FEDERAL ALCOHOL CONTROL ACT

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 8870

AN ACT TO FURTHER PROTECT THE REVENUE DERIVED FROM DISTILLED SPIRITS, WINE, AND MALT BEVERAGES, TO REGULATE INTERSTATE AND FOREIGN COMMERCE AND ENFORCE THE POSTAL LAWS WITH RESPECT THERETO, TO ENFORCE THE TWENTY-FIRST AMENDMENT, AND FOR OTHER PURPOSES

JULY 26, 27, AND 29, 1935

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FEDERAL ALCOHOL CONTROL ACT

FRIDAY, JULY 26, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to call at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), George, Bailey, Clark, Byrd, Gerry, La Follette, and Capper.

The CHAIRMAN. Mr. Choate, will you come up here, please?

STATEMENT OF JOSEPH H. CHOATE, JR., WASHINGTON, D. C., CHAIRMAN AND DIRECTOR, FEDERAL ALCOHOL CONTROL ADMINISTRATION

The CHAIRMAN. We have before us this morning H. R. 8870, the Federal alcohol-control bill. Will you make a statement on this bill?

Mr. CHOATE. In general, Mr. Chairman, I have very small criticism of the bill as passed. The greater part of it, it appears to me, is entirely satisfactory. It has, however, two major defects from my point of view, and my point of view now, I think, is that of the unprejudiced observer, because the future of this organization is a matter that does not concern me personally.

The second section of the bill makes the new Federal Alcohol Administration a division in the Treasury Department. It provides that the salaries of the staff, which are to be fixed by the single Administrator, must be approved by the Secretary of the Treasury, and in the next subsection (d) it provides that the rules and regulations which the Administrator is authorized and directed to make are subject to the approval of the Secretary of the Treasury.

I respectfully submit that these provisions are violations of one of the fundamental principles of good government, that power and responsibility shall be concomitant. The bill places upon the single Administrator an enormous task, gives him immense power, makes him the judge of the business life and death of 17,000 or 18,000 businesses, gives him power to make regulations which protect the entire public in the matter of labeling and advertising. He proceeds under the bill to study the problems involved in the making of his regulations. After that study he drafts and promulgates his regulations. Under the bill as it stands they have no force whatever until approved by the Secretary of the Treasury.

Now the Treasury has not now and never has had any concern with the main purposes of this bill, those purposes which are sometimes described, rather unhappily, as social control of alcohol.

The bill aims to do for the country at large those things which the States cannot do in the matter of keeping the liquor industry in order, and protecting the consumer public against its mistakes and its excesses, and insuring that the evils which led to the enactment of prohibition shall not arise again.

The Treasury has not now and never has had any concern with any of the problems of liquor except the collection of revenue and the concomitant punishment in case the revenue law is violated. The Treasury has had nothing to do with the regulation of labeling or advertising; it has had nothing to do with the suppression of the "tied house"; it has had nothing to do with the suppression of improper trade practices; it has had nothing to do with the enforcement of the twenty-first amendment, although, of course, it will eventually have, if legislation now pending in the House is passed. So that the Treasury's experience, its methods, and its forces, are by no means fitted to enable it to deal with the problems which come before the Administrator under this bill.

I think I can illustrate most effectively how unfortunate this provision to which I referred would be in operation by an instance that I have in mind.

The CHAIRMAN. As I understand it, the Secretary of the Treasury has no desire to put it in the Treasury.

Mr. CHOATE. That is as I understand it, the Secretary of the Treasury protested against its insertion, in spite of which the provisions in question went into the bill as passed.

I think a single illustration, as I say, will explain more fully the evils of the situation than any amount of general argument. Among the first problems before the F. A. C. A. was the enactment of the labeling regulations and standards of identity. One of the first problems before them was the adoption of suitable definitions of various types of whisky, in order that the labeling regulations might intelligibly require the statement on the label of those things about the contents of the bottle which the consumer wanted to know. The question of what is whisky has exercised those who are interested in those matters for at least 50 years. The question finally came before President Taft in the great "*What is Whisky*" *case*, and it came before the British Special High Commission almost at the same time and in an almost parallel way. Both of them reached decisions which were adopted by the trade and by the various regulatory bodies, but both those decisions had become slightly antiquated in view of scientific advance and required revision. The entire matter was as difficult and complicated as anything you can imagine. We studied it at great length and finally got out regulations and standards of identity which appeared to be satisfactory to everybody. Immediately the scientists got busy and devised forms of stills which enabled the distillers to produce in full accord with our definitions products which did not accord with the names given to them and with the public understanding of those names.

Under our definition of straight whisky it became possible, by the use of these new stills, to produce a beverage which was almost a pure neutral spirit and which had none of the characteristics of straight whisky as previously understood. We had, accordingly, begun a restudy of the whole thing.

The CHAIRMAN. However, it was good liquor?

Mr. CHOATE. It was good liquor, if you like that kind of liquor. It was as harmless as any liquor could be, but it would not improve much with age. It lacked the terrible smell and taste which new whisky has, when it is the sort of whisky that is going to be good whisky after it is aged.

We had begun the study, we had procured the appointment, by a general agreement among the industry, of 8 or 10 distinguished experts who were going to report, in an effort to obtain a chemical definition of straight whisky which would stand up against the new stills of the scientists and the changes in the business.

Now, you can see there is no more difficult problem than that, no more highly specialized problem than that in the way of framing regulations. Had the Schechter decision not come along we should just about now be issuing a new set of regulations embodying the new definition. What would that set of regulations have been worth under the new bill? Absolutely nothing at all unless the Secretary of the Treasury approved them. What would have happened? Any definition we made, any set of regulations we got out would have stepped on the toes of some considerable portion of the industry, and of those who were interested in the matter. Those persons who would be offended by the new definition would immediately have gone to the Secretary of the Treasury as a court of appeal, and he would have had to take the heat. It would have been for him to resist the pressure. The Secretary of the Treasury would have found himself subjected to all possible pressure to reverse the decision of the Administrator on a matter with which the Secretary was totally and completely unfamiliar.

The result would have been that either the Secretary would have had to say simply, "I am mechanically approving everything the Administrator turns out", or he would have had to restudy the entire situation and decide for himself whether the new regulation was a good regulation or a bad regulation, and pass upon it and take the responsibility for passing upon it.

Now, that, if the members of the committee please, is a typical example of the improper divorcement of power from responsibility, and I say in that respect the bill is radically defective.

In the same way the provision authorizing the Secretary of the Treasury to pass upon the salaries of the staff. That is subject to the same criticism to some extent. The situation probably would not create any friction in the present organization of the two offices, but if the Administrator is to have this enormous responsibility he should certainly have an unfettered jurisdiction over his own staff as you can give him, and to compel the approval by another agency of the appointments and the salaries which the Administrator makes and fixes, is to deprive him of the power which he should have in order to carry out his responsibility.

Understand, I am not arguing for unfettered power on the part of the Administrator.

The CHAIRMAN. It is your theory that to put it in the Treasury Department would work no economy in expenditures?

Mr. CHOATE. None at all.

The CHAIRMAN. That phase of it does not have any influence?

Mr. CHOATE. I believe there would be no economies, because in the first place you have this difficulty: Under the bill as it stands the staff here are removed from civil-service requirements. The purpose of that, as I understand it, was the wise purpose of permitting the use of a somewhat expert staff, small but quite expert by now, in the present F. A. C. A.

The CHAIRMAN. How large a staff?

Mr. CHOATE. We have about 160, at present.

The CHAIRMAN. That is in Washington?

Mr. CHOATE. That is in Washington entirely. There is no personnel with official stations in the field. Of the present force, 15 or 20 are emergency additions to the labeling staff, to get the enormous mass of original labels approved in the first place. So the staff, as far as that is concerned, would not have to be as large in the future. Those people know the business, and they are the only people in the country who do know the business.

As I understand the civil-service laws, it would be practically impossible to transfer the force to the Treasury, if that were contemplated, in such a way that they could continue operating there. The result of transferring the functions to the Treasury without transferring the staff would be the necessity of creating a new staff and the consequent subjection of the industries to another formative year and a half, during which they would have to go through the misery that they had to go through while we were learning the business. So I think there would probably be not only no economy but quite the reverse in placing the business in the Treasury.

The CHAIRMAN. Has the Civil Service Commission any objection to any provision of this bill?

Mr. CHOATE. I understand the Commission objects to the exemption from civil service and has written the committee to that effect. No one is a stronger advocate than I am of civil-service requirements. No one would more strongly advocate than I would the eventual bringing of this organization into the Civil Service fold, but while it is performing specialized services for which it has a trained staff, which cannot be replaced outside, I would say it would be unwise to apply those regulations.

Now, another reason why I consider it absolutely imperative in the public interest that this organization, whatever it be called and wherever it exists, be an absolutely independent organization, responsible only to the President, is that it has one of the most important quasi-judicial functions which has ever been committed to anyone by the Federal Government. Whenever the Administrator under this bill grants or refuses a permit to the 16,000 or 17,000 people who will be required to have permits, whenever he considers the question of whether a permit ought to be revoked or not, whenever he considers the propriety of a label or of a piece of advertising, he is performing a quasi-judicial function of the highest type.

I thought, until this bill passed the House, that it had become a rather accepted doctrine in Federal Government that important quasi-judicial bodies should be independent of any departmental control, and for perfectly obvious reasons. They are, to all intents and purposes, judges within their field, and it is certainly a wise principle of government that judges should be subjected to as little control as may be from any outside political or executive authority.

That concludes what I have to say on the subject of the general desirability of striking out from the bill those provisions which make the organization a division of the Treasury which, standing by itself, is meaningless, and which give the Secretary of the Treasury the power and authority which he does not want over matters with which his job does not fit him to deal.

Senator GEORGE. Where did the suggestion originate for creating the Alcohol Administration in the Treasury?

Mr. CHOATE. In the Ways and Means Committee.

Senator GEORGE. It originated in the House committee?

Mr. CHOATE. In the House committee.

Now, as to what sort of a body should head the new organization, I have very little to say. It is an enormous authority to impose upon a single man. It may be that the public would be happier if these important quasi-judicial functions, such as the granting and revoking of permits, were performed by a board. That is for you gentlemen, in your wisdom, to say. We have, in the F. A. C. A., a board consisting of three in the organization and three from other departmental positions, which worked very smoothly, and gave us every expert advice on all sorts of matters. I think that was a pretty good board.

The CHAIRMAN. Did you have much friction in the Administration at all?

Mr. CHOATE. We have had no friction whatever, but that may have been due to the fact that under the code system the director had, except as to rectifiers, the function of granting permits, and also, subject to board approval, of revoking permits. In other words, his power was so great he was almost in the position of being able to overide the board had there been friction.

The set-up as it now stands would hardly permit the granting to the chairman here, the Administrator as chairman, if you put in a board, of any such overriding power, but I think that a board of five, three to be in the active office of the Alcohol Control Administration, and two to come from other departments, to insure liaison with those other departments, and to provide the Alcohol Control Administration with the expert assistance, for instance, of a member of the Department of Justice, as we now have, and an economist, as we now have—not consider it vital that there be a board rather than a single administrator provided the new organization is made free and independent and is not subject to any other department; but I think a board, on the whole, preferable.

I think the general lines projected by this bill would produce a satisfactory control organization.

The only other criticism which I have to make upon the bill is the bulk sales provision. The effect of these provisions as they now stand in the bill is not as disastrous as those which were in the bill when it first came out.

The CHAIRMAN. What provision is that?

Mr. CHOATE. It is section 4 (e) commencing on page 8, line 3. It provides in part:

> No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order, issued under this or any other Act of Congress, prohibit the use or sale of any barrel, cask, or keg, if made of wood, and if of one or more wine-gallons capacity as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages.

That section is intended to destroy the Treasury regulations and the code provisions which latter, of course, have already been destroyed by the Schechter decision, which prevented the sale in bulk of spirits.

Senator CLARK. Is there any authority at law for the Treasurer to regulate the sale of spirits in bulk?

Mr. CHOATE. That is a question which, perhaps, I ought to leave for the Solicitor of the Treasury to answer.

Senator CLARK. Was that before or after the code authority was set up?

Mr. CHOATE. The code restrictions on bulk sales were established by the President before the code authorities were set up; the Treasury regulations after the Schechter decision. The restrictions prevent sales in bulk to anyone except a distiller or a rectifier or a State store system; those provisions were part of the codes originally, and they were, as I say, incorporated in Treasury regulations. They are regarded by the Treasury as absolutely essential to insure the collection of the revenue and to defeat the bootlegger. They are equally regarded as essential by the State liquor authorities as protections for their own control measures. Those provisions in the codes were bitterly attacked by the cooperage interests and others quite early in the game, and in order to find out what the situation was I sent out circular letters to the various State liquor control boards and received letters which indicated that all of them which were then operating considered that the limitation of bulk sales, so that no on could purchase in bulk except those who were intending to continue the manufacturing processes of the liquor, was necessary in order to permit the effective operation of State-control systems.

My own impression is that that is right and that neither the State nor Federal control systems can adequately function if free distribution in bulk is to be restored.

The present bill, in an effort to protect the labeling regulations, has, however, limited, not bulk sales, but the bottling of bulk liquor to a considerable degree. It provides that no one except a rectifier or distiller can bottle spirits out of the bulk, so that one who purchases in bulk may not bottle and thus throw the bottling world open to the entire public and to all the wholesalers and the hundred thousand or more retailers. So far so good. It provides also that no retailer may sell out of bulk, that is, sell the drink by withdrawing from the keg, except a bona fide hotel or club.

Senator LA FOLLETTE. Excuse me, Mr. Choate. I understood you to say the present bill was mentioned. You were not referring to this bill?

Mr. CHOATE. I was.

Senator LA FOLLETTE. Were you?

Mr. CHOATE. Yes.

Senator LA FOLLETTE. Then I do not quite understand how this section breaks up the present regulation.

Mr. CHOATE. It is the next section that breaks up the present regulations, the next two sections. It is pretty complicated stuff. I do not think I will bother to go into it in full except to assure you, if you will read paragraph (2) at the bottom of page 8, and paragraph (3) on page 9, you will find what I say is the fact.

Senator LA FOLLETTE. Is there, then, some inconsistency in the bill?

Mr. CHOATE. No.

Senator LA FOLLETTE. I did not quite understand you. I understood you to say that section 4 (e) (1) on line 3, page 8, did say something in reference to the present regulations concerning the sale in bulk.

Mr. CHOATE. It does.

Senator LA FOLLETTE. Now, I understood you to say that this present bill made certain provisions with regard to bottling, and so on, which seem to me to be somewhat in conformity with the present regulations.

Mr. CHOATE. You are quite right.

Senator LA FOLLETTE. I do not quite follow you.

Mr. CHOATE. The effect of that is this: Subsection (e) (1) at the top of page 8 wipes out all existing regulations on bulk sales, and section 2 and section 3 proceed to restore some of the restrictions on bottling and dispensing of bulk liquors.

Senator LA FOLLETTE. Will you point out, then, just where they differ from the existing regulations?

Mr. CHOATE. I will try to, although this is really part of the Treasury's job, because they are quite as much interested as we are in this particular feature.

Senator CLARK. May I ask you this, Mr. Choate, since you mentioned the opinions of the various State liquor authorities. Do I understand it to be your contention that the subsections (1), (2), and (3), as they now stand, would authorize bulk sales in any State where bulk sales have been in effect?

Mr. CHOATE. No.

Senator CLARK. So if the laws of the States do permit bulk sales, then this would not have any effect whatever?

Mr. CHOATE. No, Senator. I had a talk with Mr. Mulrooney, head of the New York Department—and, by the way, I think he may come down here tomorrow—and he said, "our own State law, which we can enforce, prevents bulk sales in New York, but under this bill anybody can buy in bulk in an adjoining State where the regulation is different and we cannot then prevent the introduction of the goods that have been bought in bulk into New York."

Senator CLARK. You could not prevent the sale of the drink in bulk?

Mr. CHOATE. Prevent the sales in bulk, yes; but they cannot prevent the introduction of the goods. I would rather let him explain his own views on the subject. I am merely pointing out that he thinks that the protection of his own laws requires more than his own State can give him.

Now, returning to Senator LaFollette's question, after wiping out existing bulk-sales regulations, paragraph (2) provides:

> It shall be unlawful for any person to package or repackage distilled spirits for sale or resale in bottles unless that person is a distiller, a rectifier of distilled spirits, or a person operating a bonded warehouse.

That is, only those three classes of persons can bottle. So far so good.

> Provided, that any other person may so package distilled spirits in bottles if he qualifies under the internal revenue laws as a rectifier.

Which merely means that anybody can get a rectifier's permit if he qualifies under the provisions of this bill.

Then paragraph (3) provides that:

> Notwithstanding the foregoing provisions of this subsection, no person who is subject to the occupational tax imposed—

that is, no retailer shall—

> Package or repackage distilled spirits for sale or resale in bottles * * * and no such person, except a bona fide hotel or club, shall, for purposes for sale, remove from any such barrel, cask, or keg, any distilled spirits contained therein.

The effect of that is to provide that while no retailer can bottle, but any retailer may sell whatever he can buy in bulk and whatever the State laws will let him. I would have no particular objection to that, except the fact that the passing about the country of kegs will, as I will show in a moment, offer great facilities for bootlegging. But this provides that any bona fide hotel or club may sell by the drink out of the keg if permitted by the State law.

The result of that is, first, to make an enormous distinction between the bona fide hotel and club, on the one hand, whatever the bona fide hotel or club may be, and on the other hand, the package store or restaurant, the tavern, and all the other persons who might conceivably wish to do the same thing. That enables the bona fide hotel or club to buy by the barrel, keep the barrel in its cellar, sell by the decanter or by the bottle from the barrel, and to my mind that immensely facilitates the most dangerous form of bootlegging, which is the refilling of the legitimate bottle on the bar from bootleg goods.

Now, it is all very well to say that the corrupt retailer does that now, but it is not so easy for him in the matter of bootlegged alcohol. It is sold largely in 5-gallon or larger cans and he cannot allow himself to be caught with the 5-gallon can on his premises, in the cellar, or anywhere else, because he cannot explain it, but if he may have in his cellar a perfectly legitimate tax-paid barrel of whisky and use that for such purposes as he sees fit, there is nothing under heaven to prevent him from keeping that barrel indefinitely, and refilling it with goods similar to what came in the barrel, or with bootlegged goods.

Incidentally, that points out a possible loss to the cooperage fellows, because having bought one barrel the retailer need not buy another.

The next difficulty is the extraordinary difficulty of administration in determining what is a bona fide hotel or club. The country is full of little boarding houses and tourist's rests, where the proprietor has three or four rooms and provides food of sorts. Nobody can say, as far as I know, that such an organization is not a bona fide hotel. No one can say which is and which is not a bona fide club. Even the British with their superior law-enforcement systems, have had terrible difficulties with alleged clubs. New York authorities have had difficulties with clubs. Every authority which has ever attempted to privilege a club especially has had difficulty with clubs.

In New York, under the Raines Law, every dive became a hotel and had a rubber sandwich and a couple of disreputable bedrooms in the background somewhere which entitled it to the name.

I think that particular provision is unadministrable, and will create more trouble than any other single feature of the bill.

The CHAIRMAN. That does not apply to beer, does it?

Mr. CHOATE. That does not apply to beer. I am speaking purely from the point of view of spirits. I am all for bulk distribution of beer and wine.

The CHAIRMAN. The language of the statute, so far as bulk sales are concerned, does not apply to beer, does it?

Mr. CHOATE. I would say not. I think, gentlemen, that is really all I wanted to say in my original statement.

The CHAIRMAN. I want to ask you something about the advertising. We have had some criticism of the provisions with reference to advertising. What is your viewpoint on that?

Mr. CHOATE. There are two or three points where the advertising provisions are, perhaps, too rigid in the bill as it now stands. I do not want to criticize them in detail, because I think it will be done for you by members of the industry, and I think we shall be able to concur in several of the recommendations which the members of the industry will make.

In general, I should say the provisions were pretty good and that it was highly important that liquor advertising be subjected to the kind of control to which this bill subjects it. Our advertising control in the F. A. C. A. was beginning to be extremely successful. They were submitting advertising for voluntary criticism beforehand, and were following our advice, without putting us to the necessity of trying to compel them to follow it. I think the same result would follow from this bill.

Senator CLARK. Mr. Choate, you testified before this committee at the N. R. A. hearing as to the percentage of the liquor trade controlled by certain companies, or by number. Could you give us that again, so that it can be in the record in this hearing?

Mr. CHOATE. Yes. I have them here on two sheets, one for 1934, and the other for the first part of 1935. I take it, that the first 4 months of 1935 are really the more important figures. They show a considerable modification from the 1934 figures.

Shall I read these in or just hand them in?

Senator CLARK. Would you mind just handing them in? As I recall, Mr. Choate, you testified that 80 percent of the business was controlled by some nine companies in 1934. Is that right?

Mr. CHOATE. I did not put it in that way, because I do not think this quite means control. In 1934 about 80 percent of the production was that of 9 companies, 9 companies which, as far as I know, are entirely independent of each other, and as far as I can see, compete as bitterly as anybody could.

Twenty-two companies produced just under 90 percent in 1934. In 1935 the nine companies were producing considerably less. Twenty-three companies were producing 85 percent. In 1935 the figures are as follows:

Shall I give the name of the companies, or simply the order?

Senator CLARK. Yes; we would like to have them, if you do not mind, Mr. Choate.

Mr. CHOATE. The National Distillers, operating seven plants, produced 15.90 percent. Of course, this is the production of whisky only. It is not the sales. It has nothing to do with any other feature than the actual production.

Schenley, operating 5 plants, produced 12.82 percent.

Hiram Walker, operating 1 plant, produced 10.66 percent.

The American Distilling Co., operating 2 plants, produced 9.24 percent.

Seagram, operating 3 plants, produced 8.91 percent; Continental, operating 1 plant, produced 7.96 percent; Century, operating 1 plant, produced 4.94 percent; Frankfort, operating 1 plant, produced 4.27 percent; Bernheim, operating 2 plants, produced 3.19 percent; Glenmore, operating 1 plant, produced 1.87 percent.

(The matter submitted by Mr. Choate is as follows:)

Production of whisky, 1934

	Percent
National Distillers (7 plants)	22. 96
Schenley (5 plants)	15. 86
Seagram (3 plants)	8. 62
Continental	8. 13
American (2 plants)	7. 61
Century	5. 79
Hiram Walker	5. 45
Frankfort	3. 50
Glenmore	2. 88
22 companies produced	89. 61

Number of distilling plants in operation [1]

January 1934	146
July 1934	227
January 1935	293
May 1935	297

Production of whisky, January to May 1935, inclusive

	Percent
National Distillers (7 plants)	15. 90
Schenley (5 plants)	12. 82
Hiram Walker	10. 66
American (2 plants)	9. 24
Seagram (3 plants)	8. 91
Continental	7. 96
Century	4. 94
Frankfort	4. 27
Bernheim (2 plants)	3. 19
Glenmore	1. 87
23 companies produced	84. 44

Comparison of stocks of distilled spirits for beverage purposes in hands of distillers on Jan. 31, June 30, and Dec. 31, 1934, and May 1935

[Quantities in tax gallons]

	Jan. 31, 1934	June 30, 1934	Dec. 31, 1934	May 31, 1935
Whisky, Bourbon type:				
Over 4 years old	2, 464, 626	2, 464, 161	1, 269, 704	1, 573, 008
From 3 to 4 years old	870, 430	867, 152	778, 463	261, 746
From 2 to 3 years old	1, 084, 322	301, 402	287, 649	391, 509
From 1 to 2 years old	659, 348	862, 781	2, 545, 395	9, 712, 685
Less than 1 year old	12, 059, 985	29. 681, 106	49, 453, 160	77, 034, 119
Total, Bourbon type	17, 138, 711	34, 176, 602	54, 334, 371	88. 973, 067
Rye:				
Over 4 years old	451, 291	773, 809	847, 326	1, 287, 872
From 3 to 4 years old	650, 249	929, 163	1, 451, 720	1, 243, 420
From 2 to 3 years old	1, 740, 552	1, 272, 453	1, 046, 092	1, 478, 524
From 1 to 2 years old	1, 709, 166	2, 019, 569	4, 119, 590	9, 717, 078
Less than 1 year old	6, 464, 483	19, 506, 356	26, 637, 998	36, 447, 057
Total, rye	11, 015, 741	24, 501, 350	34, 102, 726	50. 173, 951

[1] Producing all types of distilled spirits.

Comparison of stocks of distilled spirits for beverage purposes in hands of distillers on Jan. 31, June 30, and Dec. 31, 1934, and May 1935—Continued

[Quantities in tax gallons]

	Jan. 31, 1934	June 30, 1934	Dec 31, 1934	May 31, 1935
Other than Bourbon and rye:				
Over 4 years old	20,677	15,799	22,819	47,520
From 3 to 4 years old	8,856	22,714	24,681	
From 2 to 3 years old	24,681	10,823		40,804
From 1 to 2 years old		21,634	115,034	418,846
Less than 1 year old	304,921	643,769	666,195	405,636
Total, other	359,135	714,739	828,729	912,806
Total, whisky, all types	28,513,587	59,392,691	89,265,826	140,059,824
Gin:				
Over 4 years old	54,475	53,961	47,951	25,512
From 3 to 4 years old				
From 2 to 3 years old				
From 1 to 2 years old				
Less than 1 year old	352,913	344,344	446,594	596,290
Total, gin	407,388	398,305	494,545	621,802
Rum:				
Over 4 years old	49,580	50,979	37,656	33,523
From 3 to 4 years old	7,339	15,451	33,389	33,340
From 2 to 3 years old	45,629	20,748	15,393	15,388
From 1 to 2 years old	16,934	16,450	196,009	229,991
Less than 1 year old	382,614	641,387	868,040	2,122,959
Total, rum	502,096	745,015	1,150,478	2,435,201
Alcohols:				
Grain alcohol	1,951,589	4,173,054	2,476,250	1,715,913
Other alcohol	847,384	1,336,072	1,621,441	1,813,554
Total, alcohols	2,798,973	5,509,126	4,097,691	3,529,467
Brandies:				
For fortification of wine	34,114	29,712	66,410	26,818
For beverage use other than fortification of wine:				
Grape:				
Over 4 years old	276,883	291,897	295,363	270,002
From 3 to 4 years old	16,969	21,152	107,508	108,536
From 2 to 3 years old	133,011	114,411	92,213	442,323
From 1 to 2 years old	459,372	610,218	734,393	698,705
Less than 1 year old	837,715	987,510	1,201,143	859,413
Total, grape brandy	1,723,950	2,025,188	2,430,620	2,378,979
Apple:				
Over 4 years old	10,093	8,915	1,519	
From 3 to 4 years old				
From 2 to 3 years old				
From 1 to 2 years old			1,476	145,312
Less than 1 year old	104,398	1,248,910	1,461,936	1,169,640
Total, apple brandy	114,491	1,257,825	1,464,931	1,314,952
Other:				
Over 4 years old	6,029	6,029		
From 3 to 4 years old				
From 2 to 3 years old				
From 1 to 2 years old				40,870
Less than 1 year old		47,869	60,618	78,652
Total, other	6,029	53,898	60,818	119,522
Total, all brandies	1,878,584	3,366,623	4,022,579	3,840,271
Other distilled spirits:				
Over 4 years old	4,482	482	2,034	2,029
From 3 to 4 years old				
From 2 to 3 years old				
From 1 to 2 years old				1,821
Less than 1 year old	877	109,826	83,284	31,852
Total, other distilled spirits	5,359	110,308	85,318	35,702
Total, all distilled spirits	34,105,987	69,522,068	99,116,437	150,522,267

Prepared by Statistics and Reports Division, Federal Alcohol Control Administration, July 20, 1935.

NATIONAL DISTILLERS PRODUCTS CORPORATION

Holding company owns 100 percent stock in—

Henry H. Schufeldt & Co., Medicinal Products Corporation, W. A. Gaines & Co., A. Overholt & Co., Alex D. Shaw & Co. (60 percent), National Straight Whisky Distillery Co., Inc., National Distillers Corporation of New England, and American Medicinal Spirits Co.

American Medicinal Spirits Corporation (100 percent): Old McBrayer Distillery Co., Old Taylor Distillery Co., Old Grand Dad Distillery Co., Cedar Brook Distillery Co., Hermitage Distillery Co., Pebbleford Distillery Co., Green River Distillery Co., Chicken Cock Distillery Co., Old Crow Distillery Co., Rewco Distillery Co., Medical Arts Products Co., Bond & Lillard Distillery Co., Black Gold Distillery Co., Sunny Brook Products Co., Federal Distillery Co., Mt. Vernon Distillery Co., Gwynnbrook Distillery Co., Spring Garden Distillery Co., Mellwood Distillery Co., Blue Grass Distillery Co., Hill & Hill Distillery Co., Fannis Distillery Co., and Farmdale Distillery Co.

Large Distilling Co. (Pennsylvania), Sunny Brook Distillery Co., Medicinal Holding Corporation, and Security Warehouse Co. (St. Louis),

Penn-Maryland, Inc., Penn-Maryland Corporation, Penn-Maryland Co., Inc., and Carthage Distillery Corporation.

Crown Fruit & Extract Co., Chickasaw Wood Products Co. (Export Cooperage Co.) (51.185 percent), and Interstate Distributing Corporation.

Affiliates: National Canadian Distillers, National Canadian Distributors, John de Kuyper & Sons, Inc., National Pure Spirits Corporation, and Standard Alcohol Co.

Marketing contracts: Canada Dry Ginger Ale, Inc., General Wines & Spirits Corporation, Fleischman (entire gin output).

Other interests: Company holds number of inactive, wholly-owned subsidiaries chiefly for purpose of perpetuating brand names, trade marks, etc.

SCHENLEY DISTILLERS CORPORATION, NEW YORK CITY

Subsidiaries: United Bonded Warehouse Corporation, Joseph S. Finch & Co., James E. Pepper & Co., Schenley Distributors, Inc., Eastern Distillers Syndicate, Inc., John T. Barbee Co., Belle of Anderson Distillery Co., Finch-Stagg Laboratories, Inc.; Gibson Distilling Co., Henry Clay & Co., Lexton Distillery Co., Monticello Distillery Co., Schenley Products Co., Schenley Distributors, Inc.; Schenley Products Corporation (New Jersey), Old Quaker Co., The George T. Stagg Co., Schenley Wine & Spirits Importing Corporation, Armstrong Distillery, A. B. Blanton Small Tub Distilling Co., Cove Springs Distilling Co., Franklin Distillery Co., Greenbrier Distillery Co., Hoosier Distillery Co., Melvale Distillery Co., Napa Valley Wine & Brandy Co., Inc.; Schenley Research Institute, Inc.; Sam Thompson Distillery Co.

OWENS-ILLINOIS GLASS CO.

Company has 1,200,000 shares of common stock ($25 par) outstanding. Estimated income for 1934, $6,500,000, equal to $5.42 a share. "Liquor bottle sales may be increased appreciably should Government regulations prohibiting the reuse of bottles be rigidly enforced." (Standard Statistics.) Total current assets were $19,163.369 at end of 1933. Every reason to believe they have increased substantially. Company has and is continuing to expand its position in bottle field.

Company's plants are located at: Alton, Ill.; Bridgeton, N. Y.; Chicago Heights, Ill.; Clarksburg, W. Va.; Evansville, Ind.; Gas City, Ind.; Huntington, W. Va.; Muncie, Ind.; Okmulgee, Okla; Streator, Ill.; Terre Haute, Ind.; Brackenridge, Pa.; Charleston, W. Va.; Clarion, Pa.; Columbus, Ohio; Fairmont, W. Va.; Glassboro, N. J.; Los Angeles, Calif.; Newark, Ohio; San Francisco, Calif. (2 plants).

Company also owns Closure Service Co., Toledo, Ohio (wholly owned); Tavern Rock Sand Co. (3 mills) (wholly owned).

Senator CLARK. Now, Mr. Choate, what I was trying to get at is this: Doesn't this concentration of production in the hands of a few companies, doesn't the requirement against bulk sales and the requirement of sales in bulk only in certain instances, have the inevitable tendency of giving these large companies an opportunity to

spend vast sums of money in advertising, which has a tendency to increase the price of liquor, and which would induce the sale of inferior liquor through their advertising campaign, and at the same time squeeze out the little fellow?

Mr. CHOATE. I cannot follow you in any of those respects, Senator, perhaps because I cannot understand the reasoning that lies at the root of your suggestion.

Senator CLARK. Every morning the papers are filled with advertising, four or five pages of advertising these various brands put out by these large companies. There are some in the Washington Post this morning.

Mr. CHOATE. Of course. But what in the world would prevent them from using the same advertising power whether bulk sales were permitted or not?

Senator CLARK. Of course, in the days before prohibition sales by the bottle were very widely advertised, and sales by bulk were not. Is that correct?

Mr. CHOATE. I do not think I can generalize even as far as that.

Senator CLARK. That is my observation and my information.

The CHAIRMAN. Well, would this bill prevent this advertising to which the Senator referred?

Mr. CHOATE. It certainly would not. It leaves the advertising, so long as it is not false, perfectly free. As far as I can see, there is no advantage which the big concern now has which is increased by bulk restrictions.

The CHAIRMAN. What is the condition of the cooperage business now?

Mr. CHOATE. I would not be able to say, but I can say this, that a very large part of the advantage which the cooperage people would expect to get by the removal of the restrictions seems to me to be imaginary.

Senator CLARK. Well, this regulation has been extremely profitable for the bottle people, hasn't it? The Owens-Illinois Glass Co. is one of the few concerns in the United States who paid a tax of over a million dollars.

Mr. CHOATE. The Treasury regulations providing against the reuse of bottles has probably been very profitable, but I doubt very much whether the actual sale of bottles has been greatly increased by the mere restriction of bulk sales. It may have been. But as regards whisky, as soon as it comes from the still it goes into a barrel, and that barrel may or may not be reused. A suggestion was made in the House that reuse be prohibited. That would give some relief to the cooperage people.

Senator CLARK. Well, Mr. Choate, may I ask you right on that point, do I understand these charred barrels in which whisky is put to age immediately after it is made, can be used more than once? I ask that because the testimony before the Joint Committee of the Finance Committee and Ways and Means Committee, was to the effect that they can only be used once, which was a surprise to me.

Mr. CHOATE. They can be used only once for complete effectiveness, but there are new light-bodied types of whisky which can be taken from the barrel in a few months, and the barrel can again be used for the same purpose, for that particular type of whisky. You

cannot take an old-fashioned type of heavy-bodied whisky, such as used generally to be considered of high quality in this country, and mature it in a used barrel. It must be put in a new barrel. The only market the cooperage people have lost by these particular regulations, has been the market for half barrels, quarter barrels, eighth barrels, and small kegs, which was never a large market. I think if you will consult the figures you will find the total production of them, even before prohibition, when the legal sales of whisky were vastly greater than they are today, was almost negligibly small.

The only other loss which the cooperage people have suffered by this has been a part of the small production of barrels for use of gin. My understanding is there would be no barrels used for gin today if the restrictions were destroyed.

That is really all I have to say on that subject.

The CHAIRMAN. Are there any other questions?

Senator CAPPER. Mr. Choate, is there any good reason why there should be any advertising at all?

Mr. CHOATE. I would say yes, Senator. I would say that as long as the goods are legal the public which is interested in those goods, is entitled to the sort of information which can be got by advertising and in practically no other way. I agree that advertising is subject to great abuse, and should be considerably limited, but I do not think you can cut it out altogether as long as you regard liquor as a legal article of commerce.

Senator CAPPER. Some States prohibit the sale of liquor, and do not want that advertising matter in their State, and yet this advertising comes into these States and aids in encouraging the violation of the law in illegal sales.

Mr. CHOATE. I think the perfect situation would be one in which all such advertising could be kept out of States which did not want to have it, but I concede that there are considerable difficulties in the way of such local regulation, because it is almost impossible to prevent, for instance, radio advertising, newspaper advertising, from getting in the dry States without totally crippling it in the States in which it is accepted.

The CHAIRMAN. Thank you, Mr. Choate. Mr. Lee, did you want to go on at this time?

Mr. LEE. I did not request to appear. My name was put on by the committee. I am agreeable to any time you want to have me make a statement.

The CHAIRMAN. All right, then you will just stand by.

Mr. Mulrooney is the next witness. He will be here tomorrow.

Mr. Hankerson of Missouri, representing the National Legislative Committee Tight Cooperage Industry. How much time, do you want, Mr. Hankerson?

Mr. HANKERSON. I will try to get through in 10 minutes, Mr. Chairman.

The CHAIRMAN. Very well.

STATEMENT OF F. P. HANKERSON, ST. LOUIS, MO., NATIONAL LEGISLATIVE COMMITTEE, TIGHT COOPERAGE INDUSTRY

Mr. HANKERSON. Mr. Chairman and members of this committee, I would like to make a statement or two before I start my talk, and one is that I do not think Mr. Choate is a very good authority on the cooperage industry. We testified at some length before the House Ways and Means Committee as to what this would mean to the cooperage industry. I do not want to go into that again and take your time, but I will appreciate it if the committee will give attention to it.

The CHAIRMAN. That will be available?

Mr. HANKERSON. Yes.

Now, Mr. Mulrooney has been quoted, and will be here tomorrow to speak. I have no doubt but what Mr. Mulrooney is a very honorable gentleman, but I would like to point out to you gentlemen that there is a chance of Mr. Mulrooney being biased in his remarks. Mr. Mulrooney is chairman of the Liquor Board of New York State. He was appointed to this position by Governor Lehman, of New York. Governor Lehman, who appointed Mr. Mulrooney, has heartily opposed bulk sales.

I may also add that the large distillers are very strenuously against bulk sales. Lehman Bros., of 1 Williams Street, New York City, bankers, is one of the 10 largest stockholders in National Distillers, and they are the bankers for Schenley.

I will further state that many misleading and extravagant statements have been made in the past without one iota of proof, and I defy the opponents of bulk sales to give this committee one single iota of actual proof that bulk sales will aid the bootlegger.

I will say this: Bulk sales succeeded before prohibition. I have talked to a number of old-time revenue agents in the field and not one of them has said that bulk sales were not successful; that there was any cheating under bulk sales.

I would like to have you gentlemen bear in mind that this should be decided on the facts and not by wild statements that are issued to this committee.

It is not my intention in this talk to make any accusations; I simply want to state facts that this committee can readily verify.

On June 30, 1914, before prohibition, there were 352 operating whisky distilleries in the United States making whisky. On April 1, 1933, there were seven whisky distilleries in the United States making medicinal whisky; that is, during prohibition. Three of these are owned by National Distilleries and two by Schenley.

On December 31, 1933, there were 24 licensed whisky distilleries in the United States.

Senator CLARK. What is that date?

Mr. HANKERSON. December 31, 1933.

There were 24 licensed whisky distilleries in the United States. Of these, 7 are owned by National Distilleries and 4 are owned by Schenley.

On January 16, 1934, the U. S. Industrial Alcohol Co. had 26 permits for industrial alcohol distilleries, warehouses, and denaturing plants.

During 1934 nine distilleries produced 80 percent of the whisky. Of these nine, National Distillers lead with approximately 23 percent. Schenley was second with approximately 16 percent, and Seagrams third with 8.6 percent. These three distilleries produced almost 50 percent of the whisky.

The Owens-Illinois Glass Co. is the largest glass-bottle manufacturer in the world. They make more glass bottles than all the rest of the American companies combined. Furthermore, they hold the basic patents on a great deal of the modern bottle-making machinery. The president and vice president of the Owens-Illinois Glass Co. are on the board of directors of National Distillers. The Illinois Glass Co. is listed as one of the 10 largest stockholders of National Distillers. The largest stockholder of National Distillers is the United States Industrial Alcohol Co. Two members of the board of the United States Industrial Alcohol Co. are also on the board of National Distillers.

National Distillers owns 100 percent stock in 42 companies. Besides this, it has five affiliates; marketing contracts with several other companies, and so forth. It earned $11,134,768 net profits after tax payments, and increased its assets by nearly $22,000,000 during 1934.

I want to further state that the records show that Schenley has 28 companies.

During prohibition Dr. James M. Doran was Commissioner of Industrial Alcohol. I presume he had charge of issuing permits for manufacturing medicinal whisky, although I cannot state this as a fact. It is a fact, however, that 5 out of the 7 distilleries operating at this time are owned by National Distillers and Schenley.

With repeal, Dr. Doran became supervisor of the Distillers Code Authority. He served as a member of the committee which drafted the Distillers Code. The regulation restricting the distribution and sale of distilled spirits was written into this code.

Also written into the Distillers Code in article VIII is this provision:

> No person shall utilize for the production of distilled spirits plant capacity in excess of that held by him or under actual process of construction or in the process of equipment by him on the date of the repeal of the eighteenth amendment, or on the effective date of this code, which ever is the earlier.

In other words, nobody else could get a permit except those who were in, or the large factories that were in process of construction.

Dr. Doran now heads the Distillers Institute, an organization of distillers whose names are not available to the general public. Under Dr. Doran in the Industrial Alcohol Division was R. E. Joyce. Mr. Joyce served as head of the Permit Division in the Federal Alcohol Control Administration. Mr. Joyce is now head of the Washington office of National Distillers.

On November 26, 1933, the Code of Fair Competition for the Distilled Spirits Industry, limiting the transportation and sale of distilled spirits to bottles, was signed by the President.

Senator CLARK. Who formed that code, do you know?

Mr. HANKERSON. It was formed by the committee, and it was my understanding, which of course I cannot prove, that Dr. Doran was largely instrumental in forming it.

Senator CLARK. What I am getting at, there were no legal distilleries in existence at that time, were there?

Mr. HANKERSON. There were seven producing medicinal whisky.

Mr. CHOATE. There were seven.

Senator CLARK. Of course, every member of the trade was supposed to come in theoretically already set up. In this instance, seven distilleries had been forced to sell medicinal whisky to constitute the committee to make the code.

Mr. HANKERSON. Yes, sir.

On May 7, 1934, Director Choate of the F. A. C. A. defined the term "bottle" as any container not exceeding 1 gallon. On June 6, 1934, F. A. C. A. further qualified this with the term, "Irrespective of the materials from which made." The cooperage industry manufactured a few 1-gallon kegs. On July 13, 1934, the office of the Secretary of the Treasury defined liquor bottles as any glass container. The Treasury then issued regulations specifying that bottles must have certain identifying marks blown into them, and that they could not be reused or sold, but must be destroyed. I will refrain from commenting on the benefits of this provision to the Owens-Illinois Glass Co.

I will say, however, that on June 22, 1934, the small glass manufacturers, including the Olean Glass Co., the Knox Glass Bottle Co., and the Glenshaw Glass Co. filed a vigorous protest, which stated that these regulations would "concentrate the economic benefits of repeal, as far as the glass and liquor industries are concerned, to the large distilleries and the large glass manufacturers."

As a final step, it was ruled in the State of Indiana that all beer must be sold in glass bottles. It is my understanding that public indignation became so great that the Attorney General defined bottle so that it would include barrels.

I will say to you, in closing, gentlemen, that the Distillers Institute and the large distilling interests are wholeheartedly in favor of the bottle regulations, so much so, in fact, that they have written, through their advertising agency, to newspapers of the United States, to oppose bulk sales. I presume, although it is only a presumption, that the Owens-Illinois Glass Co. will strongly favor restriction to glass bottles.

That completes the facts. The large distillers favor the bottle regulations, because whisky is sold by brand names and advertising. The small distillers and rectifiers cannot compete, because they cannot spend hundreds of thousand of dollars to establish their brand names, and to set up far-flung sales forces. Prohibited from selling in bulk on a quality basis, they are out of the market.

Remember, nine distillers in 1934 produced 80 percent of the whisky. It would be interesting to know how many of those nine distillers are members of the Distillers Institute. With whisky confined to bottles and the small distiller well under control, certainly the opportunity for price control exists. Suffice it to say that whisky before prohibition sold for $1 a quart and the quality was excellent.

I thank you.

The CHAIRMAN. I thank you, Mr. Hankerson.

Mr. CHOATE. Mr. Chairman, I think I ought to say one word here in justice to Dr. Doran. The insinuation is made that the distillers bought him and took him out of the Government service, and that because he is employed by them, he has been engaged in some sort of improper practice ever since.

As a matter of fact, Dr. Doran, when the proposition was first made to him to become head of the Distillers Institute and executive secretary of the Distillers Code Authority, came both to the Treasury officials and to me and asked if we thought it was proper and desirable that he should go, and asserted that he would not go unless it was with our full approval.

Both the Treasury and my department came to the conclusion that there could be no better safeguard against bad behavior by the distillers than to have Dr. Doran running their affairs and we told him so.

Senator CLARK. Mr. Chairman, I ask that Dr. Doran be summoned, and let us have an opportunity to question him.

The CHAIRMAN. All right. We will have him tomorrow morning, if possible.

Mr. HANKERSON. It is my understanding that Dr. Doran left for Europe.

Senator CLARK. Dr. Doran did not appear at the hearing on the N. R. A. He was in Europe then, too.

Mr. HANKERSON. He has gone to Europe.

The CHAIRMAN. All right.

Who is in charge of the Distillers Institute?

Mr. CHOATE. Mr. Howard Jones is here.

Mr. HANKERSON. I would like to ask, Mr. Chairman, to insert an extension of my remarks in the record.

The CHAIRMAN. All right.

(The matter submitted by Mr. Hankerson is as follows:)

KENTUCKY-MARYLAND CORPORATION,
Chicago, Ill., April 15, 1935.

LEAGUE FOR THE BULK DISTRIBUTION OF DISTILLED SPIRITS,
St. Louis, Mo.

(Attention Mr. F. P. Hankerson.)

DEAR SIR: Received your letter of April 13, and contents carefully noted. Please be advised that the writer is the president of the Illinois Retail Liquor Package Stores Association and has been in the liquor business prior to prohibition for many years.

As you no doubt know, prior to prohibition, the wholesaler and even a retailer was permitted to buy whisky in bulk and bottled same for his wholesale trade or for his bar. The writer is of the opinion that the same privileges should be extended to the man in the wholesale industry today with, of course, strict regulations pertaining to the handling of whisky in bulk.

It appears to the writer that if the League for the Bulk Distribution of Distilled Spirits is large enough, that we should not have any difficulty in convincing the Federal Alcohol Control Administration that the proper method of distribution should be through the wholesaler of whisky in bulk and let the wholesaler bottle same under whatever regulations that would be equitable for both the Government and the liquor industry.

I am enclosing the membership card properly filled out.

Wishing you every success in the organization of the above association, and hoping to have the pleasure of hearing from you further, I remain.

Very truly yours,

ABE MARCO, *President.*

HAHN & WESSEL, INC.,
New York City, June 12, 1935.

LEAGUE FOR THE BULK DISTRIBUTION OF DISTILLED SPIRITS,
St. Louis, Mo.

HONORABLE SIR: Due to the decision of the United States Supreme Court, the bottling provisions in the National Recovery Administration codes for the alcoholic beverage industries are no longer in effect. It is obvious that the

Government will act immediately to set up liquor-control legislation. As the situation now stands there is no Federal restriction against the distribution and sale of distilled spirits in bulk quantities of 5 gallons and over. In the interest of the honest and law-abiding men in the liquor business today, we believe no provisions should be included in the proposed legislation that will prohibit the bulk distribution and sale of liquors and neither the Secretary of the Treasury nor any one else should be given authority to regulate or otherwise prohibit the distribution and sale of such bulk spirits.

The former code bulk sales restrictions were a great injury to the liquor industry. It encouraged cheating, resulted in high prices for liquors, caused price cutting and established a monopoly for the big, national advertisers at the expense of the small business man.

One of the reasons advanced for the code regulations was their necessity in order to eliminate the bootlegger; the theory being that if all liquors were sold in bottles only, it would eliminate cheating. This reasoning has failed because it is just as easy to refill a bottle as it is to refill a keg or barrel. The high cost of liquor and the necessity of the dealer to charge a high price to the consumer has been the reason why the bootlegger is still doing business. This high cost would have been considerably reduced had the dealers been allowed to purchase liquors in bulk. He could then offer his product to the consumer at a reasonable price and there would have been no incentive for the bootlegger to remain in business.

The Government has been trying for the past 13 years to put the bootlegger out of business by police power and has failed. In our opinion, one of the ways to eliminate him is to sell legal spirits at a price which will no longer make bootlegging worth the risk. We believe that selling bulk liquors to the dealer will aid in lowering the price of legal spirits.

When this proposed legislation is presented to your committee, we ask you, as law-abiding men in the liquor industry, to protect our interests (which also are the interests of the general public) and not oppress our business with regulations in a misguided attempt to catch chiselers in our business.

A return to conditions that prevailed previous to the enactment of prohibition relative to the sale of bulk liquor, would benefit everyone concerned; would get a better quality of whisky for less money, the Government would profit through revenue derived from increased sales and the liquor industry would profit by the elimination of the objectionable features of our business.

Trusting that you will give this matter your serious consideration, we are

Very truly yours,

LOUIS A. WESSEL, *Treasurer.*

CHICAGO, ILL., *June 10, 1935.*

Mr. CHESTER THOMPSON,
Ways and Means Committee, House of Representatives,
Washington, D. C.

DEAR SIR: With reference to bulk distribution and sale of whisky which I understand is going before the House very soon, beg to voice my opinion in the matter, having been in the liquor business for half a century.

For the benefit of the Government and for the benefit of the consumer it is best to allow the retailer to pay tax in bulk for the following reasons.

The Government will get a tax on a barrel of whisky which will amount to about a hundred dollars, where otherwise the retailer gets only a case and after the bottle is open he may refill it again. However, it was never known before prohibition for anyone to refill a barrel. They all respect the Government stamp on the barrel and they do not fool around with it. A consumer gets more for his money and better merchandise. They don't have to pay extra bottling charges and extra freight.

From the experience that I have had in business before prohibition, there was never a case known that a barrel was refilled, while this does happen quite often with a bottle after the stamp is broken.

Thanking you for your consideration in the above, I am,

Respectfully,

MEYER FRANK.

How to Get Rid of the Bootlegger

(Reprint from the Wooden Barrel)

Outsold by the bootlegger, bound down by taxes, and harrassed by regulations, the legitimate manufacturers and sellers of distilled spirits in the United States are "taking it on the chin." The entire legitimate liquor industry is sick, suffering from several serious ailments. The situation is critical, and drastic remedies are necessary. The legitimate liquor industry is selling less than one-half of the distilled spirits it could reasonably expect to sell. During 1934 it sold less than one-half of a 4-year preprohibition average. For those who doubt these statements, here are the facts:

During the years 1912 to 1916, tax-paid withdrawals of distilled spirits averaged 130,000,000 gallons. At the start of 1934 it was estimated that tax-paid withdrawals for the year would be 105,000,000 gallons. The facts are that actual withdrawals of distilled spirits for 1934 were approximately 60,500,000 gallons, which is less than one-half of the preprohibition average and slightly more than one-half of the estimate for the year.

