor handling the case stated that the activities of the stockholders which contributed to the agency were also actively engaged in the conduct of the affairs of the corporation, and without their contribution there could not be any sales or anything like that. I took exception to it on the ground that we were dealing with a corporation, and inasmuch as only one of the stockholders, who handled 20 per cent of the stock, that the corporation was disqualified because of the inability to meet the test prescribed for stockholders.

Senator COUZENS. What was the purpose of creating that sales agency?

Mr. BELL. Simply to sell the fruit of these growers.

Senator COUZENS. Yes; but I mean the parent company could have done that. What I am trying to get at is whether there was any purpose of evasion in creating it.

Mr. BELL. No; I do not think so at all. I think it was simply to facilitate the handling of their joint crops and things like that.

Senator COUZENS. Have you ever been over to Europe?

Mr. BELL. No, sir.

Senator COUZENS. Have you ever studied the British system of taxation at all?

Mr. BELL. No, sir; except just some phases of it, sir. I read a great many of the English decisions on depreciation.

Senator COUZENS. Do you want to ask any questions, Doctor?

Doctor ADAMS. I think not, except that I might bring out this, that in all applications in a section such as this you have a great many border-line questions.

Mr. BELL. Yes, Doctor; we have a great many border-line cases. In every border-line case, the thing finally resolves itself into this: What is the nature and character of the income? To what extent is capital necessary to affect that income? In other words, the criterion would appear to be the source of the income. The statute is very general, as I stated a moment ago. It must be ascribable primarily to the activities of the stockholders or owners, who are themselves regularly—not spasmodically—but regularly employed in the conduct of the business, and then in which capital is not a material income-producing factor.

You can see how general those qualifications are, Senator.

Senator COUZENS. Can you suggest any amendment that might obviate these border-line cases?

Mr. BELL. The revenue act of 1923 does away with the personal service.

Doctor ADAMS. You mean of 1921?

Mr. BELL. At the expiration of December 31, 1921; the personal service corporation—

Mr. HARTSON. When you were chief of the personal service section, were the decisions that you made in those cases subject to any review?

Mr. BELL. Yes, sir.

Mr. HARTSON. By whom?

Mr. BELL. To begin with, each and every case had to be conducted by the auditor. The auditor was required to prepare a synopsis sheet. This synopsis sheet gave the name of the corporation, its business, the taxable period, the basis of the claim, the liability for accounts, title to goods, and the balance of the items; then the gross income, whether from trading commissions or from other sources; then invested capital, with explanations of any changes or adjustments; whether or not the corporation was financed by borrowed money; whether or not there was any interest deduction, so as to trace the capital stock sources, and then additional facts; furthermore, the names of the offices and principal owners were listed—

Mr. HARTSON. We are not so much interested in what the auditor did.

Mr. BELL. I just wanted to follow that out, and I am almost through, Mr. Hartson—showing the distributive interests and the time devoted, and their duties. Then, the auditor handling the case had to recommend whether he approved or allowed personal service classification. That was the first thing.

The next step was that his immediate supervisor, the section unit auditor also reviewed that de novo. If he approved it, he signed it. If he had any adverse criticism to make, he noted it on that.

The next step was that it went to the subsection chief.

Senator COUZENS. That is what you were?

Mr. BELL. No. That is supposed to be the best technician that we had on personal service. It went to him, and he had made an examination of the subject of the case. If it met with his approval he signed it, and it came to me and I reviewed the synopsis and I either approved it or rejected it.

The next step was that it went to review, an independent outfit, where it was also gone over carefully. After that the capital stock division, which is interested in the personal service allowance cases, was notified.

(Witness excused.)

Senator COUZENS. I think we will adjourn now, subject to call of the chair.

Mr. HARTSON. Senator, you will have the chairman notify us as to when to return?

Senator COUZENS. Yes.

(Whereupon, at 4.30 o'clock p. m., the committee adjourned, subject to call of the chair.)