The Government, too, has suffered. When repeal was still in the discussion state, it was freely and confidently asserted that the Federal Government alone would receive from liquor taxes as much as $1,000,000,000 a year. What do the figures actually show? For 1934 the Federal Government has received in revenue from all liquor manufacture and sales a total of $374,506,232.50. Of this total only about $174,000,000 was accounted for by the taxes on distilled spirits, while more than $200,000,000 was derived from the excise tax on fermented malt liquors. To sum up the situation, liquor consumption and liquor-tax returns have fallen far short of even the most conservative estimates. This deep slump in sales and revenue is not due to any change in the drinking habits of the American people.

Where, then, can the causes be found? The answer to that question sums up the sickness of the liquor industry. The liquor industry is not prospering because of three factors. They are, in order of their importance:

1. The bootlegger. 2. Legislation and regulations. 3. Taxes.

The bootlegger is by far the most serious problem facing the industry today. Although he is a product of the prohibition era, repeal has not affected him seriously. He is still with us, in great numbers, flourishing and prospering. Leaders of the legitimate distilling industry maintain that the bootlegger today is getting fully 70 percent of the present liquor business, while the legitimate distiller must be content with the remaining 30 percent. Estimates based on the number and capacity of illicit stills seized in the early months of 1934 indicate that the illicit industry would, during the entire year, have a productive capacity of 271,623,000 gallons, or slightly more than the capacity originally allotted to the entire legal industry. Director Choate, of the Federal Alcohol Control Administration, is emphatic on the subject. He says:

"Any assumption that the 1934 seizures would eliminate the illicit plants would be ridiculous. It is hardly open to doubt that the unseized stills are now, and will remain, able to produce at least as much liquor as, and probably a good deal more than, those which will be put out of action this year.

"That vast illegal capacity is not there for the bootleggers' health or pleasure. It unquestionably is being used. The persistence, year after year, of the immense numbers of seizures shows that illicit distilleries are replaced as fast as they are seized. This could never happen unless they were needed to meet the demands of the bootleggers' business. If any great portion of them were being used much below their practical capacity, the replacements would grow fewer and fewer, and seizures would decrease. It seems probable, therefore, that the bootleggers are now turning out from their stills alone, not counting smugglings and alcohol divertings, a quantity of spirits which cannot be much less, and may be more, than we drank before prohibition. This quantity is being consumed in addition to the entire sales of legal goods, which, ever since repeal, have run not far below preprohibition figures. All this means that the drinking habits of the people have increased more than has been imagined even by the pessimists; that the existing demand, if only it could be confined to legal manufacture, is great enough to absorb, at least, all that the legal industry can supply; that the Government is losing more taxes than it gets; and that a colossal criminal industry, necessarily highly organized, still exists, and still exerts its debauching tendencies on every governmental agency."

These are the words of the Director of the Federal Alcohol Control Administration. The bootlegger is with us. He is stealing at least 50 percent and perhaps

70 percent of the liquor business. Before the legitimate business can prosper, he must be eliminated. Which leaves us with the question, How?

"Increase appropriations for the enforcement of the law; stamp him out; put him in jail." These are the proposals advanced from one source. Are they logical? We have only to turn to the prohibition era for the answer. Millions of dollars were spent and thousands of men thrown into the fight against the bootlegger. He not only survived—he prospered. For every bootlegger jailed, a dozen more sprang up. Obviously, any effort to stamp him out by force will result in failure.

How, then, can we get rid of him? Before we answer this question, let's ask ourselves another. Why is the botolegger in business? The answer is: Because he can sell his product below the price of the legitimate product and still make a profit. Here we have the answer to the first question. To stamp out the bootlegger, we must make it unprofitable for him to stay in business, to compete with the legitimate industry. He will then eliminate himself, because it is the lure of profits that has kept the bootlegger with us. The distilling industry must face the issue squarely. Through no fault of its own, it will be forced to compete with the bootlegger on a price basis and on a quality basis.

The legitimate manufacturer must keep the quality of his products high and at the same time reduce the cost. Which leaves us with another question:

There are two methods:

1. Legalization of bulk sales of distilled spirits.
2. Reduction in taxes.

There is no doubt but that the price of good-quality liquor is high, and it is on this situation that the bootlegger fattens. Prices for certain recognized products in New York City currently range from 80 percent to more than 400 percent higher than in the year preceding prohibition.

Bulk sales of liquor were allowed before prohibition. The grocer, hotel man, tavern owner, and private citizen could purchase whisky by the barrel and use it as needed, while the remainder was improving by aging in the wood.

Bulk sales are prohibited today by clauses in the National Recovery Administration codes for the liquor industry and Treasury regulations which limit the distribution and sale of distilled spirits to glass containers of a capacity of 1 gallon or less.

Right here is one of the vital causes for the high prices of liquor. Bottles, corks, caps, labels, cartons, cases, bottling and labeling machinery, extra labor, and higher freight rates all add to the cost of the whisky to the consumer. It is estimated by reliable sources that legalization of bulk sales would reduce the cost of whisky from 75 to 90 cents a gallon, at a most conservative estimate.

Preprohibition figures will give us more detailed information on this question. The costs of various well-known preprohibition brands of whisky were obtained from a 1916 catalog of the Liquors Dealers Supply Co. This catalog listed the prices of certain brands of whisky by the case and by the gallon in bulk. As a case contains 3 gallons, the bulk prices were multiplied by three for a basis of comparison.

The figures showed that the extra for distillery bottling ranged from $2.56 on one brand bottled in quarts to $7.58 on another brand bottled in half-pints per 3 gallons. In other words, bottling charges on one brand ran considerably more than $2 a gallon. If these bottling charges were wiped out, the bootleggers' high margin of profit would be wiped out with them.

Why, then, are bulk sales of distilled spirits banned? Many distillers favor bulk sales; the National Wholesale Wine and Liquor Dealers' Association has gone on record as strongly favoring bulk sales; the hotel man and the tavern owner want to handle in bulk. But the regulations still say, "No." Why? Because, say the powers that be, the whole system of liquor enforcement is built around the bottle.

"We can check up on bottles," they say, in effect. "We require that the distiller use certain bottles which we can identify. If we find a tavern owner with whisky in a barrel or keg, we know that it is not legal and can arrest him. We know that whisky in legal bottles is legal whisky."

What a tremendous guffaw these arguments must have provided for the bootleggers. They are probably still laughing. During prohibition and since repeal there is hardly one well-known brand of liquor which has not been illegally imitated, with all the labels, stamps, and wrappings, a perfect copy of the original. Dozens of distilleries have suffered great harm from poor-quality moonshine placed on the market under their brand names. Any effort to control the sale of bottles

will, of course, be futile. The bootlegger always has been able to obtain bottles, and he always will be able to.

"But", say the opponents of bulk sales, "if we allowed whisky to be sold in barrels, there would be nothing to prevent an unscrupulous bartender from filling all of the bottles on his bar with liquor from the same barrel, regardless of the brand names."

The answer to that argument is simply this: There is nothing to prevent him from doing so now. Furthermore, there is nothing to prevent him from filling all of the bottles with illegal whisky.

"Oh, yes; there is", answered the opponents of bulk sales. "If we catch him with a barrel of whisky on his premises, we know immediately it is illegal whisky and promptly arrest him."

Whereupon the tavern owners who violate the law are entitled to as hearty a laugh as the bootleggers. For what tavern owner is so naive as to have a barrel of illicit whisky on his premises for the purpose of filling empty legal bottles? They can be filled just as well from 5-gallon cans, and no illicit liquor will be left standing around to attract the eyes of the law. Or the legal empties can be taken home at night and filled with illicit liquor, ready to place on the bar in the morning.

To sum up: Legalization of bulk sales of liquor would reduce the price of quality liquor to a point where it would seriously cut down the bootleggers' high margin of profit. It would provide the strongest possible means of driving the bootlegger out of business. It would make good whisky available to the public at a reduced price. It would increase sales for the distiller and the wholesaler and retailer. And it would accomplish all of this without reduction in Government revenue; in fact, it would increase Government revenue by increasing sales.

Why, then, are bulk sales of distilled spirits banned? One guess is as good as another. It apparently is a case of a small minority forcing its views on the majority. When the majority will rise and make itself heard remains to be seen.

One Barrel or 16 Cases?

BOTTLE RESTRICTIONS

Present Federal regulations limit the distribution and sale of distilled spirits to glass bottles, capacity not in excess of 1 gallon. These regulations are contained in the Codes of Fair Competition for the Distilled Spirits Industry, the Distilled Spirits Rectifying Industry, and the Alcoholic Beverage Wholesale Industry. Only rectifiers, blenders, and State-owned stores are allowed to purchase spirits in bulk. The wholesale and retail liquor dealer, who could purchase bulk spirits before prohibition, now is prohibited from doing so.

These restrictions were put in force with the announced purpose of driving out the bootlegger by controlling his bottle supply. The reuse and resale of empty legal bottles has been made illegal. Certain identifying marks must be blown in bottles. Sales of bottles are checked up. All of this is aimed at the bootlegger.

PROOF OF FAILURE

The plan of restricting distribution and sale to bottles has failed miserably. Here are proofs:

1. Tax paid withdrawal (consumption) figures of distilled spirits for 1934 show that the liquor industry sold less than one-half of the average yearly sales between 1912–16 (approximately 60,000,000 gallons, as compared to 130,000,000 gallons). This, despite increased population, women drinking, etc.
2. Director Choate of the Federal Alcohol Control Administration, says: "It seems probable, therefore, that the bootleggers are now turning out from their stills alone, not counting smugglings and alcohol divertings, a quantity of spirits which cannot be much less, and may be more than we drank before prohibition."
3. Prominent authorities estimate that the bootlegger is selling at least 50 percent and possibly 70 percent of the liquor sold today.
4. Restriction to bottles has resulted in the sale of spirits on price rather than quality, with throat-cutting, chiseling, and cheating rampant. It has placed a penalty on the honest dealer and rewarded the cheater and chiseler. It has caused failure, discouragement, and disgust among the legitimate wholesalers and retailers. It has practically barred the small distiller from competition.
5. Recognized brands which were on the market before prohibition now are selling at from 80 to 400 percent higher.

REASONS FOR FAILURE

The bottle regulations failed in their attempt to eliminate the bootlegger for these reasons:

1. The bootlegger cannot be regulated out of existence. That was tried for 13 years of prohibition and the bootlegger thrived.
2. The bootlegger rarely sells in bottles. He sells in 5-gallon cans and gallon jugs. Thus the control of bottles does not hinder him.
3. There is no way to prevent by-the-drink places from filling empty legal bottles with bootleg liquor. A survey of 981 retail outlets in a certain large city indicated that 1 out of 3 tavern owners are doing this. Legal bar bottles are filled from cans or jugs of bootleg, and the container is thrown away, leaving no evidence. It would be practically impossible to obtain a conviction. The price-cutting brought about by the bottle restriction is forcing dealers to cheat in order to stay in business.

SUMMARY

The legitimate liquor industry is selling less than one-half of what it should be selling. The bootlegger is doing one-half or more of the business. The bottle regulations have failed. It is time for the liquor trades to realize the situation and call for a new deal.

THE SOLUTION

Obviously, the liquor trades are not going to prosper until they eliminate the bootlegger. The bootlegger would not stay in business if he couldn't make a profit. He is your competitor, and he takes the risk of arrest because his profits are good. To get him out of business, you've got to sell good legal liquor at a reasonable price, to cut down his profits to a point where his receipts are not worth the risk. Director Choate of the Federal Alcohol Control Administration, said: "There should be immediate adoption of every reasonable means of cheapening and improving the legal product * * *." (United States News, May 29, 1934).

There are two ways of cutting down the price of legal spirits. One is a reduction of the taxes. The other is an amendment to the codes which would provide for the distribution and sale of spirits in bulk. Much has been written about the first method. The second has scarcely been discussed. For this reason, the remainder of this pamphlet will devote itself to a discussion of—

THE ADVANTAGES OF BULK DISTRIBUTION AND SALE OF DISTILLED SPIRITS

The distribution and sale of distilled spirits in bulk means that the spirits will be shipped in the same barrels and kegs in which they are aged, thereby eliminating container cost. Here are some of the advantages:

1. The legal liquor industry will be enabled to give its customers good qua ity spirits at a reasonable price, at the same time assuring itself of fair profits.
2. The cost of bottles, caps, labels, cartons, cases, glue, bottling machinery, labeling machinry, etc., will be eliminated. At a conservative estimate, this cost ranges from $1 to $1.25 per gallon. It represents the margin which makes bootlegging profitable and keeps the bootlegger in business.
3. The heavy extra freight cost on bottles, cartons, and cases would be eliminated. Sixteen cases hold the same amount of spirits as a standard bourbon barrel (48 gallons). The cases and bottles weigh 262 pounds more than the barrel. An example of the saving in freight rates: Shipping from Louisville, Ky., to Denver, Colo., in less-than-carload lots cost approximately 34 cents per gallon more in bottles and cases than it does in barrels.
4. Handling costs, labor costs, and storage space required will be materially reduced.
5. Whisky improves with age in a barrel, but does not age in a bottle. If a dealer acquires a stock of good whisky in barrels, its quality and value is continually increasing. He is assured of an adequate supply of a uniform product, and does not have to worry about price fluctuatons, etc.
6. Liquor will be sold on a quality basis, rather than on a price-cutting and advertising basis.
7. Dealers will be enabled to purchase warehouse receipts to assure themselves of a supply of good-quality spirits, and will not be at the mercy of the bottler.
8. The public will not be forced to buy $7,000,000 worth of bottles each year which it cannot reuse or resell.

CONCLUSION

Every person identified with the distilled spirits industry should keep in mind these two significant facts:

1. The industry has a serious obligation to the American public—to furnish the consumer with a drink of good quality spirits at a reasonble price. If it fails to meet this obligation, it is encouraging a return of prohibition.

2. The industry will not prosper until the bootlegger is driven out of business. People do not want to buy bootleg liquor. They buy it because it is priced reasonably. Bulk sales would result in a saving of from $1 to $2.50 per gallon, and would offer a powerful weapon against the bootlegger.

League for the Bulk Distribution of Distilled Spirits, 213 Robertson Building, St. Louis, Mo.)

Senator BAILEY. I would like to have you explain the statement you made in reference to Dr. Doran.

Mr. HANKERSON. I am simply pointing out a series of facts. I am making no accusation, gentlemen. I have no doubt that Dr. Doran is a high-class man. Any of the facts that I have given this committee can readily be verified.

Senator BAILEY. Do you have any reason for making that statement, thereby casting a suspicion upon Dr. Doran?

Mr. HANKERSON. No. I sincerely think there is an agreement among the larger distillery interests on certain problems that arise which I do not think is for the good of the liquor industry.

Senator BAILEY. That may be true as far as the members of the industry are concerned, but how does Dr. Doran come into this? You stated that there was a difference of opinion between yourself and a group of distillers.

Mr HANKERSON Yes.

Senator BAILEY. That is all right, but how do you get Dr. Doran into this?

Mr. HANKERSON. I thought I pointed that out in my statement.

Senator BAILEY. Well, I would like to hear it over again. I do not like to have you suggest something that casts a suspicion. I would like to get that definite. If you have got some accusation to make, I would like to know the facts.

Mr. HANKERSON. I have no accusations to make.

Senator BAILEY. I do not like to hear insinuations. If a man is going to make charges against public servants, I would like to know what those charges are.

Mr. HANKERSON. I think you misunderstood my talk. I have no accusations to make. I have simply stated facts all the way through, which you can readily verify, or which any member of the committee can readily verify.

Senator BAILEY. You do not intend to reflect on Dr. Doran's honesty or integrity?

Mr. HANKERSON. No.

Senator CLARK. He is not a public servant now.

Senator BAILEY. He was at one time.

The CHAIRMAN. All right, Mr. Hankerson.

Senator CLARK. Mr. Chairman, I would like to say for the record, if we can have one of these hearings at which we can hear Dr. Doran, after he comes back from Europe, I would like to have this cleared up

The CHAIRMAN. Of course, none of us knew this proposition was going to come up here. Dr. Doran was before the Joint Committee on Finance and Ways and Means last fall, I think it was.

Senator CLARK. A year ago.

The CHAIRMAN. A year ago. Mr. Johnston.

STATEMENT OF A. SIDNEY JOHNSTON, ST. LOUIS, MO., ASSOCIATED COOPERAGE INDUSTRIES OF AMERICA

The CHAIRMAN. You represent the Associated Cooperage Industries of America?

Mr. JOHNSTON. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. JOHNSTON. Mr. Chairman and gentlemen, on June 20, I appeared before the Ways and Means Committee of the House of Representatives and explained how the bottling regulations under the codes and two Treasury decisions issued by the Treasury Department immediately following the Schecter decision had injured and irreparably damaged the cooperage industry and stave and heading industry, the wholesale production end, and the material end of that cooperage industry.

I do not at this time care to impose on your time to go into detailed explanation regarding those injuries, unless it is the desire of the committee that I shall do that. I should, however, appreciate the privilege of filing for the record a reprint of my statement before the Committee on Ways and Means, and that of Mr. Hankerson of our industry, concerning the damage which is done to the cooperage industry and the absolute monopoly that was set up under the codes and continued under these illegal and unwarranted Treasury regulations.

(The matter submitted by Mr. Johnston is as follows:)

FEDERAL ALCOHOL CONTROL ACT

(Hearings before the Committee on Ways and Means, House of Representatives, Seventy-fourth Congress, June 20, 1935)

STATEMENT OF A. SIDNEY JOHNSTON, PRESIDENT ASSOCIATED COOPERAGE INDUSTRIES OF AMERICA

Mr. JOHNSTON. Mr. Chairman and gentlemen of the committee, I reside in St. Louis, Mo. I am here tonight as president of the Associated Cooperage Industries of America, which is the national trade association of the cooperage industry.

Our industry appears here in unanimous support of paragraph (f), section 4, page 9, of H. R. 8539, denying the right of the Commission or the Treasury Department to prohibit the use of wooden barrels, casks, and kegs as containers for the bulk distribution and sale of spirits, wine, or malt beverages.

If this right be not denied, both F. A. C. A. and the Treasury Department have stated their purpose to continue the monopoly they have heretofore granted the glass-bottle industry under the N. R. A. codes and their regulations.

To do this would deny the cooperage industry the right to compete for a large volume of business which it enjoyed prior to prohibition and that naturally belongs to it.

Both the Treasury and F. A. C. A. frankly admit the fact of this complete monopoly, notwithstanding the statement in the codes that they are [reading]—

"Not designed to promote monopoly or to eliminate or oppress small enterprises and will not discriminate against them, and will not permit monopolies or monopolistic practices."

However, they attempt to justify the continuance of the monopoly on the grounds of "law enforcement" and "revenue collection."

Such a monopoly cannot be justified on either ground, but to the contrary, bulk distribution and sale of legal spirits will so improve the quality and reduce the cost of liquor to the consuming public that it will substantially reduce the price incentive which is largely responsible for so much law violation and for the loss of untold millions of dollars of revenue to the Government.

The purported reason for the Treasury policy of prohibiting bulk sales is expressed in the report to the Treasury of Mr. J. M. Doran, when he was Commissioner of Industrial Alcohol, in the following words [reading]:

"Unless measures are taken to aid its prevention, a substantial trade in such goods will probably be carried on through unscrupulous rectifying and blending establishments. Such establishments will be able to purchase comparatively small quantities of legally produced wines or spirits, and under the cloak of this legitimate trade to blend the legally purchased products with substantial quantities of the illegal tax-free product. Such establishments will thus be a means of injecting the illegal product into legitimate channels of trade."

In other words, Mr. Chairman, in order to prevent unscrupulous rectifiers and blenders from buying bootleg in bulk, they would prohibit the sale of legal spirits in bulk to anyone except those very same rectifiers and blenders. But the fact is that legal bulk whisky would be so cheap that the rectifiers would not have the incentive to buy bootleg spirits, and bootleggers would have no more incentive to sell it than existed before prohibition, when bulk sales were permitted.

Both the Treasury Department and F. A. C. A. have repeatedly asserted that the right to distribute distilled spirits in bulk containers means nothing, or is of insignificant consequence to the cooperage industry. The basis for this assertion is the fact that spirits are aged in wooden barrels and that if bulk distribution were permitted, it would be distributed in these same barrels without increasing the output of cooperage.

The facts are that prior to prohibition, more than 70 percent of the distilled spirits produced was distributed in bulk containers, and only a very small part was distributed in the 48-gallon bourbon barrels used for aging. By far the largest part was distributed in wooden kegs of from 1 gallon to 25 gallons in capacity.

Both the Treasury and the F. A. C. A. have gone so far out of their way as to tell the cooperage industry it should be grateful to them for the business which the industry still enjoys in the manufacture of barrels for aging purposes, instead of complaining because a monopoly has been granted to the glass-bottle manufacturers in the distribution of distilled spirits.

Based on an estimated maximum production of legal whisky in 1934 of 108,000,000 gallons, not more than 2,000,000 bourbon barrels were produced by the entire cooperage industry. At an average price f. o. b. factory of $5 a barrel, the volume of this business amounted to not more than $10,000,000.

Of the distilled spirits produced in 1934, the withdrawals for consumption amounted to approximately 60,000,000 gallons, as compared to average pre-war withdrawals of 130,000,000 gallons. Assuming that 1934 consumption merely equaled the average prewar withdrawals, the bootleg-liquor industry in 1934 amounted to at least 60,000,000 gallons. But of the 60,000,000 gallons withdrawn in 1934, if bulk distribution and sale had been permitted as before prohibition, 70 percent, or not less than 42,000,000 gallons, would have been distributed in wooden kegs and barrels. Assuming that half of this would have been distributed in the original aging barrels, still 21,000,000 gallons would have been distributed in kegs, and would have required the equivalent of 4,200,000 five-gallon kegs. At an average cost of 20 cents per gallon, or $1 per 5-gallon keg, the sales value of these kegs to the cooperage industry, based only on the total withdrawals of 60,000,000 gallons, would have amounted to $4,200,000.

If, based on preprohibition withdrawals of only 120,000,000 gallons, the equivalent of 8,400,000 five-gallon kegs would have been used, with a sales value of $8,400,000; and based on the most reliable Government estimates of what the consumption would be after repeal—180,000,000 gallons annually—the bulk distribution of 35 percent of this volume would have required the equivalent of 12,600,000 five-gallon kegs, or the equivalent of a sales value to this industry of $12,600,000 annually.

Bear in mind that this accounts for only one-half of 70 percent of the withdrawals, or estimated withdrawals, the other half, or 35 percent, being allocated for distribution purposes to the original aging barrels.

Assuming that the average cost for kegs is 20 cents per gallon and that the additional cost is nothing for the other one-half of the bulk shipments which would be distributed in the original aging barrels, the average container cost would be only 10 cents per gallon if bulk shipments were permitted as before prohibition, whereas distillers have been charging from $1.50 to $3 per case for bottling and packaging costs, and independently of freight charges. They are, of course, in position to charge more or less just as long as the bottling monopoly is continued, and thus to contribute to the high cost of distilled spirits to the consuming public.

Whatever adds to the cost of legitimate spirits to the consuming public encourages and opens the door to the bootlegger, and we confidently assert that if the cost of legal spirits can thus be reduced even as little as $1 a gallon, the consumption of legal spirits and the payment of Federal taxes would be enormously increased and the consumption of bootleg liquor and the evasion of taxes correspondingly decreased.

This is what bulk distribution means to stave and heading producers:

In the production of staves and heading for the manufacture of bourbon-ageing barrels there necessarily is produced, as a byproduct, an equal amount of offgrade or second-grade material. Bourbon-ageing barrels require the finest white oak timber, less than 50 percent of that which is classed as "merchantable" being suitable and finally entering into the production of the bourbon barrel.

The remainder contains checks, knots, streaks, and other defects which it is necessary to cut off, thus making the material suitable for kegs. Based on an estimated production in 1934 of 2,000,000 bourbon barrels, approximately 50,000,000 bourbon staves and 20,000,000 pieces of bourbon heading were required. This resulted in the production of an equal number of pieces of off-grade and cut-off stock. A survey made by our association discloses the fact that at the present time there are in the principal Southern States producing such stock approximately 50,000,000 cut-off staves and 20,000,000 pieces of cut-off heading suitable for kegs that could and should have been used in the bulk distribution of distilled spirits. This stock of the finest quality is rotting on the ground because of the absence of a market. If bulk sales are generally permitted the f. o. b. mill value of this stock would be approximately $1,550,000. This stock is tied up and wasting, not only a valuable natural resource, but the profit of timber owners and millmen, who must rely on its sale for their profit on the bourbon barrel stock primarily produced.

This material now on the ground would have produced the equivalent of 3,000,000 five-gallon kegs, or approximately three-fourths of the volume of kegs that would have been required in the distribution of the 1934 withdrawals of 60,000,000 gallons if bulk sales had been permitted.

Before prohibition all surplus keg stock was consumed, and many mills specialized in producing keg stock from timber that was too small or defective for larger barrel stock. Thus they were permitted to utilize all of their standing merchantable timber, whereas today a large part of it is wasted.

The restoration of the right to make bulk distribution and sale of distilled spirits would not only provide a profitable market for the keg stock now necessarily produced and wasted, but enable the farmer and small-timber owner to properly utilize his timber and employ many additional men who are now out of work.

If tax-paid withdrawals in any year should equal the average preprohibition withdrawals of 130,000,000 gallons, the cut-off stock, instead of going to waste, would represent only three-eighths of the normal requirements of such material; and should such withdrawals equal the advance estimates of 180,000,000 gallons, the material now being wasted would supply one-fourth of the requirement for such kegs, thus not only reestablishing but increasing an industry which the timber-growing States of the South are woefully in need of and entitled to, especially under present conditions.

It must be borne in mind that these figures contemplate bulk distribution in wooden kegs of only 35 percent of tax-paid withdrawals, either actual or estimated, the remaining 35 percent of bulk withdrawals being shipped in the original aging barrels.

Wooden barrels and kegs, the standard liquor containers for centuries, have been outlawed as containers for distribution and sale of spirits. The glass-bottle industry, dominated by one firm, has been granted a complete monopoly at the expense of the cooperage industry. The cooperage industry does not ask you for a monopoly; it simply seeks the right to be permitted to compete with the bottle industry in this field on an equal basis. It asks that the distiller and the consuming public be given a chance to choose between the bottle and the barrel, and to use one or both for distribution and sale if he so desires.

Thank you very much for your consideration, and I should like to have the privilege of revising and extending my remarks in the record, together with a supplemental brief which I have here in this matter.

(The brief referred to is as follows:)

THE LIQUOR INDUSTRY AND THE GLASS-BOTTLE MONOPOLY UNDER FEDERAL ALCOHOL CONTROL ADMINISTRATION CODES AND H. R. 8001

(Submitted by the Associated Cooperage Industries of America, Inc., St. Louis, Mo.)

ORIGIN OF BOTTLING RESTRICTIONS

The so-called "bottle regulations", which restricted the distribution and sale of distilled spirits to glass bottles of a capacity not in excess of 1 gallon, were written into the codes of fair competition for the alcoholic-beverages industries. Under these regulations, only rectifiers, blenders, and State-owned stores were allowed to purchase spirits in bulk. The wholesale and retail liquor dealers, who could purchase spirits in bulk before prohibition, were prohibited from doing so.

The hearings on the codes, including the report of the President's Interdepartmental Committee, do not indicate exactly how the bottling provisions became a part of the codes. Apparently the simple statement was made that distribution and sales must be confined to bottles to control the liquor traffic and protect the revenue. As far as we can ascertain, no facts or figures were given and no survey was made to provide a basis of fact for this arbitrary assumption. Certain large distilling interests, then making medicinal whisky under permit, supported the bottling provisions for reasons which will be shown later.

The bottle regulations were put in force with the announced purpose of controlling the distribution and sale of liquor, of driving out the bootlegger by controlling his bottle supply, and of protecting the revenue. The reuse and resale of empty legal bottles was made illegal, forcing buyers of whisky to destroy the bottle. (This regulation, incidentally, was estimated in newspaper articles to mean an additional revenue of some $7,000,000 a year to the bottle industry.) Other regulations provided that certain identifying marks must be blown in the bottles, and that sales and purchases of bottles must be recorded. All of this, of course, was apparently aimed at the bootlegger.

FALLACY OF BOTTLE REGULATIONS

The bottle regulations did not accomplish their announced purpose because they are based on several false premises. These are:

1. They attempt to stop cheating at the manufacturing and bottling end, when the cheating occurs at the retail end.
2. They controlled (or attempted to control) the bottle supply to eliminate the bootlegger, when the bootlegger markets but a small proportion of his product in bottles. The bootlegger sells the major portion of his output in gallon jugs and 5-gallon cans.
3. The regulations did not take into consideration the fact that a bottle is a bulk package, just as well as a barrel, and can be tampered with. There is nothing to prevent the law-violating bartender from filling all of his legal empty bar bottles with bootleg whisky from a 5-gallon can and then throwing the can away. This is what he is doing. It is common knowledge in the trade that brands of liquor that bear metallic labels are in demand because the label can be washed and the bottle can be used for months without replacement. A new type of law violator has sprung up, the "bottlelegger" who collects empty legal bottles and sells them to the law violators.
4. The bottle regulations were based on the further premise that the bootlegger could be eliminated by regulation and police power. This was tried for the many years of prohibition, and the bootlegger grew stronger and more powerful.

PROOF OF FAILURE

1. Tax-paid withdrawal figures for 1934 show that the legal liquor industry sold approximately 60,000,000 gallons during that year. The preprohibition yearly average tax-paid withdrawals between 1912 and 1916 were 130,000,000 gallons. In other words, less than one-half of this preprohibition average was withdrawn in 1934, despite the fact that the population of the United States has increased by some 26,000,000 persons, women are drinking today, etc.
2. Before repeal, it was freely and confidently asserted in the press and in magazines that the Federal Government would receive in 1934 as much as

$1,000,000,000 from liquor taxes alone. What do the figures actually show? The Government received, in revenues from all liquor manufacture and sale, a total of $374,506,232.50. Of this total only about $174,000,000 was accounted for by taxes on distilled spirits, while more than $200,000,000 was derived from the excise tax on fermented malt liquors. It is reasonable to assume that these low figures are not due to any change in the drinking habits of the American people.

3. Estimates based on the number and capacity of stills seized during the early months of 1934 indicate that the illicit industry would, during the entire year, have a productive capacity of 271,623,000 gallons. Director Choate, of the Federal Alcohol Control Administration, said:

"Any assumption that the 1934 seizures would eliminate the illicit plants would be ridiculous. It is hardly open to doubt that the unseized stills are now, and will remain, able to produce at least as much liquor as, and probably a good deal more than, those which will be put out of action this year.

"That vast illegal capacity is not there for the bootleggers' health or pleasure. It unquestionably is being used. The persistence, year after year, of the immense numbers of seizure shows that illicit distillers are replaced as fast as they are seized. This could never happen unless they were needed to meet the demands of the bootleggers' business. If any great portion of them were being used much below their practical capacity, the replacements would grow fewer and fewer, and seizures would decrease. It seems probable, therefore, that the bootleggers are now turning out from their stills alone, not counting smuggling and alcohol divertings, a quantity of spirits which cannot be much less, and may be more, than we drank before prohibition. This quantity is being consumed in addition to the entire sales of legal goods, which, ever since repeal, have run not far below preprohibition figures. All this means that the drinking habits of the people have increased more than has been imagined even by the pessimists, that the existing demand, if only it could be confined to legal manufacture, is great enough to absorb at least all that the legal industry can supply, that the Government is losing more taxes than it gets, and that a colossal criminal industry, necessarily highly organized, still exists, and still exerts its debauching tendencies on every governmental agency."

4. Despite the fact that the Treasury Department cites figures designed to show that the sale of legal spirits is increasing (part of which increase represents the normal seasonal increase), the liquor industry still is selling far below what it rightfully can expect to sell. Furthermore, no proof is given that the increase, if any, is due to the bottle regulations.

5. The consumer today is not buying liquor, but is buying glass bottles and high-powered advertising, because of the bottle regulations. Price cutting, chiseling, and cheating has resulted. Whisky is not sold on a quality basis but on a price basis and through high-powered advertising.

6. Prices of certain recognized brands of whisky on the market today are from 400 to 600 percent higher than before prohibition. A quart of quality whisky today costs from $5 to $6. The same quality whisky could be purchased before prohibition for $1 or $1.25 a quart.

RESULTS OF BOTTLING REGULATIONS

The bottling regulations have granted a virtual monopoly in the distilled-spirits business to a few large firms which have the capital to advertise extensively and to promote their products through far-flung sales agencies. The small distiller has no market for his product, because he cannot afford the advertising necessary to sell it. Prior to prohibition, the small distiller marketed whisky in bulk to hotels, taverns, clubs, wholesalers, retailers, and grocers who bought on a quality basis. This market has been denied him. There has been testimony presented before the Federal Alcohol Control Administration of firms producing a whisky identical in quality and make-up with highly advertised brands, which they were unable to market at prices greatly under those of the similar whisky of their large competitor.

The price of distilled spirits ranges as high as 600 percent above the pre-prohibition figure. This differential in price is not covered by increased costs of manufacture and materials, nor by the increase in taxes. It is reasonable to suspect that at least some of this differential is accounted for by the virtual monopoly granted certain large interests through the bottling regulations which provide the opportunity for price control.

HARM DONE TO THE COOPERAGE INDUSTRY

The wooden barrel and keg, the standard liquor containers for centuries, have been outlawed as containers for distribution and sale of spirits. The glass-bottle industry, dominated by one firm, has been granted a virtual monopoly at the expense of the cooperage industry. The cooperage industry does not ask a monopoly; it simply seeks the right to be able to compete with the bottle industry in this field on an equal basis. It asks that the distiller and the liquor dealer be given a chance to choose between the bottle and the barrel, and to use one or both for distribution and sale if he so desires.

It is certainly not the desire nor the intent of the Government to set up a monopoly for one industry at the expense of another under the guise of law enforcement.

The cooperage industry has suffered much damage through these regulations. Thousands of men have been thrown out of work, in the woods cutting the timber, in hauling operations, in the stave mills, and in the barrel plants. Firms manufacturing kegs of a capacity under the standard, 48-gallon ageing barrel have no market for their product. Farmers and timber owners who had planned to sell their oak timber to tide them over the drought and the depression have been unable to do so.

A questionnaire survey of the cooperage industry indicates that 67 of the leading firms in the industry could employ approximately 8,000 more men and increase their business by 25.5 percent if bulk sales were made legal.

ADVANTAGES OF BULK SALES

It should be apparent that as long as there is a profit in criminal enterprises, there will always be criminals. The way to eliminate the bootlegger is to cut down the profit incentive to a point where the proceeds will not be worth the risk involved. Legalization of bulk sales would be a most important step. It would make a good quality of liquor available to the consumer at a reasonable price. It would eliminate the cost of bottles, caps, labels, cartons, cases, bottling machinery, increased freight rates, increased storage and handling charges, etc. Whisky does not age under the specific meaning of the term in bottles, but does in barrels. If the dealer could purchase in bulk, he could withdraw his spirits as needed while the remainder was improving in quality and in value through storage in the wood. The small distiller would be able to market his warehouse receipts to hotels and dealers to finance his operations, and the buyers would have assurance that they could obtain the spirits from the warehouse.

The public will not be forced to buy millions of dollars worth of bottles each year which it is forced to destroy.

SUMMARY

The Treasury Department contends that bottling restrictions are necessary for protection of the revenue. They have advanced no proof of this assertion. On the contrary, preprohibition experience indicates that bulk sales can be readily controlled.

The Treasury Department contends that a barrel can be tampered with and that brands and markings can be removed. A barrel cannot be tampered with more easily than a bottle. One barrel of 48 gallons certainly is easier to check and keep track of than 384 pints. Field agents of the Internal Revenue Bureau, with preprohibition experience, confirm these statements. Experienced liquor field men know that markings cut and branded into a barrel cannot be removed without leaving easily detected evidence.

The Federal Alcohol Control Administration contends that the States do not want bulk distribution and sale. No proof has been given to support this statement. Furthermore, any State would be at liberty to prohibit bulk distribution and sale within its borders if it so desires.

STATEMENT OF F. P. HANKERSON, SECRETARY NATIONAL LEGISLATIVE COMMITTEE OF THE COOPERAGE INDUSTRY

The CHAIRMAN. Give your full name, address, and the capacity in which you appear.

Mr. HANKERSON. My name is F. P. Hankerson, of St. Louis, Mo. I am secretary of the national legislative committee of the cooperage industry.

I listened with great interest last night to the reasons given by representatives of the Treasury Department as to why bulk sales should not be allowed. If you gentlemen would permit me, I would like to answer these reasons briefly. Mr. Graves declared that it was not a question of collecting the revenue, as the revenue is collected at the distillery. It becomes, then, obviously, a question of control.

Many of the regulations of the Treasury Department seem to be based upon the premise that every man in the liquor industry is a criminal and a potential lawbreaker. Thus, every possible regulation must be thrown around him to prevent him from cheating. History proves that the more unreasonable and unnecessary regulations are placed on an industry or an individual, the more violations of those regulations occur.

The Treasury Department argues that it is easier to introduce bootleg liquor into a barrel than it is into a bottle; that it is easier to detect bootleg liquor in a bottle than it is in a barrel. It is today a simple matter for the cheating tavern owner to refill his empty legal bar bottles from a 1-gallon jug of bootleg, throwing the jug away so as to leave no evidence. There is no way of preventing him from doing just this under the bottle regulations, unless you catch him in the act, which is practically impossible.

It would be necessary for a revenue agent to have a chemical analysis made of all the tavern's bar bottles to determine whether or not the tavern was cheating.

A standard bourbon barrel contains approximately 48 gallons. This is equivalent to 384 pint bottles. Does it seem reasonable that it would be easier to gage or analyze the liquor in 384 pint bottles than it would be to perform the same operations on a single barrel?

Furthermore the Treasury has a double check on every drop of liquor sold or purchased by a distiller, rectifier, or wholesaler, and strip stamps are issued only to cover that exact amount.

It was further argued by the Treasury that the bottle regulations provide a revenue agent with the basis for arresting any person with bulk liquor on his premises. In other words, the bulk liquor was illegal if they caught him with bulk liquor. Certainly, no cheating tavern owner, with an investment of several thousand dollars at stake, would be so simple-minded as to keep bootleg liquor standing around in bulk packages for the revenue agent to find.

It was brought out that there are 4,700 wholesalers; that if they are given the privilege of bottling, it would be necessary to employ 2,500 additional men to supervise them. Granting that the wholesalers would be able to bottle under this provision, it is reasonable to suppose than not more than half of them at the most would take advantage of that privilege. Many would not have the desire, the necessary capital, the space, or the facilities to bottle. If half of them sought the privilege it would mean 2,350 firms, and that is a very liberal estimate, gentlemen.

Before prohibition, these bottlers were not supervised with a man at each plant. They could not afford to advertise, and the only way they could market their product was to build up a reputation for quality. The cheater eliminated himself. These firms would not bottle every day. They produce perhaps 10, 20, or 30 cases a week. Perhaps they would bottle once a week. Granting that it is necessary to supervise the bottling operation of every firm—that is, granting that it is necessary; there is a great deal of doubt in regard to that—one Government man should be able to supervise at least several firms under reasonable regulations. This would mean 330 additional men at the most and their salary would be paid many times over in the increased revenue resulting to the Government from the reduced price of liquor.

The Treasury representatives held forth at length on the number of men and the amount of money that would be needed to control bottling by wholesalers. However, Mr. Mellott then turned around and said that if the wholesaler was not allowed to bottle, it would not materially affect the cheating under bulk sales.

The Treasury admitted that there was no appreciable amount of cheating under bulk sales before prohibition, but argued that a different situation exists today because of the bootlegger. But bear in mind, gentlemen, that the time-honored and tested bulk-sales plan was not tried, but an arbitrary theory, unsupported by fact or survey, was set up to replace it. It is true the bootlegger is with us. For the 15 years of prohibition, the Treasury Department tried to put the bootlegger out of existence by police power, and he grew stronger every day. As long as the profit incentive justifies the risk, you will have the bootlegger with you. It is common knowledge that for every still destroyed, two spring up to pay for it.

If the legal liquor industry, made legal by law and the will of the people, is harrassed by regulations, restrictions, rules, and red tape such as these bottling provisions, it can never hope to lick the bootlegger.

By Mr. Mellott's own admission, he had scarcely visited a distillery until he joined the Department 15 months ago. Mr. Choate testified that the Treasury knows nothing about the liquor industry, and that they are interested only in getting the revenue. Mr. Graves, by his own admission, said that the prohibition of bulk sales is not a question of collecting the revenue, as the revenue is collected at the distillery.

What effect have the bottling regulations had in collecting the revenue? During 1934 tax-paid withdrawals for consumption were approximately 60,000,000 gallons. In the preprohibition period from 1912 to 1916, tax-paid withdrawals amounted to approximately 130,000,000 gallons a year. In other words, under the bottle restrictions, the Government collected taxes on less than half of the distilled spirits it collected on prior to prohibition, despite the fact that the population has increased some 26,000,000 persons, and women are drinking today where they did not drink prior to prohibition.

In Mr. Choate's own words: "It seems probable, therefore, that the bootleggers are now turning out from their stills alone, not counting alcohol divertings, a quantity of spirits which cannot be much less, and may be more than we drank before prohibition."

In other words, the illegal-liquor industry is selling more liquor than the entire legal industry.

Mr. Mellott stated that bootlegging is on the decrease. He gave no figures to disprove this statement and apologized because the figures he did not give did not show a greater decrease. Furthermore, he gave no proof that the decrease, if any, was brought about by the bottle regulations. He cited as proof of the decrease the statement that twice as many convictions for liquor-law violations were made last year. This statement could be equally useful in proving that for every still seized two more had sprung up.

Mr. Choate advanced as an argument against bulk sales the unsupported statement that the State administrators do not favor it. In that section of the bill he will find that any State which does not favor bulk sales is expressly provided for. I quote:

"This subsection shall not apply to any condition in any basic permit issued under this act or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State."

Those States which prefer bottle sales can maintain them; those which want bulk sales will not have bottle sales thrust upon them.

In conclusion, may I say that it is the opinion of experienced men in the liquor field that the bootlegger will not be eliminated and that the Government will not collect the revenue it should rightfully expect until Government agencies stop penalizing and throwing unreasonable and theoretical restrictions around the entire industry in the hope, unsupported by any fact or foundation, of catching a few chiselers.

Mr. McCORMACK. You have addressed yourself in the main to the barrel and the keg?

Mr. HANKERSON. Yes, sir.

Mr. McCORMACK. What are your views generally on this bill?

Mr. HANKERSON. I think in general the bill is very good.

Mr. McCORMACK. Were you here when I asked Mr. O'Malley regarding the sale in bulk to wholesalers without the right of rebottling?

Mr. HANKERSON. Yes, sir.

Mr. McCORMACK. What objection is there to that? Do you see any?

Mr. HANKERSON. I see no objection to it.

Mr. McCORMACK. And sale in bulk to hotels. Of course, there are hotels and hotels, but there is everything and everything; we know that, that is life. But should your answer apply to that also?

Mr. HANKERSON. Yes, sir.

Mr. McCORMACK. Why should not I as an individual, if I want to, buy a barrel of whisky?

Mr. HANKERSON. You should be allowed to.

Mr. McCORMACK. Have I that right now?

Mr. HANKERSON. The Treasury Department says not. I can find no authority for that statement. They have two regulations, I think they are T. D. 4557 and 4558. They quote a portion from the Strip Stamp Act and two or three other very questionable sources.

Mr. VINSON. We asked them last night for further authority, and Mr. Mellott did not know where it was, but said he would try to get it in here, did he not?

Mr. HANKERSON. Yes, sir.

Mr. McCORMACK. You gave some figures as to the tax-free withdrawals before prohibition. Will you repeat them?
Mr. HANKERSON. Tax-paid withdrawals.
Mr. McCORMACK. Tax free.
Mr. HANKERSON. Tax-paid withdrawals.
Mr. McCORMACK. What about this tax-free alcohol?
Mr. HANKERSON. I do not know anything about that, sir.
Mr. McCORMACK. Something tells me that there is quite a racket in that.
The CHAIRMAN. Thank you for your appearance and the testimony you have given the committee.

Mr. JOHNSTON. I might say, briefly, there cannot be any question regarding the fact of a monopoly having been set up. In plain language and words, these regulations and these Treasury decisions constitute an absolute monopoly granted to the glass bottle industry.

The CHAIRMAN. What would you say to this statement or suggestion of Mr. Choate, and the argument made, that if spirits are sold in bulk that these people can put everything in the bottle and dilute it, and weaken it, and so on, in the keg?

Mr. JOHNSTON. It is just as easy to substitute spirits in a bottle or a tin can or a barrel, one or the other. It does not make any difference.

Senator CLARK. There is less danger of detection of adulteration of spirits in a bottle, isn't there?

Mr. JOHNSTON. It is much easier to detect adulteration in a barrel than it is in a bottle. There are 384 pint bottles of liquor in a 48-gallon barrel. Any man can go into a club, a hotel, or wherever there is a barrel of liquor, and make a single test with just exactly the same kind of care that he would make in making a test of an individual pint bottle. If he determines it is adulterated he seizes the whole barrel. The owner loses the whole barrel instead of losing the pint bottle of whisky, he loses his license, and under the provisions of this bill he is subjected to a heavy fine and imprisonment. No one who values his license is going to take such a chance.

Furthermore, I will say that we never had any such problem as this prior to prohibition. We have made an exhaustive investigation. We inquired of many men who were in the employ of the Treasury Department, and they say they never knew, prior to prohibition, of a single case of adulteration of liquor in a barrel.

I do not know why all this smoke screen is raised, except they are trying to deceive the people on this proposition. Why should you connect the barrel with bootlegging. The crux of the whole matter, Mr. Chairman, is this: What is responsible for bootlegging? No one will deny that under the bottle regulations there is as much bootlegging as there is the sale of legal whisky.

In the year 1934 there were approximately 60,000,000 gallons of legal whisky withdrawn from bond, or from the distilleries. Prior to prohibition, in the 5-year period, the average was 120,000,000 or 130,000,000 gallons. The estimates of the Treasury Department were that on repeal there would be 150,000,000 gallons sold. The result has been the sale of 60,000,000 gallons of legal liquor, and 60,000,000 gallons of bootleg, and none of the bootleg liquor is sold out of barrels or kegs, it is all sold out of bottles.

Senator LA FOLLETTE. Let us have the basis for your statement that there is 60,000,000 gallons of legal liquor and 60,000,000 gallons of bootleg.

Mr. JOHNSTON. That is based on the presumption that the consumption today is as great as the average before prohibition?

Senator LA FOLLETTE. What do you base that presumption on?

Mr. JOHNSTON. That is merely a presumption.

Senator LA FOLLETTE. You haven't any facts to base it on, have you?

Mr. JOHNSTON. I haven't, except I have this, that the Treasury Department figures or estimates show that they anticipated there would be legally sold 150,000,000 gallons.

Senator LA FOLLETTE. It does not follow from that that there were that many sold, does it?

Mr. JOHNSTON. No, sir; it does not, I will certainly grant you that. As I say, it is just as easy to adulterate liquor in a bottle as it is in a barrel. It does not make any difference, but it is a whole lot easier to detect adulteration in a barrel than it is in a bottle. That offered no problem before prohibition. It offered no problem during prohibition. Of course, from the standpoint of the Treasury Department, the ordinary collection machinery, the enforcement of it, there might be a difference.

Senator GEORGE. Do you think the bootleggers were as expert before prohibition as they were after prohibition?

Mr. JOHNSTON. No, sir; I do not. I think they certainly learned to make good liquor during prohibition, but they never sold it in barrels or kegs. They distributed it in 5-gallon tin cans, just like they do today. They take the 5-gallon alcohol can, as Mr. Choate has said, and empty the contents of that can into glass bottles. If they catch a man who sells bootleg liquor in a glass bottle, that is all, in the way of liquor, that the man who is caught loses. If they put it in a barrel he loses the barrel, he loses his license, he is fined $500 or $1,000, and sentenced to jail under the provisions of this bill.

It is a smoke screen, Mr. Chairman. There isn't an iota of proof. It is a theory that somebody concocted here.

There was some question here a while ago regarding Dr. Doran. Dr. Doran was a member of the special interdepartmental committee appointed by the President in anticipation of the effective date of the twenty-first amendment. He had been in the Treasury Department, the Internal Revenue Department, since 1907, according to a brief he filed with the Ways and Means Committee, in various capacities, and during the Prohibition era I understand he was Commissioner of Industrial Alcohol and did have charge of the issuance of permits. Naturally, he was familiar with the situation that existed, and his judgment was certainly entitled to the respect of the Treasury Department.

I might say, incidentally, that Mr. Morgenthau was not Secretary of the Treasury at that time, at the time that the bottle provisions were put in the codes, or at the time the recommendations were made by this special interdepartmental committee.

The CHAIRMAN. My information is that he was.

Mr. JOHNSTON. Maybe I am mistaken about that.

The CHAIRMAN. I think you are.

Mr. JOHNSTON. At any rate, Dr. Doran signed the special committee report which was the basis for the bottling provisions in the code. He made the recommendations, and he did it on the strength

of the probability, Mr. Chairman, as to what might happen. It was not based on facts, it was not based on proof.

Now, our position is simply this, in a nutshell: We do not like to be made the goat. We do not claim to be more honest or more honorable than other industries, because on the whole our industry is as honest as the other fellow, but we are entitled to live unless it is shown, from the standpoint of good morals or good government, we should be crushed to death.

Since repeal, a major portion of the market we rightfully hoped for has been arbitrarily denied us, and a complete monopoly handed to the glass-bottle industry on the theory that it would aid control. It has not aided control; the bootlegger today is selling as much, if not more, than the entire legal industry.

Many wild and loose-jointed statements are being hurled at you by a powerful and organized opposition that wants liquor kept in glass bottles for obviously selfish reasons. The cry of cheating and adulterating in barrels is raised on every hand.

I would now like to make a brief statement regarding the labor situation:

In the hearings before the Ways and Means Committee, a Mr. Flynn appeared, opposing bulk sales, representing the Labor National Committee for Modification and Repeal, which, he said, was created by unanimous vote of the executive council of the American Federation of Labor. He stated that presumably my assertion that bulk sales would help the cooperage industry was meant to imply that it would help those employed in the production of whisky barrels.

My statement, however, distinguished clearly between the manufacture of barrels, used primarily for aging whisky, and the manufacture of kegs used for bulk distribution and sale.

We understand, as Mr. Flynn stated, that some of these barrel shops are financed and controlled by the largest whisky distillers. The largest of these is the Chickasaw Wood Products Co., of Memphis, Tenn., and Louisville, Ky., which is controlled by National Distillers Products Corporation.

We might point out, however, that these barrel shops owned by the big distillers are not in favor of bulk sales. In fact, these are the only members of the cooperage industry in the United States who have openly opposed bulk sales. The obvious reason is that the interests which control them are opposed to bulk sales. After all, they are interested primarily if not solely in the production of bourbon aging barrels.

Thus, by going on record against bulk sales, Mr. Flynn has played right into the hands of the big distillers whom they seek to condemn, and have attacked independent manufacturers, some of whom operate American Federation of Labor union shops.

Furthermore, there is an employees' union in the cooperage industry, the Coopers' International Union, which is affiliated with the American Federation of Labor, and that union of workers in the cooperage industry has definitely gone on record in favor of bulk sales.

Furthermore, Hon. Reuben T. Wood, a Representative in Congress from Missouri, has for years been president of the Missouri Federation of Labor, which is also affiliated with the American Federation of Labor, and with his understanding of the matter, he has voted in

favor of bulk sales and in favor of final passage of the bill in its present form.

Bulk sales would provide employment for many more human beings in the cooperage industry than could possibly be thrown out of employment in the glass industry, because glass bottles are manufactured largely by automatic machinery. Due to the difficulty of manipulating wood by machinery over 50 percent of the cost of cooperage represents wages paid to labor. The only plants in the cooperage industry that could operate as high as 60 hours a week are the few favorably situated for the production of bourbon aging barrels, while the independent shops have hardly been able to operate at all, due to the monopoly granted the glass industry.

The manufacture of staves and heading requires much hand labor in the cutting of timber, the making of bolts, hauling to the mill, the manufacture of rough staves and heading, piling for seasoning and handling. This labor is all performed by people in the farm and forest regions, where employment is particularly needed and few opportunities exist to add to their annual cash income. The mills in these operations at all times pay prevailing wage rates.

Notwithstanding this fact the cooperage industry has for over a year voluntarily maintained, with few exceptions, the hourly wage rates in effect in 1926–29, ranging from 20 cents per hour from common labor in the South to $1 an hour for highly skilled labor in the North. And the reason our employees are on Government relief is that our plants are shut down, due in part to the arbitrary, autocratic, and illegal refusal of the Treasury to permit us to compete with the glass bottle industry.

But, and I will appreciate it if you gentlemen will mark this well, not one iota of proof has been submitted to you that conclusively shows that liquor in a barrel can be more readily adulterated or substituted than liquor in a bottle. The cry of wolf is raised, gentlemen, but the wolf can't be found.

Pre-prohibition experience shows that liquor can be effectively regulated and controlled in barrels and kegs. But the situation is different today, says the Treasury; the bootlegger is with us.

And why, gentlemen, is the bootlegger with us? Because the price of legal liquor is so exorbitant that the public won't pay. The bootlegger has to make a high margin of profit to justify the risk he takes. He is making that margin of profit or he would not be with us. You can slash off a good portion of that profit margin by allowing bulk sales.

I plead with you gentlemen not to heed these wild and unsupported cries connecting the bootlegger and the barrel, unless they are accompanied by proof. I point out to you that the barrel was never given a trial and that the bottle has failed miserably. You have definite proof of that. Legal tax paid withdrawals of whisky during 1934 were approximately 60,000,000 gallons, as compared to a pre-prohibition average of 130,000,000 gallons. We have 26,000,000 more citizens today than we did then; we have more wet States than we did then; women are drinking today and they weren't then. And yet we are selling less than half of the legal liquor we did before prohibition. There is no proof or reason to suppose that our drinking habits have changed. There is only one answer: The bootlegger is selling the difference, and not in barrels or kegs.

Liquor can be adulterated in barrels, cans, bottles, or paper bags; the container makes no difference. You have to remove the cause of adulteration—the bootlegger. To remove him, the price of legal whisky must be reduced.

In conclusion, let me say that the cooperage industry does not come here seeking favoritism. It does not want this committee to grant a monopoly to wooden containers, and to prohibit bottles, cans, and other containers. We simply ask a fair and even chance to compete for business in a market which has arbitrarily been denied us.

If there were any legitimate excuse for the banning of this barrel, the end accomplished certainly should justify it. With the bootlegger selling 50 percent of the liquor sold today, the penalty now imposed on the cooperage industry has no justification.

We plead with you, if for no other reason than that of fairness alone, to give the barrel and the cooperage industry an honest chance. If the barrel fails (and I do not think it will) the Congress can sit in judgment again and determine whether or not a legitimate industry should be sacrificed to expedite control. It is my earnest belief that this occasion will never arise. If we are sacrificed on the altar of fact, we will have to take our medicine; but we object strenuously to being sacrificed on the altar of fiction, to the extent of granting a monopoly to the selfish interests of another industry.

Senator LA FOLLETTE. I asked you upon what you based your statement that there was as much bootleg liquor sold as there was legal liquor sold?

Mr. JOHNSTON. I do that upon the estimate of the Treasury Department, Senator La Follette, and the statement of Mr. Choate. Mr. Choate himself is on record time after time and he will verify the statement that there is as much bootleg liquor sold today as there is legal liquor, if not more.

The CHAIRMAN. Mr. Johnston, as one member of the committee, I want to see the cooperage industry helped, but primarily I want to see this law enforced.

Mr. JOHNSTON. So do I.

The CHAIRMAN. Notwithstanding the fact that I would be interested in the people who are interested in the cooperage business. That is the proposition before us.

Mr. JOHNSTON. This is only my personal opinion regarding this matter, Mr. Chairman. I believe Mr. Choate is as high-minded a man as any man who has ever occupied a position in the Government service. I think he and others in the Treasury Department have been hoodwinked on this thing, they have been misled, they have been misled by a group of distillers who are interested in the bottle industry in this country.

As pointed out by Mr. Hankerson, the facts show the bottle industry primarily consists of one company, and it is tied in with the biggest distiller in the United States. The small group of distillers, seven of them, that were in existence, sold the Treasury Department on this policy. I can understand how it might be sold, but I think they ought to be open-minded enough to be unsold on that proposition, even if it might involve a change in policy. I do not think they should shut their ears and eyes to it.

The small distiller hasn't a chance in the world, because he cannot spend hundreds of thousands of dollars for advertising. The only chance to get rid of the bootlegger is to reduce the price of liquor.

The only way to reduce the price of liquor, as we see it, is to sell it in bulk. The difference in the cost of packaging amounts to approximately a dollar a gallon. There has been some talk of reducing the Government tax to a dollar a gallon. You can accomplish that by taking the difference in the packaging cost between bottles and kegs.

Here is the big point, Mr. Chairman, that it costs for fine whisky today, 4-year old whisky, originally not more than 40 cents a gallon, and it costs 10 cents a gallon to carry it 4 years, and at the end of that time, at the outside, the cost of that whisky is not over a dollar a gallon. What does it sell for today? Twenty-four dollars a gallon wholesale. The statement was made the other day, at the hearing before the Ways and Means Committee of the House, that it could be bought for $34 a case.

I defy anybody to try to buy it at $34 a case.

The CHAIRMAN. Thank you very much, Mr. Johnston.

Is Mr. McMackin here?

STATEMENT OF HUGH J. McMACKIN, WASHINGTON, D. C., NATIONAL WHOLESALE WINE AND LIQUOR DEALERS ASSOCIATION

The CHAIRMAN. Mr. McMackin, you represent the National Wholesale Wine and Liquor Dealers Association?

Mr. McMACKIN. Yes; Mr. Chairman. I am not going to go into the brief. I would rather make some extemporaneous statements, and file the brief, if I may.

The CHAIRMAN. Very well. Did you testify before the Ways and Means Committee?

Mr. McMACKIN. Yes.

The CHAIRMAN. That is available to the committee?

Mr. McMACKIN. That is available to the committee.

Since the time that I testified, there has been additional evidence come into the office that I wanted to give to the Committee on Finance, so that they may have a true situation.

Mr. Chairman and gentlemen, speaking on behalf of the wholesalers, to which wholesalers Mr. Choate's department has issued some 2,200-odd permits for wholesaling wines and liquors throughout the United States, we feel that we have been somewhat handicapped, primarily due to the fact that at the time we were operating under the code the F. A. C. A. had reached the decision that we had sufficient bottling capacity in the United States, and held up the granting of any further bottling permits, commonly known as rectifier's permits.

Later on, toward the close of their administration, they decided to reopen that situation, if a man could qualify for the purpose of bottling. I had occasion for a few of the wholesalers, just before the F. A. C. A. went out of business, to fill out some of the applications for those who desired the privilege of bottling, or the so-called "rectifier's permits", as they were known, on the part of the wholesalers, and I was rather amazed at the questionnaire that was submitted to the industry. It had 4 duplicate checks of 3 letters each of questions that had to be answered and filed with the F. A. C. A. in order to obtain the bottling right which the wholesalers of the

United States, prior to prohibition, had, when they were allowed to do their own bottling.

Of course, when the F. A. C. A. was created an emergency existed, and the Government felt, in order to protect the morals of the country, and control the industry, all of which was agreed to at the time, that something might be done, and the F. A. C. A. was created.

But what do we find here today? We find that the F. A. C. A. was set up, and it set up very severe restrictive rules and regulations to which the industry abided and gladly cooperated with Mr. Choate, and they have the highest regard for him and his coworkers over there, but we were confronted with the condition that we would have a regulation on the labeling situation today, and tomorrow we would have a new regulations, and we would have to destroy those labels and throw them away and have new ones made up to meet the new regulations.

We have done that; we were glad to do it as long as Mr. Choate recommended that situation, and his department heads, while it was necessary; but we rather question today the advisability of enacting into law, such as is written in this bill, when you have the Food and Drug Division which has charge of labeling, misbranding, false or misleading advertising, and so on, and we question the advisability of enacting those things into law. You gentlemen have before you the famous Copeland bill which has charge of labeling, false or misleading advertising, and then we had the Treasury Department come out with a recent Treasury decision pertaining to labeling.

That is the situation we are confronted with and I am going to offer, Mr. Chairman and gentlemen, some letters here, and petitions from some of the associations, especially the Missouri Wholesale Liquor Dealers Association, wherein they ask for the privilege to be granted to them again, so that they would be able to buy and sell in bulk. We were allowed prior to prohibition to do that.

Now, the previous speaker has well referred to a smoke screen that has been thrown up here with reference to the possibility of bootlegging in a barrel. I admired the chairman when he made the statement that he was for anything that would defeat the bootlegger. I want to heartily endorce that statement. We are with you, Mr. Chairman, on that score, but let us take a picture of a barrel of whisky from the time it is put up in the distillery and as it travels along.

Now, that barrel is filled at the distillery, it is put in bond. It cannot leave that distillery until the Government has collected its taxes. That barrel then is sent along to the wholesale house, the rectifier. What happens there, the barrel is rolled in and invariably, if they have automatic equipment, the bung is removed, the liquid is withdrawn through siphonation. In the smaller plants they put the barrel upon an end, a gimlet hole is bored in the head and a faucet inserted. It is then placed upon barrel skids. A nail is driven through one of the staves to provide a vent, and this vent is closed when the package is not being used by a small wooden pile. The bung, through which the wooden package must be filled, is not removed to drain it, and it is sealed with iron bung straps. When the legal contents are emptied, it is mandatory under our revenue laws that the canceled revenue stamps affixed to it be immediately destroyed.

Now, this isn't a smoke-screen that has been thrown up here to scare you gentlemen that there is a possible chance of adulteration on the part of wholesalers, when prior to prohibition, and you can look up your records, you could not find, I do not believe, where there were any wholesalers who were ever prosecuted for substitution or putting any inferior goods in their packages. They would not jeopardize the seizure of their entire stock of liquor by the Revenue Department. They would not dare violate the provisions of the Food and Drug Act when they came to labeling it. They would not dare advertise in their local newspapers in order to build up an exclusive trade in the various large cities of the country for their own private brands of whisky to meet the competition that we are up against today.

Now, we are deprived of the right to buy in bulk and build up our own well-known private brands that we had prior to prohibition, which we advertised in our local newspapers throughout the particular cities in which that business was built up throughout the country, and I trust that you gentlemen, in your wisdom, will see that the wholesale industry is protected and granted the same privileges that we enjoyed prior to prohibition.

I would like, Mr. Chairman, with your consent, to give to your clerk these petitions and resolutions, and my brief, if you have no objection.

Thank you for the attention you have given me.

(The matter submitted by Mr. McMackin is as follows:)

STATEMENT BY HUGH J. MCMACKIN, SECRETARY NATIONAL WHOLESALE WINE AND LIQUOR DEALERS' ASSOCIATION AND FORMER SUPERVISOR OF CODE AUTHORITY OF THE ALCOHOLIC BEVERAGE WHOLESALE INDUSTRY, WINE AND LIQUOR DIVISION

Mr. Chairman and honorable members of the Committee on Finance of the United States Senate. In May 1934 the Honorable Joseph H. Choate, Jr., Administrator of the F. A. C. A., ruled that no more bottling or rectifiers permits would be issued to members of the industry. It is upon that premise that I appear in favor of the bulk sales section of H. R. 8870.

Prior to prohibition the distillers were permitted to bottle only so-called "bottled-in-bond, 4-year-old whisky." During the period of prohibition, only approximately six distillers were permitted to bottle so-called "medicinal liquors." When repeal became effective, December 5, 1933, these were the only ones who had legal liquor to bottle.

The situation today, therefore, is that these few distillers maintain a monopoly of the market and are bottling approximately 90 percent of the distilled spirits sold today.

There are a number of other independent distillers, who, before prohibition, sold in bulk to wholesalers who were permitted to bottle and market their private brands for which they created local demand by newspaper advertising and marketed successfully in competition with nationally advertised products.

When Mr. Choate issued his arbitrary ruling in May 1934, which denied other than the afore-mentioned favored six distillers and rectifiers the right to bottle, he established the monopoly which controls the marketing of legal liquor in this country today.

The competition which the liquor monopoly, fostered by Mr. Choate as F. A. C. A. Administrator and the Bureau of Internal Revenue of the Treasury Department is composed of approximately 2,500 wholesale wine and liquor dealers who have been deprived of their right to bottle and market good legal liquor at moderate prices. This is competition which is feared as much by the bootlegger as by the liquor monopoly.

Those interested in maintaining the present liquor monopoly have been resorting to a smoke screen. They are shouting through subsidized newspaper articles and editorials that bulk sales would aid the bootlegger. It is noteworthy

that this newspaper barrage against bulk sales did not begin until after the liquor monopoly with its allies in the former F. A. C. A. and the Treasury Department failed in their attempt to jam down the throats of the House Ways and Means Committee the draft of a liquor-control bill which would have perpetuated the monopoly.

When the so-called "Cullen bill" containing the provisions for bulk sales of liquor which are now before this committee was endorsed as a unanimous agreement of the House Ways and Means Committee upon a fair and proper control measure, the liquor trust through its advertising agencies immediately brought pressure to bear upon every newspaper in America which could be controlled through its advertising column, as was brought to the attention of Congress by Claude A. Fuller of Arkansas, in his able address on the floor of the House of Representatives when H. R. 8870 was being discussed.

Coincident with the introduction in the House of Representatives of the so-called "Cullen bill", containing the provisions for bulk sales of liquor which are now before this committee a group, claiming to represent all of the retail liquor dealers of the United States, came to Washington from New York City and has been issuing statements to the press and to members of Congress in an effort to eliminate these bulk sales provisions.

These statements, quoting the National Retail Liquor Package Stores Association, have been written and distributed to Congress and the press by Erwin Wasey & Co., Inc., Graybar Building, New York City, the advertising agency of the Liquor Trust. These statements as were shown by a specimen exhibited by Congressman Fuller in the House bear in the upper left corner of the first page the name of Frank Getty, who is the Washington representative of Erwin Wasey & Co., Inc., giving the Washington office address of that firm but making no mention of Mr. Getty's connection with the Liquor Trust's advertising agency. Reference to the Washington, C. P. Telephone Directory, will show that telephone no. National 5506, in the Albee Building, is listed in the names of both Mr. Getty and Erwin Wasey & Co., Inc., the advertising agency of the Liquor Trust.

A check of the files of the newspapers, which have been waging editorial and news column campaigns against bulk sales since the Cullen bill was introduced on July 16, also will show that the advertising placed with them by Erwin Wasey & Co. as agents for the Liquor Trust was greatly increased after that date. And since that date statements issued by our association to refute those issued or sponsored by the Liquor Trust have been denied publication in these same newspapers.

The provisions for bulk sales in the bill now under consideration would do no more than restore a situation which existed before prohibition when practical experience demonstrated that the bootlegger was not aided but instead was discouraged. The wholesaler would regain the right to bottle his own private blends in competition with the big distiller and rectifier and could market them profitably at comparatively low prices, because of their wholesomeness and palatability and low-price inducement judiciously advertised in his local mediums.

When they raise the cry of bulk sales as an aid to bootlegging, the opponents of these provisions conveniently omit reference to the stringent regulations, requirements, and physical facts which make it much more difficult to substitute bootleg or inferior liquor in a keg than in a bottle.

The law requires the presence of a United States storekeeper-gager when a keg or barrel is filled by a distiller, wholesaler, or rectifier. He supervises the affixing of tax-paid stamps, which must be glued and tacked on, examines the contents checking quality and proof, and gages the contents, weighing the entire package. All these data are branded on the head of the keg or barrel and entered in triplicate on Government records (form 52, U. S. Government book). Until this is done no keg or barrel can be moved, thus assuring the Government full collection of its revenue.

When the contents of a barrel or keg of legally produced liquor is to be removed and marketed, it is set upon an end, a gimlet hole is bored in the head, and a faucet inserted. It is then placed upon barrel skids. A nail is driven through one of the staves to provide a vent, and this vent is closed, when the package is not being used, by a small wooden spile. The bung, through which the wooden package must be filled, is not removed to drain it and is sealed with iron bung straps. When the legal contents are emptied, it is mandatory under our revenue laws that the canceled revenue stamps affixed to it be immediately destroyed.

During the prohibition era it was the keg and barrel and not the bottles that disappeared, which is the situation today. There is no affinity between the keg

and the bootlegger and no one dreads its return to the legitimate liquor trade more than the bootlegger does, except certain aforementioned interests which maintain the present exorbitant prices for legal liquor.

The following cost of whiskies was arrived at by several wholesalers at a round-table conference on a basis of payment of 52 cents per gallon for whisky put up in quarts.

	Per case
80 proof	$10.37
85 proof	10.75
90 proof	11.12
100 proof	11.88

The above prices include $1.50 profit above cost. These figures are arrived at in the cases of the Massachusetts situation and are based as follows:

Whisky and revenue tax	$6.04
State tax	1.20
Strip stamps	.12
Bottling charges	1.50
Total	8.87
Plus minimum profit of	1.50
Total	10.37

The bootlegger is with us today and distributes approximately 50 percent of the liquor being consumed for no other reason than the high cost of legal liquor to the legitimate retailer and thus to the ultimate consumer.

Under date of July 21, 1935, the Standard Statistics Co. of New York, in a comprehensive economic survey of the liquor industry, makes the following statement:

Estimates of proper liquor sales made in 1934, prior to repeal, range upward from 110,000,000 proof-gallons. The actual total for the year was 69,500,000 gallons, including 17,600,000 gallons of tax-paid alcohol, not all of which was used for beverage purposes. In the typical preprohibition period of 1910–15 annual average consumption of distilled spirits was 137,737,000, gallons, including 56,500,000 gallons of tax-paid alcohol. Comparison of consumption in wet States provides even more startling experience. In the 1910–15 interval, population of the States in which spirits were sold legally averaged about 81,000,000, indicating annual average per capita consumption 1.70 proof-gallons. Population of the States in which liquor could be sold legally during most of 1934 is estimated at around 91,000,000, thus, per capita consumption last year was only about 0.76 gallon, or 45 percent of the earlier period.

"Making due allowance for the abnormal and restrictive State liquor control laws restricting the market. It is nevertheless apparent that by most means all of the currently indicated shrinkage in liquor demand can be thus explained. It is well recognized in fact that the major reason for the disappointingly small tax paid withdrawal is the continued existence of large illicit bootleg traffic, so that it would appear that the legal and illegal industry distribution was about evenly divided."

Our association convention in Chicago in March 1934, and later in September 1934, in New York City, adopted a resolution favoring bulk sales by members of the industry, as one of the surest and speediest ways to defeat the bootlegger and assist in lowering the prices to the public.

At the hearing before the Ways and Means Committee on this same bill held June 19, 1935, in which the Treasury officials, who by the way admitted lack of experience prior to prohibition, attempted to becloud the issue by stating that an army of revenue agents would be required to police bulk sales. No army was required before prohibition when bulk sales were permitted for the reasons I have described to you, and none would be needed today. Unfortunately for the industry our rules, regulations, and Treasury decisions as well as these wild statements, are being made by Government officials and employees who are prohibitive minded.

I desire to call to you particular attention the Treasury Department decisions 4557 and 4558 which ban bulk sales today. Treasury Department representatives appearing before the Ways and Means Committee could cite no basic law for these two decisions prohibiting bulk sales and we challenge them again to do so.

Our association submitted a questionnaire to the members of the wholesale wine and liquor industry throughout the United States. The returns showed our industry strongly favors the return of control to the Treasury Department, where it was successfully carried on prior to prohibition, and when we did not have to compete with the bootlegger and the liquor monopoly.

The sale and consumption of bootleg liquor today is due primarily to the fact that a considerable part of the public will not, or cannot pay the exorbitant prices for legal liquor, built up and maintained by the liquor trust with the aid of the Federal Alcohol Control Administration and Treasury Department rules, regulations, and decisions, and therefore buys the illegal product.

The bulk sales provision of the Cullen liquor-control bill would do much to correct this situation by making good legal liquor available at reasonable prices. The records concerning bulk sales before prohibition support this contention by showing that bootlegging did not flourish, but also that good legal liquor then was available to the consumer from 100 to 600 percent lower than the prices charged for bottled goods today.

Mr. Chairman and gentlemen of the committee, I should like the privilege of inserting into the record the attached letters from industry members.

JULY 13, 1935.

Hon. BENNETT C. CLARK,
Senate Finance Committee, Washington, D. C.

DEAR SENATOR CLARK: The undersigned, members of the Missouri Wholesale Liquor Dealers' Association, respectfully urge you to use your influence in having H. R. 8539 upon its passage to carry authority, to permit whiskies in bulk to be available, under reasonable regulations, to the wholesale liquor dealer.

Since repeal of the eighteenth amendment the wholesaler has been deprived of this natural right and the result has been very destructive to the interests of the consuming public, the working man and the profitable operation of the wholesale liquor business.

On the other hand a monopoly has been created that has profited in a very short period to the extent of more than $100,000,000 at the expense of consumers who have been charged exorbitant prices, while 95 percent of the 6,000 wholesalers were compelled to operate at a loss.

If the wholesale liquor dealer is deprived of the right to buy and sell in bulk, the continuance of the following unjust and economically unsound conditions will prevail:

1. The continuation of the present monopoly.
2. The continued prevailing high prices of whisky to the consumer.
3. The employment of only 2,500 workers concentrated in the distilling centers instead of 25,000 men scattered throughout the United States to bottle distilled spirits.
4. The encouragement and continuation of the illicit traffic made profitable by existing methods and high prices.
5. The destruction of the legitimate wholesale liquor dealing interest and other small units in the trade.
6. The ultimate concentration of the entire industry in the hands of a few.

We, the undersigned, bespeak your cooperation and that of the other members of the Senate Finance Committee in correcting this injustice done the wholesale liquor dealers by insisting on reasonable liquor control legislation which will grant us the right to buy and sell in bulk and bottle under proper Government supervision as before prohibition, which would be advantageous to the consumers in better-quality liquor at lower prices, to the Government in curbing the bootlegger and in more taxes and to the smaller units in the industry in enabling them to make a reasonable profit, practically all of which under present regulations now goes to the glass bottle and distillery monopolies.

Very sincerely yours,

American Liquors, Inc., J. V. Quinn, Kansas City, Mo.; Roy S. Baer, Kansas City, Mo.; John Bardenheier Wine & Liquor Co., Joseph A. Bardenheier, St. Louis, Mo.; Dianchi Bros., Macon, Mo.; Blue Ribbon Beverage Co., Kansas City, Mo.; Dexheimer & Becker Co., St. Louis, Mo.; Dun-Schenk & Co., Kansas City, Mo.; B-L Bottle & Supply Co., St. Joseph, Mo.; L. J. Hazel, Caruthersville, Mo.; Herkert & Schuler Co., Anton Schuler, St. Louis, Mo.; The Louis Hilfer Co., St. Louis, Mo.; Hirsch Distilling Co., Kansas City, Mo.; Import Distributing Co.,

J. W. McCullough, St. Louis, Mo.; Jennings Beverage Co., Springfield, Mo.; J. E. Lehman, St. Louis, Mo.; Lynn Wholesale Liquor Co., R. J. Weisguth, St. Louis, Mo.; McMullin & Whitaker, Sedalia, Mo.; McPike Drug Co., Kansas City, Mo.; Mississippi Valley Liquor Co., Mr. Harry Zimmerman, St. Louis, Mo.; Pioneer Mercantile Co., Kansas City, Kans.; St. Louis Wholesale Drug Co., O. J. Cloughly, Vice president, St. Louis, Mo.; Superior Wines & Liquers, Inc., John B. Blando, president, Kansas City, Mo.; G. E. Swope Wholesale Liquor Co., Kansas City, Mo.; Triangle Wine & Liquor Co., St. Louis, Mo.

Authorized to sign for the above:

SECRETARY MISSOURI WHOLESALE LIQUOR DEALERS' ASSOCIATION.

NEW YORK CITY, *May 27, 1935.*

DEAR SIR: We enclose herewith a statistical sheet, which we put out month by month, as we get figures from Washington.

Distributed by States for April 1935 as follows:

State	Production	Withdrawal	Remaining
Kentucky	4,300,000	740,000	44,000,000
Illinois	3,700,000	1,340,000	21,000,000
Indiana	2,000,000	800,000	16,500,000
Pennsylvania	2,400,000	300,000	26,500,000
Maryland	1,000,000	225,000	13,300,000
Ohio	600,000	430,000	6,500,000

We enclose a revised statement of our projections covering whisky stocks.

More than 50 percent of the accumulation is remaining with such concerns as National, Schenley, and Frankfort, who are offering no bulk goods on the market. This attitude on the part of these major factors will serve to hold the prices on goods of appreciable age at a comparatively high level, as there is very little in float.

The price on the goods used currently—that is, 1, 2, 3 months' old goods—will be governed by two factors: First, the grain market; second, the disposition of the producers to hold for reasonably good profits or to start a cutthroat price war.

It is our judgment that such distillers would prefer the good profit rather than to mark up volume sales at minimum rates. Grain prices will naturally respond to various factors—governmental activities (agricultural control and currency control) as well as weather conditions.

It does seem as if the people are being educated to a lighter-bodied whisky than before the prohibition period.

This is particularly encouraged by the 30-cent rectifiers' tax, which largely reduces the volume of blends.

With all of the above, we are convinced that whiskies already made will continue to bring good prices as against original contracts, because of the age mark.

What the future may bring forth as to goods to be manufactured, of course, is any man's guess.

Very truly yours,

THE SID KLEIN CORPORATION,
SID KLEIN.

Whisky production statistics (United States made only)

[Figures are approximate. Government statistical gallons]

	Production	Tax-paid withdrawal	On hand close
Preprohibition:			
Average, 5 years, 1901–05	71,500,000	49,600,000	210,700,000
Average, 5 years, 1906–10	72,900,000	58,800,000	230,200,000
Average, 4 years, 1911–14	96,800,000	73,500,000	278,100,000
Year ending June—			
1915	44,500,000	63,600,000	249,700,000
1916	59,200,000	69,400,000	228,600,000
1917	57,600,000	83,600,000	189,600,000
1918 [1]	17,400,000	56,200,000	140,700,000
1919 [2]	----------	69,100,000	63,900,000
Average, monthly:			
17 years	5,600,000	----------	----------
19 years	----------	5,400,000	----------
Postprohibition:			
Nov. 30, 1933	----------	----------	25,000,000
December 1933 (repeal Dec. 5, 1933)	4,600,000	3,750,000	26,100,000
January 1934	6,100,000	2,800,000	29,400,000
February 1934	7,200,000	1,900,000	34,500,000
March 1934	9,000,000	2,300,000	41,300,000
April 1934	8,800,000	2,100,000	46,400,000
May 1934	8,700,000	2,100,000	52,900,000
June 1934	7,600,000	2,000,000	58,000,000
6-month total	47,400,000	13,200,000	----------
July 1934	8,200,000	2,200,000	63,400,000
August 1934	8,200,000	2,800,000	68,300,000
September 1934	8,800,000	4,000,000	72,900,000
October 1934	11,200,000	5,200,000	78,500,000
November 1934	11,300,000	5,300,000	84,200,000
December 1934	13,100,000	5,500,000	91,600,000
6-month total	60,700,000	25,100,000	----------
Calendar year total	108,100,000	38,300,000	----------
January 1935	14,900,000	3,700,000	102,500,000
February 1935	13,900,000	4,200,000	112,100,000
March 1935	15,300,000	4,700,000	122,600,000
April 1935	14,300,000	4,400,000	131,700,000

[1] War conservation, Sept. 7, 1917; stopped production.
[2] War prohibition, June 30, 1919; national prohibition Jan. 16, 1920; stopped sale.

Excerpts from Federal Alcohol Control Administration Release No. 195, dated Apr. 6, 1935

BREAK-DOWN OF WHISKY PRODUCED AND DEPOSITED IN BONDED WAREHOUSES DURING 1934

	Gallons
Bourbon whisky	72,611,000
Rye whisky	32,920,000
Other types	2,519,000
Total whisky	108,051,000

ANALYSIS OF STOCKS REMAINING IN BOND ON DEC. 31, 1934

Whiskies	Bourbon	Rye
	Gallons	*Gallons*
Less than 1 year old	49,453,000	26,638,000
From 1 to 2 years old	2,545,000	4,120,000
From 2 to 3 years old	288,000	1,046,000
From 3 to 4 years old	778,000	1,452,000
Over 4 years old	1,270,000	847,000
Total	54,334,000	34,103,000

Stocks in bond Dec. 31, 1934:	*Gallons*
Grape brandy	2,431,000
Apple brandy	1,465,000
Rum	1,150,000

Whisky statistics—Domestic production

[The following statistics cover "U. S. A. made" whisky only—gin, rum, brandy, neutral spirits, and alcohol not included]

	Proof gallons
Estimated annual capacity of distilled-spirits industry based on outstanding permits—20-hour day, 250-day year	340, 000, 000
Factual data:	
1. Preprohibition:	
Average annual production, 1910–17	79, 000, 000
Average amount stored in bond, 1910–17	245, 000, 000
2. Post repeal:	
Tax-paid, January–December 1934, inclusive	38, 300, 000
Aggregate production, January–December 1934	108, 000, 000
Stocks on hand Dec. 31, 1934, in bond	91, 600, 000
Stocks on hand Apr. 30, 1935, in bond	131, 700, 000
Projections:	
3. Estimated tax payments, 1935	50, 000, 000
4. Present rate of annual accumulation of stock deduced from above facts	75, 000, 000
5. Stock which should be accumulated in bond for proper maturing and aging and for bottling in bond	265, 000, 000
6. Date when such accumulations should reach required stocks	July 1, 1937
Collateral information:	
7. Estimated cash investment involved in grain, fuel, cooperage, and labor, and direct manufacturing expense, interest, and insurance (not including investments in distilleries and warehouse buildings)	$200, 000, 000
8. Approximated fixed investment in distilleries, refining plants, warehouses, cooperage, and bottling plants	$500, 000, 000

THE SID KLEIN CORPORATION,
New York City, June 25, 1935.

HONORABLE SIR: We refer to a bill, H. R. 8539, which is to be considered by the Senate Finance Committee. In that bill, on page 9, lines 11 to 23, inclusive, there appears a restriction against the issuance of any order which would prohibit the selling of spirits in barrels, casks, or kegs made of wood and of a capacity of 1 gallon or more. It is necessary to the economic life of the smaller units in the spirits business that this section be retained in the law when it is passed.

The F. A. C. A. had set up a restriction against wholesale liquor dealers buying or selling in bulk. The F. A. C. A. and its restrictions are no longer effective.

The Treasury Department, without warrant of law, issued T. D. 4557 and T. D. 4558, restricting to distillers and rectifiers only the handling of bulk spirits. This is unsound and unfair. The various States have set up license laws which make it possible for only the larger units to operate in all States in legitimate interstate commerce, while the very existence of the smaller units is threatened.

All of which would tend to create a monopolistic status in the whisky business, which was never intended by the voters who voiced against the eighteenth amendment.

Very high taxes (Federal and State), pyramiding of profits on spirits and on bottling charges by distillers, and multiplication of freight charges by doubling the weight and raising of classifications in shipments of whiskies in glass, all make for high prices to the consumer and furnish the necessary incentive for expansive bootlegging activities which, according to Secretary Morgenthau, are largely on the increase. That is the economic status.

As to the moral status: The distiller is no more honest nor dishonest than the rectifier; the rectifier is no more honest nor dishonest than the wholesaler; and the wholesaler is no more honest nor dishonest than the distiller.

Prior to the adoption of the eighteenth amendment, the Treasury Department was strong enough to hold reins over all of these classes, and there was practically no bootlegging except in the mountains, where the natives believed that whisky-making was a God-given right.

We trust that you will give due consideration to the facts as we have set forth, and that you will require such clause to be included with the passage of the bill in

which it appears, permitting a proper handling of bulk spirits by wholesale liquor dealers, as well as by rectifiers and distillers.

Respectfully,

———— ————.

P. S.—Agreeable with the request of the secretary of the National Wholesale Wine and Liquor Dealers' Association, Mr. Hugh J. McMackin, we are enclosing chart showing cost of carrying whisky in bond, also cost of tax payment of whiskies under the present tax rate and with the current Government outage allowances.

NEW YORK CITY,
June 10, 1935.

(Sent to the 24 members of the Ways and Means Committee)

SIR: There is before your committee now H. R. 8159, a bill to cover the proper handling of distilled spirits.

We are told that an amendment has been submitted which would permit the purchase and sale of spirits in bulk by wholesale liquor dealers. It is necessary that this amendment be enacted into law.

The F. A. C. A. set up a restriction against wholesale liquor dealers buying or selling in bulk. The F. A. C. A. and its restrictions are no longer effective.

The Treasury Department without warrant of law issued T. D. 4557 and T. D. 4558 restricting to distillers and rectifiers the handling of bulk spirits. This is unsound and unfair. Only the larger distillers can be benefited, while the very existence of the smaller units is threatened.

All of which would tend to create a monopolistic status in the whisky business, which was never intended by the voters who voiced against the eighteenth amendment.

Very high taxes (Federal and State); pyramiding of profits on spirits and on bottling charges by distillers; and multiplication of freight charges by doubling the weight and raising of classifications in shipments of whiskies in glass, all make for high prices to the consumer and furnish the necessary incentive for expansive bootlegging activities which according to Secretary Morgenthau are largely on the increase. That is the economic status.

As to the moral status: The distiller is no more honest nor dishonest than the rectifier. The rectifier is no more honest nor dishonest than the wholesaler. The wholesaler is no more honest nor dishonest than the distiller.

Prior to the adoption of the eighteenth amendment the Treasury Department was strong enough to hold reins over all of these classes and there was practically no bootlegging except in the mountains where the natives believed that whisky making was a God-given right.

We trust that you will give due consideration to the various facts set forth and that you will give your good consideration to voting for the amendment permitting a proper handling of bulk spirits by wholesale liquor dealers, as well as by the rectifiers and distillers.

Respectfully,

THE SID KLEIN CORPORATION.

REPLIES FROM LIQUOR TRADES

LOUISVILLE, KY., *June 6, 1935.*

Hon. ROBERT L. DOUGHTON,
Chairman Ways and Means Committee,
Washington, D. C.

DEAR SIR: Since your committee will soon be faced with the responsibility of drafting Federal legislation for the control of the distilled-spirits industry, we wish to call your attention to one constructive change that should be seriously considered.

Transactions in warehouse receipts have given us the experience which prompts this letter. Under previous rulings of the F. A. C. A. distillers were forced to bottle their products before making delivery to dispensers. This not only added to the cost of the product and stopped its aging process, but encouraged the refilling of bottles with bootleg whisky.

If it were possible to deliver in original bulk packages the price could be reduced, inventory on hand would continue to improve in quality, and thus the weapons of price and quality would be added to the side of the legal enforcement.

We have been assured by dispensers that if they could buy in bulk and have it delivered direct from bond without the costs of bottling and the danger of substitution at the bottling plant, they would be glad to buy in anticipation of their needs and thus assure their customers a better quality at a lower cost.

Since you are interested in regulations for the sole purpose of discouraging bootlegging and the patronage of bootleggers and helping legitimate distillers to supply the entire demand with tax-paid products, we strongly urge that the restriction on bulk deliveries of distilled spirits not be renewed.

Respectfully,

COLLINS-MOORE & CO.,
By ——— ———, *President.*

MIDLAND DISTRIBUTING CO.,
Chicago, July 12, 1935.

Mr. HUGH J. MCMACKIN,
Secretary National Wholesale Wine & Liquor Dealers' Association,
National Press Building, Washington, D. C.

DEAR MR. MCMACKIN: I am submitting data showing the comparison of costs between "bulk goods and case goods", also details showing the advantage to all concerned by permitting the sale of bulk goods to the trade. I will appreciate it if you will present these facts to the Senate Finance Committee when this question comes up for hearing.

Attached hereto are figures showing the relative costs to the retail trade of bulk goods and bottled goods. You will please note that in 18-month-old whiskies the cost of bottled goods is just double the cost of the equivalent quality in bulk, and this proportion is even greater in the marketing of the older goods. As a consequence, the cost to the consumer of even a fair quality is altogether out of proportion to its real value.

Because of the peculiar conditions in the liquor industry due in a great measure to the fact that bulk sales are prohibited, this business is being operated in a most uneconomical manner. A very considerable number of those engaged in distributing liquor are mere collection agents for a few large distillers. If section 4 (f) of H. R. 8539 is adopted, everyone will profit—the Government, the liquor industry and the public. Even the large distillers will be better off because they are now operating on a very unsound, uneconomical basis.

Owing to the fact that about one-third of the consuming States have State-owned stores, this industry has become thoroughly confused to the extent that a few large concerns are supplying practically all the requirements of those States. Thus, this handful of concerns by reason of their small selling expenses in those States and the large profits made by them in their sales to the State-owned stores, they are enabled to come into the licensed States and spend a vast amount of money for sales promotion, thus dominating the market. Because of these vast advertising appropriations, the profits in the licensed States are very small and the independent wholesale trade finds it almost impossible to profitably compete with them. Even those concerns who distribute the products of the large distillers, work on such a small mark-up that they are fortunate to earn their operating expenses. Most independent concerns have been operating at a loss for the past year and unless bulk sales are permitted, most of them will be wiped out before very long.

By permitting bulk sales the wholesale and retail trade will be enabled to compete with the brands produced by the large distillers and thus the entire industry will be back on a paying basis. Then each distiller, instead of having 40 or 50 different labels, will be compelled to concentrate on a few labels: These will then of necessity be their better class merchandise. They will be justified in appropriating a reasonable amount of money to advertise those brands and thus this business will resolve itself into a merchandising business—the same as any other business.

As it is now, a few distillers who had the advantage of operating during prohibition, have an advantage that practically gives them a monopoly. Due to the fact that prohibition eliminated nearly all of the producers and distributors, the advantages that the few distributors had who remained in business, enable them at will to eliminate all independent competition. This is a most unfair advantage particularly in view of the fact that conditions in the past few years have

proven that business concentrated in a few hands produces unhealthy and uneconomic competition.

Very truly yours,

LEWIS BLUMENTHAL.

The following figures are based on the average selling price of Kentucky whisky in bond at 6 months old. These figures show the average cost of tax-paid whisky in bulk and in glass at 6 months, 12 months, and 18 months. I do not go beyond 18 months for the reason that the stock of older goods available at this time is negligible.

Bulk whisky 6 months old, 100 proof:	
Original cost in bond	$1.00
Carrying charge 6 months	.048
Internal revenue tax	2.00
Loss by evaporation	.035
Miscellaneous expenses, transportation, etc	3.183
Total cost per ounce	.025
12 months old, 100 proof:	
Original cost in bond	1.00
Carrying charge 12 months	.095
Internal revenue tax	2.00
Loss by evaporation	.066
Miscellaneous expenses, transportation, etc	.10
Total cost per gallon	3.261
Total cost per ounce	.0255
18 months old, 100 proof:	
Original cost in bond	1.00
Carrying charge 18 months	.143
Internal revenue tax	2.00
Loss by evaporation	.087
Miscellaneous expenses, transportation, etc	.10
Total cost per gallon	3.330
Total cost per ounce	.0258
Case whisky 6 months old, 100 proof:	
Cost per case, 3 gallons	13.00
Cost per gallon	4.25
Cost per ounce	.033
12 months old, 100 proof:	
Cost per case 3 gallons	15.00
Cost per gallon	5.00
Cost per ounce	.039
18 months old, 100 proof:	
Cost per case, 3 gallons	20.00
Cost per gallon	6.66
Cost per ounce	.0521

NOTE.—As the whisky gets older the increased cost to the owner of bulk goods is very small while the increased cost in the sale from the producer by glass is very large. In these figures we did not consider the State taxes which vary from 50 cents to $2 per gallon in the different States.

JOHN BARDENHEIER WINE & LIQUOR CO.,
St. Louis, Mo., July 13, 1935.

Mr. HUGH J. MCMACKIN,
Secretary National Wholesale Wine & Liquor Dealers' Association,
Washington, D. C.

DEAR MR. MCMACKIN: The object of this statement is to give to the proper authority, the basic facts which underlie the question of permitting the wholesale liquor dealer to receive and sell distilled spirits in bulk, a function that has been enjoyed by him profitably from time immemorial and only recently deprived

of this right by the action of the Treasury Department unauthorized by law, or justified by conditions.

The question therefore is, shall the Treasury be permitted to continue to enforce an unauthorized act that deprives the wholesaler of his just rights and conveys to the distiller the sole right to enjoy the profits, which the wholesaler is being deprived of.

It will doubtless be claimed by the Treasury Department, which created a complete monopoly of the bottling of distilled spirits on the ground of the protection of the revenue, that it would be dangerous to allow the wholesaler to bottle. For more than a generation the wholesalers have faithfully cared for these revenues and by and large were the sole bottlers of distilled spirits for the entire period of existence of the Internal Revenue system, except for bottling in bond, which was the sole privilege of the custodian of the distilled spirits, who, however, was not permitted otherwise to bottle on his premises.

It may be true, that during the past decade there were persons and corporations engaged in the illicit distillation and distribution of whisky and have not up to this time been entirely eliminated from the field, but judging by the constantly rising figures of tax payment which means consumption this class is being rapidly eliminated.

The bottling from the barrel had nothing to do with this condition and the bottling from barrels at this time in the hands of the original bottlers, the whole saler, will not give cause for improper use of untaxed illicit spirits as some of the distillers might lead one to believe

The Internal Revenue officials are also worrying about the inordinate expense that may be entailed by the enormous forces that may have to be engaged by the Treasury Department through its tax unit, to see that the wholesaler uses only legitimate spirits.

The correct answer to this fear is that the figures of the Treasury Department will definitely show that wholesale liquor dealers and rectifiers are grouped in large centers and comparatively few wholesalers are located singly in any town or small city.

Official figures will also prove that the numbers necessary to properly police the wholesalers who will bottle from the barrel, in addition to the rectifier, who is now continually inspected, would be immaterial.

It can be safely asserted that the comparative figures of pre-prohibition with those of today relative to the numerical strength of the wholesale rectifying group is reflected by the figures of Missouri which show that prior to prohibition there were 228 wholesale liquor dealers in the State and now we have 85. There were 69 rectifiers and we now have 3. There were 23 distilleries and we now have 1 or 2 operating at this time. This clearly shows that a smaller enforcement force will be needed now than before prohibition and further indicates the creation of the monopoly above referred to.

Outside of the large cities like Chicago, New York, and probably a few other centers, in America, these comparative figures will be found in like proportion.

It should be understood that it is quite possible for one inspector to take care of as many as 10 ordinary wholesale liquor dealers, or rectifiers, and it does not follow that the inspections of every wholesaler or rectifier requires a single inspector.

The mechanics of the situation, where a wholesaler receives the barrel for bottling, is that the distillers tax-pay the barrel, ship it to a wholesaler, or rectifier, who enters into a Government book receipts and disposals of distilled spirits by gallons daily. Since the wholesaler is subjected to a fine of as much as $3,000 and imprisonment in the penitentiary for as long as 3 years if he falsifies the record that he is required to keep for the Internal Revenue Department, you may believe he will toe the mark.

Furthermore, the wholesaler is required when bottling whiskies from a barrel to purchase strip stamps from the Government to place across the cork of each bottle, and is only sold these stamps by the collectors upon a sworn statement that he requires them for bottles containing liquor withdrawn from certain tax-paid packages serially numbered.

It is utterly ridiculous to charge that it is possible for the wholesaler under these conditions to fill into his bottles un-tax-paid illicit whisky.

The answer to this gratuitous admonition is that the monopoly created by the Treasury Department is threatened with the loss of their great profits enjoyed in performing a service in the exclusive right to bottle for several months prior to and after repeal of the eighteenth amendment.

To give you an idea of what that profit amounted to, one of the members of this monopolistic group exclusively operating under the sanction of F. A. C. A.

and Treasury Regulations, reported a total income of $466,538 in 1932, almost $8,000,000 in 1933, in which year they enjoyed only 2 months of this monopoly, and nearly $14,000,000 in 1934 when the monopoly was in full swing. It is conceded that this one member of the monopoly represents about 22 percent of the total business of the small monopolistic group that was so favored, and you can figure for yourself whether there is method in their madness to continue to bottle from the barrel at a profit and deprive the wholesaler of his natural right.

It might be added here that prior to prohibition we had more than 500 distilleries in America to distill and furnish whiskies to the public and only 9 during the high-profit period of late 1933 and early 1934.

If the Treasury Department is unwilling to furnish the record of the number of field men who inspected wholesale liquor dealers and rectifiers prior to prohibition and the cost thereof and the number of such licensed dealers and how they are grouped, it may be possible to secure their reports for the fiscal years 1917–18, 1918–19, 1933–34, 1934–35 from the Commissioner of Internal Revenue's report of these years.

In order to graphically show the profit that the wholesale liquor dealer is deprived of by being denied the purchase in bulk and the privilege of bottling, the following figures will show the difference between his cost when he bottles from the barrel and when he purchases nationally advertised brands of the exact quality and age from the distiller.

Wholesalers cost if permitted to bottle from the barrel:	
3 gallons of 1-year old Kentucky bourbon, at $0.85	$2. 55
1 case containing 12 quart bottles, labels, caps, corks, and labor to bottle	1. 00
Government strip stamps for 12 quarts	. 12
Government excise tax, 3 gallons, at $2	6. 00
Total	9. 67
30-percent profit for sale to retailer on above	2. 90
Total cost to retailer	12. 57
Distillers cost of bottling same grade as above:	
3 gallons 1-year old Kentucky bourbon, at $0.60	1. 80
1 case containing 12 quart bottles, labels, caps, corks, and labor to bottle	. 85
Government strip stamps for 12 quarts	. 12
Government excise tax, 3 gallons, at $2	6. 00
Total	8. 77
Distiller price to wholesaler	14. 50
Distiller price to retailer	17. 40

The above figures clearly demonstrate that if the wholesalers were granted their legal right to bottle, the saving to the retailer would be about $5 a case, which saving, or $100,000,000 based on the 20,000,000 cases bottled during 1934, would have, by the force of competition, been passed on to the consuming public.

Bottling of distilled spirits during 1934 approximated 20,000,000 cases. As the profit of the bottler when bottling for the wholesaler at the present established charge for such bottling shows an increase of at least 77 cents a case over the wholesaler bottling in his own establishment, you have the amount of $15,400,000 lost to the wholesaler and profit to the bottler.

The tables given below will clearly show where the profit accrued of which the wholesaler was deprived as well as the substantial amount also which would have been reflected in savings to the consumers.

Statement from Moody's of the largest distiller representing about 22 percent of the aggregate of distilling business in America.

Year	Total net sales	Cost of sales	Gross profit
1928	$6, 414, 399	$5, 292, 229	$67, 854
1920	2, 062, 786	1, 634, 474	(d) 221, 266
1930	4, 214, 826	2, 172, 546	618, 784
1931	4, 711, 115	2, 588, 830	748, 220
1932	3, 192, 886	1, 581, 519	466, 538
1933	15, 580, 378	5, 607, 357	7, 615, 428
1934	50, 056, 513	29, 145, 807	13, 605, 974

Now for the second largest:

Year	Total net sales	Cost of sales	Operating profit
1933 (July 11 to Dec. 31)	$10,913,151	$5,506,096	$4,152,431
1934	40,275,410	24,619,820	9,244,089

Now cast your eyes on the results to the largest glass manufacturing corporation which participated in the benefits of this monopoly:

Year	Manufacturing profit after deducting cost of sales and manufacturing expenses	Operating income	Gross income
1928	$5,416,719	$4,507,503	$7,474,417
1929	8,682,546	6,986,983	9,996,552
1930	6,794,802	5,176,068	7,852,096
1931	70,63,603	5,292,976	7,791,224
1932	6,086,472	4,111,703	6,556,692
1933	11,618,635	9,554,066	12,341,737
1934	11,946,020	9,973,910	13,184,441

Now, to sum up we have this picture before us: The Treasury Department in cooperation with the Federal Alcohol Control Administration under the direction of the Hon. Joseph H. Choate, Jr., made it possible for the manufacturing and bottling monopoly, in 1933 and 1934, to earn approximately $100,000,000 net at the expense of the consuming public and the 6,000 wholesalers, 95 percent of whom were unable to make a profit in those years.

In order to bring about this result the Treasury Department issued regulations without legal rights and they admit this, and are now continuing this practice by exercising their power over the industry in every possible way.

As proof of the unprofitable opertions of the wholesale liquor dealer, the following is quoted from the Journal of Commerce and Commercial in New York, page 16, Friday, June 28, 1935, issue:

"None of the large distillers openly disregard the wholesaler, but the fact remains that the jobber today is too often a mere commission man, passing out the widely advertised brands at a small fee per case, with many of the best customers dealing directly with the producers. This unstable marketing condition has eliminated almost 50 percent of the wholesalers since repeal."

In conclusion and last but not least, it can be easily conceived that if the 20,000,000 cases bottled during 1934 had been allocated to the natural bottler, the wholesale liquor dealer, there would have been not less than 6,000 bottling houses with a total employment of labor scattered throughout the United States of not less than 25,000 workers whose job was done by less than 10 percent of that number employed by the established monopoly in their bottling departments in the distilling centers where this work was largely concentrated.

As the oldest liquor house in St. Louis now operated by the son and grandsons of the founder in 1873, we believe we are properly qualified by knowledge and experience to make the above statement which we ask you to kindly bring to the attention of the proper authorities so that the relief outlined may be provided in the new liquor-control legislation.

Very truly yours,

JOSEPH A. BARDENHEIER, *President.*

THE AMERICAN MEDICINAL SPIRITS CO., INC.,
Louisville, Ky., April 18, 1934.

KOBOLO TONIC MEDICINE CO.,
Chicago, Ill.

GENTLEMEN: In reply to your letter of the 14th, concerning four barrels of January 1915 Rossville whisky, we beg to advise that the accrued storage to April 30 is $10, and local taxes from 1926 are $32.08, making a total of $42.08.

Our present prices for bottling whisky in bond are $9 per case for quarts and pints and $9.50 per case for one-half pints, and we regret to state that at this time we would not be in the market for the whisky in question.

Yours very truly,

E. B. RODMAN, *Vice President.*

[From: National Wholesale Wine and Liquor Dealers' Association, 780-782 National Press Building, Washington, D. C. For release Monday, July 22, 1935]

"It was the keg, not the bottle, which disappeared during prohibition, the heyday of the bootlegger," says Hugh J. McMackin, secretary of the National Wholesale Wine and Liquor Dealers' Association, in a statement answering attacks on the bulk sales provisions of H. R. 8870, the new liquor control bill upon which the House of Representatives will vote this week.

There is no affinity between the keg and the bootlegger, and no one dreads its return to the legitimate liquor trade more than the bootlegger does, except certain monopolistic interests which also desire to maintain the present exorbitant prices for legal liquor.

The bootlegger is with us today and distributes approximately 50 percent of the liquor being consumed for no other reason than the high cost of legal liquor to the legitimate wholesaler and retailer, and thus to the ultimate consumer. A large part of this high cost of legal liquor is due to a monopoly of its production for sale in bottles, created and fostered by the old Federal Alcohol Control Administration and the Bureau of Internal Revenue of the United States Treasury Department which are now allied in the fight to perpetuate it by continuing their ban against bulk sales.

The opponents of the bulk sales provision in the Cullen liquor control bill (H. R. 8870) are shouting that it will aid the bootlegger, that the public will get inferior liquor, that hotels and bona fide clubs, which would be allowed to dispense liquor from kegs would cheat, that the Government would be at immense expense to police such sales and would lose revenue. None of these contentions stands up before analysis of the facts or in the light of experience before prohibition and the subsequent Federal Alcohol Control Administration control.

No army of revenue agents was needed to police bulk sales and collect revenue when they were permitted before prohibition and none would be needed today. In fact the advantage would be gained by the officers of the law, for the keg does not offer as much opportunity for the substitution of bootleg liquor as the bottle. A standard liquor barrel contains the equivalent of 384 pint bottles and it is obviously easier to check the contents of one barrel than of 384 bottles, not to mention the comparative ease with which glass containers and their contents may be destroyed when detection is feared.

With regard to the contention that reputable hotels and bona fide clubs, which would be permitted by the Cullen bill to sell by the drink from the barrel, will substitute bootleg liquor, consider the penalty provided. The penalty would be a fine of $1,000, a year in jail, confiscation of their liquor and loss of their permit. Certainly, no hotel or club is going to risk a fine, a jail term, the loss of its investment and of the privilege to sell liquor, for the few dollars that might be made by selling bootleg.

The law requires the presence of a United States storekeeper-gager when a keg or barrel is filled by a distiller, rectifier, or wholesaler. He supervises the affixing of tax-paid stamps and checks the proof, quality, and quantity of the contents, which data, together with the serial number of the package, are branded indelibly in the head of the keg or barrel and are entered on Government records (U. S. revenue book, form 52). The opponents of bulk sales conveniently omit reference to the foregoing requirements for bulk sales when they cite the requirements for permit numbers and tax-paid stamps on bottled liquor as a special and unique protection for the Government and the public from illegal and inferior liquor.

The sale and consumption of bootleg liquor today, Mr. McMackin says, is due primarily to the fact that a considerable part of the public will not, or cannot, pay the exorbitant prices for the legal liquor brought about by the monopoly caused by bottle regulations together with the fact that the United States Treasury Department fails in its duty to prevent the manufacture and importation of illegal liquor. The bulk sales provision of the Cullen liquor-control bill would do much to correct this situation, he declares, by making good legal liquor available at reasonable prices.

The records concerning bulk sales before prohibition, Mr. McMackin says, not only fail to bear out the gloomy predictions of their opponents with regard

to bootlegging, but show that good legal liquor then was available to the consumer from 100 to 600 percent lower than the prices charged for bottled goods today.

Origin of Bottling Restrictions

The so-called "bottle regulations", which restricted the distribution and sale of distilled spirits to glass bottles of a capacity not in excess of 1 gallon, were written into the codes of fair competition for the alcoholic beverages industries. Under these regulations, only rectifiers, blenders, and State-owned stores were allowed to purchase spirits in bulk. The wholesale and retail liquor dealers, who could purchase spirits in bulk before prohibition, were prohibited from doing so.

The hearings on the codes, including the report of the President's Interdepartmental Committee, do not indicate exactly how the bottling provisions became a part of the codes. Apparently the simple statement was made that distribution and sales must be confined to bottles to control the liquor traffic and protect the revenue. As far as we can ascertain, no facts or figures were given and no survey was made to provide a basis of fact for this arbitrary assumption. Certain large distilling interests, then making medicinal whisky under permit, supported the bottling provisions for reasons which will be shown later.

The bottle regulations were put in force with the announced purpose of controlling the distribution and sale of liquor, of driving out the bootlegger by controlling his bottle supply, and of protecting the revenue. The reuse and resale of empty legal bottles was made illegal, forcing buyers of whisky to destroy the bottle. (This regulation incidentally, was estimated in newspaper articles to mean an additional revenue of some 7 millions of dollars a year to the bottle industry). Other regulations provided that certain identifying marks must be blown in the bottles, and that sales and purchases of bottles must be recorded. All of this, of course, was apparently aimed at the bootlegger.

FALLACY OF BOTTLE REGULATIONS

The bottle regulations did not accomplish their announced purpose because they are based on several false premises. These are:

1. They attempt to stop cheating at the manufacturing and bottling end, when the cheating occurs at the retail end.
2. They controlled (or attempted to control) the bottle supply to eliminate the bootlegger, when the bootlegger markets but a small proportion of his product in bottles. The bootletgger sells the major portion of his output in gallon jugs and 5-gallon cans.
3. The regulations did not take into consideration the fact that a bottle is a bulk package, just as well as a barrel, and can be tampered with. There is nothing to prevent the law-violating bartender from filling all of his legal empty bar bottles with bootleg whisky from a 5-gallon can, and then throwing the can away. This is what he is doing. It is common knowledge in the trade that brands of liquor that bear metallic labels are in demand because the label can be washed and the bottle can be used for months without replacement. A new type of law violator has sprung up, the "bottle-legger," who collects empty legal bottles and sells them to the law violators.
4. The bottle regulations were based on the further premise that the bootlegger could be eliminated by regulation and police power. This was tried for the many years of prohibition, and the bootlegger grew stronger and more powerful.

PROOF OF FAILURE

1. Tax paid withdrawal figures for 1934 show that the legal liquor industry sold approximately 60,000,000 gallons during that year. The preprohibition yearly average tax paid withdrawals between 1912 and 1916 were 130,000,000 gallons. In other words, less than one-half of this preprohibition average was withdrawn in 1934, despite the fact that the population of the United States has increased by some 26,000,000 persons, women are drinking today, etc.
2. Before repeal, it was freely and confidently asserted in the press and in magazines that the Federal Government would receive in 1934 as much as $1,000,000,000 from liquor taxes alone. What do the figures actually show? The Government received, in revenues from all liquor manufacture and sale, a total of $374,506,232.50. Of this total, only about $174,000,000 was accounted for by taxes on distilled spirits, while more than $200,000,000 was derived from the

excise tax on fermented malt liquors. It is reasonable to assume that these low figures are not due to any change in the drinking habits of the American people.

3. Estimates based on the number and capacity of stills seized during the early months of 1934 indicate that the illicit industry would, during the entire year, have a productive capacity of 270,623,000 gallons. Director Choate of the Federal Alcohol Control Administration, said:

"Any assumption that the 1934 seizures would eliminate the illicit plants would be ridiculous. It is hardly open to doubt that the unseized stills are now, and will remain, able to produce at least as much liquor as, and probably a good deal more than, those which will be put out of action this year.

"That vast illegal capacity is not there for the bootleggers' health or pleasure. It unquestionably is being used. The persistence, year after year, of the immense numbers of seizures shows that illicit distillers are replaced as fast as they are seized. This could never happen unless they were needed to meet the demands of the bootleggers' business. If any great portion of them were being used much below their practical capacity, the replacements would grow fewer and fewer, and seizures would decrease. It seems probable, therefore, that the bootleggers are now turning out from their stills alone, not counting smugglings and alcohol divertings, a quantity of spirits which cannot be much less, and may be more than we drank before prohibition. This quantity is being consumed in addition to the entire sales of legal goods, which, ever since repeal, have run not far below preprohibition figures. All this means that the drinking habits of the people have increased more than has been imagined even by the pessimists, that the existing demand, if only it could be confined to legal manufacture, is great enough to absorb at least all that the legal industry can supply, that the Government is losing more taxes than it gets, and that a colossal criminal industry, necessarily highly organized, still exists, and still exerts its debauching tendencies in every governmental agency."

4. Despite the fact that the Treasury Department cites figures designed to show that the sale of legal spirits is increasing (part of which increase represents the normal seasonal increase), the liquor industry still is selling far below w at it rightfully can expect to sell. Furthermore, no proof is given that the increase, if any, is due to the bottle regulations.

5. The consumer today is not buying liquor, but is buying glass bottles and high-powered advertising, because of the bottle regulations. Price cutting, chiseling, and cheating has resulted. Whisky is not sold on a quality basis, but on a price basis and through high-powered advertising.

6. Prices of certain recognized brands of whisky on the market today are from 400 to 600 percent higher than before prohibition. A quart of quality whisky today costs from $5 to $6. The same quality whisky could be purchased before prohibition for $1 or $1.25 a quart.

RESULTS OF BOTTLING REGULATIONS

The bottling regulations have granted a virtual monopoly in the distilled spirits business to a few large firms which have the capital to advertise extensively and to promote their products through far-flung sales agencies. The small distiller has no market for his product, because he cannot afford the advertising necessary to sell it. Prior to prohibition, the small distiller marketed whisky in bulk to hotels, taverns, clubs, wholesalers, retailers, and grocers who bought on a quality basis. This market has been denied him. There has been testimony presented before F. A. C. A. of firms producing a whisky identical in quality and make-up with highly advertised brands, which they were unable to market at prices greatly under those of the similar whisky of their large competitor.

The price of distilled spirits ranges as high as 600 percent above the preprohibition figure. This differential in price is not covered by increased costs of manufacture and materials, nor by the increase in taxes. It is reasonable to suspect that at least some of this differential is accounted for by the virtual monopoly granted certain large interests through the bottling regulations, which provide the opportunity for price control.

HARM DONE TO THE COOPERAGE INDUSTRY

The wooden barrel and keg, the standard liquor containers for centuries, have been outlawed as containers for distribution and sale of spirits. The glass-bottle industry, dominated by one firm, has been granted a virtual monopoly at the expense of the cooperage industry. The cooperage industry does not ask a

monopoly; it simply seeks the right to be able to compete with the bottle industry in this field on an equal basis. It asks that the distiller and the liquor dealer be given a chance to chose between the bottle and the barrel, and to use one or both for distribution and sale if he so desires.

It is certainly not the desire nor the intent of the Government to set up a monopoly for one industry at the expense of another under the guise of law enforcement.

The cooperage industry has suffered much damage through these regulations. Thousands of men have been thrown out of work, in the woods cutting the timber, in hauling operations, in the stave mills and in the barrel plants. Firms manufacturing kegs of a capacity under the standard, 48-gallon ageing barrel have no market for their product. Farmers and timber owners who had planned to sell their oak timber to tide them over the drought and the depression have been unable to do so.

A questionnaire survey of the cooperage industry indicates that 67 of the leading firms in the industry could employ approximately 8,000 more men and could increase their business by 25.5 percent if bulk sales were made legal.

ADVANTAGES OF BULK SALES

It should be apparent that as long as there is a profit in criminal enterprises, there will always be criminals. The way to eliminate the bootlegger is to cut down the profit incentive to a point where the proceeds will not be worth the risk involved. Legalization of bulk sales would be a most important step. It would make a good quality of liquor available to the consumer at a reasonable price. It would eliminate the cost of bottles, caps, labels, cartons, cases, bottling machinery, increased freight rates, increased storage, and handling charges, etc. Whisky does not age, under the specific meaning of the term, in bottles, but does in barrels. If the dealer could purchase in bulk, he could withdraw his spirits as needed while the remainder was improving in quality and in value through storage in the wood. The small distiller would be able to market his warehouse receipts to hotels and dealers to finance his operations, and the buyers would have assurance that they could obtain the spirits from the warehouse.

The public will not be forced to buy millions of dollars worth of bottles each year which it is forced to destroy.

SUMMARY

The Treasury Department contends that bottling restrictions are necessary for protection of the revenue. They have advanced no proof of this assertion. On the contrary, preprohibition experience indicates that bulk sales can be readily controlled.

The Treasury Department contends that a barrel can be tampered with and that brands and markings can be removed. A barrel cannot be tampered with more easily than a bottle. One barrel of 48 gallons certainly is easier to check and keep track of than 384 pints. Field agents of the Internal Revenue Bureau, with preprohibition experience, confirm these statements. Experienced liquor field men know that markings cut and branded into a barrel cannot be removed without leaving easily detected evidence.

The Federal Alcoholic Control Administration contends that the States do not want bulk distribution and sale. No proof has been given to support this statement. Furthermore, any State would be at liberty to prohibit bulk distribution and sale within its borders if it so desires.

[From the Journal of Commerce and Commercial, New York]

LAWFUL INDUSTRY SHARES UNITED STATES TRADE WITH BOOTLEGGERS

ILLEGAL TRAFFIC TRACED IN REPORT AS MAJOR INFLUENCE IN REDUCED CONSUMPTION, NOW 69,500,000 GALLONS, COMPARED WITH 137,700,000 GALLONS DURING 1910–15 PERIOD—GIN USE REPORTED DOUBLE

Another independent survey indicates, as stated in these columns on several occasions, that tax-paid liquor consumption has been greatly diminished by the continued activities of the illegal liquor traffic. An estimate made this week in the Standard Statistics Co.'s economic survey divides the lawful and unlawful trade "about evenly."

Estimates of probable liquor sales made in 1934, prior to repeal, ranged upward from 110,000,000 proof-gallons, states the report. The actual total for the year was 69,500,000 gallons, including 17,600,000 gallons for tax-paid alcohol and not all of which was used for beverage purposes. In the typical preprohibition period of 1910–15 annual average consumption of distilled spirits was 137,700,000 gallons, including 56,500,000 of tax-paid alcohol.

"Comparison of per capita consumption in wet States provides even more startling contrast. In the 1910–15 interval, estimated population of the States in which spirits were sold legally averaged about 81,000,000, indicating annual average per capita consumption during the period of 1.70 proof-gallons. Population of the States in which liquor could be sold legally during most of 1934 is estimated at around 91,000,000. Thus, per capita consumption last year apparently was only about 0.76 gallon, or 45 percent of the earlier period.

FACTORS IN REDUCTION

"It is recognized, of course, that final conclusions cannot be drawn from 1934 data. The natural confusion attending the attempt to reestablish quickly an industry which had been virtually out of existence for 14 years manifestly affected distribution adversely. Moreover, reduced public purchasing power, comparatively high prices for liquor, and restrictive State laws unquestionably exerted limiting influences on demand.

"Making due allowance for the abnormal influences restricting the market, it is nevertheless apparent that by no means all of the currently indicated shrinkage in liquor demand can be thus explained. It is well recognized, in fact, that the major reason for the disappointingly small tax-paid withdrawals of distilled spirits is the continued existence of a large illicit traffic. Manifestly, the exact proportions of the bootleg trade cannot be measured, but estimates for 1934 divide the legal and illegal trade about evenly.

POPULAR TASTE UNCHANGED

"Appraisal of 1934 liquor consumption by types indicates no major change in the preference of the American drinking public since before prohibition. The following table shows approximate percentages of various liquors consumed:

	Percent	
	1910–15	1934
Whisky	52.4	63.4
Alcohol [1]	41.1	25.5
Gin	3.3	6.6
Brandy	2.1	2.9
Rum	.6	.9
Other	.5	.7

[1] Total tax-paid alcohol, includes some nonbeverage.

"Whisky (including alcohol used for blending) is still the leading liquor beverage by a wide margin, accounting for about 90 percent of total tax-paid withdrawals last year.

"Reflecting principally its increased popularity during prohibition and also the lower price, gin withdrawals last year were double their preprohibition average. While gradual reductions in whisky prices probably will curtail somewhat the popularity of gin in succeeding periods, indications are that gin will retain the greater share of its improved position."

The CHAIRMAN. Mr. Alprin, of New York; is he here?

Mr. McCabe.

STATEMENT OF GEORGE P. McCABE, WASHINGTON, D. C., COUNSEL, AMERICAN BREWERS ASSOCIATION

The CHAIRMAN. Mr. McCabe, you represent the American Brewers Association?

Mr. McCABE. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. McCABE. Mr. Chairman and gentlemen of the committee: I am appearing here this morning on behalf of the American Brewers Association, representing some 50 breweries, and we ask concretely for an amendment to the bill as it was passed in the House. The nature of the amendment is to require the Director, or the Administrator, to give a brewer a hearing, an administrative hearing, before he reports to the Department of Justice for prosecution for violating the provisions of the fair trade practice system of the act, which is section 5.

The CHAIRMAN. Is that provision applicable now to other people handling distilled liquors?

Mr. McCABE. Yes.

Senator CLARK. What is that?

Mr. CHOATE. It applies to all industries.

Mr. McCABE. That is true.

Senator CLARK. You are not asking this, then, only for the beer people, you are asking it for all?

Mr. McCABE. It is on page 23, where I suggest the amendment, at the end of line 2. This will be the end of section 5. Now, you will notice that section 5 contains all the fair-trade practice provisions. Those fair-trade practice provisions are largely taken from the codes. So far as the brewers are concerned, they are very largely taken from the Brewers Code.

The CHAIRMAN. Did you appear before the House Ways and Means Committee?

Mr. McCABE. I did not.

The CHAIRMAN. Give a copy of that amendment to the clerk, please, that suggested amendment.

Mr. McCABE. Yes. If you please, I would like to read that. I will take but a moment, Mr. Harrison.

Before reporting to the Department of Justice for prosecution, any violation of section 5 of this act, the Administrator shall afford to the person accused an opportunity to be heard by him, or by such officer of the Administration as may be designated by him.

A similar provision is found in the Food and Drugs Act, in the present Food and Drugs Act, and in the new bill which was just passed in the Senate and is now pending in the House.

The hearings provided for a revocation of the permit, the hearings provided for everything, but there is no administrative hearing provided for for violation of section 5.

Now, the experience of the code authority was this: Very frequently a case would be reported in by the regional board, or directly by the code authority, that appeared to be a violation of the code, but after a hearing was afforded to the man who was accused he came down and presented his side of the case and it was discovered that there was no violation. This would result in the trade or the industry generally being protected against court proceedings until after the hearing by the Administrator, after the Administrator had decided.

The CHAIRMAN. I think we get your idea. Thank you.

Mr. Cobb, did you have anything at this time?

Mr. COBB. Senator Harrison, I have filed a letter as attorney for the Lawrence Warehouse Co., of San Francisco. That states my case.

The CHAIRMAN. You have given that to the clerk?

Mr. COBB. I have given that to the clerk, and I would like to ask to have it inserted in the record.

(The matter submitted by Mr. Cobb is as follows:)

WASHINGTON, D. C., *July 26, 1935.*

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR HARRISON: You will find enclosed a letter from Mr. H. F. Callaway, assistant treasurer of the New York Trust Co., dated New York, April 8, 1935, addressed to my client, the Lawrence Warehouse Co., showing the very great need for liquor warehouse receipts, issued by independently owned warehouses, and supported by bailment, for use as collateral and for the expansion of credit. Mr. Callaway's letter is so conclusive that it is attached and given in full.

As a means of accomplishing this result, it is suggested that the pending Federal Alcohol Control Administration bill be amended, by inserting therein amendments to those certain sections of the Revised Statutes or code, authorizing general bonded warehouses and special bonded warehouses, respectively: (1) So as to permit the establishment of general and special bonded warehouses, respectively, adjacent to distilleries, without limitation as to number within a district; and (2) so as to permit the return of liquor or brandy, respectively, from such general or special bonded warehouses to the distillery warehouse.

This would enable the distiller, at his option: (1) To obtain negotiable warehouse receipts, based upon bailment with independently owned warehouses, as a basis for his credit; and (2) to return the goods to his own warehouse for bottling under his own label, etc., likewise, at his option.

This system of warehousing in independently owned warehouses, situated adjacent to the winery, is now in use by the wine industry, particularly in California, under Treasury Decision 19. The benefits: (1) To the vintner as a basis for credit; (2) to the banks as a means of extending credit; and (3) to the public, in the expansion of credit, and favorable effect upon general business has been demonstrated.

I will ask the privilege of filing additional letters, from bank officers and others, in support of the foregoing.

Very respectfully,

ZACH LAMAR COBB,
Attorney for Lawrence Warehouse Co.

NEW YORK TRUST CO.,
New York, April 8, 1935.

Mr. A. T. GIBSON,
President Lawrence Warehouse Co.,
New York, N. Y.

DEAR MR. GIBSON: You will be interested in knowing that the writer was recently in Louisville, Ky., and found that the subject of whisky warehouse receipts was causing both bankers and distillers considerable concern. These warehouse receipts at present, generally, are issued by the distillers themselves and as collateral for loans, do not afford the banks full and proper protection.

Practically all of the distillers are facing a shortage of working capital, largely due to high taxes and the necessary aging of whisky. Some of the large companies do borrow against their own warehouse receipts, but these companies could probably borrow as well unsecured. The smaller companies often do not have these facilities and a very serious situation will exist for a number of companies unless they can find a satisfactory method of borrowing against their whisky in storage.

If banks could be assured that the warehouse receipts offered them as collateral represented whisky stored in independent warehouses under competent supervision and the receipts could legally be reduced to possession, if necessary, I believe the banks would be perfectly willing to loan even the smaller companies on a liberal basis. Such an arrangement is necessary for the future financing of the industry, and I hope the present obstacles to issuing an entirely acceptable receipt will be shortly removed.

Yours very truly,

H. F. CALLAWAY, *Assistant Treasurer.*

WASHINGTON, D. C., *July 29, 1935.*

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR SENATOR HARRISON: Supplementing my letter of the 26th instant:

H. R. 8870 is drawn and intended to govern, among others, "a person operating a bonded warehouse qualified under the internal revenue laws" (p. 8, line 19), yet, by oversight, warehousemen are not expressly mentioned among those to whom a permit may be issued by the Administrator (p. 6). It is submitted that this omission requires an amendment (1) to make the bill complete, and (2) to safeguard modern and adequate financing through the use of warehouse receipts

based upon bailment, and issued by independently owned warehouse companies. Please see letter from Mr. Callaway of the New York Trust Co., heretofore filed, and letter from Mr. A. E. Sbarboro, vice president of the Bank of America, hereto attached.

These independently owned warehouses are now operated as special or general bonded warehouses, "not exceeding ten in number in any one collection district", for the storage of brandy and other spirits, respectively (19 Stat. 393, Code 318; 28 Stat. 564, Code 393), and as concentration warehouses (Code 420).

At the time the necessary amendment is made to H. R. 8870, to expressly authorize permits to such warehouses, it is respectfully submitted that said limitation of 10 special, and 10 general, bonded warehouses to each collection district should be repealed, so as to make this modern means of financing available, under the control of the governing authorities, and at the option of the industry, and so as to eliminate the statutory limitation that serves no present purpose except to invite monopoly. This suggestion is germane to the pending bill. The public need for it (1) to discourage monopoly, (2) to afford the industry the modern facilities for financing, and (3) to thereby expand bank credit, and help restore prosperity, is self-evident.

It is, therefore, respectfully requested that section 4 (a) be amended by inserting the following, at page 6, after line 20:

"(3) Any person operating a bonded warehouse qualified under the Internal Revenue laws; and the provisions of section 1 of the act of March 3, 1877, and of Section 51 of the act of August 27, 1894, limiting special and general bonded warehouses, respectively, to 'not exceeding ten in number in any one collection district,' are hereby repealed."

Very respectfully,

ZACH LAMAR COBB,
Attorney for Lawrence Warehouse Co.

NEW YORK TRUST CO.,
New York, July 22, 1935.

Mr. Z. L. COBB,
Washington, D. C.

DEAR MR. COBB: I have your letter of July 18, enclosing copy of the type of receipt used by the Bernheim Distilling Co., and am very much interested in what you have to say regarding this form of receipt.

From a banking standpoint, I don't think the guarantee of the surety company would be as satisfactory as having the distiller's warehouse under the supervision of a field warehousing company, such as yourself.

The writer is leaving shortly on a vacation, but you can be assured of my cooperation in the work you are trying to accomplish, and I will get in touch with Mr. Stetson after my return, sometime after the first of September.

Cordially yours,

H. F. CALLAWAY, *Assistant Treasurer.*

BANK OF AMERICA,
San Francisco, Calif., July 25, 1935.

ZACH LAMAR COBB,
Attorney for the Lawrence Warehouse Co.
Washington D. C.

MY DEAR MR. COBB: It is our understanding that you are in Washington for the purpose of having the regulations in connection with warehousing of whisky amended so as to enable so-called "field warehousing" and the issuance of bonded warehouse receipts for whisky in warehouses located on the distillery premises.

I am writing you to let you know that our bank is very much interested in having the field warehousing extended to cover distilleries making grape brandy. This would facilitate the financing of grape growers and wineries in the manufacture of grape brandy, as it would enable us to lend on warehouse receipts issued for brandy stored in bonded warehouses on the premises, without the necessity of the distillery going to the expense of removing the brandy to a public warehouse.

Trusting that you will be successful in having the regulations amended to accomplish the above, I remain

Very truly yours,

A. E. SBARBORO, *Vice President.*

The CHAIRMAN. The committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at the hour of 11:35 a. m., the committee adjourned until 10 a. m. of the following day, Saturday, July 27, 1935.)

FEDERAL ALCOHOL CONTROL ACT

SATURDAY, JULY 27, 1935

UNITED STATES SENATE, COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to recess, at 10 a. m., in the Finance Committee Room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), George, Barkley, Connally, Gore, Clark, La Follette, and Capper.

The CHAIRMAN. All right, Congressman, we will hear you.

STATEMENT OF HON. EVERETT M. DIRKSEN, REPRESENTATIVE IN CONGRESS, STATE OF ILLINOIS

Mr. DIRKSEN. Mr. Chairman and members of the committee, when this bill was pending before the House on Tuesday and Wednesday, Congressman Gilchrist from Iowa offered an amendment to make the issuance of permits conditioned upon agreement by the permitee not to make the use of imported molasses in the manufacture of alcohol or distilled spirits. The amendment lost in the committee by 9 votes. Subsequently it was offered as a part of the motion to recommit with instructions, and was voted down by the House. I am here in the interest of that amendment this morning.

(The amendment referred to is as follows:)

Page 3, line 23, strike out the words "with regard to" and insert in lieu thereof the words "in accordance with"; page 9, line 9, before the period insert a comma and the following: "and shall be further conditioned upon the agreement by the holder thereof that no imported molasses shall be used in the manufacture of alcohol or distilled spirits, and upon any breach of such agreement such permit shall be revoked."

I have here a short statement that is not very long and with the indulgence of the committee, I shall read it.

On Wednesday and Thursday, July 24 and 25, when this measure was before the House for consideration, an amendment was offered by Representative Gilchrist, of Iowa, making the issuance of a basic permit under this act, conditioned upon an agreement by the permittee that he would not use imported molasses in the manufacture of alcohol and distilled spirits. That amendment was defeated by 9 votes. Before final passage of the bill, a motion was made by Representative Bacharach of New Jersey to recommit the bill with instructions to alter the provision respecting the selection of employees without reference to the Civil Service or Classification Acts and with instructions to insert the amendment placing a ban on the use of imported molasses. The motion to recommit was voted down. In my humble judgment the matter is of considerable importance and

I am grateful for the opportunity to present the matter to this committee.

The annual average production of corn in the United States for the last 5 years was about 2,557,000,000 bushels. Most of this finds its way to market in the form of meat. The report prepared by the Department of Agriculture with reference to the subject of power alcohol in response to Senate Resolution No. 65, Seventy-third Congress, introduced by Senator Shipstead (Doc. No. 57) states on page 23 that—

> Only a little more than 200,000,000 bushels of corn out of an average crop has been exported, utilized in producing corn meal, and in the manufacture of alcohol and other commercial products.

On page 24, the report contains this observation:

> In view of the small proportion of the crop which is marketed as corn, an increase of even 100,000,000 bushels in the annual utilization for industrial purposes would probably have a marked initial effect on corn prices in the central markets.

It may be reasonably concluded that since only a small portion of the crop moves to market in its original state for industrial purposes and since that small proportion is an independent determining factor in the price of corn, an expansion of the industrial market would do more to increase and stabilize corn prices than artificial control of production.

The report issued by Mr. Chester Davis, Administrator of the Agricultural Adjustment Administration on June 17, 1935 (p. 87) indicates that in the corn-hog adjustment program for 1934, 13,030,000 acres of corn land were contracted to the Secretary of Agriculture and removed from production, for which the Federal Government paid $111,840,000 at the rate of 30 cents a bushel. In addition thereto $203,700,000 was paid to corn-hog farmers for the adjustment of hog production at the rate of $5 per head. Funds for this purpose were derived from processing taxes, paid by the consumers.

To me it appears wholly inconsistent to tax the American people in order to adjust and curtail production of corn and hogs and at the same time leave the door open to competitive products which take away the farmers' industrial market and create instability and uncertainty in the corn market. Among these competitive products are tapioca starch which comes in duty-free from Asiatic countries at the rate of several million pounds a year, and blackstrap molasses, which is imported from offshore islands, such as Cuba, Puerto Rico, and the Philippines, at the rate of several hundred million gallons a year.

This heavy, dark inedible molasses has but two uses. Feed manufacturers use it for mixing with dry feeds such as chopped alfalfa. Probably not over 50 to 75 million gallons are used for this purpose. The balance is used for conversion into alcohol. Every 6 gallons of molasses used in the production of alcohol, displaces 1 bushel of corn, so we have the rare spectacle of collecting processing taxes from every consumer in the land to benefit agriculture by artificially raising prices and at the same time, permitting imported molasses to make great inroads upon the industrial outlet for corn. Whether it be in the production of alcohol for industrial or beverage purposes, blackstrap molasses is displacing corn.

In the production of industrial alcohol for the year ending June 30, 1932, the report previously referred to shows that of a total pro-

duction of about 142,000,000 gallons, 84.76 percent was made from molasses and only 3.75 percent from grain. At the present time, both gin and neutral spirits are being made from imported molasses and because the raw material cost is so much lower than in the case of corn, there is a price advantage in using molasses. Otherwise it would not be used. Corn has not yet reached the parity price. This means that the market must go higher. This means in turn that there will be even a greater incentive for the use of molasses.

In 1934 we imported 1,273,448,284 pounds of molasses. In January and February of 1935 we imported 204,961,122 pounds of molasses. Taking out the requirements for feed, the balance is left for conversion into all forms of alcohol and neutral spirits, thereby replacing corn. This paradoxical situation can be cured by incorporating an amendment in this bill, similar to the one suggested by Representative Gilchrist, of Iowa, compelling any holder of a basic permit to agree not to use imported molasses in the production of alcohol and distilled spirits.

In the fall of 1933, when convention delegates were being selected for the ratification of the twenty-first amendment repealing the eighteenth amendment to the Constitution, administration speakers went into doubtful States and there exhorted farmers to support repeal of the eighteenth amendment on the ground that it would create an enlarged market for farm commodities. In fairness to the farmers who believed these assurances, we can make those promises a reality by putting an end to the use of imported competitive products such as molasses in the manufacture of alcohol and distilled spirits.

It seems to me one of the things we can do is to bring about a realization of that promise by putting a restriction or ban upon the use of this imported molasses for beverage purposes for the manufacture of neutral spirits, or use in blending with all kinds of neutral spirits. We have at the present time the spectacle of these products coming from Cuba to New Orleans and then up the deep waterways right up to the city of Peoria in the heart of the Corn Belt for conversion into various forms of spirits.

It seems to me if we are going to hew to a consistent policy we cannot, in all fairness, tax consumers in this country and then leave the back door open for these competitive products from which alcohol is derived. We have to be consistent, and it seems to me that consistency and common sense make it imperative that that amendment be restored to the bill.

The CHAIRMAN. Thank you very much. Is Mr. Hodges here?

STATEMENT OF JOSEPH C. HODGES, CHICAGO, ILL., ADVERTISING METAL SIGN AND DISPLAY MANUFACTURERS ASSOCIATION

The CHAIRMAN. You may proceed, Mr. Hodges.

Mr. HODGES. I represent the sign manufacturing industries in the country comprising of the small manufacturer located in the smallest town and the largest city. They have about 6,000 members. We have the Advertising Metal Sign and Display Manufacturers Association, with 38 members, located in various cities of the United States, who employ some 1,600 people, and the porcelain enamel industry has 36 members. The electrical-sign industry has also a big unit in the sign manufacturing business.

We are particularly interested in the sign provision in this bill. In the industry as a whole we employ something like 60,000 people. Outside of the electrical-sign industry today 28 percent of those people have been employed since the repeal of prohibition on the manufacturing of brewery signs. It has been a substantial increase in our volume of business and has meant great assistance in bringing back recovery to our industry.

In the electrical-sign industry there are 12,000 glass blowers engaged in making neon tubes. There are 9,000 tin-metal workers. I am reliably informed a large percentage of these employees would be thrown out of work if the sign provision in the bill would be permitted to remain as it is.

Senator GEORGE. What section is that?

Mr. HODGES. Section 5, subparagraph 3. As the bill now reads, this distribution of signs by the interstate shipping breweries is left up to the discretion of the administration.

We feel, as we have analyzed this bill, that this is a rather dangerous position that he is to be placed in, because we have had experience with the administrator of the former Federal Alcohol Administration, and it is rather difficult to work out what we feel is an equitable basis. We feel that it is an undue delegation of power.

We believe that signs are valuable not only from an advertising value, they are used by every type of product manufactured to identify that product at the point of purchase, and we feel that it is very essential that signs be used by the breweries to identify their product at the point of purchase.

We are confident that it will go a long way in eliminating sale of so-called "bootleg" products. We know that it will increase the value of what moneys are spent by that industry in advertising. In other words, a sign at the point of purchase is a necessary unit in the advertising campaign. If they cannot identify their product at the point of purchase, it greatly depreciates the value of the other portions of their advertising campaign.

We are not satisfied with the measure as it is. We feel like we should be given at least the same provision that was in the brewers' code under N. R. A. That provision allowed any individual manufacturer to distribute to any individual dealer signs up to the aggregate value of $100 in any calendar year.

Now the great majority of the dealers would not get $100 worth of signs in a year. The fact is that the large portion, in volume, of signs that are used by the breweries will cost under $12, and many thousands of them will cost 40 or 50 cents apiece, and they will use, in those small places, those cheaper signs. They need an indoor sign and an outdoor sign.

So we want to get the issue in front of you. We want to impress upon you the fact that labor will be thrown out of work if this thing goes through and we will not be permitted to enjoy this business as well as the profits which have accrued to our industry from it. I believe that is all I have to say.

Senator BARKLEY. It seems that the object of this provision here is to prevent the use of any device by which one concern controls another by compelling him or inducing him to buy his product to the exclusion of other people who have the same product for sale. Now does the use of a sign furnished by a wholesaler or manufacturer of

liquor or wine of any sort carry with it an obligation on the part of the retailer to purchase only from the man or the concern furnishing the sign?

Mr. HODGES. No, sir. I cannot, by the broadest stretch of imagination, see how the distribution of a sign which does not cost the dealer anything, but simply identifies the product, could tend to tie that dealer individually to his source of supply. In other words, he can have, and many of the restaurants, cafes, and taverns do have as many as three or four different brands advertised by signs in their place.

Senator BARKLEY. Suppose you were a retailer and you got a sign from Anheuser-Busch, a concern in St. Louis, advertising Budweiser over in your retail establishment, what is the practice? Do they sell that to you or do they furnish that to you free?

Mr. HODGES. No, they put those signs up free. That is my understanding. Particularly the more moderate signs, the more moderate-priced signs.

Senator BARKLEY. Is there any obligation on your part to buy Budweiser?

Mr. HODGES. No; they are anxious to have the sign there, to let the public know that they can procure Budweiser at that place. In other words, all that mentions is that they have Budweiser for sale. A customer may be in town and wants to buy Budweiser, and if there was not a sign he would not be able to tell where to go.

Senator BARKLEY. You realize, I suppose, one of the objects of this section is to prevent the old-time proprietorship of the brewery in the retail establishment.

Mr. HODGES. That is where we are in accord with you.

Senator BARKLEY. That was one of the annoying things in the old days.

Mr. HODGES. We are thoroughly in accord with that. We cannot believe that the proper identification of any product which has been licensed and authorized under Federal law, we cannot feel that something as small as a sign would have a bad influence. We can readily understand if you gave a back bar, or something like that, you would be controlling them outright.

Senator BARKLEY. All right, Mr. Hodges, that is all.

Senator LA FOLLETTE. I desire in this connection to insert in the record a letter from James Maloney, president of the Glass Bottle Blowers Association of the United States and Canada.

Senator GEORGE. All right, pass it to the stenographer.

(The letter referred to is as follows:)

GLASS BOTTLE BLOWERS ASSOCIATION,
Philadelphia, Pa., July 26, 1935.

Hon. ROBERT M. LA FOLLETTE,
Member Finance Committee, Washington, D. C.

DEAR SENATOR LA FOLLETTE: I am most respectfully appealing to you as a distinguished member of the Senate Finance Committee to use your best efforts in behalf of our 12,000 members employed in the advertising industry, whose jobs will be in danger if paragraph B, "Tied house", section 5, pages 15 and 16 of the Federal Alcohol Control Act, H. R. 8870, as passed by the House of Representatives, is finally adopted in its present form.

We are firmly convinced, as I have indicated, that unless this section is amended very definitely and finally to permit the erection of signs without being referred to the Administrator, the members of our association who now find steady and regular employment at good wages, will be out of employment.

I trust you will kindly give some thought and study to this section which so vitally affects the welfare of our members and use every legitimate means in your power to secure the necessary changes that will permit the erection of signs.

Respectfully yours,

GLASS BOTTLE BLOWERS ASSOCIATION
OF THE UNITED STATES AND CANADA.
JAMES MALONEY, *President.*

Senator GEORGE. Mr. Thompson.

STATEMENT OF LOCKWOOD THOMPSON, CLEVELAND, OHIO, FORMER VICE CHAIRMAN NATIONAL ASSOCIATION OF LIQUOR ADMINISTRATORS

Senator GEORGE. Mr. Thompson, whom do you represent? Why are you here?

Mr. THOMPSON. I am here solely in my own interests and pursuant to a telegram from the committee, but my connections are as follows: I am an attorney and am connected with the law office of Baker, Hostetler, Sidlo & Patterson in Cleveland. When the repeal became effective in Ohio, in December 1933, I was appointed by Governor White as one of the members of the board of liquor control, operating Ohio's State monopoly of liquor. I served as a member of the board from the time of my appointment to April 1 of this year, at which time I resigned to return to the practice of law. I served as a member of the board until April 1 of this year, and was vice chairman during the latter part of my service on the board. I am at the present time vice chairman also of the National Conference of State Liquor Administrators and last year was chairman of its taxation committee. I would like to have the record show, however, that I am here solely as a person interested in this bill and representing no client, and solely at my own expense, because of my interest in the general problems involved.

Senator BARKLEY. You were requested by the committee also to appear?

Mr. THOMPSON. Yes.

Senator BARKLEY. Did you testify before the House committee?

Mr. THOMPSON. No, sir; I did not. I want merely to emphasize two points concerning the provision for the sale of barrel whisky, or whisky from the barrel, on the part of bona fide hotels or clubs. I believe that this provision, as it now stands in the House bill, would play directly into the hands of the bootlegger. This provision, it seems to me, would facilitate the evasion of taxes, would lead to a particularly great temptation toward reselling barrels by permit holders with bootleg liquor. The public would not have the protection to be found in the sale of package liquor, and bootlegging, in my opinion, would be very greatly increased.

There is one other point I want to talk on. It seems to me that it is a very grave mistake to provide, as is provided in this House bill, that the Federal Alcohol Administration should be a mere division of appendage of the Treasury Department. I have a sincere admiration for the intelligence and sincerity of the present Secretary of the Treasury, but I feel that the problems of liquor control are so important that they deserve and need the attention of a separate department, as well as an administrator who can give his full time to the problems, and who will not be required to subordinate his views

to that of a departmental head whose primary functions and duties are entirely different.

I do not believe that the person to be selected by the President to administer this act, which is vital to the welfare of the citizens generally, should be subordinated to another department, the main purpose of which is to raise revenues. The head of the Federal Alcohol Administration will be concerned in solving one of our greatest social problems. He must approach his subject and attempt to solve it along social lines, not on a basis of dollars and cents, as liquor problems under the Treasury Department might quite necessarily be solved.

I will give just one example of what I mean. Suppose the matter of recommending a reduction in Federal liquor taxes arises. Many of us in the various States who have been called upon to administer the liquor laws have felt for some time that Federal liquor taxes are too high, viewing the question from a social basis of regulation and the need for eliminating the bootlegger.

I might just say, parenthetically, that 11 States have joined with Ohio unanimously in requesting and petitioning the Members of Congress to lower the present Federal liquor taxes.

If the Director of the Federal Alcohol Administration looks at the matter from a social viewpoint he is likely to feel he should recommend a reduction in liquor taxes. On the other hand, if he is a mere subordinate in the Treasury Department, which has as its primary and very proper obligation to the citizens the obligation of raising revenues, it is scarcely to be expected that the subordinate's recommendation would see the light of day. I use that only as one example of the fact that if the Federal Alcohol Administration is made subordinate to any other department, it will be handicapped in meeting the problems which are peculiarly its own problems.

I earnestly submit for your consideration the setting up of the Federal Alcohol Administration as a separate bureau, with its head responsible to the President alone.

Senator GEORGE. All right, Mr. Thompson. The committee wishes to thank you for your appearance here.

Miss Gross.

STATEMENT OF MISS M. LOUISE GROSS, HARRISON, N. Y., NATIONAL CHAIRMAN, WOMEN'S MODERATION UNION

Senator GEORGE. For whom do you appear, Miss Gross?

Miss GROSS. For the Women's Moderation Union, the same organization that worked for repeal during the 13 years of prohibition, and we are still organized, because we realized there were problems that would come up after repeal.

Mr. Chairman and members of the committee, it is a pleasure, and we thank you for the privilege, of speaking in favor of H. R. 8870, which is a most excellent bill.

The Women's Moderation Union, of which I am national chairman, was organized in 1920 as the Molly Pitcher Club, and under this name and the present name we were actively engaged in the fight for repeal during the entire 13 years of prohibition.

When repeal was accomplished, we did not disband because we felt that there would be a great many problems involving the success of

repeal which our experience and knowledge of conditions might aid in solving.

In appearing before this committee, I feel that I am talking for the consumer and the women of this country, who like ourselves are interested in repeal, and I propose to call a spade a spade.

The American public, which brought about repeal and legalized the business of making alcoholic beverages, has been made the goat. It is forced to pay exorbitant and unjustified prices for liquor. It is being duped with raw concoctions colored with oak chips and labeled "whisky"; concoctions which a self-respecting bootlegger would be ashamed to sell. We understand a Whisky Trust has formed again, and under the very noses of the Treasury Department and the Federal Alcohol Control Administration. Furthermore, we are advised that representatives of the trust are acting as unofficial advisers to the Treasury Department and to F. A. C. A.

As a result, what have we got? Whisky today is selling at from 100 to 600 percent higher than it did before prohibition, and this increase cannot be accounted for by higher taxes, slightly increased cost of materials, and manufacture and scarcity of aged whisky.

Why, then, are we being forced to pay $5 and $6 and $7 a quart for whicky which could be purchased before prohibition for 75 cents or a dollar a quart? In my opinion, restriction of spirits to glass bottles has accounted for a major portion of the high prices.

These restrictions, enacted under the guise of law enforcement and heartily endorsed by the Whisky Trust, add materially to the cost of whisky, through the cost of bottling, bottling materials, and machinery, increased handling charges, breakage and higher freight rates. This is the obvious explanation. There is, however, a hidden reason; a reason which has caused the Whisky Trust to support the bottle regulations with all its power.

We understand these bottle regulations grant a monopoly to the large distillers; in other words, the trust. Only those firms which can spend thousands of dollars on advertising and far-flung sales forces can sell their whisky under this "patent medicine" plan. The little fellow, without money to spend on extensive advertising, can't establish his brand. Before prohibition, he marketed most of his whisky in bulk, building up a market on a quality basis. Today he is barred from selling in bulk; he can't hope to compete with the big advertisers in the package field. In other words, he is out of luck and out of business. All of which, of course, makes grand ammunition for my dry opponents, who are again working for prohibition.

I would like to give you that picture once more. The small distiller is practically out. The rectifier is dependent upon the large distiller for his aged whisky. The large distillers seem to be a private monopoly. Certainly, the opportunity for price control openly exists, and the consumer can take it and like it. Furthermore, the Treasury Department places itself in the position of aiding and abetting this set-up by insisting on the bottle restrictions.

As an example—bottled and labeled vinegar costs twice as much as bulk vinegar of the same quality. But, the public is protected because the Government does not prevent the sale of bulk vinegar. The small manufacturer can sell his vinegar in bulk if he so desires.

With one hand, the Treasury tells you that the bottle regulations are successful. With the other hand, they say that they are convinced that bootleggers are getting rid of their stocks through licensed retail channels, and ask for $1,086,941 to investigate the licensed retail dealers. Verily, the right hand of the Treasury doesn't seem to know what the left hand is doing.

And this amazing Treasury Department, gentlemen, wants this $1,000,000 to employ inexperienced relief workers as amateur sleuths to go pussyfooting and snooping through the stores of licensed and legitimate dealers. They don't want this money to go after the bootlegger, gentlemen, but to send amateur gumshoes out to harrass and worry the legitimate dealer.

Perhaps a few members of the licensed industry are selling bootleg liquor. They have been forced to do so because the public won't pay the exorbitant prices charged for legal whisky. Instead of devoting its time and energy to thinking up unreasonable and theoretical restrictions for the legitimate industry, the Treasury should be devoting its efforts to reducing the cost of liquor so as to make bootlegging unprofitable. The way to kill the weed is to destroy the roots; wipe out the bootlegger to keep the legal dealer from selling bootleg.

The Secretary of the Treasury apparently sees only one method of driving out the bootlegger. In a newspaper interview in Baltimore, he is quoted as saying that he will wipe out the bootlegger by police power or resign and go home.

Apparently Mr. Morgenthau did not learn the lesson taught by prohibition, when this Government spent millions of dollars and employed thousands of men in a vain attempt to wipe out the bootlegger by police power. The bootleg element thrived and grew until it became a national menace. Today the Secretary of the Treasury is advocating these same methods which failed miserably after a 13-year try-out.

Bootlegging is a simple matter of economics. As long as bootlegging is profitable enough to warrant the risk, we will have the bootlegger with us. Although he is a lawbreaker, he must be treated as a competitor of the legal and licensed industry. The only way to eliminate him is to cut down his profits to a point where his profit will not justify the chance he takes. Reduce the cost of legal liquor and you will lick the bootlegger automatically. Certainly, you cannot lick him by hampering and hindering and pussyfooting the legal industry.

The results obtained in 1934 tell the story graphically. In the first year of repeal, tax-paid withdrawals of whisky were approximately 60,000,000 gallons, compared to a preprohibition yearly average of 130,000,000 gallons. In other words, the legal industry, bound down with unreasonable restrictions, sold less than half of the spirits it sold before prohibition, despite an increase of 23,000,000 in population and the fact that women are drinking.

Senator CLARK. Bootlegging would not be able to exist at all except for the high-priced liquor, would it, Miss Gross?

Miss GROSS. I do not think so. I think that is one of the reasons we have bootlegging. The only way to eliminate him is to cut down his profits. If you cut down his profits you will lick the bootlegger automatically. Certainly you cannot lick him by hampering and hindering and pussyfooting the legal industry.

Please do not get the erroneous idea that only 60,000,000 gallons of whisky were consumed in 1934. Oh, no. With our increased population and increased thirst for liquor it would be nearer correct to say that more than 160,000,000 gallons of whisky were consumed in 1934, 100,000,000 gallons representing the bootleggers' sales upon which no taxes were paid. You don't have to be a "brain truster" to figure that one out. The bootlegger is selling more whisky than the entire legal industry, and the Treasury is aiding and abetting him. Is it any wonder that we women are commencing to look into these questions?

I sincerely urge that this committee retain subsection (f) of section 5 in H. R. 8870. This is the subsection which allows bulk sales. It is my opinion that this provision will aid in reducing the cost of liquor to the consumer and in breaking up the Whisky Trust.

In conclusion, I wish to say that the consumer has benefited but little, if any, through repeal. He is paying exorbitant prices for a poor quality of spirits. He is buying glass and high-pressure advertising—not whisky.

As stated before, we understand there is a whisky trust in the saddle again and it is riding hell-bent for prohibition. Those of us who fought for repeal are disgusted and chargined at the present situation. Men who are avowed drys, men who are prohibition-minded, men who know nothing whatever about the liquor business or its regulations, are dictating the rules and policies under which it is controlled. Perhaps the trouble is that there isn't a woman in the picture. If it had not been for the good sense of a majority of the American women, we would probably still have prohibition.

These men are allowing themselves to be convinced and misled by the whisky trust and its representatives. In the entire governmental set-up pertaining to liquor revenue, control and enforcement, there is not one woman in any important position to help solve the problems resulting from prohibition. I question if any woman would be fooled by a whisky trust—perhaps that is one reason why women are not wanted in responsible positions either in the Government or in the industry itself. You know, nothing of any lasting benefit will ever be accomplished without the aid and cooperation of the women; we can force action while others sit around and talk theories.

Before I conclude, there is one other point I wish to make and that is regarding the statement made by some of those people opposed to bulk sales to the effect that "bulk sales were the cause of many abuses in preprohibition days; that people then bought liquor in bulk, cut, diluted, and adulterated it and there was no way of checking up on it or holding the seller responsible for the quality of goods which he sold." This is a pretty good argument when made to those who have forgotten their history and the facts surrounding the adoption of the late-lamented eighteenth amendment. The opponents of bulk sales would have us believe that bulk sales was one of the causes of prohibition, when everyone knows that prohibition was enacted as a temporary war measure to conserve grain. It was never intended to become a part of the Constitution and it never would have, except that we were all so busy helping Uncle Sam win the war that we weren't watching the dry slackers in Washington who took advantage of the situation and saddled it on us. It is just as reasonable to say that prohibition was caused because there were too many saloons, or

too many crooked judges and politicians who used to help liquor violators out of their scrapes, to say bulk sales caused prohibition. A million men were in Europe fighting in the World War and they were taken advantage of just the same as the rest of us at home who were thinking about helping to win the war and not about prohibition. That's how it happened.

Everyone knows that temperance was achieved in 1914 and liquor control was better then than it ever was or ever has been since. There were no women drinking like today, or young people either, this coming as a result of prohibition.

No, gentlemen of this committee, the so-called evils of preprohibition days cannot be raked up now. We started from scratch on December 5, 1933, when the twenty-first amendment was ratified. Now let's do the natural and sensible things to help bring about success for repeal. At least try bulk sales of whisky for awhile. It worked successfully before prohibition and it should work successfully now. Certainly the present plan is not a success. A trial of bulk sales is one experiment which will not cost the taxpayers any money. If it doesn't work, you can change the law again, the same as women change their minds about things, you know.

Therefore, I plead with you gentlemen to pass legislation that will make the business of manufacturing and selling and bottling whisky an honest business for the American people, instead of a monopoly for a few firms. I plead with you gentlemen to pass legislation that will return bulk whisky, and which will make a good drink of liquor available at a reasonable price.

I hope you adopt H. R. 8870 as is. The reason I favor bulk sales, which sounds very silly on the surface but which is most logical and sound when investigated, is the fact that certain persons who favor the bill, like Secretary Morgenthau, whose wife is bone-dry, as well as her bosom friend, Mrs. F. D. Roosevelt, also the New York papers with Wall Street connections, editorially oppose bulk sales. These papers are controlled by the whisky ring.

So again I plead with you gentlemen to pass legislation that will return bulk whisky, and which will make a good drink of liquor available at a reasonable price. I hope you adopt this bill.

The CHAIRMAN. Mr. Miller.

STATEMENT OF TOBIAS MILLER, NEW YORK, N. Y., OLD PRESCRIPTION CO., INC.

The CHAIRMAN. Mr. Miller, you represent the Old Prescription Co.?

Mr. MILLER. Yes, sir. Mr. Chariman, I just finished a trip of 20,000 miles. I have been in your State, and in every State.

Senator BARKLEY. What is the Old Prescription Co.?

Mr. MILLER. We are rectifiers, sir.

Senator BARKLEY. All right.

Mr. MILLER. In the 5 minutes allotted to me I would like to impress upon this committee to question carefully the motives behind every witness that comes before you. You will find a great many are simply "Little Tommy Tuckers", they are singing for their supper. There is no really decent purpose behind these fellows except a selfish interest.

The CHAIRMAN. All right, tell us what your views are on this bill.

Senator CLARK. Tell us what you are interested in.

Mr. MILLER. My views are that this bill is not necessary, that the liquor laws that are on the books today, if they were properly handled by the Treasury, would properly control the industry; that this is simply building up a new bureau to be manned by people that haven't got the experience.

There is no limit to the power in this bill, there is no limit to the amount of men that this bureau can employ, there is no limit to the amount of money that they can spend, that the taxpayers must pay; there is no limit of people that they can hire under this bill. With the O. K. of the Postmaster General you could make every letter carrier a snooper.

The CHAIRMAN. What is the Old Prescription Co., Inc?

Mr. MILLER. We are rectifiers of spirits. It was my father's and grandfather's business.

The CHAIRMAN. Where is your business?

Mr. MILLER. In New York City, sir. It is a business that I closed the door to when I served with the A. E. F. and came home and found it closed sir, when I had to go out and find a job. It was my father's and grandfather's business before.

The CHAIRMAN. You think this thing is all right without new legislation?

Mr. MILLER. No, sir; I did not say that. I say this bill here, as it is, gives power that the people will live to regret. It puts power in the hands of men who know little. It does not limit the amount of men they can employ. It builds up a great alcohol machine.

The CHAIRMAN. What other constructive suggestions about the bill would you make?

Mr. MILLER. I would take out entirely the provision, sir, to let the retailer, the last man along the line of distribution, handle goods in bulk and forbid the wholesaler to handle it, which is contrary to natural laws. In other words, if you let a hotel and a retail outlet handle liquor in bulk, where the natural outlet is a smaller package, and prevent the wholesaler from handling liquor in bulk, it is contrary to the natural laws. I say if you are going to let the retailer, the hotel man handle goods in bulk, then you must permit the wholesaler to handle it in bulk also, like the wholesale grocer, the wholesaler of parts, or anything else.

Now, sir, in this bill here there is a joker, if I may be permitted to show it to you.

The CHAIRMAN. We want to find the joker.

Mr. MILLER. Thank you, sir. The joker is it does not permit the wholesaler to handle goods in bulk unless he qualifies as a rectifier. The qualifications of a rectifier—and I want to talk facts to you, Mr. Chairman, not theories—to qualify as a rectifier today he must conform to existing Government regulations, which costs thousands of dollars. He cannot become a rectifier without spending a lot of money. In my own State the license fee for a rectifier is $5,000 a year. The Federal Government says unless you are qualified in the State you cannot qualify in the Federal Government. Now while it looks insignificant here, it really means that no wholesaler can handle goods in bulk unless he wants to invest $15,000 or $20,000.

I am going to make a statement, too, that I am willing to back up. I have been in your State, too, and I can mention names, I tell you, and I can back up the statements that the wholesale liquor business today is bankrupt. It is bankrupt on account of the fact that they have been forced to handle goods, branded goods, at 75 cents or 60 cents a case profit, that cost them $15. In your State, Senator, I have got two letters from men in Milwaukee, and I have also letters from other States. I am not talking theories, I am talking facts.

Let the liquor dealer handle goods. When that barrel comes in, sir, it is surrounded by Treasury regulations. They are assuming that it is harder to find illegal goods in a 20-ounce bottle than it is to find illegal goods in a barrel. To hear these fellows talk you would think the Treasury had no regulations. In 40 years before prohibition there was no wholesaler convicted under this old system. The internal revenue records are there.

You have people coming in here and telling you things which are all based on theory. Go to the wholesale liquor dealers in the country. The reason they are not here is because they haven't got the carfare.

That is the God's truth, they haven't got the carfare. Go to the wholesale liquor dealers throughout the country and ask them. Ask the people in your own State, "How much money did you invest when the Government gave you the right to go in this business?" You went out and you hired help, you bought the building, you painted it, you hired Joe Smith and Tom Brown, and you got seven salesmen out, you put in $10,000 or $20,000 with the knowledge that Uncle Sam was behind you. What have you got now? You got trimmed. Do not ask me what happened to the different men in the States. You can ask the men that put up the money. They are in bankruptcy.

The CHAIRMAN. Let me ask you, what was your business in going into each of the States over the country?

Mr. MILLER. Selling liquor, sir. The liquor dealers and I called on these people, trying to build up a business which is a national business, like any other peddler would go selling the wholesaler. I come in to see these people and I know them. I talk their business with them. They complain to me. Lots of them owe money, they do not pay their bills. They do not tell you to go the devil, they say, "We are up against it", and that is the truth, Senator.

I want you to get down to the facts of this thing and not listen to theories.

The CHAIRMAN. Is there any other suggestion now?

Senator BARKLEY. You said a while ago there was enough law on the statute books now. What Federal law do you refer to as being adequate?

Mr. MILLER. All the Treasury regulations. Every phase of the liquor business is covered by existing law. If any member of the Treasury Department can show one phase of the liquor business that is not covered by existing law I am going out of my business and close the doors.

The Treasury Department, sir, is honeycomed with prohibitionists. The man who is in charge of liquor today in the Treasury Department—and understand I have never met him—he is a very worthy gentleman, he has got a fine record, but at the same time he is a

prohibitionist absolutely, on his record. The gentleman comes from Kansas.

The CHAIRMAN. The record of some of the gentlemen on this committee shows they were once prohibitionists.

Mr. MILLER. That is fine, that is good. That is what is the matter with this bill. It says protect those who were in favor of the eighteenth amendment. There isn't one comma, one semicolon, that will protect the honest and sincere dry in this bill, nothing.

Now it says something with respect to enforcing the twenty-first amendment. I will tell you something. You do not have to enforce privileges that you give a man, you have to enforce restrictions. What are the restrictions? To prevent shipping into dry States. You give a fellow a privilege and you do not have to make him take it, he grabs it. You have to enforce him on the restrictions. There is not a restriction in this law, Senator, not one thing to protect the honest and sincere dry. And, boys, are they shipping it into the dry States! You all know it. They are selling it open, wide open. Every hotel has a wine list. It is the State's business to control it, but they are shipping it in there.

Now a sincere dry is entitled to his opinion, and that is what the whole Democratic platform was, to please them all, to give them all a common right. Now what happened? I want to read from a memorandum that I submitted to the White House.

The present F. A. C. A. bill which has been ordered out of the House, permitting bulk sales, is a joke. There is more power given to the Administrator than any other Government officer. Under this act he can build a swell political machine and with very little inconvenience make every letter carrier a snooper, or use the Army and Navy, with the consent of the Secretary of War or Navy, to enforce any regulations that he may promulgate. This bill is so clearly unconstitutional that it will not last 6 months before the court throws it out, as it is the widest delegation of power ever contemplated. It defines no limits to the power given the F. A. C. A. Administrator. It permits the building up of a tremendous bureaucracy, to which principle the people are now firmly opposed. It sets no limit on what this man might do and it makes no qualifications based on experience as to who shall promulgate the limitless rules and regulations that it permits this Administrator to issue.

As a matter of fact, the bill in its present form is entirely unnecessary, because if we had in the Treasury people who were at least sympathetic toward the legal sale and consumption of liquor, it would not be necessary to enact this measure at all and so increase the taxpayer's burden by a new horde of leeches on the public pay roll.

There are at present sufficient laws, rules, and regulations already enacted governing every phase of the liquor business and this is simply adding an insufferable burden to an already bankrupt industry and when I say bankrupt, I mean bankrupt. With exception of a few Wall Street trusts who pay fabulous salaries for big contact men—names furnished on request—the average wholesale liquor dealer who entered into this business, invested his money, employed his labor, bought his plant, machinery, automobiles on the faith in the Government that he would get a fair deal, has been badly trimmed.

The prohibitionists in the Treasury and that holier-than-thou element raising a smoke-screen of the bootlegger, forbade the whole-

saler to handle goods in bulk, which is the natural way to distribute merchandise the same as the wholesale grocer or any other distributor receives goods in bulk and rearranges them in smaller packages for retail consumption, and with the assistance of the trust lobby have been successful in denying him this privilege in its present bill.

The Secretary of the Treasury, through lack of knowledge, has stated that he is against this. He is simply being advised by people with an ax to grind. If this monopoly is permitted to continue and the wholesale industry is driven into bankruptcy, the very hopes and purpose of the twenty-first amendment will have been defeated, that is, the sane handling of the liquor problem.

I recommend that a committee of both Houses be appointed to investigate this whole liquor situation, to hear testimony, facts, from all sides, so that they may in the next session write in an intelligent law that will work. This present Treasury bill will give the administration all sorts of trouble before they are through, besides certainly developing a national crop of soreheads—with reason to be sore.

I believe that such a body, composed of members from the wet States to hear evidence pertaining to legal sale and a subcommittee of members from dry States to hear testimony regarding that part of the enforcement of the twenty-first amendment to which they are entitled, will be a good solution. At least it will be an intelligent step forward. At present you have only organized monopoly and fanatical theorists to aid Congress in forming laws. The average wholesale liquor dealer has neither the carfare, nor the money, nor the time to come down and protect himself against wild legislation.

Senator LA FOLLETTE. May I ask you, Mr. Miller, whether your views represent the views of others in your corporation?

Mr. MILLER. I am the president of the corporation. I was told by a brother of mine that he did not think we should go down. He owns no stock in the company. He took the pussyfooting attitude. He said, "If you go down there and talk against this, Mr. Choate or Mr. Willingham, whom they have been very friendly with, may get in power, and what is going to happen to us if they are in power? They are going to ride you. Don't do it." He said, "If you go down there and talk against an old friend like Weiskopf there, he is going to kick you out."

Senator LA FOLLETTE. Did you see this letter, written by Lee Miller?

Mr. MILLER. My brother says I do not speak for the corporation, but the records of New York State show the gentleman is not a stockholder; I am the chief stockholder and president of it.

Senator LA FOLLETTE. He is secretary of the company; isn't he?

Mr. MILLER. He owns no stock. Now I have known Mr. Willingham. Why, I wrote a letter to the President. What happened? He knows what happened. I told him. I was complaining against Mr. Willingham's outfit. Three days later I got a letter from Mr. Willingham showing an acknowledgment of my letter. The President's secretary said, "I cannot help you here, Mr. Miller. It is customary, you know how it is, it is customary to have this referred to the department."

Senator LA FOLLETTE. I think we ought to have the letter in the record following your testimony.

Mr. MILLER. May I see that letter, please? That was the reason he was not employed. He was afraid it might hurt our business.

Senator LA FOLLETTE. He does not say that. He says he does not agree with your views concerning many features of this bill.

(The letter referred to is as follows:)

OLD PRESCRIPTION CO., INC.,
GOLDEN GATE FRUIT PRODUCTS CO., INC.,
New York, July 24, 1935.

FELTON M. JOHNSTON,
Clerk United States Senate Committee on Finance,
Washington, D. C.

DEAR MR. JOHNSTON: We note your letter of July 18 addressed to our Tobias Miller, with reference to his desire to be heard by the committee on H. R. 8870, Federal Alcohol Control Administration bill.

Please be advised that our Tobias Miller, if he is permitted to appear when and if hearings are open to the public, speaks for himself alone, not for the entire membership of this corporation, as the writer personally is not in accord with a good many of our Tobias Miller's objections to H. R. No. 8870, and we do not wish this corporation to go on record as opposing a great many features of the bill.

Yours very truly,

LEE MILLER, *Secretary,*
OLD PRESCRIPTION CO., INC.

The CHAIRMAN. Mr. Mulrooney.

STATEMENT OF EDWARD P. MULROONEY, NEW YORK, N. Y., CHAIRMAN NEW YORK STATE LIQUOR AUTHORITY

The CHAIRMAN. Mr. Mulrooney is chairman of the New York State Liquor Authority and is, as I understand, an authority on this question.

Mr. MULROONEY. Gentlemen, I appear as chairman of the New York State Liquor Authority and as chairman of the National Conference of State Liquor Administrators. Appearing in this dual capacity and by the direction of Gov. Herbert H. Lehman, I wish to register objection to what we regard as a pernicious provision in House bill 8870 as it relates to the sale of bulk liquor.

The State of New York has a provision in its liquor control law which prohibits the shipment of liquor into the State in containers in excess of 1 quart unless it be consigned to a distillery or rectifier. In addition thereto, there must appear on the label of all containers the name, post-office address of the manufacturer and the State license number of the distributor or wholesaler. Further provisions for label regulations as provided for by the F. A. C. A.

These requirements are deemed necessary to protect the consumer and to channelize and trade the container from the point of production to the sale to the ultimate consumer. In many States where liquor may be legally dispensed, however, such provisions were not inserted in their control laws, and while it would appear that the provisions in this bill would not apply in the State of New York, New York would not escape the baneful effects of liquor sales permitted in the border States. No agency, Federal, State, or municipal, possesses adequate personnel to supervise bulk sales and insure the payment of Federal and State taxes, or to prevent tampering by cutting of the product.

The CHAIRMAN. Will you elaborate on that idea now, Mr. Mulrooney?

Mr. MULROONEY. Yes, sir; on the labeling you mean, Senator?

The CHAIRMAN. No; on the bulk sales. You say it is impossible to follow through in detail if it was a bulk sale. Give us your reasons for that statement.

Mr. MULROONEY. My particular reason is, as stated here, that no agency that I am familiar with has an adequate personnel to supervise it and trace it. Now the liquor coming into New York State today, as I explained here, we know where it started from and where it ended as to the final sale. If it comes in in bulk I know of no way that we can prevent the cutting of that liquor.

Senator CLARK. It could not come in in bulk in your State?

Mr. MULROONEY. Not in our State; no, sir.

The CHAIRMAN. Into other States it could?

Mr. MULROONEY. It could. We have a similar situation in border States now, in Connecticut, for instance, where the State tax is lower than it is in our State, or in New Jersey, and that sets up serious competition with our dealers who pay a higher rate, and we cannot stop that liquor from coming into the State, even though it comes in in the legal-sized container and complies with all the requirements of the label regulation.

The CHAIRMAN. It is your opinion if it came into New York State in bulk the hotelman or the restaurantman could denature it better than he could if it came in bottles?

Mr. MULROONEY. Exactly.

Senator CLARK. Is it not easier to doctor a bottle than it is a barrel?

Mr. MULROONEY. You do not accomplish as much in one operation.

Senator CLARK. And you do not run as much risk of being caught either.

Mr. MULROONEY. Exactly; you do not. If an agent or a supervisor goes into a place where liquor is sold in New York City and picked up a bottle from the bar and drops a hydrometer into it and finds it to be under proof or over proof, he can take action.

Senator CLARK. He can drop the hydrometer into a barrel and get the same result, cannot he?

Mr. MULROONEY. Just a moment. He can go back and call to his aid the person who produced the contents of that bottle and ask him to testify whether the analysis of that bottle conforms to the formula of his particular brand. But if you have a bottle on a bar or table that is not labeled, no indication where it originated, you are going to have a difficult time holding somebody responsible. You would have to practically catch the man in the act who was selling it.

Senator CLARK. If he had a barrel of liquor in the basement it would also show where he got it from, would not it?

Mr. MULROONEY. Yes; but suppose he made sales and he continues to dilute, either by adding water or spirits?

Senator CLARK. If the hydrometer shows it had been diluted he would certainly be liable under the law. It seems to me it would be very much easier to dilute the liquor in the bottle than to dilute it in a barrel, because there would be much less risk of being caught.

Mr. MULROONEY. I do not agree it would be as easy, because when you take one quart container there are labels on it stating the alcoholic contents, and so forth, where you would not find that on the

wood container. You could trace it back and ask the producer possibly as to what it contained when he shipped it but that, I think, would be as far as you could go.

The CHAIRMAN. Go ahead, Mr. Mulrooney.

Mr. MULROONEY. The greed for profit in the liquor industry and its affiliates contributed its full share to the condition which made prohibition possible. They appear to have failed to have profited by their experience.

It has been said that the sale of bulk liquor will eliminate bootlegging. That statement is as absurd as to say you can eliminate the gangster by giving him a bulletproof vest.

The bootlegger was taught to cut liquor by the dishonest liquor dealer. The dishonest cheating liquor dealer, whether a wholesaler or a retailer, wants the bulk liquor returned that he may more readily cut it, thereby not only evading tax but cheat the consumer.

If the sale of the bulk liquor is again permitted, the first step will have been taken to again establish the barrel or "deadhouse" as it existed prior to prohibition, a place where the derelict can purchase 10 or 15 cents worth of liquor in a flask only later to be found in a stupor on the nearby sidewalk.

Further, bulk sales will set up competition which will ultimately eliminate the package stores which have been set up by the States or under the license system. These stores have undoubtedly by their appearance and efficient management placed the sale of liquor on a higher plane than has ever been known in the United States.

It is interesting to note that when laws or regulations that have to do with liquor control are discussed, it is always said that the advocated change will benefit some industry. Would it not be well to have it understood that the welfare of the people should be first considered and that all interests concerned, no matter of what magnitude, should be definitely of secondary consideration?

Students of the liquor problem are agreed that if profit can be eliminated from the traffic, it would no longer be a problem. By the provisions of this bill as to bulk liquor, you are providing an opportunity to increase profit a thousandfold.

Under this bill, clubs may be organized and chartered, pay a smaller license fee than the ordinary license, and be almost relieved of restrictions and supervision.

Based upon 38 years of police experience in the city of New York, I am of the opinion that the bulk provision in this bill will create a condition which will prove obnoxious and offend public decency and nullify many of the splendid results which have been obtained under liquor control.

Success in passing the bulk provisions of this bill would certainly result in similar action by the legislatures of the several States, and the ultimate result will be that adequate control over the sale of liquor will be destroyed.

Governor Lehman wishes me to say to you that, in his opinion, the best interest of the State of New York will not be served by the bulk provision of this bill, and that he is unalterably opposed to its enactment.

Senator BARKLEY. Let me ask you there about the relative ease with which adulteration may occur. Of course, people who manu-

facture barrels want bulk sales and people who makes bottle want the bottle sales. I am not concerned with that at all.

Mr. MULROONEY. Nor am I, sir.

Senator BARKLEY. Would it be possible for a man with a barrel of liquor to adulterate the whole barrel by one operation?

Mr. MULROONEY. I imagine that it would be possible.

Senator BARKLEY. That is by putting half of it in another barrel and putting something else in, or some proportion of stuff in, so that by one operation he could adulterate a whole barrel, whereas it would require separate operations for each bottle?

Mr. MULROONEY. That is what I say. Senator, I might say, and this is not legend, it is personal observation, and this is before prohibition, that we had in New York a hotel of national prominence. It was agreed, by and large, that you could buy the best drink of liquor over the bar in that hotel, better than you could buy any place else.

Senator BARKLEY. What hotel was that?

Mr. MULROONEY. It is gone now.

Senator BARKLEY. It is just a memory.

Mr. MULROONEY. I know where they made the purchases, and they purchased the liquor from possibly one of the outstanding wholesalers of reputation in the city of New York, they bought a good product, no question about it, but rarely did they ever make a purchase that they did not also purchase the necessary ingredients to cut it, which I know of as a matter of fact. I do not say that the liquor was not palatable, it was satisfactory to those who consumed it.

Senator CLARK. That would be true in the case of bottles, would not it, if liquor was sold in bottles?

Mr. MULROONEY. They can cut it, but they cannot cut it until they break the seal.

Senator CLARK. You said the hotel sold the best liquor that was possible to be obtained in New York. Was that generally the opinion?

Mr. MULROONEY. Yes.

Senator CLARK. That probably casts a reflection on the patrons.

Mr. MULROONEY. I am telling you what happened. I am just giving it to you as being their procedure. When we were drawing our interim control laws and regulations to incorporate in our permanent law we were seeking advice from such men as Dr. Nicholas Murray Butler, Dr. Smith of the State Medical Association, and all we knew of, that we could reach, who had led in the fight for repeal and had no particular interest, and they were very much of the opinion that we should permit nothing but the sale of liquor in bottles, that we should entirely follow the Quebec system at that time.

Senator CLARK. That prevents the sale of liquor by the drink in any case?

Mr. MULROONEY. In that case it did. We did not go along with that. We knew it would not meet the social needs of the people of the State of New York. That was the thought of that group, that at least for a time we should not go beyond the sale of liquors in bottles.

Senator CLARK. It is a very different proposition to say that you ought not sell liquor by the drink at all than to say you ought to sell the drink out of the bottle and not out of the barrel.

Mr. MULROONEY. I can only speak for the State of New York. You have got to sell it by the drink in the State of New York, Senator Clark.

Senator CLARK. I understand. What you are doing there is quoting the opinion of some eminent antiprohibitionists, that you ought not to sell it by the drink at all. Whether you ought not to sell it by the drink at all or whether you ought to sell the drink out of the bottle and not out of the barrel, are two things that seem to be entirely separate.

Mr. MULROONEY. They qualified that at the time, they said for the first year we should restrict the sales to the bottle.

Senator CLARK. It was a question of whether you should sell the liquor by the drink at all.

Mr. MULROONEY. For the first year.

Senator CLARK. Now, Mr. Mulrooney, as a matter of fact, the manufacturer's name, the number of the distillery, that is all cut in the head of each barrel?

Mr. MULROONEY. Yes.

Senator CLARK. So it can be traced to the producer. Now the seller has to make triplicate copy of all of the liquor he sells in bulk, the name of the person to whom he sells, and the rectifier has to make a similar record?

Mr. MULROONEY. Yes.

Senator CLARK. So it is just as easy to trace the liquor in bulk as it is to trace the liquor in a bottle, isn't that true?

Mr. MULROONEY. Yes; but it is not as easy to supervise it.

Senator BARKLEY. Take a barrel of any well-recognized brand that is to be bottled in bond, some of it is sealed and some of it is not, but the stamp which has been paid, the Government stamp is pasted over that, so that in order to adulterate or change its contents it is necessary to remove the stamp, break the seal, and it is impossible to restore that so as not to be detected?

Mr. MULROONEY. That is true, but to tamper with it by the bottle container, you have got to break each individual seal. I expect this may be done if it is being used for sale over the bar or at the table. As it is being consumed they can replace it.

Senator CLARK. We would have the same problem in the case of the bottle. For instance, it is entirely possible to buy a quart of 17-year-old Taylor, bottled in bond, and then buy a quart of some very low-grade rotgut and combine the two and make 2 quarts out of it, half and half of each.

Mr. MULROONEY. Yes.

Senator CLARK. And use it the same way that you would use the adulterated liquor out of the barrel after the seal has once been broken, and sell it by the drink at the hotel, the club, or the tavern, or any place else.

Mr. MULROONEY. That is true.

The CHAIRMAN. Have you any other suggestion?

Mr. MULROONEY. No, Senator; only I would like to make one observation on the club problem. Our provision for the club in the State of New York, for the purpose of licensing, is a very stringent one, but experience has taught me the club is a subterfuge recently put up by any group that wanted to evade any law. For instance, they set up a club for vice, they set up a club for horse racing, they

set up a club for gambling, they set up a club for various other things. It is a very easy matter to incorporate a club and obtain a charter. If you ask the efficient police force in England what their problem is as far as liquor is concerned, they will tell you the club which attempts to violate the closing provisions, and so forth.

Senator CLARK. Mr. Mulrooney, irrespective of the merits of bulk sales, which you oppose, there is no logical difference between the club, the hotel, the bar, the tavern, or any other place that is licensed to sell liquor at retail by the drink, is there?

Mr. MULROONEY. Only the difference that I am speaking of in New York. The club in the city of New York pays a license fee of $600, whereas the restaurant or hotel pays $1,200. So he starts off with an advantage right away on his license fee.

Senator GORE. That is the State law?

Mr. MULROONEY. That is the State law.

Senator BARKLEY. Your position is that while a group of men would not organize a hotel for the purpose of selling liquor, they might organize a club, ostensibly for other purposes, but the main object of which would be to sell liquor?

Mr. MULROONEY. Not only would, but do; they are doing it now. That is one of the problems. There are a lot of these so-called fraternal clubs set up.

Senator GORE. That is a State problem?

Mr. MULROONEY. Yes, sir; that is a State problem entirely.

The CHAIRMAN. Thank you very much.

Senator LA FOLLETTE. Mr. Chairman, in connection with this question of bulk sales, I have a telegram from the State treasurer of Wisconsin which I would like to have inserted in the record, protesting bulk sales.

Senator BARKLEY. Would you mind having it read?

(The telegram was read and is as follows:)

MADISON, WIS., *July 26, 1935.*

Senator ROBERT M. LA FOLLETTE:

Bulk sales provision in Doughton Federal alcohol bill now pending in Senate vicious in the extreme. Hope you will vigorously oppose enactment of this provision. Its enactment will mean a virtual breakdown of control in many States and will seriously complicate the question of control in the State of Wisconsin.

ROBERT K. HENRY, *State Treasurer.*

The CHAIRMAN. All right, Mr. Jones.

STATEMENT OF HOWARD T. JONES, WASHINGTON, D. C., COUNSEL DISTILLED SPIRITS INSTITUTE, INC.

The CHAIRMAN. You are counsel for the Distilled Spirits Institute, Incorporated?

Mr. JONES. Yes, sir.

The CHAIRMAN. I think you said yesterday that Mr. Doran was the head of that institute?

Mr. JONES. Yes, sir; Dr. J. M. Doran.

The CHAIRMAN. He is in Europe, Mr. Jones?

Mr. JONES. Yes.

The CHAIRMAN. Have you some statement you want to make?

Mr. JONES. Very short, Mr. Chairman. Yesterday the question was raised as to why Dr. Doran was not available. I merely want

to say in explanation of that, that Dr. Doran was appointed by the State Department as the American delegate to the Fourth International Technical and Chemical Congress of International Industries that is to be held in Brussels between July 15 and July 28. He sailed from New York on July 10, having no knowledge of this meeting here.

The only other thing I have is a list of the members of the Distilled Spirits Institute which was requested yesterday.

Senator BARKLEY. Have you got a written statement that you are putting in the record?

Mr. JONES. No, sir. I was merely reading the title. I was not certain of it. It is the Fourth International Technical and Chemical College of Agriculture and Industry at Brussels, to be held between July 15 and July 28.

The CHAIRMAN. All right; proceed, Mr. Jones.

Mr. JONES. Yesterday a request was made for a list of the members of the Distilled Spirits Institute, Incorporated. I have that here, Senator.

Senator CLARK. How many members are there?

Mr. JONES. Seventy-six or seventy-eight.

Senator CLARK. As of what date?

Mr. JONES. Right up to date.

Senator CLARK. Will you have that list inserted in the record?

The CHAIRMAN. That may be inserted in the record.

(The list referred to is as follows:)

MEMBERS OF DISTILLED SPIRITS INSTITUTE, INC.

Ernest C. Alderman, Unionville, Conn.
The American Distilling Co., New York City.
The Baltimore Pure Rye Distilling Co., Dundalk, Md.
J. A. Barry Distillery Co., Inc., Ekron, Ky.
Bernheim Distilling Co., Inc., New York City.
Bonnie Bros., Inc., Louisville, Ky.
Brown-Forman Distillery Co., Louisville, Ky.
A. & G. J. Caldwell, Inc., Newburyport, Mass.
California Mission Vintage Co., Los Angeles, Calif.
California Products Co., Fresno, Calif.
Century Distilling Co., Peoria, Ill.
Churchill Downs Distilling Co., Louisville, Ky.
Commercial Solvents Corporation, New York City.
Connecticut Distilleries, Inc., Westport, Conn.
Cook-McFarland Co., Los Angeles, Calif.
B. Cribari & Sons, Inc., San Jose, Calif.
Daviess County Distilling Co., Owensboro, Ky.
Distilled Liquors Corporation, New York City.
J. A. Dougherty's Sons, Inc., Philadelphia, Pa.
Felton & Son, Inc., South Boston, Mass.
The Fleischmann Distilling Corporation, New York City.
Frankfort Distilleries, Inc., Louisville, Ky.
Glencoe Distillery Co., Louisville, Ky.
Glemore Distilleries Co., Louisville, Ky.
John A. Guhl, Trenton, N. J.
Hawaiian Okolehao Distilleries, Ltd., Honolulu, T. H.
Hickory Town Distilling Co., Hanover, Pa.
Hoffman Distilling Co., Inc., Lawrenceburg, Ky.
James Distillery, Inc., Baltimore, Md.
Kinsey Distilling Co., Philadelphia, Pa.
Laird & Co., Scobeyville, N. J.
F. C. Linde Co., New York City.
Lord Stirling Distilleries, Inc., Pittstown, N. J.
Los Angeles Warehouse Co., Los Angeles, Calif.

Louisville Public Warehouse Co., Louisville, Ky.
McKesson & Robbins, Inc., New York City.
Maryland Distillery, Inc., Relay, Md.
Merchants Distilling Corporation, Terre Haute, Ind.
H. McKenna, Inc., Fairfield, Ky.
National Distillers Products Corporation, New York City.
National Distilling Co., Milwaukee, Wis.
Nelson Wine & Distilling Co., Inc., Springdale, Ark.
New England Distillers, Inc., Clinton, Mass.
The New England Distilling Co., Inc., Covington, Ky.
Northwest Distilleries, Inc., Seattle, Wash.
Old Dixie Distilling Co., Richmond, Va.
Oldetyme Distillers Corporation, New York City.
Old Joe Distilling Co., Lawrenceburg, Ky.
Old Kentucky Distillery, Inc., Louisville, Ky.
Old Sam Distilling Co., Tunkhannock, Pa.
Owings Mills Distillery, Inc., Owings Mills, Md.
Padre Vineyard, Inc., Los Angeles, Calif.
Park & Tilford Distillers, Inc., New York City.
Pennsylvania Distilling Co., Inc., Jersey City, N. J.
Pomell, Inc., Winchester, Va.
Readville Distilleries, Inc., Boston, Mass.
Rockland Distilling Co., Tenafly, N. J.
T. W. Samuels Distillery, Inc., Cincinnati, Ohio.
San Francisco Warehouse Co., San Francisco, Calif.
San Gabriel Vineyard Co., San Gabriel, Calif.
Schenley Products Co., New York City.
Jos. E. Seagram & Sons, Inc., New York City.
Security Warehouse Co., Inc., St. Louis, Mo.
Shewan-Jones, Inc., San Francisco, Calif.
The Siegfried Loewenthal Co., Cleveland, Ohio.
South End Warehouse Co., San Francisco, Calif.
Speas Manufacturing Co., Kansas City, Mo.
Stitzel-Weller Distillery, Inc., Louisville, Ky.
K. Taylor Distilling Co., Frankfort, Ky.
Virginia Distillery Corporation, Richmond, Va.
Hiram Walker & Sons, Inc., Peoria, Ill.
The Thomas Ward Distilling Co., Westminster, Md.
The Frank L. Wight Distilling Co., Baltimore, Md.

Senator CLARK. Let me ask you when the institute was formed?

Mr. JONES. In December of 1933.

Senator CLARK. And whom was it formed by?

Mr. JONES. It was formed by a group of distillers composed of practically every distillery that had a permit to operate under the National Prohibition Act for the production of medicinal spirits and a few with plants in course of construction.

Senator CLARK. That was seven?

Mr. JONES. No, sir; it was something like 26 or 28. As a matter of fact, I think I have got a list here prepared by the Bureau of Internal Revenue that I can put in the record.

Senator CLARK. Put that in the record.

The CHAIRMAN. That may go in the record too.

(The list referred to is as follows:)

The Frankfort Distillery, Inc., no. 17, Louisville, Ky.
The Old Taylor Distillery Co., no. 19, Louisville, Ky.
H. S. Barton, no. 24, Owensboro, Ky.
The Old Quaker Co., no. 113, Frankfort, Ky.
The Mount Vernon Distillery Co., no. 27, Baltimore, Md.
Jos. S. Finch & Co., no. 4, Schenley, Pa.
Penn-Maryland Corporation, no. 1, Peoria, Ill.
A. Ph. Stitzel, Inc., no. 17, Louisville, Ky.
A. Overholt & Co., no. 3, Broad Ford, Pa.
The Old Crow Distillery Co., no. 19, Louisville, Ky.

The American Distilling Co., no. 2, Pekin, Ill.
Continental Distilling Corporation, no. 1, Philadelphia, Pa.
The Hermitage Distilling Co., no. 19, Louisville, Ky.
Bernheim Distilling Co., no. 1, Louisville, Ky.
Carthage Distilling Corporation, no. 1, Carthage, Ohio.
Hiram Walker & Sons, Inc., no. 3, Peoria, Ill.
Brown-Forman Distilling Co., no. 414, Louisville, Ky.
The Green River Distilling Co., no. 27, Baltimore, Md.
Large Distilling Co., no. 5, Large, Pa.
Wright & Taylor, Inc., no. 17, Louisville, Ky.
Black Gold Distillery Co., no. 19, Louisville, Ky.
Bernheim Distilling Co., Inc., no. 2, Louisville, Ky.
Pennsylvania Distilling Co., no. 6, Logansport, Pa.
Frankfort Distilleries, Inc., no. 1, Baltimore, Md.
Old Quaker Co., no. 2, Lawrenceburg, Ind.
Union Distilling Corporation (now Seagram), no. 1, Lawrenceburg, Ind.

Senator CLARK. What was the purpose of this institute at the time it was formed, the announced purpose?

Mr. JONES. A trade association.

Senator CLARK. That was composed only of the distillers who had permits to operate for medicinal or industrial purposes?

Mr. JONES. Yes, sir.

Senator CLARK. During prohibition?

Mr. JONES. Yes, sir.

Senator CLARK. It included both the makers of industrial alcohol and the holders of medicinal permits?

Mr. JONES. Yes. At the conference held at that time, I believe there were some industrial alcohol people, but I think later on they did not go forward with it, they left it purely to the beverage industry.

Senator CLARK. This institute was formed as a trade association last December?

Mr. JONES. Yes.

Senator CLARK. It was formed by the membership, and the membership at that time was limited to the holders of those permits?

Mr. JONES. That is right.

Senator CLARK. During prohibition times?

Mr. JONES. Yes, sir.

Senator CLARK. Do you remember how much contribution was made originally by each of these members of the institute?

Mr. JONES. Yes, sir; I remember what I heard about it. I have no personal knowledge of that. In order to underwrite the operations necessary to incorporate, and so forth, some seven of these concerns, each contributed $5,000.

Senator CLARK. Do you know who the seven were?

Mr. JONES. No, sir; but I think I can get it.

Senator CLARK. Will you get that and insert it in the record?

Mr. JONES. Yes.

(Names of contributors are as follows:)

Brown-Forman Distillery Co., Louisville, Ky.
Commercial Solvents Corporation, New York, N. Y.
Frankfort Distillery, Inc., Louisville, Ky.[1]
National Distillers Products Corporation, New York, N. Y.[1]
Schenley Products Co., New York, N. Y.[1]
Union Distillery Corporation (now Jas. E. Seagram & Co.), New York, N. Y.[1]
Hiram Walker & Sons, Inc., Peoria, Ill.[1]

[1] These companies are included in Mr. Choate's list of the first 10 companies in size of production in 1935.

Senator CLARK. Do you know whether the seven were among the nine who now control, according to the testimony here 80 percent of the distillery business in the United States?

Mr. JONES. I could not say, Senator. I do not recollect who those concerns were.

Senator CLARK. I would be glad to have you acquire that information and put it in the record.

Mr. JONES. Yes, sir.

(See names of contributors above and footnote (1).)

Senator CLARK. That original group of 27 also formed a code, did it not?

Mr. JONES. Yes, sir.

Senator CLARK. Was not that the body that did sponsor the code under which the Federal Alcohol Control Administration was formed?

Mr. JONES. No, sir; the distillers did not sponsor the code. The code was an imposed code, laid down by the Agricultural Adjustment Administration.

Senator CLARK. You mean that that was a code that was imposed by the President?

Mr. JONES. Yes, sir.

Senator CLARK. Under the section of the law authorizing the imposition?

Mr. JONES. Yes.

Senator CLARK. That is at variance with the testimony of Mr. Choate in the N. R. A. hearing.

Mr. JONES. I think that is what Mr. Choate said.

Senator CLARK. That is easy to prove, that is a matter of record.

Mr. JONES. Yes, sir.

Senator CLARK. Then this institute set up by these holders of permits was set up as the code authority under the code when it was formed, was not it?

Mr. JONES. I do not believe I got the full question.

Senator CLARK. I say the institute which was originally formed by the holders of permits during prohibition times was then set up as the code authority, was not it?

Mr. JONES. No, sir.

Senator CLARK. Who was the code authority?

Mr. JONES. The code authority consisted of 14 men that were elected under the code which was promulgated by the Agricultural Adjustment Administration.

Senator CLARK. Who was it elected by?

Mr. JONES. Elected by what was known as the Association of Distilled Spirits Industry, which formed a nonincorporated, voluntary association, purely for the purpose of electing a code.

Senator CLARK. Who were the members?

Mr. JONES. It composed, I think, practically every member distilling anything in the country, including brandy and alcohol for beverage purposes. At the time the N. R. A. code went out, that is at the time of the Schechter decision, there were, roughly speaking, 120 or 125 members of that association.

Senator CLARK. That was in addition to the members of the Distilled Spirits Institute?

Mr. JONES. Yes. Of course, that was composed of, in many instances, the same men. I mean practically all those that were in the institute were also in the association.

Senator CLARK. Who was the head?
Mr. JONES. Mr. Owsley Brown.
Senator CLARK. What connection did Dr. Doran have with it?
Mr. JONES. He was the supervisor of the code authority.
Senator CLARK. What was the basis of contribution subsequent to the original permission of the Distillers Institute?
Mr. JONES. That is the rate, you mean?
Senator CLARK. No; the basis.
Mr. JONES. The gallonage basis, the gallon production basis.
Senator CLARK. There was an assessment against each distiller on the basis of the gallonage?
Mr. JONES. Yes.
Senator CLARK. Do you know how much money was expended last year?
Mr. JONES. I am not sure of that, Senator. I can furnish that. Expenditures from December 14, 1933, to December 31, 1934, $66,832.24.
Senator CLARK. It was quite a large sum of money, wasn't it?
Mr. JONES. Yes. We have got quite an organization.
Senator CLARK. Dr. Doran was formerly in charge of the administration of the industrial alcohol?
Mr. JONES. Yes, sir; he was.
Senator CLARK. He has become head of the Distilled Spirits Institute at the time of its formation?
Mr. JONES. Very shortly afterward.
Senator CLARK. At a salary of $36,000 a year?
Mr. JONES. No, sir.
Senator CLARK. What was the salary?
Mr. JONES. $30,000.
Senator CLARK. And it is now $36,000?
Mr. JONES. No, sir.
Senator CLARK. Never more than $30,000?
Mr. JONES. No, sir.
Senator CLARK. That Distilled Spirits Institute, through the code authority, has passed on applications for permits for distillers all over the country, has it not?
Mr. JONES. No, sir.
Senator CLARK. Through Dr. Doran?
Mr. JONES. No, sir.
Senator CLARK. Has Dr. Doran been active, through the code authority, in passing on the permits?
Mr. JONES. No, sir.
Senator CLARK. What connection has he had?
Mr. JONES. The permit-granting power was entirely in the Federal Alcohol Control Administration. Due to the trouble—I should not say "trouble"—due to the fact that the alcohol tax unit was not able to supply that information about the various individuals who were applying for permits, because of the decrease in their force, they asked us to assist them and we made arrangements with Dun & Bradstreet, and we sent the name and address and connections of anyone who applied for a permit to operate a distillery to Dun & Bradstreet in the city here, and they furnished us a report that we transmitted to the Federal Alcohol Control Administration without comment.

Senator CLARK. You simply gave them the required information?
Mr. JONES. Yes.
Senator CLARK. The information on which the permits were issued?
Mr. JONES. Yes; and we made no comment.
Senator BARKLEY. What was the object of that? To ascertain the financial responsibility?
Mr. JONES. Yes, sir.
Senator CLARK. Was there any reason why the Federal Alcohol Control Administration could not acquire that information itself without proceeding to the Distilled Spirits Institute?
Mr. JONES. No; except they had no field force that was large enough they were limited at that time.
Senator CLARK. They could report to Dun & Bradstreet just as easy as you could?
Mr. JONES. Yes, sir.
Senator CLARK. Do you know why they did not do that?
Mr. JONES. I do not know why.
Senator CLARK. They asked you to do that?
Mr. JONES. Yes.
Senator CLARK. That is all.
The CHAIRMAN. Is there anything else, Mr. Jones?
Mr. JONES. I have a short statement that I would like to have included in the record.
The CHAIRMAN. All right, it may be included.
(The matter referred to is as follows:)

DISTILLED SPIRITS INSTITUTE, INC,
Washington, D. C., July 26, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR HARRISON: This memorandum of suggestions is filed on behalf of members of the distilled spirits industry, both those who are members of the Distilled Spirits Institute, Inc., and many of those who are not members of that corporation but who were members of the Association of Distilled Spirits Industry, being the organization through which the Code of Fair Competition for the Distilled Spirits Industry functioned during the life of the National Recovery Act.

This bill is a control measure for the alcoholic beverage industry. We do not object to control. Rather we welcome it and believe that strict rules and regulations are necessary and desirable. The suggestions we make are motivated by a desire to make effective this bill and, as will be apparent, most of our suggestions are in the line of clarification and definiteness

Section 4 (e), paragraphs (1), (2), and (3), commencing on page 8, line 3: As drafted, these paragraphs permit anyone, including consumers, to purchase distilled spirits in bulk. Packages purchased in bulk, however, cannot be broken into smaller units except by rectifiers, distillers, and bonded warehousemen or by those wholesalers who sell small barrels to distillers, rectifiers, and bonded warehousemen. There is an exception in favor of hotels and clubs which are permitted to draw the contents of bulk packages into containers for sale to consumers.

The Treasury Department and the Federal Alcohol Control Administration have voiced their definite disapproval of this section. In this view we concur. The keenest competition a distiller can have is a bootlegger, selling without the payment either of excise or occupational taxes. The control measures in effect under the codes and the internal-revenue laws, were slowly reducing, we believe, the bootleg problem. We believe these control measures should be continued without the weakening which would result from the passage of this section. We suggest the elimination of the three paragraphs in question.

Section 5 (b), (6), commencing on line 15, page 15: As the section now reads, the Administrator is charged with ascertaining what credit periods are usual and customary in the industry. Such a determination cannot be made, since there are no terms of credit usual or customary to any particular branch of the industry

as a whole. Even if such a determination could be made it would be impossible thereafter to have any change in the terms of credit unless all of the members of the industry acted in concert. Any general rule of credit periods applicable to the industry is unworkable and once fixed is unchangeable, but a rule which would prevent an individual member of the industry from tying up a retail establishment by extending to him credit not usually extended by such industry member would be enforceable.

Section 5 (d), insert on page 17, line 6 before the last word "or": "*Provided*, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons;".

In normal commercial intercourse, the return of merchandise by a customer is from time to time necessary. Without the amendment herein suggested such normal intercourse might be prohibited by the subsection.

Section 5, (e), line 4, page 18: Following the word "manufacturer" we suggest the addition of the word "distributor." The section deals with the requirements of the Administrator's labeling regulations and provides that the regulation require the label to inform the consumer of the name of the manufacturer, bottler or importer of the product. Without the amendment herein suggested, trade marks owned by distributors are made practically valueless. Trade marks are of two kinds, marks of production and marks of selection. A distributor owning a mark of selection may buy a product packaged under that mark from any source so long as he maintains the quality. If he is compelled to disclose on a label bearing that mark the name of the producers from whom he buys, he is faced with a commercial problem in competing with that producer on his own merchandise and is precluded by commercial conditions from ever changing his source of supply to the point where the property value in his mark is virtually destroyed. Those owning marks of selection are just as responsible to the consumer for the quality of the product sold thereunder as are those owning marks of production and the property rights in neither should be destroyed. The amendment which we suggest protects the property rights in marks of selection. Further, there is ample means of identification of the bottler by means of the numbers or names required to be shown on the strip stamps and blown in the bottom of the bottle.

It is assumed that subdivision 3, section 5, (e), commencing on line 5, page 18, is intended to require the labels on gin to show the commodity from which distilled. As originally drafted, it is believed the section would make that requirement only as to gin produced by redistillation and would not make that requirement as to gin produced by a continuous process of distillation. Neither would the amendment made by the House accomplish this end and it should be eliminated. If it is desired to make that requirement applicable to gin produced by both processes, that can be done by adding after the word "distilled" in line 12, page 18, the following: "and in the case either of alcohol or gin produced by a process of continuous distillation, the name of the commodity from which distilled."

We suggest that after the word "subsection" in line 6, page 21, there be added, "and in any such suit, service of process may be made upon the Administrator in any district in which the complainant resides or has his principal place of business by service upon the United States attorney for such district of such other person as the Administrator may by regulation prescribe." This amendment is is necessary, otherwise the right to bring action in the district courts might be denied through the Administrator's refusal to accept service outside the District of Columbia or where he might be served personally.

The same amendment should be made in line 5, page 25.

We suggest the elimination of the words, "or in case of gin whether or not produced by blending or rectification" commencing on line 7, page 22 and the insertion of the words, "if a representation of age is made" between the word "spirits" and the parenthesis on line 6, page 22 and the addition after the word "distilled" on line 12, page 22 of the words, "and in addition in the case either of gin or alcohol the commodity from which it or its neutral spirit content was produced." Under the advertising regulations of the Federal Alcohol Control Administration as promulgated under the code, the statement of the neutral-spirit content of the product was not mandatory unless some claim of age or excellence of quality was made. This regulation worked well and we believe was satisfactory to the administration. The amendment above would carry out the present practice as approved by the Federal Alcohol Control Administration with the additional requirement of the statement of the commodity from which the neutral spirit was made.

Respectfully,

HOWARD T. JONES, *Counsel.*

(Subsequently the following letter was received from Mr. Jones and was ordered printed in the record. In addition, the following telegram from the Glenmore Distilleries Co., Louisville, Ky., was ordered placed in the record.)

DISTILLED SPIRITS INSTITUTE, INC.,
Washington, D. C., July 30, 1935.

Senator PAT HARRISON,
Chairman Committee on Finance, United States Senate.

DEAR SENATOR HARRISON: This will refer to my letter of July 26, 1935, submitting for consideration of your committee suggestions as to amendment of H. R. 8870. Our suggestions were submitted to members of the institute for the purpose of securing their approval. Glenmore Distilleries Co. of Louisville, Ky., do not concur in the recommendation we made for amendment to section 5 (e), line 4, page 18, and have asked that its objection be incorporated in the record. Accordingly, a copy of its telegram is attached hereto with the request that it be incorporated in the record of the hearing.

Respectfully,

HOWARD T. JONES, *Counsel.*

[Telegram]

LOUISVILLE, KY.

DISTILLED SPIRITS INSTITUTE,
Washington, D. C.:

Reference your 20th, your memorandum satisfactory except suggestion to add "distributor" following "manufacturer", in line 7, page 19. If the purpose of these labeling regulations is claimed to be to provide the consumer with adequate information as to the identity and quality of the product it is most important that the name of the manufacturer be required to be stated. Please file this telegram with your memorandum. Please answer wire collect.

GLENMORE DISTILLERIES CO.

The CHAIRMAN. Is Mr. Barlow here?

STATEMENT OF LESTER BARLOW, STAMFORD, CONN., YALE & TOWNE MANUFACTURING CO.

Mr. BARLOW. Mr. Chairman and members of the committee: I represent the Yale & Towne Lock people. Neither the company nor myself are connected in any way with any liquor industry or any packaging organization, such as glass or cooperage. We are entirely disassociated with any angle of the liquor industry, other than the promotion of the protection for the consumers, and for the tax fees to the Government. Since repeal has been voted and adopted there has been no investigation, to our knowledge, by the Congress of the United States on how to proceed adequately in getting the tax and protecting the consumers of this country against the crime of bootleg practices.

Our organization and our experts do not believe at this time that the Congress can proceed with any sound knowledge on ways and means for protecting the consuming public or obtaining the taxes due until a fair investigation is made of the whole liquor industry and all of its affiliates and all of its associates.

Senator CONNALLY. Pardon me. Whom do you represent?

Mr. BARLOW. I represent the Yale & Towne Manufacturing Co., the makers of locks and protective devices.

It seems to us that the procedure today is like trying to fly a plane blindly, without the proper instruments. We will make this state-

ment now, that we are thoroughly convinced that no liquor would be passed by the bootlegger in the United States through retail sales in hotels, bars, or package stores if the Government of the United States determines to stop him, and this does not depend entirely on police regulation—it pertains to the physical thing. We do not protect the banks of the United States by simply saying, "Thou shalt not rob the bank." It is a fact that in all the bank raids in the last 6 years there has not been a dollar taken past the Yale protection.

Yale has made a study of this bootleg liquor, and Yale, through me, now states before this committee today that we are willing to meet anyone from anywhere who can show this committee that our contention is not true.

Senator CLARK. What is your contention?

Mr. BARLOW. Our contention is we can stop the bootlegger from operating in the United States through package liquor, and that the bulk sales is absolutely in violation of all sound principles of handling liquor in this country.

You were speaking of bottles a little while ago. Gentlemen, I will show you the Yale bottle here now, and this is so interesting that the Secretary of the Treasury sent for us without our requesting an invitation to see him.

Senator GORE. Are those bottles nonrefillable?

Mr. BARLOW. No, sir; we do not believe there are nonfillable bottles, that there is such an animal. You can fill any bottle. Any bottle that is fillable can be refilled. There is no nonfillable bottle. Such a bottle does not exist. There is no bottle that the Secretary of the Treasury's experts here cannot fill inside of 10 minutes.

Senator BARKLEY. The bottle you have there is the Yale bottle?

Mr. BARLOW. That is the Yale bottle.

Senator BARKLEY. Manufactured by Yale & Towne?

Mr. BARLOW. No, sir; this bottle is designed by Yale & Towne but it is manufactured by any glass bottle institution.

Senator BARKLEY. Is there a patent on it?

Mr. BARLOW. It is patented; yes.

Senator BARKLEY. Then you are interested in the bottle business.

Mr. BARLOW. We are interested in protection. We are not interested in any way in the bottle business.

Senator BARKLEY. You get a royalty on the bottle, don't you?

Mr. BARLOW. I will say this: Anything that the Government may do, as far as the Congress is concerned, at this time, will not affect Yale & Towne earnings on this bottle. We have more business than we can handle. We have more machines to make than we can furnish. The Government might protect the Yale & Towne earnings on this bottle by taking a monopoly on it, but we are not concerned at this time about the earnings on this thing, because we think we are protected on it. We are concerned with the continual deception practiced in this country, which is perpetrated on the American people, the continued racket in liquor, which we believe should not be tolerated by the American people. We do not think it is necessary.

Senator GORE. What is the point of the bottle?

Mr. BARLOW. The point is this, Senator, that Yale is not interested in materials.

Senator CONNALLY. What is that bottle made of? It is glass, isn't it?

Mr. BARLOW. Glass is the only material that we know of which you cannot patch, with liquor in it. You have no more chance in patching a bottle with liquor in it than you have a pane of glass, without it being detected always afterwards.

Senator GORE. If they take the liquor out of the bottle and then replace it with adulterated liquor, and then seal it with glass, they would be able to do it that way, wouldn't they?

Mr. BARLOW. That is one of the impossibilities.

Senator GORE. Well, I know of some that are operated on the cork end of it.

Mr. BARLOW. There has never been a liquor bottle opened and sealed with glass on the bottom. It would show the chill mark and it would be immediately detected by the people that the bottle had been tapped. They have tried to spread the chill mark as far as possible. There is probably one-half of the bottle showing the chill mark. Every bottle manufactured shows the chill mark. The story of tapping through the glass is not true; it does not happen. It has been stated here that bottles can be tapped, bottles can be altered, that is the liquor in those bottles or the content can be altered through the glass, but that is not true.

Senator GORE. What is the advantage of one bottle over another if you cannot tamper with any of them?

Mr. BARLOW. I mean the protective type of bottle, properly designed.

Senator CLARK. What is the feature of your protective bottle?

Mr. BARLOW. I think in the United States there is plenty of technical science to stop the bootlegger.

Senator CLARK. I wish you would show us something about the particular bottle. I am not concerned with your opinion about the altruism of the Yale & Towne Co.

Mr. BARLOW. We are contending that you can stop the bootlegger.

Senator GORE. Tell us how.

Mr. BARLOW. Just give us a chance and we will show you. We will show you that we are right. You cannot bring anybody in here to prove that we are wrong about this matter. Let us be emphatic about this thing. Mr. Malott, of the Internal Revenue Division, made the statement to the witness, "Here is what I want: 100-percent protection." The Secretary of the Treasury asked to see us and have us explain this to him, and present with him was Mr. Oliphant. Each of these three gentlemen said it was up to Mr. Graves. Mr. Graves has charge of the enforcement of the law against bootleg traffic. Mr. Graves said, "We do not need any further protection, because there are no more bootleggers." Four days later he led a raid of 12,000 men to get the bootleggers.

Senator BARKLEY. Is that the explanation of your bottle?

Mr. BARLOW. This is not a laughing matter, gentlemen. I am not laughing; I am talking seriously.

Senator BARKLEY. If you tell us what we want to know we will get along.

Mr. BARLOW. If you wish, if you give me a chance, I will do it.

Senator BARKLEY. We have been waiting for your explanation of the bottle.

Mr. BARLOW. This is a glass bottle that I have here; it looks like any other bottle. Now if I break off the top of that bottle there is

no one knows how to put it back again without showing how it has been welded. You cannot heat it with liquor in it.

I will break this top of the bottle, or I will rip it. The glass people say it cannot be done. I rip that top off. I do not crack it up, and I will not open the bottle; I will just crack it off the top. I will unlock it; I will pull the top away from it, and there is a cork. The bottle is still unopened, you see, gentlemen. That has been ripped, the rip running this way [illustrating]. No one knows how to put that back on the bottle. You cannot get the liquor out without breaking off that top.

We contend if this bottle denoted the amount of tax paid, itself being the label, and not released to the liquor trade until the tax was paid on that much liquor, and the consumer was being forced to break the top off the bottle before getting the liquor out, he would destroy the Government stamp, and the bottle is not available again for packaging, and cannot be picked up.

Furthermore, you cannot hide a glass plant. You might hide a railroad, but you cannot hide a glass plant. It takes from a week to 10 days to get the glass hot enough to make the bottles. You have got to heat the sand, the coloring matter, and all the ingredients that go into the glass. It would take thousands of dollars to make the molds for the bottles. It takes from $25,000 to $50,000 to make the bottles. So it is utterly impossible for the bootleggers to get the bottles if the Government wants to stop it. There are about 50 places in the United States where bottles could be made. Less than 300 men can absolutely control the output of bottles in this country. If you make the bottle out of tin or some other material that you cannot break, then glass would not be in the picture. That is all we are concerned with.

Here is an empty bottle with no rubber on it. You asked me, Senator Connally, if you could see how that breaks off. I can throw the bottle across the room without breaking the neck off.

Senator GORE. Do your people control the patent on this?

Mr. BARLOW. Yes, sir.

Senator GORE. Now if it was adopted——

Mr. BARLOW. We are not asking that it be adopted.

Senator GORE. I say if it was a good idea and the Government should adopt it, then provision should be made so that they all would have access to it.

Mr. BARLOW. Mr. Malott asked if the Yale would be interested in agreeing that the Government should take it over. I said it would be up to the Government.

I will make this suggestion: Before Congress passes any laws with reference to liquor control that they investigate the ways and means that are possible, that the scientific men might bring before a conference, in order to stop the bootlegger.

Senator BARKLEY. Do all the bottles have a slit in the rubber?

Mr. BARLOW. The slit is under the arrow, on the neck of the bottle.

Senator BARKLEY. You mean you have got an arrow pointing to where the slit is?

Mr. BARLOW. Yes.

Senator GORE. There is no danger in getting glass in the liquor?

Mr. BARLOW. The liquor bottle is not opened by unlocking it. You simply take the top of the bottle off. This bottle is insured by insurance companies against accidents. It cost us less than 0.002 of a cent to insure the bottle.

Senator CLARK. Where do you find the place to open the thing?

Mr. BARLOW. Naturally if people had never seen the gear shift of the automobile we would have to show them where it is, so in case of the bottle we show it to them by the arrow.

Senator BARKLEY. In other words, all your bottles carry this arrow?

Mr. BARLOW. Yes.

Senator BARKLEY. Which points to a slit?

Mr. BARLOW. Yes, sir.

Senator BARKLEY. If a man knows how to find the slit and has a little key he can open the bottle?

Mr. BARLOW. Yes, sir.

Senator BARKLEY. And if he does not know where the slit is then he would not be able to open the bottle?

Mr. BARLOW. Then he should not be allowed to drink.

Senator BARKLEY. He may lose his key.

Mr. BARLOW. It may be opened with a penknife, anything that will go in there will open the bottle.

Senator BARKLEY. Is that arrow and that arrangement designed to make it easy for somebody to open that bottle and change the contents in it?

Mr. BARLOW. But how is he going to put the bottle top back together again after he has changed the contents? We are concerned only with the original opening of the bottle.

Mr. Mulrooney told you a while ago that they can throw a hydrometer in a bottle that is on the bar and they can tell you whether it has been doctored or not, but we contend any distiller would be careful not to doctor the liquor, because all they would have to do is drop a hydrometer in the bottle to show whether it was true liquor. So the bottle is doctored at the bar.

Glass is the only thing that we know of in which we can have such protection.

Now then, here is the thought we want to leave with you: Senator Copeland introduced a bill sometime ago whereby the protective type of bottle, not nonrefillable, but the type which had to be broken before you could get it open, that the Federal Government grant the concession to any distiller who would use such protection, paying the tax on the volume in the bottle before he received the concession, relieving him of the purchase of that strip stamp. That stamp, putting it on, would almost pay the distiller for the protection. That would not force any distiller into that type of bottle, but he could take it if he wanted to. These bottles would never be available to the criminal to evade the taxes to the public or to violate the confidence of the public.

We say this: We think the thing to do, gentlemen, before you go into caucus and consider it, throwing it wide open to the bootlegger, that you consider all the methods that are brought before you, that are brought before the Congress to protect the liquor trade and the taxes.

Here are two bottles of V. O. Seagram's. Both of these were bootlegged. Both of the labels seem to be genuine, but these Canadian labels are fakes, not even the right color. One of the caps also is a counterfeit. The Seagram people asked me "Why are you hunting up the bootlegged packages?" I said "We are taking these down before the committee of the Senate", and they immediately closed up and did not want to know even where the bottles were packaged.

I could go a long ways. I have got a lot of data, but I am not going to take the time. I think gentlemen, if you go into the wholesale-trade business, if you go into the glass-manufacturing industry, I think you ought to go into the coopering business. It happens that the biggest bootleg ring in the world controls the glass industry. Despite the fact that I am talking for the glass bottle, the glass industry is controlled by the biggest bootleg ring in the world.

Senator GORE. What is that bootleg ring?

Mr. BARLOW. You mean the name?

Senator GORE. Yes.

Mr. BARLOW. We call it the National Distillers.

Senator GORE. That is the bootleg ring?

Mr. BARLOW. That is one of those in the bootleg ring. Two-thirds of the liquor contained in the bottles is bootleg liquor.

Senator CLARK. If you have any data on that I am sure the Treasury Department would be glad to have it.

Mr. BARLOW. I think Mr. Morganthau is very sincere, and he was very sincere when he made the statement he would run the bootlegger out or quit, and I think he meant it when he made that statement. And I think Mr. Oliphant is sincere, and Mr. Malott, but unfortunately men in public life as well as private life can be bought. When a group of men can evade taxes up to $200,000,000 a year, and probably $400,000,000——

Senator CLARK. You just made the statement that the National Distillers, Inc., headed the bootleg ring.

Mr. BARLOW. I did not say "the ring", I said, "a" bootleg ring.

Senator CLARK. What proof have you of that?

Mr. BARLOW. The Yale & Towne was told in plain and simple words, "Get out of the production business and get out quick." I saw the president of this organization——

Senator CLARK. Before you go into that, who was it that told you that, Mr. Barlow?

Mr. BARLOW. I am going to give names when you go into an investigation on this thing.

Senator CLARK. That is all right. You gave names before, but you will not give them now.

Mr. BARLOW. I will give names when you go into an investigation on this thing.

Senator CLARK. Mr. Chairman, I ask the witness be sworn.

(Mr. Barlow was sworn.)

Senator CLARK. Now you are sworn, sir. Mr. Barlow, I repeat my question. Who was it that told you to get out of the production business and get out quick?

Mr. BARLOW. I am not going to tell you that. If you have an investigation, I will tell.

Senator CLARK. Mr. Chairman, at the proper time I will ask to have the witness cited.

Mr. BARLOW. Cite me and put me on the floor of the Senate. We mean business on the question of this bootleg ring. The American people are going to call a halt to it. Put me on the floor of the Senate for contempt, if you want to.

Senator CLARK. Mr. Chairman, I insist that this witness answer. This witness has no right to come in here and deliver stump speeches and to make charges against business concerns unless he is willing to prove it.

Mr. BARLOW. I am willing to prove it.

The CHAIRMAN. Proceed, Mr. Barlow, if you have something else. The matter of the citation will come up later. Is there anything else now?

Mr. BARLOW. I think, Senator, under the circumstances that happened just a minute ago, that I will conclude my testimony right now with this statement, that the American people are not going to take kindly to the present proposal of packaged and bulk liquor. What we want to see is bootlegging stopped. We are ready to help. We challenge anyone to show us that we are not correct on that point. That ends my testimony, sir.

The CHAIRMAN. The committee is considering this legislation and is trying to prevent as much bootlegging as possible, and legislate accordingly. I do not think we have stopped it all yet.

Mr. BARLOW. No, sir, you haven't; you haven't begun to.

(Subsequently the following telegram was received from Mr. J. A. Horne, vice president, the Yale & Towne Manufacturing Co., Stamford, Conn., and was ordered placed in the record.)

NEW YORK, N. Y., *July 30, 1935.*

CHAIRMAN OF THE SENATE FINANCE COMMITTEE,
United States Senate:

Press reports of July 28 and 29 refer to Lester P. Barlow as a representative of the Yale & Towne Manufacturing Co. in testifying before your committee. He is not authorized to represent this company before your committee.

THE YALE & TOWNE MANUFACTURING CO.,
J. A. HORNE, *Vice president.*

The CHAIRMAN. All right. Next we will hear from Mr. Mills, from St. Louis, a representing the Anheuser-Busch, Inc.

Mr. H. P. Somerville, Washington, D. C.

STATEMENT OF H. P. SOMERVILLE, WASHINGTON, D. C., NATIONAL LEGISLATIVE COMMITTEE, AMERICAN HOTEL ASSOCIATION

The CHAIRMAN. Mr. Somerville, you represent the national legislative committee, American Hotel Association?

Mr. SOMERVILLE. That is correct, sir. As chairman of the legislative committee of the American Hotel Association, I respectfully urge on behalf of the hotels of the United States that provisions be included in the F. A. C. A. liquor control bill to enable license holders to purchase and sell liquor in bulk.

Under the present regulations which allow hotels to purchase liquor only in bottles, we are forced to charge as high as 50 or 60 cents per drink. Prior to prohibition, when we were permitted to purchase liquor in barrels for sale to our customers, we were able to sell a better quality of liquor to our customers at a much lower price.

It is our belief that a large share of the increased cost of liquor is due to the restrictions which have confined the distribution and sale of spirits to bottles. We have to pay for the cost of bottling, casing, capping, labeling, and so forth, of spirits, when we could have purchased the same spirits in bulk and saved this expense. The weight of the bottles and cases required to hold 48 gallons, the amount held by the standard bourbon barrel, is approximately 300 pounds more than the weight of a barrel, and we are forced to pay freight and handling charges on this useless weight. Furthermore, we have encountered the problem of breakage, which we did not have with barrels.

Liquor stored in glass bottles does not improve in quality or flavor, while liquor stored in barrels improves constantly. Prior to prohibition, a hotel was able to select a particularly fine quality of liquor, order 25 or 50 or 100 barrels, and put it aside to age, using it as needed. Thus the hotel was always assured of a supply of good quality liquor, and was not worried about price changes and market conditions.

The value of the liquor purchased became greater as it was aged in the wood. We were also able to purchase warehouse receipts and to withdraw this liquor as needed, without going to the expense of having it bottled.

Under the bottling regulations, we are forced to purchase thousands of dollars worth of bottles for which we have no use. We are further forced to destroy these bottles, which causes us much additional expense and trouble.

There is no reason to believe that there will be any cheating by hotels if allowed to purchase liquor in bulk. Certainly no hotel would risk the loss of its liquor permit in an attempt to gain a few dishonest dollars. The barrel does not offer any more opportunity for cheating than the bottle and probably not as much.

The purpose of this statement to the committee is to emphasize our contention that bulk distribution and sale of spirits would enable us to provide our customers with a higher quality of liquor at a lower price. We likewise feel that it would reduce the bootleggers operations, because with lower sales prices in reputable hotels and clubs, the illicit sales of liquors would not be profitable.

My friend Commissioner Mulrooney made two points that I would like to answer. The first one was a statement about what a so-called "reputable" hotel did prior to prohibition. Since he did not mention the name of the hotel it might be considered as a reflection on the hotel business in general. Now he said that hotel had the reputation of having the finest grade of liquor and then mixed other liquor with it. Commissioner Mulrooney did not tell you that at that time it was legal to do so, and it was the common practice, and frequently resulted in better bar liquor, and would probably do so today if we were permitted to do it, but we are not permitted to do it under the present law.

The second point made was in reference to the amount of inspectors needed in the event of bulk sales. I question the consistency of that statement, because it takes one inspection to inspect a 48-gallon barrel, and if that has been converted into pints, it makes 384 pints and that would require 384 inspections to inspect the same amount of liquor. That is all, thank you.

The CHAIRMAN. Thank you very much, Mr. Somerville.

Mr. Beneman.

STATEMENT OF GEORGE R. BENEMAN, WASHINGTON, D. C., UNITED STATES BREWERS' ASSOCIATION

The CHAIRMAN. Mr. Beneman, you represent the United States Brewers' Association?

Mr. BENEMAN. Yes, sir; we have prepared a short memorandum of our views, if I may have leave to file it.

The CHAIRMAN. Put it in the record.

(The statement referred to is as follows:)

MEMORANDUM OF THE UNITED STATES BREWERS ASSOCIATION WITH RESPECT TO H. R. 8870

H. R. 8870 as passed by the House of Representatives is in fact a revised draft of H. R. 8539, originally introduced by Mr. Doughton.

The bill creates prohibitions or rules described as rules of unfair competition and unlawful practices and provides penalties and administrative machinery for enforcement of the said rules.

H. R. 8539 was introduced in the House of Representatives on June 18. On that day the brewers of the United States were assembled in convention in Chicago, Ill., considering the effect of the termination of the code of fair competition which had been approved by the President under the National Industrial Recovery Act, on the industry. There had been established by that code rules of fair competition for the brewing industry. There were some four-hundred-and-sixty-odd brewers represented at the mass meeting in Chicago in person and by proxy.

While considering the subject of maintaining fair-trade practice rules the meeting was advised of the introduction in the House of Representatives of H. R. 8539, and adopted a resolution which, among other things, stated that they were unalterably opposed to the writing into statutes an inflexible code of fair-trade practices.

This position was due primarily to two facts: (1) Because in the main the brewing industry is essentially an intrastate industry, approximately 70 to 80 percent of all beer produced in the country being distributed to consumers within the State in which it is produced, according to our best estimates, and (2) because practically every State has incorporated within its statutory provisions or administrative regulations rules of fair competition with which the brewer must comply.

The brewing industry does not desire to conduct its business in any improper manner or in any manner unfair or unsound as to dealers or the consuming public. It is in full accord with the purpose of the proposed rules of unfair competition and unlawful practices, but is of the opinion that the intrastate character of its business makes Federal rules impractical.

There are 36 States which have definite statutes dealing with the control of retail outlets by brewers and wholesalers; 21 States have statutes dealing specifically with the furnishing, etc., of fixtures and supplies by the brewers and wholesalers to retailers, and 22 States have dealt specifically with the matter of signs to be furnished by brewers and wholesalers to retailers. These state restrictions and regulations vary. It is obvious, of course, that a brewer dealing with a retailer within his State is engaged in intrastate commerce and is controlled in his operation by the law of his State. If brewers outside the State were by Federal statute required to conform to rigid statutory rules of fair competition not in conformity with the rules set up by the States controlling brewers doing business wholly within their borders the result would be unfair competition as between different brewers rather than fair competition.

In dealing with the power of the Federal Government to regulate interstate commerce the Supreme Court in the *Schechter Poultry Corporation case* held that the activities of the Schechter Poultry Corporation were not in interstate commerce and made the following statement:

"Much is made of the fact that almost all the poultry to New York is sent there from other States. But the code provisions, as are applied, do not concern the transportation of poultry from other States to New York, or the transactions to the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases, whether at the West Washington Market of New York City or at the railroad terminals serving the city, or elsewhere the poultry was trucked to their slaughter houses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughter-house markets for slaughter and local sale to retail dealers and butchers, who in turn

sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce."

If the slaughter of chickens in the city of New York and the sale thereof to retailers who in turn sold to consumers in the city of New York is not a transaction in interstate commerce, then, obviously, the brewing of beer in New York and the sale thereof to retailers who in turn sell to consumers in the city of New York is not a transaction in interstate commerce.

H. R. 8870 in defining those bound by the rules of fair competition and unlawful practices therein set up, however, does not limit the application of those rules to transactions in interstate commerce. To use a typical phrase from the bill, the rules of fair competition apply to "persons in interstate or foreign commerce", if the rule is violated "in the course of interstate or foreign commerce", or if the rule is violated "to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce", or if the direct effect of the violation is "to prevent, deter, hinder, or restrict other persons from selling or offering for sale * * * in interstate or foreign commerce."

The draftsman of the bill apparently attempted to make the rules of unfair competition and unlawful practices therein set forth go beyond the mere application to transactions "in interstate commerce". We believe, however, that it is obvious that there will be many situations of purely intrastate character where a brewer deals with a retailer within the borders of his own State and fully within the laws of the State which, while, it may affect a brewer outside of the State, would not have such direct effect that the Federal statute would be applicable and that as a result the rigid statutory rules of the Federal act would, at least, to a degree, create the conditions of unfair competition which the resolution adopted at the Chicago convention attempted to forestall.

It is only where the intrastate transaction directly and substantially affects interstate commerce that Congress has any jurisdiction over intrastate operations. In dealing with this question in the *Schechter case*, the Supreme Court said:

"The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intrastate operations. Thus, Congress may protect the safety of those employed in interstate transportation 'no matter what may be the souce of the dangers which threaten it' (*Southern Railway Co.* v. *United States*, 222 U. S. 20, 27). We said in *Second Employers' Liability Cases* (223 U. S. 1, 51) that it is the 'effect upon interstate commerce', not 'the course of the injury', which is 'the criterion of congressional power'."

The Court then went on to say the following:

"But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all of the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government."

It is thus apparent that many of the instrastate transactions between brewers and wholesalers on the one hand and retailers on the other, complying with the local law will not so directly affect interstate commerce as to make the Federal law applicable thereto and where the State restriction is less than the Federal restriction, unfair competition between out-of-State vendors and in-State vendors will result.

Apparently this was to a certain extent realized by the draftsman of the bill, as in section 5 (a) of H. R. 8870 wherein the requirement is made that labels used must be first approved by the Administrator, the following provision appears:

"Provided that any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant, are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce" (lines 17 to 23, inclusive, p. 21).

If, however, the fair-trade-practice provisions are to apply to brewers, we respectfully submit the following suggestion for modification of the language of some of them.

We respectfully submit that the language of subdivision 3 and subdivision 6 of section 5 (c) should be modified.

Subdivision 3 creates a complete prohibition on the furnishing, giving, etc., to the retailer, of any equipment, fixtures, signs, supplies, money, or other thing of value to induce such retailer to purchase beverages from such person to the exclusion in whole or in part of such beverages offered for sale by other persons. It further provides, however, that such prohibition is subject to such exceptions as the Administrator shall by regulations prescribe, and then enumerates the conditions and things to be considered by the Administrator in determining the exceptions. The conditions to be considered by the Administrator in promulgating his exceptions are: (1) Due regard for public health; (2) the quantity and value of articles involved; (3) established trade customs not contrary to the public interest; and (4) the purpose of this subsection.

In view of the fact that so many of the States have already legislated within the field covered by the prohibitions and have set up varying rules of limitation on equipment, fixtures, etc., which may be furnished by a manufacturer or wholesaler to a retailer, and in order that out-of-State vendors dealing in interstate commerce be not restricted by this act to a greater extent than are dealers within the State whose business is purely intrastate, it is suggested that another condition be inserted as one to be considered by the Administrator in determining the exception, to wit: "The law of the State in which the retailer conducts his business."

We further suggest that subdivision 6 of section 5 (b) be amended to read as follows:

"(6) By extending to the retailer credit for a period in excess of the credit period usual and customary for the particular class of transactions."

The bill now provides that credit other than usual and customary credit to the industry shall be one of the items dealt with in finding whether or not a tied relationship exists between the brewer or wholesaler and the retailer and further provides that the usual and customary credit to the industry shall be ascertained by the Administrator and prescribed by regulations by him. The effect of the amendment proposed is that the credit terms shall not be deemed to constitute a tied house relationship unless those terms are not the usual and customary terms extended by the particular dealer to retailers in the particular class of transactions involved. There is no such thing as usual and customary credit terms applicable to the industry at large. Each brewer, and in fact, each merchant, has his own credit system. It is, therefore, impracticable to deal with usual and customary terms of credit in the industry and obviously the individual members of the industry could not operate under rigid credit rules laid down for the entire industry by the Administrator. The provision as we have suggested it be revised is substantially that which appeared in the Code of Fair Competition for the Brewing Industry and affords full protection against abuse.

We suggest that section 5 (e) be amended as follows:

On page 17, lines 19 and 20, strike out the words "the Administrator finds to be likely to" and insert in lieu thereof the word "will".

After the word "manufacturer", line 4, page 18, insert, "distributor or".

On page 19, line 23, change the period to a semicolon and insert "provided that this paragraph shall not apply to the icing of bottles by retailers and the effect thereof on marks, brands, or labels."

The effect of the proposed amendments is as follows:

The section deals with labeling of distilled spirits, wine or malt beverages in bottles and requires such packages to be marked, branded and labeled in conformity with regulations prescribed by the Administrator, and attempts to define the nature of those regulations. Amongst other things, the regulations are to be such as will (a) prohibit deception of the consumer to the products or the quantity thereof, and (b) as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters "as the Administrator finds to be likely to mislead the consumer."

The first amendment suggested with respect to this section requires the regulations to prohibit all of (a) and to make the prohibition referred to above under (b) a prohibition irrespective of falsity of statements relative to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as "will mislead the consumer."

All we ask in this regard is that a statement be not prohibited on the label unless it misleads the consumer, and that we be not bound by what the Administrator considers as likely to mislead the consumer. As drafted, the section gives the Administrator almost arbitrary powers and practically precludes court review of his findings. The amendment which we suggest at least leaves the

courts available to the bottler so he can try out in the courts the question of whether the label does, in fact, mislead the consumer.

The second amendment suggested has to do with the provision that the regulations require the label to show the manufacturer, or importer. We suggest that the label be permitted to show only the name of the distributor. Many distributors have developed trade-marks of their own. Trade marks, under the law thereof, are of two types—marks indicating production and marks indicating selection. The distributor who has developed a proprietary right in a mark of selection may procure his supplies, bottled under that mark, from any source, so long as a uniform quality of his product is maintained. To require a label bearing a mark of selection to show the name of the producer or bottler is virtually to destroy the property value in the mark of selection. Private brands owned by distributors would be practically valueless if the name of the producer were required to be shown on the label. If the identity of the bottler is necessary for administrative purposes, the language of the bill is broad enough to allow the Administrator by regulation to require some symbol on the label for that purpose.

The third amendment suggested in the section has to do with the provision which prohibits alteration, mutilation, destruction, obliteration, or removal of any mark, brand, or label upon distilled spirits, wine, or malt beverages which are either held for sale in interstate commerce or which have been shipped in interstate commerce. Obviously, many retailers serve beer in bottles which have been shipped in interstate commerce, and which due to the nature of the product, must be iced before they serve it. This is equally true of many wines. It is, of course, impossible to ice the bottles without mutilating or destroying the label, and the amendment suggested is intended to take out of that prohibition such label mutilation or removals as are due to icing after interstate shipment.

Section 5 (f): On page 21, line 20, we suggest that "the Administrator finds to be likely to" be eliminated and the word "will" be inserted in lieu thereof.

This amendment makes the same change in the advertising section as is proposed in the first amendment above in the labeling section..

We suggest that at the end of section 5 there be added a provision along the lines suggested by Mr. George P. McCable in the statement which he made before the committee yesterday. He fully explained the reasons thereof.

Respectfully submitted.

GEORGE R. BENEMAN,
Attorney, United States Brewers' Association.

The CHAIRMAN. Mr. Harry L. Lourie.

STATEMENT OF HARRY L. LOURIE, WASHINGTON, D. C., NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS

The CHAIRMAN. Mr. Lourie, you represent the National Association of Alcoholic Beverage Importers?

Mr. LOURIE. Yes, sir. Mr. Chairman and members of the committee, I am the executive secretary of this association which represents some 90 percent of the total volume of the imports in the United States.

Senator CLARK. Speak a little louder, please, Mr. Lourie.

Mr. LOURIE. I say I represent an association, national in scope, which includes in its membership some 90 percent of the total imports into the United States. This association formerly was formed, or originally was formed under the imports code, which was placed by the Government on the importing business, and was formed primarily for the election and the support of the code authority. At the time the code authority was organized and elected by the members of the industry, I was the executive director of that code authority.

We only have three points in this bill that we would like to present for the committee's consideration. The importers as represented by a board of governors, who are selected from all over the country, would like the committee to consider the desirability of the control of the liquor industry being placed in an independent governmental

establishment. We have certain definite reasons for making this suggestion. First of all, H. R. 8870 is a bill which is only remotely connected with the collection of revenue. You might look on this bill as a social economic measure.

The CHAIRMAN. You heard Mr. Choate's testimony?

Mr. LOURIE. Yes.

The CHAIRMAN. You share his views?

Mr. LOURIE. I agree with Mr. Choate's views and the views expressed by the Secretary of the Treasury.

Senator CLARK. You were formerly in the Government service?

Mr. LOURIE. I was with the Tariff Commission for years.

Senator CLARK. And you helped to draw the code?

Mr. LOURIE. No, Senator, I was on the President's Liquor Committee, but the imports codes were drawn by another committee which succeeded us after we prepared our report.

I may add for the information of the committee that I never have been directly or indirectly connected with the liquor industry. My job today is not the buying or selling of liquor. It started simply as a policeman for the industry. I am not concerned with the profits or losses of the industry. I am concerned with the welfare.

Senator CLARK. Just what is your job today, Mr. Lourie?

Mr. LOURIE. The decision of the Supreme Court threw out the work which the code authority had been doing, which has been police work mostly. When the Supreme Court wiped out our code, the members of the industry decided to become a nonprofit association, and I am still holding my job. My contract runs out next February.

Senator CLARK. Is that the Distillers Institute?

Mr. LOURIE. It is an entirely separate organization.

Senator CLARK. What is the name of it?

Mr. LOURIE. The National Association of Alcoholic Beverage Importers, Inc.

Senator CLARK. That has only to do with importers?

Mr. LOURIE. It has entirely to do with importers. I may say certain members of the distilling industry are also importers, they are members of this association, as well as in the Distillers Institute However, there are no joint meetings between the two. Our problems are entirely different.

Senator CLARK. You have only to do with the matter of importers?

Mr. LOURIE. Yes, sir. There were some 1,200 permits issued for importers, the other 400 were mainly rectifiers, distillers, and importing bulk whisky for further rectification and blending.

May I say, Mr. Chairman, one of the reasons we feel rather strongly that this work should be continued as an independent establishment is because of the quasi-judicial powers given in this bill. This bill, to my mind, goes perhaps further to establishing such powers than the law establishing the Tariff Commission or the Federal Trade Commission. Under this bill the administrator can absolutely put out of business any member of the liquor industry, whereas the Tariff Commission is limited in its functions to changes in recommendations, to changes in rates of duties. The Federal Trade Commission is limited mainly to desist orders in respect to unfair practices. This bill goes further than any bill of its type that I have ever seen, because of the enormous powers given to the administrator or the commission which may handle it. We think this is a function which is so far

separate from that exerted by the Secretary of the Treasury that we believe the responsibility should be placed in a separate organization responsible only to the President and to the Congress.

The CHAIRMAN. Well, there are some of us that share your views on that problem.

Mr. LOURIE. The other two points I have to make, one is with respect to this bulk provision. As importers we are not concerned with any legislation that you may adopt governing domestic distillers, rectifiers, or wholesalers. We would like to point out for your consideration the fact that the importer does a very limited amount of business, partly because the existing tariffs, duties, and excise taxes are so high that on a gallon of imported spirits you have a $7 tax. The only stock in trade that the importer has is the reputation of the goods that he brings in. We do not want the right given to the importing industry to import spirits in bulk and to sell such spirits in bulk unless such spirits are sold to concerns carefully regulated by the Government.

The dangers to the importing industry of substitution are enormous. I may say, for your information, we spent some $10,000 in investigating illicit traffic in distilled spirits in New York, insofar as imports are concerned, and we found that an enormous number of bottles, apparently illicit in origin, entirely fake, as far as labels were concerned, were on the market bearing the name of famous brands of imported liquors. Some of the stuff was no doubt smuggled, but the great majority represented concoctions put up largely in private houses, some of them put up, of course, in plants. We turned over all that information to the Government, and we know a number of raids were conducted in the case of the plants. In the case of the private houses, however, the Government finds an almost impossible situation because of the terms of the law, which hold the raiding agent responsible for any damages, unless the conviction ensues later on.

We feel if bulk imported spirits should be allowed into the United States there would be a tremendous incentive to the manipulation of this liquor, and I do not need to tell you when you have a tax of $7 a gallon, every gallon you substitute in a 50-gallon barrel not only means $7 a gallon loss to the Federal Government in Federal tax, but also a dollar in the State tax, and you also have the initial cost of the liquor. In the case of cognac the initial cost is some $16 a case. The Federal Government collects $16.80 in tax. If you substitute a gallon of something else for it you have got an initial saving of $32 or $33, to say nothing of the State tax.

The CHAIRMAN. Suppose they should permit bulk sales to the United States; would you then want the same rule to apply to the imported liquor?

Mr. LOURIE. I have been instructed to tell this committee we still do not want it for imported liquor. We feel that the importer who brings in imported liquor under the present conditions has to protect the authenticity of the goods that are brought in.

The last section I referred to is section 5 (e) on page 19. There is a provision made with respect to Government sales.

I would like to take just 1 minute to explain what has been troubling our industry. It is on page 19, beginning with line 10. There are two types of Government sales. One type of Government sales is conducted by the Attorney General's office with respect to goods

which have been smuggled into the United States, or where there was a violation of the laws of the United States. The other type of Government sale is conducted by collectors of customs with respect to imported goods which have stayed in the Government's custody for 3 years and have not been withdrawn from the Government's bonded warehouses on payment of duty, and are sold to meet the charges and the tax.

We are concerned primarily with the sales made by the Government through the Attorney General's office, the seized, smuggled liquors. Some of the sales have been extremely distressing, first because of the fact that it makes liquor dealers out of Government officials. A sale was conducted in Boston last year in which the agents of the Government conducting the sale invited the liquor trade to be on hand for a sale at public auction of a very large stock of old, matured liquors. This was an opportunity to buy fine liquor at a reasonable price. The Government catalog, on the other hand, had this cautionary phrase, that buyers are warned the Government does not guarantee the authenticity of the liquor, that it was only guaranteeing the liquor to be palatable and free from poisons, and the prices received were not equal to the tariff and the tax. The men who bought the stuff went into bankruptcy and the goods went around from hand to hand. Finally they appeared on the market again this year. The volume that appeared appeared to be in excess of the amount that had been sold. An analysis of the goods showed they were not genuine Scotch whiskies, and yet every one of the cases and bottles bore labels of very well-known brands, on which thousands of dollars had been spent in advertising.

We feel the Government, in the case of seized goods or smuggled goods, or goods that were seized because of violations of law, should not sell those goods, they should either destroy them or dispose of them to governmental institutions or hospitals, if they were fit for such purposes.

On the other hand, we recognize in the case of sales made by collectors of customs that they are carrying out the provisions of the tariff act. Those goods are authentic. Those goods are sold to bring the Government the revenue that should have been paid when the goods came over for entry.

May I add to this, that the Government sales of seized goods have caused tremendous trouble in the trade because of the fact that the prices have been so low. A recent selling price of so-called "imported liquor," was $16 a case, and the tariff itself amounted to $16.80 a case, and any importer trying to buy the goods brought to this country would pay $10 or $11, besides the charges and besides his own license fee. It is impossible for retail dealers to compete under those conditions.

Senator GEORGE. Do not you have the same thing in the case of watches and other things that are imported?

Mr. LOURIE. Yes.

The CHAIRMAN. Is there anything else?

Mr. LOURIE. No, sir, although I may say this in conclusion, that the importers are very much in favor of this bill. That is not because the importers want a lot of regulation, it is because the importers intend to stay in business. They recognize that before prohibition there were only two Governmental institutions controlling the liquor industry. One was the Treasury Department, which was interested

in the taxes, and the other was the Pure Food Department, interested in the labels. The Federal Trade Commission, gentlemen, had very much work there. Since that time you have had a different condition arise in this country. You really have a social problem. I believe the Government has a duty to its own consumers. The people who voted repeal ought to see to it that the goods they buy are properly labeled, that the practices of the industry are on a high plane, that the industry is maintained ethically.

I might say we, as importers, endorse the work that has been done by the Federal Alcohol Control Administration. We do not say they have not made mistakes, of course they have, but so would anybody else. They have made decided achievements, and it would be a decided detriment to the liquor industry if those achievements were lost at this time.

I would like to add this observation, Mr. Chairman: I have watched the liquor industry for a year and a half rather closely. Ever since the Supreme Court made its decision, and the importing industry, the distilling industry and rectifying industry, as far as I can determine, have tried honestly to live up to the very provisions that the F. A. C. A. enforced. They voluntarily tried to comply with those provisions. I claim a voluntary adoption of provisions, when it is not mandatory by law, would indicate that the bulk of the liquor industry today realizes the value of the work that has been done.

The CHAIRMAN. Thank you, Mr. Lourie.

Mr. LOURIE. I admit there can have been criticisms, but on the whole it has been very good.

The CHAIRMAN. Thank you. Mr. Curtes.

STATEMENT OF MICHAEL CURTES, NEW YORK, NATIONAL RETAIL LIQUOR-PACKAGE STORES ASSOCIATION, INC.

The CHAIRMAN. Mr. Curtes, you represent the National Retail Liquor Package Stores Association?

Mr. CURTES. Yes, sir; I am a retailer and not an attorney. I never appeared before a body of this kind before, but I have observed in the last 2 days that the distillers and the glass people and the cooperage people must have some sort of a fight on between themselves, and they come in here in this room and that is all they talk about, the distillers' trade, the glass trade, the cooperage trade, but they do not say anything about the consumers and the retailers who have to carry out the dictates of the law handed down by the Government. I think that is a very un-American procedure and I think it should be stopped.

I am a retail liquor package store owner.

I am president of the National Retail Liquor Package Stores Association, Inc., representing over 25,000 retail liquor package store owners throughout the country. Our organization, on behalf of its members and in the interest of the consuming public, respectfully urge upon the Senate Finance Committee our vehement opposition to the bulk-sales features of the liquor bill now pending before the Senate.

This bill creates the opportunity and temptation for hotels, clubs, and restaurants to sell either bootleg or adulterated and inferior liquor, should they desire to do so. Thus, should anyone seek to evade the law he would only have to make this first bulk purchase from a legitimate dealer and then use the keg for refilling either with bootleg stuff

or mixing legal with illegal liquor. I can do so, in our opinion, much faster, quicker, and get a larger stock by adulterating the barrel than by trying to adulterate liquor in a small bottle, a 1-pint bottle. I do not think it would pay anybody who wanted to be an illicit dealer to try to make money from a 1-pint bottle, but I certainly can visualize what I can do with a 50-gallon barrel. I think I can make as much as 3 barrels out of 1, and that is the opinion of our organization, Mr. Chairman, and I think we can prove it.

The difficulty in detection and also the huge profits to be made will only serve to encourage this illicit traffic in liquor. This provision would virtually require an army of inspectors even larger than during prohibition days to keep a check on and prevent the sale of such illicit liquor or the mixtures thereof. It can readily be seen, as a result thereof, that the Government will be deprived of millions of dollars of revenue by reason of the greater use of nontax-paid alcohol. By the same token, the State and Federal Governments will also lose considerable income and sales taxes, and God knows, we all know how much illicit alcohol is used in this country today, and there is only one way to dispose of it, and that is by the drink, plus the man walking in there with a 1-pint bottle and saying, "Give me 15 cents worth of that rot gut", because primarily that is what it is.

It would demoralize our branch of the industry since the bulk sale provision would tend to flood the market with inferior or adulterated whiskies. Faced with such grossly unfair competition, package stores now selling in properly sealed, packaged, and labeled containers, which constitute the most effective protection that the public has against bootleg and inferior liquors, would be virtually eliminated.

Public sentiment, as reflected in the editorials from all newspapers, which protest against bulk sales of liquor, overwhelmingly favors the preservation of the present retail package store set-up under which the consumer knows exactly where the product he purchases came from and who made it.

Incidentally, Mr. Chairman, I would like to say at this time that I am a fortunate package store owner in that I have my store in the State of New York. I have a store that is ruled by the regulations of the State of New York under Mr. Mulrooney, a State whose rules and regulations the whole country is jealous of. I am speaking of the States. They are all copying it day by day. It makes my blood boil to have a man come up here and say it is controlled by distillers.

The National Retail Package Stores Association, Inc., representing over 25,000 stores throughout the country, desires to add its protest to that already voiced by the Administration, by the Treasury Department and also by the former F. A. C. A. against the bulk sale of liquor.

It seems to me our branch of the industry is the only one that is satisfied to be governed by our country and not by the individual—shall I say jealousies? Anyway we are satisfied that our good old Government is a whole lot better than some of the so-called "holier-than-thou" lawyers who come down to tell you of the whisky trade, the import trade, or whether the liquor should be in the bottle or the glass. They want cheap publicity so they can advertise to the world that poison they are selling. We are absolutely fair, Mr. Chairman, in my territory, and I admire your patience.

I am not afraid to say right here that the majority of the customers in our store are women, and the women, when they come in the store,

want to look at the label on the bottle, they say, "What kind of label can you show me?" If you take it out of a barrel, if there were no ladies around, I would tell you what I would have to answer.

We believe that the bulk-sale provision is helping to destroy the gains we have made since repeal, and particularly sounding the death knell of one of the industry's finest features, namely, the retail package store. It also deprives the consuming public of all protection against poisonous and inferior liquor. Beyond a doubt, it adds to the army of unemployed, not only the retail-package store owners and their clerks, totaling 50,000, but thousands of others employed in allied industries. Due to the fact that a whisky keg can be used over and over again—at least 50 times—it will replace the use of millions of bottles, labels, corks, crowns, cartons and printing now used to make up the package. Workers engaged in manufacturing these products will be thrown out of employment. Moreover, the passage of this provision will undermine the education in true temperance which has been fostered by the National Retail Liquor Package Stores Association.

The reason why we say that, it takes me back to what I said a minute ago, we save the consumer. We are the ones that tells them the sincerity behind the law as handed down by the Government today. We are the ones to answer all questions, whether good or bad. We certainly have a hard job. We respectfully request that you do not give us a tougher one by putting us in competition with a lot of unfair shock houses; that is what they are, shock houses.

Now, I have some telegrams here that I would like to have inserted in the record. We are here representing 25,000 retail-package stores and I defy any one of these people who came before you to present their credentials like I am willing to.

The CHAIRMAN. They may go in the record.

(The telegrams are as follows:)

MILWAUKEE, WIS., *July 25, 1935.*

MICHAEL CURTES,
President National Retail Liquor-Package Stores Association, Inc.,
Washington, D. C.:

Wisconsin retail liquor dealers association united in stand against proposed bulk sales. Feel bulk sales will open door to racketeering and bootlegging. You have our heartiest cooperation in efforts to curb bulk sales.

A. BERNARD COHN,
President Wisconsin Retail Liquor Dealers Association.

TRENTON, N. J., *July 26, 1935.*

MICHAEL CURTES,
President the National Retail Liquor Stores Association,
Washington, D. C.:

I have wired both United States Senators reference to bill H. R. 8870. The New Jersey Retail Liquor Stores Association strenuously object to this bill. We feel it the worst kind of discrimination and the surest and quickest way of driving the legitimate package store out of business. Commissioner Burnett in a statement today said traffic control fades if restraint is lifted. Bulk sale plan will permit return of old abuses in industry. Bootleggers will be more powerful than ever and the Government lose millions on illicit whisky. As a State-wide association affiliated with the national, representing 25,000 membership, we beseech the Members of the United States Senate not to foster a bill as vicious and unfair as this one.

GUS WALDRON,
President New Jersey Retail Liquor Stores Association.

BOSTON, MASS., *July 27, 1935.*

MICHAEL CURTES,
President National Package Stores Association,
Washington, D. C.:

We strongly object to the provision allowing taverns, restaurants, hotels, and clubs the right to purchase and sell bulk whiskies. This provision is unfair and discriminating to retailers, it will handicap the hard work we have done to eliminate bootlegging, and it will be a great loss to Government revenue.

METROPOLITAN BOSTON RETAIL LIQUOR
PACKAGE STORES ASSOCIATION.

ST. PAUL, MINN., *July 26, 1935.*

MICHAEL CURTES, *Washington, D. C.:*

Have wired Senators Schall and Shipstead for St. Paul dealers. Also had Minnesota liquor dealers wire to oppose bulk measure. Proposed measure would have tendency to change present method of distribution which has been successful. Would also allow unscrupulous dealers to tamper with liquors before selling. Return of preprohibition conditions and loss of public confidence in the industry.

GEORGE L. LEININGER.

NEW YORK, N. Y., *July 26, 1935.*

MICHAEL CURTES, *Washington, D. C.:*

The retail package store owners in the State of Connecticut are unanimously opposed to the sale of liquor in bulk by any retailer. Such a provision in the law will increase bootlegging, reduce revenue to Government, and drive the legitimate retail merchant out of business. The package store owner is the source through which the public is guaranteed quality liquor protected by strip stamps and labels. The legal sale of bulk liquor will nullify this protection to the public and create havoc in the industry in general. We urge you to do everything you possibly can to convince the Senate that this provision in the bill should be defeated.

ALBERT M. SIMONS,
President, Connecticut package store association.

CHICAGO, ILL., *July 25, 1935.*

MICHAEL CURTES, *Hotel Mayflower:*

As president of the Illinois Retail Liquor Package Stores Association I ask you to do all in your power to help defeat the present bulk sales law, as it discriminates against the package stores and every retail outlet that sells nothing but liquor.

ABE MARCO,
President The Illinois Retail Liquor Package Stores Association.

DISTRICT OF COLUMBIA EXCLUSIVE RETAIL
LIQUOR DEALERS' ASSOCIATION,
Washington, D. C., July 26, 1935.

Mr. MICHAEL CURTES,
Washington, D. C.

DEAR MR. CURTIS: Pursuant to a resolution duly adopted at a special meeting of the board of directors of the District of Columbia Exclusive Retail Liquor Dealers' Association, the resolution was unanimously adopted that we go on record to vehemently oppose the bulk sale of liquor to hotels and clubs which is now provided for in the liquor bill pending before the Senate.

As president of the national association, will you please place into the records of all legislative proceedings, this protest against bulk sales? It is the unanimous feeling of our membership that this pernicious provision will ultimately drive the package store out of business and flood the market with inferior, and adulterated liquors. We, in the package stores industry, are proud of our record in true temperance, but feel bulk sales will destroy the benefits we have thus far gained since repeal.

Moreover, the tremendous temptation to palm off illicit, non-tax-paid alcohol on the consuming public, will mean the loss of millions of dollars of badly needed revenue to our Government, as well as the hardship on the consuming public.

Very truly yours,

JEROME B. MCKEE, *President.*

The CHAIRMAN. Mr. Tapee, is he here?

STATEMENT OF JOSEPH A. TAPEE, NEW YORK CITY, REPRESENTING INSTITUTE OF WINE AND SPIRIT DISTRIBUTORS, INC.

Mr. TAPEE. I would like to say, Mr. Chairman, during the F. A. C. A. I was chairman of the Third Regional Board operating in New York. I am thoroughly familiar with the liquor business in that particular State, as far as the wholesaler, the retailer, and that end of it is concerned.

I would also like to say that the F. A. C. A. under Mr. Choate we feel is a very efficient organization, as well as Mr. Choate being a wonderful, high-calibered man, and his entire organization was.

In connection with the bill, H. R. 8870, the bill says "bona fide hotels, clubs", would buy this liquor in bulk. Now a bona fide proposition, when it comes to a club or hotel, is a pretty difficult thing to say. I am familiar with every hotel in this country, or a great many of them, and it is a hard proposition to say which is a bona fide hotel.

The retail stores in the State of New York, under which supervision they operate, are high grade, clean stores, operated by high-grade men, and the inspectors supervise them and they look after them.

When it comes to barrels in hotels or clubs, or half-barrels, or small wooden containers, it is a very difficult thing. It is impossible today to find out which is genuine and which is not. Today there is no barrel permitted in the State of New York on the premises of a retail dealer, a hotel, or restaurant. They are not permitted. The minute an inspector from Commissioner Mulrooney's office goes in there and he sees a barrel or a keg, he says, "What is this?" And immediately he detects that there is something going on that is absolutely against the law.

Now in regard to the profits of the wholesale liquor business, we did last year $7,000,000 and we made one-tenth of 1 percent profit, and today the liquor business—and I speak of the wholesale liquor business industry in this country today—there absolutely has not been a nickel made in the industry so far. Now we are living in hopes, the legitimate people in the business, that some time we will be able to make a dollar or two.

The unfortunate situation right now is there are too many people in the business all over the country, and as the result they are cutting prices to the point where nobody is making any money, and to get any volume of business to stay in the business you have got to meet the conditions today. Now the business hasn't today, the people haven't got the money to buy the liquor, the people haven't got the money to expand, and as the result everybody is trying to force the sale of liquor, and as the result nobody is making any money.

Now the tax today of $8 a gallon is the thing that is keeping the big bootleg rings running. There is no question in my mind about that, and I have been in the liquor business in the State of Missouri, my former home. The bootleg rings operate from coast to coast. They have operations in every town, in Boston, New York, Chicago, Kansas City, and all the way through, and as long as we have the high taxes we are going to have the same conditions continue.

My house is a house that is 85 years old. We went into the liquor business when the repeal was effected in New York State.

Now I have a couple of briefs that I would like to submit to you gentlemen for your consideration.

Senator GEORGE. You may submit them for the record.

Mr. TAPEE. Now, in connection with blending whisky in barrels, there is no whisky in this country in barrels. There is some that is 3 months old, and some a little older than that. They used to go to Canada and get whisky, but that is not whisky that is matured in this country. It would be 2 years before we would have whisky that is matured. I think it is a serious mistake to put bulk goods on the market until we have American brands of rye and Bourbon, which we will not have for at least 2 years.

In connection with the empty whisky barrels, it is very much more easily adulterated than bottles, and even in the old days the people who were not so clean about things at that time, they adulterated whisky in barrels. Now in the bottle, in the container, I know in our State, the State of New York, has got the finest law and the strictest supervision on that, I think, of any State in the country. I know the thing is being handled there in a perfectly proper way. I thank you very much.

(The brief referred to is as follows:)

BRIEF SUBMITTED ON BEHALF OF THE INSTITUTE OF WINE AND SPIRIT DISTRIBUTORS, INC., TO THE SENATE COMMITTEE ON FINANCE, JULY 27, 1935

The Institute of Wine and Spirit Distributors, comprising within its membership and on its Board of Directors the representative firms in New York, New Jersey, and Connecticut, is unalterably opposed to the provisions of the present bill which permits the sale and distribution of alcoholic beverages in bulk. We are thoroughly convinced that enactment into law of such provisions at the present time can only result in an increased consumption of nontax paid liquor. We do not feel that the infant industry has progressed sufficiently to undertake distribution in bulk as providing in the pending bill.

It is our opinion that arguments advanced by certain speakers to the effect that spirits were freely distributed in bulk prior to prohibition are not applicable under present conditions. It is well known that there is but a limited amount of matured whisky available in this country. Naturally those stocks are valuable. Before prohibition, the difference in cost between the cheapest and the best whiskies was very small. The industry had long been established and stabilized and not in its formative stages as is true today. It is well known that the repeal of prohibition at a time of depression and when other businesses were being operated at a loss attracted to the liquor industry capital which had been unsuccessful in other lines of endeavor. It is also known, of course, that a great many people formerly engaged in violating the prohibition laws immediately, because of the knowledge of markets and of outlets, went into the liquor field. In addition to the high cost of matured stocks today, we find instead of a Federal tax of $1.10 a gallon, a Federal tax of $2 per gallon and State taxes generally about $1 a gallon. There is also a rectifying tax of 30 cents a gallon and import duties on spirits of $5 a gallon. Of course imported merchandise not only pays import duties but also Federal and State taxes. It can readily be seen, therefore, that the incentive to use nontax paid alcohol to adulterate legitimate products is much greater than at any time prior to prohibition. If you consider that imported spirits in New York pay Federal and State import duties and taxes of $8 a gallon, it is obvious that the incentive to adulterate alcoholic beverages is so great that only the strictest control and the most stringent regulations can possibly keep the situation within control.

The Federal Alcohol Control Administration and the Treasury Department, realizing the situation above set forth, have limited the sale and distribution of bulk liquors to distillers and rectifiers and have put into effect carefully thought out plans to make it difficult for the bootlegger to obtain bottles, stamps, caps,

etc., with which to imitate tax-paid liquor. Notwithstanding all these restrictions it has been estimated a great part of the alcoholic beverages consumed today do not pay taxes of any kind. Obviously it is easier to adulterate alcoholic beverages in large containers such as barrels, half barrels, or tins than it is in bottles.

We do not feel that private arguments between the cooperage industry and the bottle-making industry should be given serious consideration where the welfare of the industry and the consumer is concerned.

The distributors represented by this institute very definitely feel that enactment into law of the provisions of this bill permitting bulk sales will result in the bootlegger getting a far greater share of the business than he does today. That means that the consumption of non-tax-paid liquor will increase and the legitimate distributor will lose that business; the Federal and State Governments will lose the taxes and duties and the public will be required to pay additional taxes to make up for this loss.

To take an extreme example: If a hotel or club in New York were allowed to buy imported spirits in a 50-gallon barrel, that barrel would represent a $400 payment in State and Federal duties and taxes. As the barrel was being used, the introduction of each gallon of bootleg high-proof alcohol and water would mean a tax evasion of $16. We respectfully submit that the temptation and incentive to evade taxes would encourage certain types of hotel operators to become dishonest, and would deprive the distributor of those markets which would be supplied by bootleggers. Please keep in mind in considering this argument that the supply of matured spirits in this country is very small and in many cases adulterated imported spirits would be superior in quality to the new and immature spirits now being sold.

Aside from the adulteration by the use of alcohol, we must also consider the refilling of the barrel by smuggled imported spirits which have paid no Federal or State duties or taxes. Under the present Treasury rules and regulations and the Federal Alcohol Control Administration regulations as they stood at the time of its decease, there were relatively few concerns who were licensed to handle alcoholic beverages in bulk. These concerns were operating under close and continuous supervision and in every case a Government agent was on the premises. We predict that if the distribution of bulk spirits is permitted that we will again return to the picture prevailing during prohibition days of trucks crossing the border with smuggled liquors, which beverages can immediately be hidden in the large containers which this bill proposes to legalize.

Counsel for the institute, at the direction of the president and the members of the committee on legislation, has consulted all of the directors so that we are now able to state for the record that after this consultation that each and every one of the firms and gentlemen serving as directors have expressed themselves as being definitely in favor of eliminating from the proposed bill those provisions referring to bulk sales of spirits. We have been particularly asked to note on the record that L. Gandolfi & Co., Inc.; McKesson & Robbins, Inc.; Kraus Bros. & Co., Inc.; American Spirits, Inc.; Wilkinson, Gaddis & Co., Inc.; R. C. Williams & Co., Inc.; V. Casazza & Bro., Inc.; Austin, Nichols & Co., Inc.; Bluebell Importing Corporation; Hoffman Beverage Co.; Park & Tifford Import Corporation; Ira J. Shapiro-Casin Liquor Corporation; Colonial Grade Products Corporation; Bellows & Co., Inc.; R. O. W., Inc.; Spitzer Bros., Inc., are opposed to this provision.

Suggestions were made before the House Ways and Means Committee and at this hearing by officials of the National Wholesale Wine and Liquor Dealers Association that they voice the opinion of the entire wholesale industry of this country in favor of permitting bulk sales. Many members of the Institute of Wine and Spirit Distributors who are or were members of the National Wholesale Wine and Liquor Dealers Association have said that they had not been consulted by the National Wholesale Wine and Liquor Dealers Association, and if they had been would have expressed the same opinion as they have to the officers of this institute, that they were unalterably opposed to the sale and distribution in bulk at this time.

We are thoroughly convinced that a canvass of wholesalers and distributors throughout the country will show a vast majority opposed to legislation permitting

bulk sales. Such a provision would lead not only to evasions of State and Federal taxes on liquors but also to similar evasions on income and other tax payments.

Respectfully submitted.

INSTITUTE OF WINE AND SPIRIT DISTRIBUTORS, INC.
WALDEMAR GRASSI, *President.*
M. JOSEPH GRAMMONT,
Vice Chairman Committee on Legislation.
CLARENCE P. GOLDBERG, *Counsel.*

JOSEPH A. TAPEE,
Chairman Committee on Legislation.

The CHAIRMAN. Does Mr. Goldberg desire to file a brief?

Mr. GOLDBERG. The briefs have been submitted by Mr. Tapee. I would like one minute.

STATEMENT OF CLARENCE P. GOLDBERG, INSTITUTE OF WINE AND SPIRIT DISTRIBUTORS, INC.

Mr. GOLDBERG. There was a certain gentleman who spoke for the National Wholesale Wine and Liquor Association, and his views were contrary to the views of our institute and of the members of the institute, and I should like to have it appear on the record that the wholesalers of New York represented by Mr. Tapee and the institute do not share the views which were expressed yesterday.

The CHAIRMAN. The committee will stand adjourned until 10 o'clock Monday morning.

(Whereupon, at 12:20 p. m., the committee adjourned until Monday July 29, 1935, at 10 a. m.)

FEDERAL ALCOHOL CONTROL ACT

MONDAY, JULY 29, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to recess at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Clark, Lonergan, La Follette, and Capper.

The CHAIRMAN. Mr. M. J. Donnelly.

STATEMENT OF M. J. DONNELLY, CHICAGO, ILL., REPRESENTING BREWERS SHIPPING IN INTERSTATE COMMERCE

The CHAIRMAN. Mr. Donnelly, you represent the brewers shipping in interstate commerce?

Mr. DONNELLY. I do.

The bill in question purposes to protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce, to enforce the postal laws with respect thereto, and to enforce the twenty-first amendment.

A careful reading of the bill fails to disclose any provision dealing with the protection of the revenue derived from the manufacture of beer or fermented malt liquor. The tax on fermented malt liquor is paid by the brewer before the product is removed from the brewery. From the standpoint of revenue the Government is not interested in the shipment in interstate commerce of fermented malt liquors manufactured in the United States, it having received the tax thereon before the product was removed from the place of manufacture.

The enforcement of the twenty-first amendment and the postal laws is now vested in the Department of Justice. The necessity for a separate administration to enforce these laws is not at present apparent.

Stripped of the language contained in the title of the bill in question, it is apparent that the purpose of its author was to write into the laws of the United States the provisions of the different codes under Federal control regulating the manufacture and sale of distilled spirits and fermented malt liquors, the provisions of which codes were, by the decision of the Supreme Court of the United States, rendered unconstitutional.

There are at present engaged in the regulation and control of some phase of the brewing industry, liquor commissions in 46 States and the District of Columbia, the Treasury Department of the United States, the Federal Food and Drug Department, and the Federal

Trade Commission, and if this bill is enacted into a law a new commission, known as the Federal Alcohol Administration, will be empowered to deal with the regulation and control of the brewing industry.

The duty imposed upon those engaged in the brewing industry of complying with the regulations as issued by these different administrative bodies is no small task. Regulations are amended and changed so rapidly that it is practically impossible for one engaged in the liquor industry to conduct his business in conformity with the law and regulations.

There are at present 680 breweries engaged in the manufacture of beer within the United States, breweries being located in every State of the Union except Kansas and Alabama.

There was manufactured and sold in the United States during the year 1934 approximately 40 million barrels of beer. Of this amount less than 20 percent was shipped in interstate commerce, the remaining 80 percent being manufactured and sold in intrastate commerce.

The testimony before this committee Saturday diclosed that during the year 1934, nine distillers in the United States produced 80 percent of all the whisky manufactured and sold in the United States during that year.

More than 90 percent of all the distilled spirits manufactured and sold in the United States during the year 1934 was shipped in interstate commerce.

It is apparent from the foregoing facts that under the provisions of this bill the brewers and distillers occupy entirely different positions.

The Administration, in the enforcement of the provisions of this bill and the regulations enacted thereunder, can regulate and control 90 percent of the distilled-spirits industry. While in the brewing industry the Administration can regulate and control only 20 percent of the entire output.

Those brewers shipping in interstate commerce less than 20 percent of the beer manufactured in the United States will be subject to Federal regulation and control, while the remaining manufacturers of 80 percent of the beer manufactured in the United States and sold in intrastate commerce will be beyond Federal regulation.

Under such circumstances the brewer engaged in interstate commerce will be seriously discriminated against. He will be forced to comply with the regulations of the Federal Alcohol Administration and the fair-trade practices set forth in this bill, while the brewer engaged in the sale of beer in intrastate commerce will, in the conduct of his business, be beyond Federal regulation or control.

The advertising of a brewer in a foreign State to which he ships his beer in interstate commerie will be under the control and subject to the regulation of the Federal Alcohol Administration, while the advertising of the local brewer in that State whose sales are confined to intrastate commerce, will be entirely free from Federal regulation.

For example, supposing a brewer in Ohio, manufacturing his product and selling it solely within that State, erects a sign within the State containing the language, "This beer is made from selected barley and selected hops under a rigid process, under the most sanitary conditions", he can erect that sign without interference by Federal control, because it is not attempting to induce sales in interstate commerce, while the brewer in the Middle West, erecting a sign in that State, will be under

Federal control, because that sign is there to incude the sales of beer in interstate commerce. Beer cannot be sold in that State that is represented by that ad unless it is shipped in interstate commerce. So it commonly develops that those two brewers, advertising their products, are in entirely different situations.

Local manufacturers in the manufacture and sale of their product within the State where it is manufactured will be required to comply only with the laws and trade practices of the State in which they transact business, while the brewer engaged in the shipping of his product in interstate commerce will be bound to comply not only with the law and regulations of the Federal Alcohol Administration but with the law, regulations, and trade practices of each State into which he ships his product.

It is fair to assume that the framers of the bill in question had in mind the regulation of the brewing industry as a whole and did not intend that only 20 percent of the output of this industry in the United States should be regulated and controlled while the remaining 80 percent should be left free to transact their business as they see fit unrestricted by any Federal regulation.

The brewing industry is a local industry. The cumbersomeness of the packges in which it is marketed and the low price at which it is sold, coupled with the expensive freight rates covering the shipment of the product and the return of the empty containers, seriously militates against the sale of the product in interstate commerce.

In view of the small percentage of beer shipped in interstate commerce as compared with the total manufactured in the United States, we submit that the brewing industry has no place in this bill and that the provisions thereof dealing with the manufacture and sale of beer be stricken from the bill.

An analysis of this bill discloses that it discriminates against those engaged in the shipment of beer in interstate commerce and in favor of those engaged in the shipment of beer in intrastate commerce.

By section 5, subsection A, it is made unlawful for a brewer, wholesaler, or bottler to, directly or indirectly, or through an affiliate, required, by agreement or otherwise, that a retailer engaged in sale of malt beverages purchase any such products from such person to the exclusion, in whole or in part, of malt beverages sold or offered for sale by other persons in interstate commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

By section 5, subsection A, it is made unlawful for the brewer or wholesaler to impose a requirement upon the retailer, by agreement or otherwise, that he purchase the beer of that brewer or wholesaler to the exclusion of other brewers or wholesalers engaged in interstate commerce.

It is further provided that such requirement must be made:

First, in interstate commerce, or

Second, if not in interstate commerce, the direct effect of the requirement must prevent, deter, hinder, or restrict other persons from selling in interstate commerce.

This unlawful act could arise in only the following manner: First, by requesting the retailer to purchase exclusively, or a certain percentage of his beer, from the particular wholesaler or brewer by agreement to that effect.

Second, by imposing the same requirement by other means than by agreement.

Subsection B of section 5 goes one step further and makes it unlawful for the wholesaler or brewer to induce the retailer to purchase such products from such person to the exclusion, in whole or in part, of malt beverages sold by other persons in interstate commerce. Such inducement must be made:

First, in the course of interstate or foreign commerce.

Second, or the practice must be engaged in to such an extent as to substantially restrict, restrain, or prevent transactions in interstate commerce.

Inducements are made through the following means:

First, by holding an interest in the license of retailer.

Second, acquiring an interest in premises of a retailer.

Third, furnishing, giving, renting, lending or selling a retailer the following: (*a*) Equipment; (*b*) fixtures; (*c*) signs; (*d*) money; (*f*) other thing of value.

Subject to such exceptions as administrator shall by regulation prescribe.

Fourth, by crediting retailer for advertising display or distribution service.

Fifth, guaranty of loans of retailer.

Sixth, extending credit to retailer for period in excess of usual credit period as ascertained by administrator and prescribed by regulations.

As will be observed from the act, the inducements must be made in one of the following ways:

First, in the course of interstate commerce.

This would seem to require that if equipment, signs, money, and so forth, were furnished that this prohibition could only arise by the transportation of the actual thing furnished from one State into the State in which the retailer was operating, or that these articles were furnished as a direct incident to the sale of malt beverages to the retailer in interstate commerce, or

Second, if the articles were not furnished in the course of interstate commerce the practice must be indulged in to such an extent as to substantially restrain or prevent transactions in interstate commerce by others.

Touching on the subject of inducements on the part of the brewery, I call your attention to a couple of authorities.

The CHAIRMAN. Let me ask you, in the administration of the code under the N. R. A., was there a brewery code?

Mr. DONNELLY. Yes, they had a brewers' code.

The CHAIRMAN. Was that imposed or was it a voluntary code?

Mr. DONNELLY. They agreed to it. The brewers agreed to the code and prepared it under the Federal supervision and regulation, so it might be in conformity with the ideas of the Administration.

Effect on shipping brewer as contracted to local brewer: It would seem clear under the holding of *Ward Baking Co.* v. *Federal Trade Commission* (264 Fed. 330), that the statute in question could have no application to the brewer or wholesaler who is engaged in purely intrastate commerce.

In the case above referred to the baking company baked its bread in the State of Massachusetts and transported it to the State of Rhode Island where it was given away in towns there during the so-called "free bread" campaign. The Federal Trade Commission held that this amounted to unfair competition, due to the intent of suppressing competition in the manufacture and sale of bread in interstate commerce. The Circuit Court of Appeals, in reversing the order of the Commission, said, at page 331 of the opinion:

> Doubtless bread sold in Massachusetts to be delivered to the purchaser in Rhode Island would be interstate commerce, but that is not this case. Moreover, the commission is not finding the act of transportation from Massachusetts to Rhode Island unfair, but the method of local sales made in Rhode Island. If the respondent had its own stores in Rhode Island, and carried to them from Massachusetts bread to be there sold, this method of selling could not be considered interstate commerce.

The local brewer or wholesaler selling only within the State would not be subject to the act unless under the second provision, namely:

First, by engaging in the practice to such an extent as to substantially restrain or prevent interstate commerce.

It is reasonably certain that the act, insofar as it would attempt to regulate interstate transaction, would be inapplicable, for, as stated by Chief Justice Hughes in *Schechter Poultry Corporation* v. *United States* (55 S. Ct. Rep. 837, 79 L. ed. 888):

> In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. * * *
>
> The distinction between direct and indirect effects has been clearly recognized in the application of the Antitrust Act. Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. * * * But, where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions.

In view of the foregoing language the lower brewer or wholesaler, in the absence of an intent to directly interfere with interstate commerce, would be free to pursue the practices which are forbidden to the shipping brewer in interstate commerce. In this connection see also the recent case of *Baldwin* v. *Seelig* (79 L. Ed. 525).

In *Federal Trade Commission* v. *Sinclair Refining Co.* (261 U. S. 463, 67 L. Ed. 746), the Federal Trade Commission had condemned and ordered the oil company to abandon the practice of leasing underground tanks and pipes to retail dealers at a nominal price, upon condition that the equipment should be used only with gasoline supplied by the lessor. There was no covenant in the lease agreement which required the lessee not to sell the goods of another. In holding that the furnishing of these pumps under the leasing agreement did not constitute unfair competition or tend to interfere with the free flow of interstate commerce, the Court said at pages 753–754 of Law Edition:

> Certainly the practice is not opposed to good morals because characterized by deception, bad faith, fraud or oppression. * * * It has been openly adopted by many competing concerns. Some dealers regard it as the best practical method of preserving the integrity of their brands and securing wide distribution. * * * No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable effect of the practice will be unduly to lessen competition. Upon the contrary, it appears to have promoted the public

convenience in inducing many smaller dealers to enter the business and put gasoline on sale at the crossroads.

In view of the holding of the Supreme Court in the above case, if the local brewer or wholesaler were to furnish the equipment, fixtures, and so forth, and did not, by express agreement prohibit the retailer from purchasing from a brewer or wholesaler engaged in interstate commerce, that it could scarcely be said that he was directly interfering with the free flow of interstate commerce in malt beverages.

Thus, while the brewer or wholesaler engaged in interstate commerce is burdened and impeded in the conduct of his business, the local brewer or wholesaler engaged in intrastate business could proceed without restraint.

Furnishing signs and equipment: Subsection B of section 5 makes it unlawful for any brewer or wholesaler engaged in interstate commerce to furnish, give, rent, or sell to any retailer any equipment, fixtures, or signs and condemns such practices as unfair competition notwithstanding the fact that in the case of the *Federal Trade Commission* v. *Sinclair Refining Co.* (261 U. S. 463, 67 L. Ed. 746), the Supreme Court of the United States held that the furnishing of pumps by the Sinclair Refining Co. to retailers under a contract with the retailer that only the gasoline of the Sinclair Co. should be withdrawn through those pumps was not unfair competition.

Prior to the enactment of the brewers' code signs advertising their beer and in some instances fixtures were furnished to the retail dealer by brewers shipping their beer in interstate commerce. The Supreme Court of the United States having approved this practice in the *Sinclair Refining Co. case*, the brewer believed, and still believes, that in the furnishing of such signs and equipment he was acting within his rights.

The manufacturer in practically every line of industry is permitted without objection to furnish to his retailer signs and advertising novelties. In the brewing industry alone is such practices under this bill attempted to be made a crime.

Under the provisions of this bill it is attempted to outlaw and destroy signs furnished by manufacturers to retailers without compensation to the owner thereof and regardless of whether such signs affect the health, morals, safety, or welfare of the people.

In passing on the question of signs and their effect upon the health and morals, it might be somewhat illuminating to read the extract from the opinion of the Supreme Court of Illinois in the case of *Haskill* v. *Howard* (269 Ill. 550), in which the court said:

> If the power to prohibit such advertisements is to be implied it must be because their display affects the public health, safety, morals, or welfare. By no stretch of the imagination could it be made to appear that such advertisements threatened or injuriously affect the public health or safety * * * So far as we are aware, it has never been held that the advertisement of its beer by a brewery was so injurious to the public morals as to make it a nuisance per se and authorize it being prohibited. The use of intoxicating liquors is objectionable to a great many people, but so is the use of tobacco, Coco-Cola and chewing gum, but they are the products of lawful manufacture and so long as that is so we do not see how their advertisement can be prohibited. It would seem inconsistent to say that a produce may be lawfully manufactured for the consumption of all who desire it but the advertisement may be prohibited as an offense against the public morals. The exercise of police power is limited to enactments tending to promote the public health, safety, morals, or general welfare. It is for the legislature to determine when an exigency exists for the exercise of police power but what is the subject of such exercise is a judicial question. Under the guise of regulation the personal rights or liberties of the citizens cannot be arbitrarily invaded.

The CHAIRMAN. Well, what is the harm that comes from this sign and advertising business?

Mr. DONNELLY. There is no harm.

The CHAIRMAN. There was some reason for the proposition to be advanced.

Mr. DONNELLY. I will give you the reasons for it.

The CHAIRMAN. What are they?

Mr. DONNELLY. The reason is this: There has arisen in the liquor industry throughout the country in the last 3 years an idea that the evils that brought about prohibition in bygone days was the influence or control which the brewer or manufacturer exercised over the local retailer. That theory, I contend, is absolutely false.

Senator BARKLEY. Do you claim then, it was a good thing for a lot of brewers and distillers to multiply the number of saloons in the town because they had furnished the money, paid the rent?

Mr. DONNELLY. The number of saloons in a town can be controlled by the State legislature or the ordinance of the municipality in which it is conducted.

Senator BARKLEY. You do not think that is a good thing, regardless of who would control it, do you?

Mr. DONNELLY. I think this, in answer to your question, I think the question of who furnished the mahogany bar, or who furnished the sign outside of the door is of no consequence in the control of the habits of the man who drinks intoxicating liquor. I do not think a man is going to drink more liquor in a place where a Hiram Walker sign is displayed, where Hiram Walker furnished the sign, than he would in a place where the local brewer furnishes the sign.

Senator BARKLEY. Regardless of signs, do you think it is wise to permit an unlimited number of retail dealers to go into business just because some wholesalers will put up money?

Mr. DONNELLY. No; I do not think so. I think that is all controlled by State legislation.

Senator CONNALLY. Let me ask you a question. Is not it true that in the old days a lot of the opposition to liquor and beer arose because of the fact that the brewers would put in a sort of a sorry fellow who had no responsibility and no money to buy his equipment, and they would pay for his license and put him in his business, and he was usually the fellow who violated all the Sunday laws and every other kind of law? That is why the thing grew up. This evidently is based on that theory, that a man ought to have some personal responsibility to run a grog shop, not depending on the brewer financing him.

Mr. DONNELLY. I am not talking about financing him; I am talking about the furnishing of signs and advertisements. I am taking the position that the signs and advertisements do not intoxicate the American people.

Senator CONNALLY. It is intended to get them to buy more intoxicating liquor, isn't it?

Mr. DONNELLY. Will the question of whether the retailer furnishes that sign or the manufacturer furnishes that sign determine that question?

Senator CONNALLY. I do not know about that. I suppose probably the manufacturer would furnish a better sign than the local retailer.

Mr. DONNELLY. The value of the sign certainly would not enter into the question of the amount of liquor that a man would drink.

Senator CONNALLY. The manufacturer could furnish probably a better sign, because he has got more expert advice in getting it up.

Mr. DONNELLY. I may have different ideas than anybody else on the liquor question, but I have this idea: When the ideal liquor bill is written it will provide for a brewery-owned, a brewery-controlled and a brewery-operated outlet.

Senator CONNALLY. Do you represent the brewery?

Mr. DONNELLY. I do.

Senator CONNALLY. Well, I see your viewpoint, of course. Your idea is to have it turned over to your industry?

Mr. DONNELLY. No. Let me suggest the reason for it. Twenty years ago they could buy gasoline in the alley or the rear of the garage. You might pay for 5 gallons and you might get 1 gallon of gas and 3 gallons of oil. The gasoline industry saw where they were heading, and so did the public. The result of it was they established their own agencies in the country through which gasoline was served. Now you get 5 gallons of gasoline for your money and you get elegant service, you have a beautiful place, you have somebody that you can hold responsible for that industry.

Now supposing today that a brewer operated a saloon under reasonable rules and regulations, he could be compelled to conduct that place properly, whether he wanted to or not, because if he did not he could not transact business in that city or that State.

During the entire reign before prohibition there was no complaint against the brewery. There was no complaint during prohibition, if I am to believe the heads of the department of prohibition. They got more cooperation and stricter compliance with the prohibition laws from the brewers than any other industry with which they came in contact.

The Supreme Court of the United States, in the case of *Scott* v. *Donald* (164 U. S. 58, 41 L. Ed. 633), said, in holding the South Carolina statute relative to intoxicating liquors invalid:

> The evils attending the vice of intemperance in the use of spiritous liquors are so great that a natural reluctance is felt in appearing to interfere, even on constitutional grounds, with any law whose avowed purpose is to restrict or prevent the mischief. So long, however, as State legislation continues to recognize wines, beer, and spiritous liquors as articles of lawful consumption and commerce, so long must continue the duty of the Federal courts to afford to such use and commerce the same measure of protection, under the Constitution and laws of the United States, as is given to other articles.

Consignment sales: Subsection D of section 5 makes it unlawful to sell, offer for sale, or contract to sell to any trade buyer, which would include both wholesaler and retailer, and for any such trade buyer to purchase, thereby making it an offense both as to seller and purchaser, products on consignment or under conditional sale with privilege of return, other than a bona fide sale, or when any part of such transaction involved directly or indirectly the acquisition by such person from the trade buyer of other malt beverages.

Not only would this prevent conditional sales, but would also prevent the sale of goods, the consideration for which was the return of goods previously purchased by the trade buyer which had proved to be unsatisfactory or stale.

This provision would give the local brewer or wholesaler, engaged solely in intrastate commerce, a decided advantage over the shipping brewer engaged in interstate commerce, as it would enable him to

make good on unsatisfactory purchases, while forbidding the like privilege to the shipping brewer or wholesaler engaged in interstate commerce.

For example, a shipping brewer ships a carload of beer to a wholesaler and for some unknown reason that beer is spoiled or deteriorated. He cannot replace that with other beer without charging for both. That rule would not apply to an intrastate shipper. He can go over and say, "That beer is spoiled, deteriorated. We will just take that back and give you another car. We do not expect you to buy that spoiled beer." But the interstate shipper could not do that. It is impossible under this bill.

Advertising: Subsection F of section 5 requires all advertising, whether by radio broadcast, newspaper, periodicals, or by outdoor signs, or otherwise, if such advertising is in or calculated to induce sales in interstate or foreign commerce, to be in accordance with regulations prescribed by the administrator.

This provision would unfairly discriminate against the shipping brewer or wholesaler, for not only does the bill purport to cover advertising which might pass through the mails, or from one State to another, by periodicals, radio broadcasts, and otherwise, but it vests in the hands of the administrator the plenary power to regulate the content of every outdoor sign that might be erected by a brewer or wholesaler having his place of business outside of the state where the sign is erected, while it could not be applicable to such brewer or wholesaler engaged solely in business within the State where his brewery is located, for the statute reads:

If such advertisement is calculated to induce sales in interstate or foreign commerce.

For example, the brewer having his brewery in the State of Wisconsin erecting an outdoor sign in the State of Pennsylvania must be engaged in advertising calculated to induce sales in interstate commerce, for the only method by which the Wisconsin beer could be secured in Pennsylvania would be by means of interstate commerce, while the Pennsylvania brewer advertising his product in the State where manufactured would be free from any Federal regulation or control.

I might say this, that if it was possible under this bill to control the habits and regulate the beer industry of all engaged in the industry, this would not be objectionable to my clients, because all would be regulated, but my clients seriously object to the passage of any bill that subjects them to Federal regulation and control and turns completely loose their competitors; that the competitors manufacture 80 percent of all the beer manufactured in the United States and ship it in intrastate commerce. It may surprise the members of this committee to know that the seven large shipping breweries in the United States shipped, in interstate commerce last year, less than 4,000 barrels of beer.

The CHAIRMAN. What was the consumption?

Mr. DONNELLY. Forty million barrels. Now conceding to all the rest of the breweries in the United States who may have shipped some little beer in interstate commerce, an amount equal to that shipped by the large shipping breweries, we have a total of not to exceed 20 percent, and here is a bill that purposes to be enacted into

law that will regulate, hamstring, and control that 20 percent and turn loose entirely the other, because if we are to be guided by the decision of the United States Supreme Court in the *Schechter case*, then, unless the interference with interstate commerce amounts to conspiracy, the local man is not interfering with interstate commerce, as the method of doing business is wide open except as controlled by the State legislature. He, as far as this bill is concerned, can erect the sign within the borders of his State, in which he can do business. He can give away his advertising novelties, he can violate the very rigid rules. You cannot give away the matches, the bottle openers, or accessories, because in so doing you would tend to tie the house, and under the provision of this bill, under the head of "tied-houses" the giving of those novelties as advertisements, that every sane man knows does not control the consumption of liquor or the habits of American people, that is made punishable by a fine in this bill, and him who receives it a tied-in customer by the manufacturer who gives it.

Now, as I said, that might be well if we can control all of them, but I do not believe it is the disposition of the committee to enact a law here that will control only 20 percent. The discords before this committee in the last 2 days demonstrate that the whisky industry and beer industry are two entirely different questions. There has been no controversy here about violation on the part of the brewers. There is no suggestion for locked bottles, or serving it in safes, or anything of that kind. That is all dealing with the whisky interests, and practically everybody admits that beer is not an intoxicating beverage.

The attempt here is to regulate not the entire industry, if you please, but only 20 percent of the industry, and the Federal Government to which he pays his tax, and pays his tribute in large sums, is going to say to him, "I am going to hamstring and control the shipment and sale of your beer", but the man who sells within the State will be free to do as he pleases.

Gentlemen, I submit, under the facts as herein stated, that the brewer has no place in this bill, and that the provisions dealing with the regulation and manufacture and control of beer shipped in interstate commerce as well as State commerce should be stricken from this bill. Thank you.

The CHAIRMAN. Very well. Mr. Corrigan.

STATEMENT OF WALTER D. CORRIGAN, MILWAUKEE, WIS., WISCONSIN STATE BREWERS ASSOCIATION

The CHAIRMAN. Mr. Corrigan, you represent the Wisconsin State Brewers Association?

Mr. CORRIGAN. My appearance, Senators, is authorized, as the Chairman has intimated, by the Wisconsin State Brewers' Association.

There are 80 breweries in Wisconsin, two-thirds of which belong to the association I represent, and the members of that association produce 95 percent of the beer that is manufactured in the State of Wisconsin. This association has gone on record unanimously as being opposed to the inclusion of malt beverages within the bill that is now before you.

In addition to their own vote upon that subject they desire to call attention to the fact that by unanimous decision of a recent mass

meeting held in Chicago of the National Brewers, at which mass meeting 450 of the breweries were represented, there was a unanimous decision and request that the brewers be permitted to work out some voluntary code based upon their experiences under the N. R. A., and that they are opposed to any Nation-wide inflexibility of rules because of the varying local conditions in different parts of the country, which they believe was demonstrated as the result of working under the N. R. A. code which they adopted.

Senator CAPPER. Mr. Corrigan, may I ask if this protest was made to the House committee when this legislation was before that body?

Mr. CORRIGAN. Whether it was or not, I do not know, Senator, but I do know that the meeting in Chicago that I referred to was held on the very day that this bill was first introduced. It so happened that it coincided as to date. The meeting in Wisconsin was held at a later time.

The CHAIRMAN. Well, the views of that meeting were given to the Ways and Means Committee, were they?

Mr. CORRIGAN. I think so.

The CHAIRMAN. The representatives of the brewers did go before the Ways and Means Committee and did protest against the inclusion of the bill in this legislation?

Mr. CORRIGAN. Senator, I am entirely new in this matter. I am not familiar with that.

The CHAIRMAN. Would you assume it is true, Mr. Donnelly?

Mr. DONNELLY. I assume that is true, except as to the question of shipment in interstate commerce and the regulation over this shipment, that was not discussed as I remember, at all before the Ways and Means Committee.

Mr. CORRIGAN. I am frank to concede their unanimous vote does not necessarily settle the question, and it resolves itself into the question of the logic and reason of the situation, and it is my purpose to endeavor to present some of our views today.

First, we think it is illogical to classify beer with potent liquors, for a number of sound reasons. Whisky is 90 percent the subject of interstate commerce, as I believe was demonstrated by the testimony before this committee. Beer, on the other hand, is 80 percent intrastate commerce. Whisky is a potent intoxicating liquor, as well as kindred potent liquors, whereas beer is ordinarily not regarded as intoxicating, as has been evidenced by the finding of the scientists of Great Britain when they investigated the subject. It has been evidenced to some extent by the declarations of the Congress and by the declarations and findings of various State legislatures throughout the country.

Senator BARKLEY. You do not agree with the Supreme Court of Wisconsin then when it said that beer is, as a matter of fact, intoxicating, and the court would take judicial knowledge of the fact that beer is intoxicating?

Mr. CORRIGAN. I do not know how old that decision is, Senator.

Senator BARKLEY. It has not been reversed, has it?

Mr. CORRIGAN. Of course, our modern ideas on the subject have changed the old views considerably, as a matter of common knowledge, as one of my old friends, the late Judge Donnelly once said, he did not think there was an inspiration in a barrel of beer. I think there is some significance in that remark.

Senator BARKLEY. It may be a matter of taste.

Mr. CORRIGAN. We think this bill follows the old error of reasoning that was inspired largely in this country many years ago by the W. C. T. U. If beer is not to be regarded as intoxicating, and certainly it is not to be regarded as a potent liquor, it being lawfully manufactured and sold as an article of commerce, there is no basis for classifying beer with whisky any more than there is of oil, for instance, as was illustrated by the *Sinclair case* in the 261 United States, where the Federal Trade Commission ordered the oil company to abandon furnishing tanks, drums, and pipes free under semiexclusive contracts, which was held to be an invalid order. I am not stopping to read from that case, because you are familiar with it.

Another reason which distinguishes the two types of liquor, if we may call them both liquor, is the fact that bootlegging is still being widely engaged in, in respect to whisky and potent liquors, whereas bootlegging has almost entirely stopped as to beer. State Treasurer Henry of our State, who has charge of the enforcement of the local liquor laws of Wisconsin, advised some of us a few days ago that in his experience of recent months he has not discovered, nor had his force discovered, a single instance in the State of Wisconsin where there was bootlegging in beer, whereas they are quite busily engaged in investigating the other type of bootlegging.

Now, to call your attention to some of the provisions of this bill with which we take special issue, and to give our reasons in respect to them. This bill purports to make contracts for exclusive outlets unlawful. Now, to read the precise language of the bill, in one particular it makes all contracts unlawful "which have the direct effect of excluding, in whole or in part, purchases from others."

In respect to the tied-house, it makes it unlawful "to induce purchase to the exclusion, in whole or part, of the products of others", by doing any one of a number of things, among which are, first, acquiring or holding any interest in any license with respect to the premises of the retailer; second, acquiring an interest in the premises; third, furnishing equipment, fixtures, signs, supplies, and so forth; fourth, paying for or crediting advertising; fifth, guaranteeing any loan; sixth, extending credit other than usual and customary credit.

Now, before I reach the discussion on the constitutional questions, let me pause to suggest that the signs and fixtures which are on hand presently represent a very large investment in money. If this bill is put into the force of law, with the powers given to the Administrator which the bill carries, and he exercises those powers, is it not clear there will be a large destruction of valuable assets in respect to articles of that kind? It means that valuable property is subject to being rendered obsolete and worthless.

Furthermore, on the subject of signs alone, whatever may be said in respect to other things, it strikes me that the public have some interest in that subject. If they want a particular kind of beer they have a right to look for the sign which carries that beer, and certainly, within reasonable limits, a sign is as harmless as a chained box car or railroad track.

Now, all of these foregoing things that I called attention to, that are declared to be unlawful in this bill, are made applicable to those engaged in intrastate commerce as well as to those engaged in inter-

state commerce. "If such person or trade-buyer engages in such practice to such an extent as substantially", whatever that means, "to restrain or prevent transactions in interstate or foreign commerce."

Now every sale of a barrel of intrastate beer in some substantial way, I fear, holds back and prevents the sale of that amount of interstate beer. The result will be that in every small town having a brewery, where, as a matter of fact, the local brewer has almost exclusive control locally, he will be holding back interstate commerce and come within this definition.

Now I pause to again call your attention to the fact that 20 percent of the beer business is interstate and 80 percent is intrastate, and that brings me to some interesting consitutional questions.

The Federal Constitution is a grant and limitation of power, and by its adoption the States expressly reserve the powers not granted to the Federal Government. This means, in consittutional law, there is a fundamental principle that the grant of power to regulate interstate commerce reserves complete power to the States as to intrastate commerce, and that right is as great as any other constitutional right plainly expressed in the Constitution.

Now if we may apply it to a practical illustration, suppose we take Ripon, Wis.——

Senator CONNALLY. That has this qualification, unles the exercise of intrastate power interferes or impedes or affects interstate commerce, to that extent it must give way ; that is true, isn't it?

Mr. CORRIGAN. Yes. We have some examples of that under the decisions of the Supreme Court in reference to the Federal Employers Liability Act. I am speaking of general rules only, without endeavoring to make very many differentiations.

Let us take the case of Ripon, Wis., which is a town near where I was born, and in which they have a brewery. Senator La Follette knows that town very well. It has a place in history, because they claim that was the place where the Republican Party was born,whether that makes it distinguished or not. Now that brewery is absolutely an intrastate brewery. Every gallon of beer manufactured there is intrastate beer, and not a gallon of it becomes interstate. This bill purports to make all the enumerated acts unlawful, even if done by the Ripon brewery, if it engages in any such practice to such an extent as to substantially restrain or prevent transactions in interstate commerce.

Therefore, the bill involves, as to the Ripon brewery, exclusive contract made by that brewery in its local community, contracts by the Ripon brewery which have the direct effect of excluding, in whole or in part, purchases from others; makes it unlawful for the Ripon brewery to induce purchase to the exclusion, in whole or in part, of the products of others; makes it unlawful for the brewery to acquire interest in a premises or furnish equipment of fixtures, or pay or credit for advertising, or guarantee a loan, or extend credit, within the language of this bill. But the Ripon brewery and 80 percent of all breweries are subject to State regulation, not national regulation, unless it comes within the exceptions stated by the Senator.

Now it seems to me that an appeal to fundamental constitutional principles, as well as the most recent Supreme Court decisions, are convincing, that to have this regulation apply to that 80 percent is

absolutely unconstitutional. The commerce clause has always been an important thing. It was important in the debates of the Federal Convention.

Senator CONNALLY. Let me ask you right there, is not it more, though, the question of the application of the act rather than the act itself? The act could be constitutional, and yet as to the Ripon brewery it could be not applicable, because that is what the Supreme Court has said, that each case must stand on its own facts. Now because the courts should hold it did not apply to the Ripon brewery is no reason why the act would be unconstitutional in its application to some other concern that did engaged in interstate commerce. If it is found applicable, that does not mean that the act is unconstitutional, does it?

Mr. CORRIGAN. I would just assume, from my standpoint, to take that alternative, because if it is held not to apply to 80 percent of the breweries in this country, then this bill destroys the very fine purposes which are recited in it.

Senator CONNALLY. We cannot pass on the facts in each case, as to whether the law is applicable, any more than we can depend on the theft statute. Every case of theft has to stand on its own facts as to whether the man stole the property under the terms of the act.

Mr. CORRIGAN. Senator, I assume it is not for me to put myself in your position entirely, but I assume that if the Senate could foresee that this bill would receive such a construction in the courts as to make it applicable to only 20 percent of the brewing industry, the Senate would at once see that that construction of the act would destroy its purposes, and instead of being an instrument of promoting fair competition it would become an instrument which would completely destroy the possibility of unfair competition.

Senator CONNALLY. On the other hand might it not be construed that the Federal Government was willing to go as far as it could even though it only affected the 20 percent, then leave it to the States, who do have jurisdiction over the intrastate transactions, to conform their laws so as to regulate the breweries and the dealers who were interested in interstate transactions? Take the case of the theft of an automobile. We have got a law that if a man steals an automobile and transports it interstate he is guilty of a Federal offense, while some particular case might show that the man did not transport interstate, and of course he would not be amenable to the law, but that would not knock out the law, would it?

Mr. CORRIGAN. It might knock out the State law applicable in those circumstances, which might be far different than the Federal law, and that creates a very strong argument especially with respect to regulation that affects an important industry, with the purpose of leaving it to the States to work it out.

Now I was speaking about the importance of the commerce clause and how important it has been regarded in all our history. It has been regarded as a reservation of power in the States at all times. It is a significant thing that the State of Rhode Island stayed out of the Union for a long time on account of that, because they were asserting the doctrine of State's rights in respect to it and refused to adopt the Constitution. Some historians, I think, claim they never adopted it.

Now I turn to the severability clause of this proposed bill. I assume it could be declared unconstitutional as to the 80 percent, or not applicable to that, and left applicable to the 20 percent. Now let that law be severed in either of those ways and see what the result would be. Consider it irrespective of the title given to this bill, consider it as a bill which is manifestly, irrespective of the language of its title, intended, in respect to the things I have talked about, to be a bill to promote fair competition and to destroy unfair competition and unethical practices in this business. Now, as to beer, it will surely regulate the interstate brewers, if it is adopted, but in my view, either by reason of the constitutional decision or construction by the courts, it will let scotfree from Federal enforcement 80 percent of the industry. Apply that to Ripon again. It will permit the Ripon brewery to make exclusive contracts, and do these other things that we have spoken about. Interstate breweries can do none of these things. The bill, therefore, permits 80 percent of the industry to do anything it wants to do, except as it may be regulated by the States, and it puts down quite harsh provisions in respect to the 20 percent. The result, as I indicated, or intended to, to the Senator's question, causes this bill not to promote competition and ethical practices, but, on the other hand, will result in promoting unfair competition and unethical practices by treating the 20 percent substantially different than it does the 80 percent.

Senator CONNALLY. Wait right there. Let me ask you the other way around, though. If the States want to regulate their own breweries, then they can regulate them within their States.

Mr. CORRIGAN. Yes.

Senator CONNALLY. But they cannot regulate interstate breweries.

Mr. CORRIGAN. No, they cannot.

Senator CONNALLY. The interstate breweries can ship all the beer they want into the State, and being an interstate transaction the State cannot absolutely control that. That is true, isn't it?

Mr. CORRIGAN. That is true.

Senator CONNALLY. So it is as fair one way around as the other way around, isn't it?

Mr. CORRIGAN. Yes; but the industry is so completely an intrastate business, as distinguished from whisky, that my argument is there should be a divorce between beer and whisky.

Senator BARKLEY. Are you speaking of the country as a whole? Is not it true in certain localities a large majority of the business is done interstate? Take the St. Louis area. Don't you suppose the business of the Anheuser-Busch Co. is very largely interstate?

Mr. CORRIGAN. That is largely interstate, and so it is with the large breweries in Milwaukee, and it is true with breweries in other large cities, but I am speaking of the industry country-wide.

Senator BARKLEY. Of course there are a lot of places all over the country where there are no breweries at all, so you take that territory in to make up the general average, but the brewery business, in a large sense, is concentrated in cities like St. Louis, Milwaukee, Evansville, Cincinnati, and other large cities, and in those places a large part of their business is bound to be interstate. Take the brewery in Philadelphia, that is largely interstate, and in New York it does not depend on its local trade altogether.

Mr. CORRIGAN. I would say materially it depends on its interstate business.

Senator BARKLEY. Yes.

Mr. CORRIGAN. But this is taking the country as a whole. Of course the places where they do not manufacture beer do not count in this argument either way, I do not suppose.

Senator CONNALLY. Let me ask you one question there, if you are through with Senator Barkley. Have you finished?

Mr. CORRIGAN. I think so.

Senator CONNALLY. Is it your attitude because we cannot reach 80 percent of them that we ought not to do anything to the other 20 percent which the States cannot reach?

Mr. CORRIGAN. No. Fundamentally, Senator, my attitude is that this is the soundest of reasons why beer should not be associated with whisky, why malted beverages should not be associated with whisky in these regulations, because there are such distinctions of fact, and the differences in facts in respect to the character of the business as between interstate and intrastate are great between the potent liquors on the one side and malt beverages on the other.

Now I can see your point so far as National and State regulations are concerned, and they are entitled to consideration, but I do not think they invade the argument I am making, insofar as the point I am seeking to make is concerned.

Senator BARKLEY. Well, one of your points is beer is so different than whisky it ought not to be in the bill at all, regardless of whether it is interstate or intrastate commerce, is that true?

Mr. CORRIGAN. My fundamental argument is that beer should not be in this bill. One of the reasons that I have tried to advance for that is the distinction between the two articles in point of fact, in respect to one of them being an interstate article, and the other one being chiefly an intrastate article of commerce.

Senator BARKLEY. I thought you said a while ago one of your reasons was beer is not now regarded as an intoxicating liquor and it did not do the harm brought about by potent spirits.

Mr. CORRIGAN. That was one reason.

Senator BARKLEY. That was one reason?

Mr. CORRIGAN. Yes.

Senator BARKLEY. Has there ever been any liquor regulating law passed in any State that eliminated beer from its consideration?

Mr. CORRIGAN. I am not familiar with that. I am merely arguing the points of distinction are such that they ought now to be separated.

Senator BARKLEY. If they ought to be separated as Federal legislation, waiving your interstate point, then would not the same logic separate them as to State regulation?

Mr. CORRIGAN. Yes.

Senator BARKLEY. That has not been followed.

Mr. CORRIGAN. No; at least I do not know that it has been followed.

The CHAIRMAN. Are you about through, Mr. Corrigan?

Mr. CORRIGAN. Yes; I am through. Now the brewers in Wisconsin may not be an important fact, but it explains my representation.

Senator BARKLEY. It is important to you.

Mr. CORRIGAN. The brewers in Wisconsin are all lying in bed together in a pretty friendly way, the big ones and little ones. In fact the association is so organized that the big brewers, like the Schlitz,

Pabst, and so forth, have just one vote under the constitution, whereas the fellow that makes a hundred barrels of beer a week has one vote.

You might wonder how we think this may affect the little breweries, as to whom we owe the same duty as we owe to the larger ones, and they owe that fiduciary duty to each other, as far as that is concerned, in that association. Well, we believe that if this bill is passed and the constitutional decisions are as we believe they will be, or the construction, on the other hand, to avoid the constitutional question as it will be, as the Senator mentioned to me, that the result would be that the interstate breweries, the larger breweries will be driven to confine themselves largely to intrastate business which, in these days, has been left largely to the Ripon brewery and the other 80 percent that are intrastate breweries.

Senator CONNALLY. That will mean the other industries will go to the other States.

Mr. CORRIGAN. It will drive out the little fellows if the big fellows are driven into this intense competition with the industries in the States.

Senator BARKLEY. Do you think the big brewery, the majority of whose business is interstate, will pull in its horns from all interstate transactions to avoid regulation?

Mr. CORRIGAN. All these regulations may apply to the industry as a whole. If they are put into effect as to the interstate brewery and the local brewery is left to do as it wants, as will undoubtedly be true in some of the States, it means the interstate brewery is through in that State. That is what they feel about it, and that is what I feel about it from my examination of the question. That means the interstate brewery within that State has got to look for intrastate business, and that will result in driving the little fellows out of business within that State, and still he will not get rid of his entire product.

Now let us look at the word "substantially" for a moment, which is the word I mentioned as being within this bill. The word "substantially" in this bill will result in one brewery finding it means something in one case and another brewery finding it means something else in another case. It will be akin to the case of *Cohen* v. *United States*, which involved the Food Administration Act some years ago which involved the term "unreasonable profits" as applied to dealing in food, or as to hoarding as applied to dealing in food, in respect to both of which questions the Federal courts have determined that to leave the question of deciding the meaning of that term to every jury in the land makes the legislation invalid.

There is another point. I am not so much interested in this, but I think it is my duty, as a lawyer, to mention it. It may have been mentioned by others. Let us look at the provisions with respect to wholesalers. The wholesaler is obliged to get a permit under this bill. Now I am told, and I think from reliable sources, but I do not pretend to accurately know, that 99 percent of the wholesalers of beer in this country are engaged exclusively in an intrastate business. In other words, the interstate character of the transaction has been finished when the beer is unloaded in their warehouses and they paid for it, and it belongs to them and they proceed to wholesale it out, but wholly within the State. If that is true, it is quite apparent that the bill will have the effect, if that is the effect of the language, it will

have the effect of having application only to 1 percent of the wholesalers of the country.

Now, we think it is illogical to leave malt liquors in this bill, because they are different in fact, because one is fundamentally interstate and the other is not; because the Constitution does not stand for it, excepting insofar as to destroy the real purpose of the bill.

The illogical title of this bill I think is unfortunate. Neither it nor the embellishment with words in order to avoid the effect of constitutional limitations will save the bill from constitutional destruction by the courts, or by interpretation, which will give it the force and effect that I argue for.

Thank you, gentlemen.

The CHAIRMAN. Thank you very much, Mr. Corrigan.

Judge De Vries.

STATEMENT OF JUDGE MARION DE VRIES, WASHINGTON, D. C., REPRESENTING THE WINE INSTITUTE

Mr. DE VRIES. Mr. Chairman and gentlemen of the committee, I appear in behalf of the Wine Institute. The Wine Institute comprises in its membership ownership of a majority in gallonage of the wineries, and in acreage of the vineyards, of the United States.

Those industries, including raisins, are essentially one and represent invested capital of between four and five hundred million dollars, and a direct employment of over 100,000 laborers. By reason of its character it distributes its gross revenues into every State, county, and hamlet of the country. It is an agricultural industry, by reason of prohibition in distress, of that magnitude and importance to the general welfare that it commands Government assistance to the extent of several millions of dollars.

The only source of consumption of the great grape surplus of the country of at least 600,000 tons per annum is through the manufacture and sale of wine, of which there is presently a tremendous production in excess of consumption. There was in stock in the United States January 1, 1935, about 82,000,000 gallons of wine, more than half of which was sound and potable. There will be in stock on reliable estimates January 1, 1936, 116,000,000 gallons. While the average annual consumption prior to prohibition was 51,000,000 gallons, since prohibition it does not exceed 23,000,000 gallons. The reason therefor is quality and price of wines, high Federal and State taxes, and particularly unnecessarily strict distribution restrictions and discriminations.

The Wine Institute was organized to exert national efforts to remedy these conditions and supply the public demand with high-quality wines at reasonable prices. So far as relating to wines, the Wine Institute favors the policy and provisions of H. R. 8870 with some minor suggested changes. These are set forth in a telegram from Mr. H. A. Caddow, its secretary, which I am filing with the committee as a part of this statement and of which favorable consideration is respectfully asked.

With reference to H. R. 8870 page 10, section 3, present wording would prevent winery from maintaining off-sale stores. Also relative to paragraph 3, page 10, language should be clarified so as not to prevent an off-sale retailer from qualifying as rectifier. Would suggest that on line 14, page 10, words "on retail" be changed to "on sale retail". Page 16, wherever word "retailer" used, should be "on-sale retailer", in order not to preclude manufacturer from engaging in off-sale business.

The Wine Institute was highly appreciative of the favorable consideration given its recommendations by Mr. Choate, his associates, and assistants of the F. A. C. A. It regarded the wine regulations adopted by the F. A. C. A. as a tremendous aid and step in advance in the cause of pure wines in our markets with labels thereon truly informative of their character to consumers. It is hoped and believed that this bill will to a great extent accomplish the same end.

The Legislature of the State of California has just passed a wine standardization act sponsored by the Wine Institute providing standards of wine production higher than those provided by either the National Pure Food Administration or the F. A. C. A. regulations, and appropriated $50,000 to enforce the same. They do not apply to wines produced in other States sold in California.

All legislative treatment should bear in mind that wine is a food product, not to be classed or legislatively treated as intoxicating liquors. The great wine-consuming source is the home and the family, who do not customarily make their purchases in the saloon or liquor store.

Two Southern States, Georgia and South Carolina, have just so declared and legislated. The acts declare this done in the cause of temperance. This consuming public cannot be economically reached through the State stores. Statistics show that absolutely true. The trend of State legislation, therefore, has been and is to provide wine and beer separate distribution systems from the State stores. That is true in Ohio. In Pennsylvania and Illinois such was passed by the State senates. That system will undoubtedly progressively prevail in the future.

This brings us to an important suggestion I have to make with reference to this bill. Because of the probable dual system of wine sales in some States, as well as for other reasons later to be stated, I wish to invite your attention to lines 20 to 23, inclusive, page 5, of H. R. 8870, reading as follows:

> This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this act.

The effect of that provision in the bill is far-reaching. It almost entirely exempts State stores and State liquor wholesalers and retailers from the provisions of the bill.

The penalty provisions of the bill, the menace of which is calculated to insure its observance, are twofold.

First. By requiring a basic permit to operate (sec. 3) conditioned upon the observance of all requirements of the bill and pertinent liquor laws (sec. 4, a and b) and a revocation of such by the Administration for any violation thereof.

Second. Proceedings in the District and other sources for violation of the requirements of this bill (sec. 6).

From these provisions, however, State agencies are excepted. They need not secure basic permits. That means that they are beyond control of the Administration. Nor can they be prosecuted in court for all the acts of unfair competition and unlawful practices defined in the bill and applicable to others.

There seems no sound reason why State agencies should not be subject to all Federal permit requirements as well as other liquor sales agencies, which do or may operate in the same jurisdiction.

The wisdom of the retention of that paragraph in the proposed law naturally involves an understanding of the legal status of the so-called "State stores" as competitors in the legal distribution and sale of liquors in the several States.

In this particular the decisions for all time are uniform. The question early arose as to the so-called "dispensary" system of South Carolina. As the result of the holding of the Supreme Court of the United States in the case of *Scott* v. *Donald* (165 U. S., 60), that the so-called "State Dispensary Act" was in certain parts unconstitutional, amendments to the act were made by the State Legislature. The constitutionality of certain phases of the amended act was passed upon in the case of *Vance* v. *W. A. Vandercook* (170 U. S., 438), part being held constitutional and part not. The precise character of this agency or agencies of the State under the aforesaid acts was, however, most clearly defined in the case of *South Carolina* v. *United States* (199 U. S., 437). The question there was whether or not State agents were subject to Federal taxes. The holding of the Supreme Court of the United States is accurately expressed in the syllabus, as follows:

> A State may control the sale of liquor by the dispensary system adopted in South Carolina, but when it does so it engages in ordinary privzte business which is not, by the mere fact that it is being conducted by a State, exempted from the operation of the taxing power of the National Government.

And again:

> Persons who sell liquor are not relieved from liability for the internal-revenue tax imposed by the Federal Government by the fact that they have no interest in the profits of the business and are simply the agents of a State which, in the exercise of its sovereign power, has taken charge of the business of selling intoxicating liquor. They are persons within the meaning of sections 3140, 3232, and 3244 Revised Statutes.

More recently, and very lately, the Supreme Court of the United States in *Ohio* v. *Helvering* (292 U. S., 360), squarely decided the precise question. The State of Ohio by original proceeding in the Supreme Court of the United States sought to restrain the Federal revenue officers of Ohio from collecting the Federal license taxes for "wholesale" and "retail" liquor dealers prescribed by the United States Code Annotated, title 26, section 205, Revisted Statutes, section 3244. The claim of the State of Ohio was that the function of the State Liquor Commission of Ohio was an exercise of the sovereign powers of the State. The Supreme Court of the United States said:

> * * * Whenever a State engages in a business of a private nature it exercises nongovernmental functions, and the business, though conducted by the State, is not immune from the exercise of the power of taxation which the Constitution vests in the Congress. This Court, in *South Carolina* v. *United States* (199 U. S., 437), a case in no substantial respect distinguishable from the present one, definitely so held. (Compare *Board of Trustees* v. *United States* 289 U. S. 48, 49.)

And further the Supreme Court continued:

> If a State chooses to go into the business of buying and selling commodities, its right to do so may be conceded so far as the Federal Constitution is concerned; but the exercise of the right is not the performance of a governmental function, and must find its support in some authority apart from the police power. When a State enters the market place seeking customers, it divests itself of its quasi sovereignty pro tanto, and takes on the character of a trader, so far, as least, as the taxing power of the Federal Government is concerned. Compare *Georgia* v. *Chattanooga* (264 U. S. 472, 480–483); *U. S. Bank* v. *Planters' Bank* (9 Wheat. 904, 907); *Bank of Kentucky* v. *Wister* (a Pet. 318, 323); *Briscoe* v. *Bank of Kentucky* (11 Pet. 257, 323–325); *Curran* v. *Arkansas* (15 How. 304, 309).

This decision continued to review the question presented as to whether or not within the taxing statutes of the United States a State or a liquor agency was a "person" as that term is employed in the Federal Taxing Act and held the State agency so included.

Senator CONNALLY. Right on that point, while they might be taxable because of the general taxing power, would a State agency be amenable to interstate regulation when it was purely local and intrastate in character?

Mr. DE VRIES. That is the point I cite, on the ground that the State agencies were made amenable because of the use of the word "person", and I take it, and believe it to be held to be true, that all Federal taxes that included persons would be effective on State agencies.

Senator CONNALLY. I am not talking about tax now. These other regulations would not apply to a State agency which was found to be purely intrastate, if it only deals in intrastate business, would it?

Mr. DE VRIES. No; not if it only deals in intrastate business, but suppose it extends to or affects interstate business? The constitutional provisions and the Federal laws relating to persons, it seems to me, would, by reason of the use of "person" in State acts render them amenable to the Federal laws and to the Federal constitutional provisions relating to "persons". That has been held in the *South Carolina case.*

In the latter case of *Helvering* v. *Powers* (293 U. S. 214) decided December 3, 1934, the Supreme Court of the United States, at page 225, thus stated:

* * * The principle of immunity thus has inherent limitations (*Metcalf & Eddy* v. *Mitchsell* (supra, pp. 522–524); *Willcutts* v. *Bunn* (282 U. S. 216, 225, 226); *Indian Motorcycle Co.* v. *United States* (supra, p. 576); *Fox Film Corporation* v. *Royal* (286 U. S. 123, 128); *Board of Trustees* v. *United States* (289 U. S. 48, 59).) And one of these limitations is that the State cannot withdraw sources of revenue from the Federal taxing power by engaging in businesses which constitute a departure from usual governmental functions and to which, by reason of their nature, the Federal taxing power would normally extend. The fact that the State has power to undertake such enterprises, and that they are undertaken for what the State conceives to be the public benefit, does not establish immunity (*South Carolina* v. *United States* (199 U. S. 437); *Flint* v. *Stone Tracy Co.* (280 U. S. 107, 172); *Murray* v. *Wilson Distilling Co.* (213 U. S., 151, 173); *Metcalf & Eddy* v. *Mitchsell*, supra; *Indian Motorcycle Co.* v. *United States*, supra; *Ohio* v. *Helvering* (292 U. S. 360, 368, 369).) The necessary protection of the independence of the State government is not deemed to go so far.

In *South Carolina* v. *United States*, supra, the State undertook to establish a monopoly of the sale of intoxicating liquors and prohibited the sale except by dispensaries to be operated by the State. The dispensers had no interest in the sales and received no profit from them. The question was whether the dispensers were relieved from liability for the internal-revenue tax prescribed by the Congress for dealers in intoxicating liquors because the dispensers were agents of the State, which in the exercise of its sovereign power had taken charge of the business. While the Court recognizes the power of the State to undertake the enterprise, the exemption was denied, as the State could not, by engaging in a business of that sort, withdraw it from the taxing power which the Constitution vested in the National Government. *Murray* v. *Wilson Distilling Co.*, supra.

The Court reached a similar conclusion in the recent case of *Ohio* v. *Helvering*, supra, where the State had established a department of liquor control and sought an injunction to restrain the enforcement of Federal statutes imposing taxes upon dealers in intoxicating liquors. The State sought to distinguish the case of South Carolina because, in Ohio, "the State-owned stores" were operated by civil employees of the State government, and hence the question was said to concern the taxation of the State itself. The argument was unavailing and the Court rested its ruling upon the broad ground that when the State becomes a dealer in intoxicating liquors it falls within the reach of the tax as one validly imposed by the Federal statute.

The method which the State may adopt in organizing such an activity cannot be regarded as determinative. If the dealers in South Carolina, or those employed to operate the State stores in Ohio, had been denominated public officers, and as such had been assigned definite tenure and duties, the same result would have been reached, as the principle involved would be equally applicable. Nor, in such a case, would the fact that the officers were entrusted with the authority to fix prices for the sales under their charge in a manner appropriately to secure the revenue needed for the enterprise, or were charged with the duty of ascertaining the losses which, if they occurred, were to be borne by general taxation, establish a material distinction. The nature of the enterprise, and not the particular incidents of its management, would control.

It is therefore respectfully submitted for the consideration of the committee that State agencies, constituted for the purpose of dealing in liquors for the profit of the State in competition with other persons dealing in like intrastate or interstate commerce, said agencies more often than not being constituted a monopoly within the State, stand in the legal relationship of persons, artificial and natural, and are not clothed with any attributes of sovereignty. They are a specially created kind and class of artificial persons doing business of a prescribed kind in competition with the same kind and class of persons in other States and in the State of their creation. They therefore are not surrounded by any of the attributes of sovereignty in avoidance of any of the Federal laws applicable to persons. They stand in no different legal status within the purview of any Federal statute relating to "persons".

In this view it is respectfully submitted that in order to avoid lack of uniformity of legislation and possible judicial and legislative complications, the Committee might wish to strike out the clause in question, exempting State agencies from provisions of the bill. There would seem to be no sound reason why State agencies buying and selling liquor in competition with other natural and artificial persons should not be amenable to the same Federal rules and regulations. This is particularly true should it be held, as has been done by the Supreme Court, that no State statute or regulation can constitutionally inhibit the residents and citizens of one State from selling its wines to the residents or citizens of another State for their own use.

It appears from the report of the case of *South Carolina* v. *United States* (199 U. S., 438), that the practice was within reference to the State dispensaries of South Carolina to file their applications for Federal licenses as wholesalers and retailers. It is recited in the statement of that case:

> By several statutes, the State of South Carolina established dispensaries for the wholesale and retail sale of liquor, and prohibited sale by other than the dispensers. The United States demanded the license taxes prescribed by the internal revenue act for dealers in intoxicating liquors, and the dispenser filed the statutory applications for such licenses. The State, sometimes in cash and sometimes by warrant on its treasury, paid the taxes.

I am informed by the Treasury Department that at the present time it is the practice to require State stores to take out wholesale Federal liquor licenses.

Aside from the uniformity of legislative application and control of all liquor distributing and sales agencies, the question may arise in future judicial interpretation as to the legal status of State liquor stores constituted and operated as monopolies as affected by many cognate statutes and the Constitution.

This exception from the Federal laws might carry with it an exception of far greater portent than is here anticipated. Unless, there-

fore, there would seem to be present some sound reason for excepting these particular competitors, usually monopolies, with other persons, natural and artificial, engaged in intrastate or interstate liquor commerce, they should not be expressly exempted from this law, but this law should be general and State agencies should be compelled to take that status assigned them, if they protest, as in the Ohio case, by judicial determination.

When a State regulates the liquor traffic, it exercises its police powers. When a State goes beyond this and itself by agencies enters into the liquor business for profit, it no longer exercises its police powers, nor is it clothed with the immunities of sovereignty, but enters the business of trade and barter exactly as to other dealers. In such cases there exists the same necessity that it, the State agency, be regulated, rather than that it, the State agency, should regulate or exclude from trade its competitors.

In such cases it may become a serious question whether or not the Federal laws against restraint of interstate commerce, or the provisions of the Constitution relating thereto or to the rights of residents and citizens of other States under the fourteenth amendment are violated. In this not remote possibility it is respectfully submitted that there is no equity attending State liquor monopolies which bespeaks a possible statutory license, which they provision might be found to be, exempting from the laws which in their legal emplitude government all other persons in like trade. There can be no justification in a State discriminating against other persons natural or artificial in favor of its own trade monopoly. The Constitution does not permit a State, even in the exercise of its police powers over liquor, to violate the constitutional rights of its own or the residents and citizens of other States. That doctrine is succinctly stated by the Supreme Court of the United States in *Vance* v. *Vandercook Co.* (no. 1, 170 U. S.), 438, as follows:

> It is settled by previous adjudications of this court:
> (1) That the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, providing always, they do not transcend the limits of State authority by invading rights which are secured by the Cosntitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union; * * *
> The South Carolina act of March 5, 1897, no. 340, amending the act of March 6, 1896, no. 61, is unconstitutional insofar as it compels the resident of tne State who desires to order alcoholic liquors for his own use, to first communicate his purpose to a State chemist, and insofar as it deprives any nonresident of the right to ship by means of interstate commerce any liquor into South Carolina unless previous authority is obtained from the officers of the State of South Carolina, since as, on the face of these regulations, it is clear that they subject the constituional right of the nonresident to ship into the State and in the resident of the State to receive for his own use, to conditions which are wholly incompatible with an repugnant to the existence of the right which the statute itself acknowledged.

The twenty-first amendment does not repeal the fifth or fourteenth Amendments to the Constitution nor interstate constitutional rights, but all must be given their due effect as parts of the supreme law of the land. The exercise of these rights, if and when asserted and establisted in States having State dispensary systems, should be subjected to no different regulations than State stores or State liquors selling agencies. To so effect State stores should be subject to all legally

applicable Federal regulations. This provision in the bill might in that event defeat that end. It would result in two systems of regulation of the same subject in the same State.

I thank the committee for its courtesy.

The CHAIRMAN. Thank you. Mr. William I. Denning.

STATEMENT OF WILLIAM I. DENNING, WASHINGTON, D. C., NATIONAL PUBLISHERS' ASSOCIATION

The CHAIRMAN. Mr. Denning, you represent the National Publishers' Association?

Mr. DENNING. I do, Mr. Chairman.

The CHAIRMAN. All right, you may proceed.

Mr. DENNING. Mr. Chairman, I appear here for the National Publishers' Association, 232 Madison Avenue, New York.

This association is composed of publishers of the leading magazines of the country.

The CHAIRMAN. Any newspapers?

Mr. DENNING. No; no newspapers in this particular organization, solely magazines.

We wish to urge the clarification of the bill in one particular. In section 5 of the bill it provides that it shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, or blender, and so forth.

The CHAIRMAN. Let me get just where that is.

Senator LA FOLLETTE. Page 13.

The CHAIRMAN. All right; I got it.

Mr. DENNING (reading):

directly or indirectly, or through an affiliate—

Then skipping to subsection 5 (f), the advertising section—

to publish or disseminate, or cause to be published or disseminated by radio broadcasts, or in any newspaper, periodical, or other publication——

Senator CONNALLY. Wait a minute. You mean subsection (f), don't you?

The CHAIRMAN. You are talking about page 21, subsection (f)?

Mr. DENNING. Yes.

any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, as will prevent deception of the consumer with respect to the products advertised.

And so forth.

Now, turning to section 6. Under section 6 the district courts of the United States, the Supreme Court of the District of Columbia, and United States Court for any territory or district where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, vested with jurisdiction of any suit by the Attorney General, to prevent and restrain violations of any of the provisions of this act.

Regulations are to be promulgated by the Administrator according to certain standards laid down in subsection (f) with respect to what is proper and improper advertising, and the regulations so prescribed will have the force and effect of law.

The CHAIRMAN. Let me ask you, has not the Federal Trade Commission got authority now to prevent any advertisement through fraud or misrepresentation, and so on?

Mr. DENNING. They have.

The CHAIRMAN. How does this broaden it?

Mr. DENNING. So does the Post Office Department.

The CHAIRMAN. How does this broaden the power that is given to the Federal Trade Commission with reference to advertisements?

Mr. DENNING. It goes still further and prescribes certain standards to be covered by regulations of the Administrator which go to what may be put in the advertisements.

The CHAIRMAN. In other words, it must be first submitted to the Administrator?

Mr. DENNING. I did not get your question.

The CHAIRMAN. It must be first submitted to the Administrator, this advertising?

Mr. DENNING. I imagine it will be, although I am not familiar with it, I am not familiar with the procedure, but I am under the impression that the advertising must be submitted to the Administrator.

Senator CAPPER. I do not find any provision in this section here that says specifically that they must first submit the advertising to the Administrator.

Mr. DENNING. No, sir; but I should think that an advertiser would probably feel compelled, in order to be certain that his advertising did not violate the regulations that might be fixed by the Administrator, to submit them to the Administrator.

The CHAIRMAN. Was a similar provision to this written into the code under the National Recovery Administration?

Mr. DENNING. I do not think so, although I think there were certain restrictions regarding advertising, but I do not think they went this far. I am not positive.

Senator BARKLEY. I imagine it follows the practice of the Bureau of Chemists which administers the Pure Food Act, where general regulations may be prescribed with respect to that advertising, but I doubt seriously whether the Administrator would feel it his duty to pass individually on every advertisement that everyone wants to put in the magazine, just as the Bureau of Chemists, which does not pass on individual cases of labeling under the Pure Food Act.

Mr. DENNING. That is correct, Senator.

The CHAIRMAN. We would have to build up a pretty big bureau if we did have to go over and approve every advertisement.

Mr. DENNING. The undoubted purposes of this act is to throw the primary responsibility on the brewer, the distiller, the rectifier, and the blender of complying with the regulations of the Administration as to the type of advertising that should be published.

The process of the manufacturer of a magazine in practically all cases involves days and sometimes weeks. This advertising comes to the publisher from an advertising agency as a rule, expensive plates are sometimes made, and in spite of all the precautions that may be taken by the publisher to take no advertising unless it comes from a reputable advertsing agency, and also from a responsible distiller or brewer, there may be occasions when advertising will be accepted and is in the process of manufacture of the magazine, which

will be found by the Administrator as not conforming with the regulations covering that type of advertising.

Now section 6 gives the courts powers to prevent and restrain any violations of any provisions of the act. We believe it should be made clear that magazines and newspapers should not be withheld from circulation under those conditions.

Senator CAPPER. If they have objectionable advertising with respect the liquor traffic, ought there not be some supervision and control over a practice that contributes to evils of the liquor traffic?

Mr. DENNING. I agree, Senator, that there should be some control over that, but I think the purpose of the act is to place that responsibility on the advertiser himself rather than on the publisher of the newspaper or magazine. It can be readily seen that if, after publication is made up and is going through the press, involving millions of copies, some advertisement that might be accepted in perfect good faith might be found by the Administrator, or might be decided by a court, to be improper, and to restrain the circulation of the entire issue of that publication simply because it had one advertisement in it that did not conform with the regulations by the Administrator, seems is not entirely fair.

The CHAIRMAN. Do you have any doubt that every newspaper man and magazine publisher has sufficient knowledge of the contents of the advertisement to become a judge of its legality before it is published?

Mr. DENNING. I am not sure about that, Senator. We suggest that you add at the end of the first paragraph of subsection (f) of section 5, after the word "advertising" on line 19, page 22, the following:

Provided, That the prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher, or radio broadcaster; is engaged in business as a distiller, brewer, rectifier, or blender, or other producer, or as an importer or wholesaler of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate.

This is necessary in order to make it clear that the responsibility of complying with the regulations of the Administrator with respect to advertising is laid entirely on the person originating the advertisement in the first place. While I speak only for the magazine publishers the amendment is equally applicable to newspapers and they should be included.

The CHAIRMAN. Thank you. Mr. O'Connor.

STATEMENT OF A. D. O'CONNOR, WASHINGTON, D. C., UNITED STATES BEER DISTRIBUTORS ASSOCIATION

The CHAIRMAN. Mr. O'Connor, you represent the United States Beer Distributors Association?

Mr. O'CONNOR. Yes, sir, Mr. Chairman. Aside from what Mr. Corrigan and Mr. Donnelly stated about striking out the breweries from the provisions of this bill, we are assuming that the language of this bill will be carefully studied and they will stay in the bill.

This bill proposes enforcement by a new Federal Alcoholic Control Administration of the many fair trade practices formerly enforced by

administrative regulations that depended upon the constitutionality of the National Industrial Recovery Act.

The enforcement of those fair trade practices has been of great benefit both to the public and to the alcoholic beverage industries. In order to become effective, however, the violators of those practices must be punished by imposition of a penalty.

The basis for exerting authority over members of the industry requires a permit system with authority vested in the Government to suspend and revoke permits for violations of the fair trade practices. With one exception, all industries engaged in the manufacture and wholesale distribution of alcoholic beverages are required by the provision of this bill to obtain a permit, and that permit is subject to suspension and revocation for violations of the fair trade practices defined in the bill. That one industry specifically exempted from the proposed permit system is the brewing industry.

I have not heard and cannot imagine what reason is the basis for that exemption. As to why all wholesalers of alcoholic beverages should be required to have a permit is perfectly evident; it is equally reasonable that all manufacturers of alcoholic beverages be placed under the permit system.

No industry is more vitally affected by the provisions of this bill than the alcoholic beverage wholesale industry. The largest branch of that industry comprises the wholesalers of brewery products. In fact, the number of wholesalers of brewery products is greater than the total membership of all other branches of the alcoholic beverage industries. In behalf of those 10,000 wholesalers of brewery products I urge that this bill be amended so that it will also bring the brewery under the proposed permit system.

All who are familiar with the history of the alcoholic beverage industries before the enactment of prohibition, know very well that these fair trade practices concern the brewing industry as much as any other alcoholic beverage industry. To exempt the brewers from the permit system leaves the Government powerless to enforce most of the provisions of this bill.

Obviously the wholesaler, not the brewer, will be subject to suspension or revocation of a permit in every instance where each of the two is guilty of a specific violation. I should like to hear some argument in favor of this exemption of the brewers from the permit system. In the absence of such an argument it seems manifestly unfair to all other alcoholic beverage industries to exempt from the permit system the very industry most vitally concerned with the fair trade practices this bill seeks to protect.

Getting back to section 5 here, we hear so much about tied houses. I am not so old, but in reading back I have never heard of anyone who has been able to tell me that a distiller has a tied house.

Senator CONNALLY. What is a tied house?

Mr. O'CONNOR. The tied house is mentioned in section 5.

Senator CONNALLY. I know it is in the bill. What is the definition of it?

Mr. O'CONNOR. The definition of a tied house is, by inducement or otherwise, to furnish equipment or signs, or something of that kind, for the express purpose of that retailer handling the one product of the brewing industry. We have had that to contend with all along. I

am sure you will have that to contend with from now on. On the question of signs I do say it is an inducement to serve a man's beer. If we walk in a man will say "So-and-so will loan me a sign, or rent me a sign providing I put his beer in, or sell his beer. What can you do for me?" Fortunately under the local law, no one is entitled to furnish signs in the District of Columbia, and that is why in many States we do not agree on the question of furnishing signs. It seems to me the merchandising of beer has been built up on the question of inducements which the incoming brewery cannot get away from, and never will get away from. He is either going to furnish coils, locks, some kind of tap or tapping devices, or some other implements that go along with the box for the drawing of beer.

We urge you, therefore, in considering this bill, to give due consideration to the question of putting the breweries under the permit regulations.

Senator CONNALLY. That is the main thing, putting the breweries under the permit?

Mr. O'CONNOR. Yes.

Senator CONNALLY. What is your attitude on the tied-house question?

Mr. O'CONNOR. I am opposed to it.

Senator CONNALLY. You are opposed to furnishing signs?

Mr. O'CONNOR. Yes, sir. I am opposed to serving anything, even on the question of cleaning coils.

Senator CONNALLY. You are in favor of letting the retailer do it himself?

Mr. O'CONNOR. Yes, sir.

Senator CONNALLY. Are the wholesale dealers in competition with the breweries?

Mr. O'CONNOR. Yes, sir; we are in competition with the breweries.

Senator CONNALLY. In other words, a lot of breweries sell direct to the retailers, do they?

Mr. O'CONNOR. Yes. We have over 10,000 wholesalers.

Senator CONNALLY. You, as wholesalers, are the middlemen?

Mr. O'CONNOR. Yes.

Senator CONNALLY. You would like to make the distance between the retailer and the brewer just as far as you can?

Mr. O'CONNOR. I do not think we are out to do that; no, sir. Of course, we do think a wholesaler is necessary to the brewer.

Senator CONNALLY. I am not talking about that. The point is, you do not want the tied-in proposition that allows the brewer to tie in the retailer with his signs and advertisement, because that is going to squeeze the wholesaler between the two?

Mr. O'CONNOR. Yes; my argument is a little different than has been declared. We contend a wholsealer who is buying beer in St. Louis and selling it here in Washington is in competition with the local brewery, and we cannot afford to give signs, whereas if we go to St. Louis, the John Jones brewery is offering signs and equipment, and we cannot afford to do it as wholesalers. That is where we are in direct competition with the local brewery.

The CHAIRMAN. Do you think, then, taking into consideration the expense of importing beer from St. Louis to Washington, that they would bear that expense and at the same time furnish some signs or something that the local man could not afford to do?

Mr. O'CONNOR. It so happens they are bearing the expense in this district; they are doing that. They have their local offices and branches, many of them.

(Mr. O'Connor submitted the following quotation from the Journal of Commerce and Commercial, New York, Friday, July 19, 1935:)

COMMENTS OF A WEEK

(By Alfred Human)

BEER FAVORITISM IN THE PENDING BILL

Two dangerous points will be found in the Federal control bill which may pass the House momentarily: Lack of control of the brewing business, and establishment of the new agency under domination of Secretary Morgenthau of the Treasury.

It is no reflection on the present beer interests to recall the historical fact that evils of the oldtime brewing industry were chiefly responsible for the prohibition terror.

Yet the revamped Doughton bill omits control of the beer division of the beverage field, while saddling the wine and liquor industry with more stringent regulations.

The beer industry is entitled to every consideration; the new brewing regime has profited by the mistakes of the preprohibition period. By the same token, the wine and liquor business is on a sound new basis.

Why such a curious kind of favoritism for any one division of the field in the pending bill?

The CHAIRMAN. Mr. Goldsborough wanted a minute or two.

STATEMENT OF FELIX V. GOLDSBOROUGH, BALTIMORE, MD.

Mr. Chairman, I am speaking really as an individual. Before I start speaking on the bill I want to say that my firm, Records & Goldsborough, has been in business over 50 years, and I personally have been in the business over 37 years.

Senator CONNALLY. What is your business?

Mr. GOLDSBOROUGH. In the rectifying business. I particularly want to call your attention to the provision in reference to the labeling regulation. I think this provision should be left out of the bill and should be left to whatever body is going to govern the liquor industry.

Senator CAPPER. What provision do you refer to?

Mr. GOLDSBOROUGH. The labeling provision. I particularly bring this to your attention at this time. When the F. A. C. A. was functioning, we, as an industry, were endeavoring to get them to eliminate the word "spirits" in conjunction with the labels and blends. To have this in the law, where we have to continue to put that word "spirits" on the label, will certainly be a great handicap to our industry, because we all know that spirits is the cleanest product made in the whisky industry, cleaner than any whisky made. We use that as a base for our blending. We get a much more palatable drink, more wholesome drink, one which we can work with and bring out the bouquet of those whiskies far better than the blending of young whiskies. In fact, it has been my experience where young whisky is used and where we eliminate the old whiskies from it, it does not stand out, it does not help it one bit. For that reason, I should certainly like to see it left in the hands of whoever is going

to govern our industry, rather than put it in the law, because one it is written there you know how difficult it is to have it stricken out.

Senator CONNALLY. Who is going to govern the industry?

Mr. GOLDSBOROUGH. I do not know whom you gentlemen have in mind to govern the industry, whether a separate body or the Treasury Department, or what not. That, of course, is not for me to say.

Senator CONNALLY. It would be in the bill in either event. Whom are you going to leave it to? You say, "Leave it in the hands of whoever is going to govern." Who is that going to be?

Mr. GOLDSBOROUGH. Let that be a regulation rather than a law. I think it should be a matter of regulation rather than law.

Senator CONNALLY. When you speak of "spirits", what do you mean? Do you mean alcohol?

Mr. GOLDSBOROUGH. It is refined alcohol; yes, sir. You know that alsohol is made of the same thing that certain whiskys are made of. We know it is distilled to a high point, and all the impurities, the oils, and so forth, are taken from it, so it is an absolutely wholesome product. I think under the Taft rule—the late President—he said anything that was made from a grain was whisky and should be so labeled and construed. Knowing the business as I do, being in it for many years, I can say truthfully to you gentlemen that you can make a better blend out of using certain quantities of spirits in that blend than you can if you had to take young straight whisky.

The largest business of the rectifiers is the blending business; it is taking the older whiskies and the younger whiskies and blending them together.

Senator CONNALLY. Making them think the whisky is a blend of the older whiskies?

Mr. GOLDSBOROUGH. No, sir. You can take several whiskies from the distiller, the older whiskies and blend the whiskies together and get a whisky with a better aroma and bouquet than you can if you just use one product. There is no question about it. Before prohibition, I think I can truthfully say, about 90 percent, 85 to 90 percent of all the whiskies sold were blended whiskies, and I would say that 80 percent of those were all blended with some spirits in them.

The CHAIRMAN. Is there anything else, Mr. Goldsborough?

Mr. GOLDSBOROUGH. Just the bulk sales. I want to say that I, and I think I speak for most of the industry—we are opposed to the bulk sales. We believe that under the bulk sales it will be very much easier for the bootlegger to dispose of his product. That is under the present condition. If we did not have the high Federal tax and State taxes it would be a different question, but as long as we have these high taxes, I doubt seriously whether it will be ever possible to do away with the bootlegging. By putting goods in bulk, there is no question that you make it 100 times easier for him to dispose of his products.

Now as an old timer, I would much rather have seen bulk sales, because that is what we have always been used to. I think that 99 percent of our business, prior to prohibition was bulk sales, but today, with the high taxes of our States, and the Federal Government, the bootlegger has too great an opportunity, because he can sell his product for less than the actual tax on those goods and make a huge profit on it. Take my own State. We have $1.10 tax in addition to the Federal tax of $2, and a rectifying tax of 30 cents, to say nothing of the strip stamp tax.

It is much easier to dump 5, 10, or 15 gallons of whisky into a barrel than it would be to try to fix that up and put it in a bottle. If the retailer bought a barrel of straight whisky to start with, he could buy his bootleg whisky, and there is only one thing he would be careful in doing, that is to see the proof of that straight whisky was the same proof as was cut on that barrel when he originally bought it. If he bought a blended whisky he could even use the same straight whisky so long as the proof was the same in the barrel, and add a little caramel color to it, and if the revenue officers visited him and examined that barrel and found the same proof, found the coloring in it, there would be nothing done about it.

The CHAIRMAN. Thank you. Mr. Celler, we will hear you.

STATEMENT OF HON. EMANUEL CELLER, REPRESENTATIVE IN CONGRESS, STATE OF NEW YORK

Mr. CELLER. I appear as a member of the Judiciary Committee in the House. There is just one phase of this liquor bill that the members of the committee were interested in. It is a purely legal phase. It is in the House bill. I haven't had a chance to examine the Senate bill, but I believe it has the same provision.

If anyone is aggrieved by the action of the so-called "Administrator" he is deprived of his right of carrying his plea in the nature of an appeal to the district court. It must go directly to the circuit court of appeals. Now in the old prohibition act when anyone was aggrieved or failed to have a permit granted, or had an application denied by the old Federal prohibition administration, his recourse was to the district court. Section 5, title II of the National Prohibition Act provided for that, and the procedure has become well crystalized, well defined.

Now, apparently somebody in the Ways and Means Committee originated the idea of having those who are suffering from actions of the administrator, not to have them go to the district court, but make them go to the circuit court of appeals.

This provision would have a tendency to glut those circuit courts. They haven't the capacity to handle the vast number of cases de novo, as it were, in the circuit court, and it would be preferable to have case heard in the nature of an appeal in the circuit court, leaving the district court to try and hear the case on the record made before the Administrator with the right to introduce new testimony if necessary.

Now, I put in the record as of July 24 a letter which I had received from the Department of Justice, signed by Alexander Holzoff, special assistant to the Attorney General, and that gives the objections that the officials of the Department of Justice have to that procedure. They reecho apparently the sentiment of the Alcohol Tax Unit Division of the Treasury Department.

(The letter referred to is as follows:)

The provision in the pending bill providing that the determination of the Administrator in matters relating to the granting, withholding, or revoking of permits shall be reviewable by appeal to the circuit court of appears, are highly undesirable and should be stricken from the bill. There should be substituted for this proposed procedure a review by a suit in equity in the United States District Court, which is the same procedure as that provided by the National Prohibition Act (National Prohibition Act, title 2, secs. 5 and 9; U. S. Code, title 27, secs. 14 and 21).

There are a number of impelling reasons in support of this contention.

First. The action of the Administrator is purely administrative in character, and, therefore, it is wrong in principle to provide a direct appeal from his action to an appellate court.

The Administrator's action should be reviewable in the district court and appeals should be taken only from the decisions of the tribunal of first instance. While it is true that decisions of certain commissions like the Federal Trade Commission, the Federal Radio Commission, and others, are reviewable directly by the circuit court of appeals, it must be remembered that those commissions are quasi-judicial in character and their decisions are quasi-judicial in their nature. This was held only recently by the Supreme Court in the so-called "*Humphreys case.*" On the other hand, the actions of the Administrator in dealing with permits do not partake of any quasi-judicial character, nor is he himself a quasi-judicial officer.

Second. As a practical matter the provision now in the bill for direct review by circuit courts of appeals would clog up the dockets of those courts with miscellaneous liquor business to an intolerable degree. The volume of this type of business can be inferred from a consideration of the following figures.

At the time the Federal Alcohol Control Administration suspended operations because of the Schechter decision it had under permit—

Wholesalers (wine, liquor, and beer)	12, 534
Rectifiers	447
Distillers	488
Total	13, 469
Plus importers	1, 192

In addition to these the Alcohol Tax Unit of the Treasury Department issues permits to manufacturers, dealers, and users of industrial and tax-free alcohol under title III of the National Prohibition Act. The number of such permits issued by it up to a few months ago were:

Denaturing alcohol plants	88
Bonded warehouses	70
Bonded manufacturers of specially denatured alcohol	4,103
Bonded dealers in specially denatured alcohol	70
Withdrawers and users of tax-free alcohol	3,970
Total	10, 251

Third. The procedure for review by suit in equity in the district court provided by the National Prohibition Act is simple and expeditious. The procedure has been well established by a series of decisions. Delays will be inevitable if the jurisdiction is transferred to the circuit court of appeals.

Fourth. The proposed procedure is unfair to the individual, for it casts upon him a heavy burden of expense in proceeding to the circuit court of appeals. It must not be overlooked that in many parts of the country this requirement will entail travel for a long distance with a consequent heavy expense. Moreover, it will result in delay in the adjudication of the rights of business men. It is unfair to subject them either to the added expense or the enhanced delay.

On the other hand, we know of nothing to commend the proposed procedure in preference to that heretofore followed, namely, a review by a suit in equity in this district court.

It is very costly to go into the Circuit Court of Appeals. You have to prepare an elaborate record. Some poor applicant should not be burdened with the expense of being compelled, in the first instance, to go to the Circuit Court of Appeals.

I spoke a moment ago about the danger that may occur through the jamming of that court. I put in the record as of that date, July 24, the number of passable permits, for example, that would be issued under this act. There would be wholesalers, wine, liquor, and beer, to the extent of 12,534; rectifiers, 447; distillers, 488, making a total of 13,469. In addition there are importers to the extent of 1,192. These figures are figures obtained from the F. A. C. A., as of the last date of business, that is the date of the Schechter decision.

In addition there would be possibility of appeals from upward of 38 denaturing alcohol plants, 70 bonded warehouses, 4,103 bonded manufacturers of specially denatured alcohol, 70 bonded dealers in specially denatured alcohol, and 5,970 withdrawers and users of tax-free alcohol, making a total of 10,251, or a possible appeal of some 25,000 permittees. You cannot afford to jam the Circuit Court of Appeals. They are very limited in time and limited in number of judges.

The CHAIRMAN. Under the N. R. A. they had no right of appeal from the decision?

Mr. CELLER. I cannot say without refreshing my recollection from reading the act.

The CHAIRMAN. And here they have given that right. They thought the Federal and district courts would be jammed and they probably could get action in the Circuit Court of Appeals?

Mr. CELLER. I know in my district in New York it would be a very serious situation. The judges are extremely busy in the circuit court. They could get quicker action in the district court.

The CHAIRMAN. We will take that proposition under consideration.

Mr. CELLER. It may be argued that, for example, the appeals from the S. E. C. are to the Circuit Court of Appeals, the appeals from the Radio Commission are to the Circuit Court of Appeals. There is a distinction between the activities of those commissions and the administrator in this bill. Those commissions are quasi judicial. Here is a board that sits as a quasi judicial tribunal, here is one man that is the administrator, and an appeal from the action of the administrator should be directly to the court of the first jurisdiction, the district court. As his name implies, he purely administers. If it was merely an appeal, like from the Securities Exchange Commission, where they act in a quasi judicial capacity, then let them go to the Circuit Court of Appeals. The Department of Justice points that out in their letter, which I will put in the record.

The CHAIRMAN. Will you cite the page of the Record?

Mr. CELLER. Pages 12262 and 12263. I do not want to take the time to read it.

The CHAIRMAN. Thank you very much, Mr. Celler.

(The following communications addressed to the chairman of the committee, were ordered printed in the record.)

NATIONAL LUMBER MANUFACTURERS ASSOCIATION,
Washington, D. C., July 26, 1935.

Hon. PAT HARRISON,
Chairman Finance Committee, Washington, D. C.

DEAR SENATOR HARRISON: The National Lumber Manufacturers Association is interested in that portion of the above-mentioned bill now before your committee having to do with the bulk sales of liquor inasmuch as it should again open an old established market for the use of lumber products, i. e., wooden barrels and kegs.

Wooden barrels and kegs were in pre-prohibition days standard liquor containers and it is thought by many that the regulations written into the codes of fair competition for alcoholic beverages industries restricting the distribution and sale of distilled spirits to glass bottles of capacity not in excess of 1 gallon, have proven to be arbitrary and monopolistic.

The revival of this market for barrels and kegs would result in increased income to thousands of owners of farm wood lots and should create in an industry which has suffered much in past years substantial employments in woods operations, stave mills and barrel plants.

May we express the hope that your committee will maintain in the bill those provisions which again establish the past practice of sale and distribution of liquor in bulk, for which there seems to be much justification.

We hope that this letter may be made part of the record of your hearings on H. R. 8870.

Very truly yours,

WILSON COMPTON,
Secretary and Manager.

AMERICAN IRON AND STEEL INSTITUTE,
New York, July 26, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance,
United States Senate.

DEAR MR. CHAIRMAN: I am informed that your committee has under consideration a bill which was passed by the House of Representatives within the past few days and in such House was numbered H. R. 8870, and which is entitled: "A bill to further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes."

My understanding is that paragraph (1) of subsection (e) of section 4 of such bill provides as follows (the brackets being mine):

"(e) (1) No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order, issued under this or any other Act of Congress, prohibit the use or sale of any barrel, cask, or keg [if made of wood and] if of one or more wine-gallons capacity, as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages. This subsection shall not apply to any condition in any basic permit issued under this Act or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State."

As it stands, the above-quoted provision would appear to permit the prohibition of the use or sale of any barrel, cask, or keg not made of wood as a container for distilled spirits, wine, or malt beverages. I cannot see any reason why the application of the provision above quoted should be limited to barrels, casks, or kegs made of wood, and I cannot believe that your committee or the Congress would knowingly sanction any such unfair discrimination in the provisions of the bill as between containers made of wood and containers made of other materials.

As you doubtless know, the iron and steel industry has within the past few years made remarkable progress in the production of stainless steel containers and has already developed an extensive market therefor. On behalf of the members of the iron and steel industry I desire to take this opportunity to protest against the inclusion in the above-mentioned bill of any provision which would permit the prohibition of the use of barrels, casks, or kegs made of steel as containers for distilled spirits, wine, or malt beverages.

In order to remove the unfair discrimination which now exists in the provisions of the bill it would only be necessary to delete the words "if made of wood and" which are enclosed in brackets in the above quotation from the bill. However, if there is any apprehension on the part of manufacturers of wooden containers that there might be any regulation under the proposed act which would prohibit the use of containers made of wood, the discrimination could be eliminated by adding after the words "if made of wood" the words "or any other material."

Very truly yours,

W. S. TOWER, *Executive Secretary.*

NATIONAL LEAGUE OF WOMEN VOTERS,
Washington, D. C., July 29, 1935.

Senate Finance Committee:

The National League of Women Voters respectfully urges the Senate Finance Committee to amend section 2 (c), lines 14 to 20, page 2 of H. R. 8870, to provide that all employees of the Federal Alcohol Administration be subject to the civil-service laws and the Classification Act of 1923.

The experience with noncivil service employees in the administration of the Volstead Act is certainly not such as to warrant a repetition. It is a matter of record that in 1927 when by act of Congress these employees were made subject to the civil-service laws, and the incumbents required to compete for reappointment,

that only about 50 percent of the incumbents passed the examination conducted by the Civil Service Commission, that of those who passed the written examination, 55 percent failed to pass the character test. Thus, only 20 to 25 percent of the former employees could qualify when the civil service act was applied.

Placing the Federal Alcohol Administration in the classified service would in no way interfere with the employment of those individuals who under the Federal Alcohol Control Administration have gained experience which would make them especially valuable in the new set-up.

Since this is conceived as a permanent agency, for the regulation of an industry in which the problem of control and regulation is admittedly one of great social importance, it should, from the outset, be subject to the civil-service laws and the Classification Act of 1923.

Respectfully submitted.

LOUISE G. BALDWIN,
First vice president in charge of legislation.

PROPOSED AMENDMENT TO H. R. 8870 TO PLACE ALL EMPLOYEES IN THE CLASSIFIED SERVICE

In line 14, page 2 strike out the words "without regard" and substitute the word "subject", and in line 18, strike out the comma after the word "duties" and insert in lieu thereof a period. Strike out the remainder of the line, all of line 19, and the first word and period in line 20; or in line 14, page 2, strike out all the line beginning with the comma after the word "shall"; all of line 15, and the first word in line 16; and in line 18, substitute a period for the comma after the word "duties" and strike out the remainder of the line, all of line 19, and the first word and period in line 20.

The first amendment would place, by affirmative action of the Congress, all employees of the Federal Alcohol Administration in the classified service. The second amendment, proposed as an alternative, by failure to exempt the employees from the application of the civil-service laws, would automatically require that they be subject to the law.

F. K. KIRLIN,
National League of Women Voters.

LEAGUE OF DISTILLED SPIRITS RECTIFIERS, INC.,
Washington, D. C., July 27, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR HARRISON: The League of Distilled Spirits Rectifiers, Inc., representing approximately 75 percent of the total gallonage output of the manufacturing rectifiers of the United States, is a voluntary trade association whose membership, together with all other concerns engaged in the rectifying business, have been for the past year and a half operating under a code of fair competition administered by the Federal Alcohol Control Administration.

The league is in hearty accord with legislation having for its purpose the control of the industry, not only from the standpoint of protecting the revenue, but from the social, economic, and moral aspects as well. It is, of course, vitally interested in maintaining the industry on a high plane of competitive business activity, and to that end it is interested in the abolishment of unfair trade practices and in protecting the interests of the consumer.

Generally speaking, therefore, the league favors the provisions of the pending bill (H. R. 8870) and welcomes the control of the alcoholic-beverage industry which will be accomplished if this bill is enacted into law.

However, it is believed that certain changes in the bill will make it more effective so that its fundamental purposes can more readily be accomplished. With this thought in mind we respectfully present the following points for your careful consideration:

The league is unalterably opposed to the provisions of section 4 (e) of the bill. It is believed that bulk sales of whisky should be limited to distillers and rectifiers as provided by present regulations of the Alcohol Tax Unit. It seems quite certain that a great impetus will be given to the business of the illicit distiller and bootlegger if such a wide distribution of bulk whisky, as the bill seeks to authorize, were to be permitted. Furthermore, the Alcohol Tax Unit would be confronted with a stupendous task in regulating the disposition of bulk whisky if wholesalers, hotels, taverns, and private individuals were permitted to acquire whisky in this manner.

With respect to the labeling and advertising provisions contained in section 5 of the bill, it is strongly urged by the league that this entire question be made a matter of regulation by the Administrator, without any specific provision being made in the statute. It is further urged that provision be made so that such regulations shall be drafted and adopted by the Administrator only after public hearings have been held so that the members of this industry may be afforded an opportunity to be heard in advance of the promulgation of regulations.

We are passing through a formulative period in the liquor industry, and it is most desirable that provisions of the statute respecting advertising and labeling have sufficient flexibility so as to meet the changing conditions that are being encountered at the present time. Any specific provision of this bill such as that contained in lines 5 to 12 on page 18 respecting labeling, and in lines 4 to 12 on page 22 respecting advertising, will, if enacted into law, preclude the Administrator from making any modification in such provisions as may appear advisable in the future, except by way of further legislation. There appears to be no sufficient reason for having this one specific provision in the advertising and labeling sections of the bill, and it is believed that the entire subject should be left to the control of the Administrator, by regulation.

With respect to section 5 (b) (6) beginning on line 14, page 15, it is believed that for the words "usual and customary to the industry for the particular class of transaction, as ascertained by the Administrator and prescribed by regulations by him;" should be changed to read "usually and customarily extended by such person in the particular class of transactions;"

In its present form the bill would place upon the Administrator the responsibility of determining what credit periods are usual and customary in the industry. Such a determination would be a difficult thing indeed since there are no terms of credit common to any particular branch of the industry as a whole. Furthermore, if such a determination were made, it would be impossible thereafter to alter the credit terms unless all members of the industry acted in concert.

It is suggested that after the word "subsection" in line 6, page 21, there be added "and in any such suit, service of process may be made upon the Administrator in any district in which the complainant resides, or has his principal place of business, by service upon the United States attorney for such district, or such other person as the Administrator may by regulation prescribe." This amendment is considered desirable so as to remove any possibility of denial of the right of a complainant to bring action in his local district court by reason of the Administrator's refusal to accept service outside of the District of Columbia, or in such other place as he might be served personally. This same amendment should be made in line 5 on page 25.

Respectfully submitted.

FRED A. CASKEY, *General Counsel.*

WHOLESALE WINE & SPIRIT MERCHANTS ASSOCIATION,
OF NEW YORK, INC.,
New York, N. Y., July 26, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: Confirming our wire, copy of which is herewith attached, we are extending the remarks for the purpose of incorporating same in the record. Due to the short notice of the hearing we were not able to be present and testify before your honorable committee.

At a meeting of the association last night at the Hotel Commodore, New York City, there were present the executive officers of several retail organizations of package-store licensees, a restaurant, tavern, and other retail dispensers of alcoholic beverages who were all given an opportunity to discuss the pending alcohol control bill, and especially provision regarding bulk sales.

After hearing these gentlemen and after free and open discussion on the floor, it was the concensus of the association that the present bulk provision in the bill should be opposed, because it is discriminatory and class legislation in that it gives the right to handle bulk liquor to clubs and hotels only. If this privilege is to be extended to retail outlets it should be extended to all indiscriminately so that the restaurants, taverns, grills, etc., should have the same rights and privileges as hotels and clubs. One of the purposes of the bulk provision is to lower the cost of liquor to the consumer and the price element is more important to customers of restaurants and taverns than it is to the customers of hotels and clubs.

With regard to the handling of bulk liquor by wholesalers, the association was evenly divided.

Every branch of the industry has heretofore and is now pressing the abolition of the practice of the Government in selling seized liquor at public and private sale. These goods are sold at from $7 to $15 per case, all taxes and duties paid. The merchandise itself costs from $5 to $15 per case, f. o. b. foreign port. The duty is $5 per gallon, or $15 per case, and the internal-revenue tax $2 per gallon, or $6 per case, making a total cost landed in the United States of from $26 to $36 per case. The taxes and duties alone amount to $21 per case. When the Government sells this merchandise at from $7 to $15 per case it derives considerably less revenue than the amount of taxes and duty. which is $21 per case, and in addition thereto the industry is faced with competition on seized goods of doubtful origin and quality, the Treasury suffers, the industry suffers, and the consumer is not quite sure of the product he is buying.

We are, therefore, urging an amendment to the present bill prohibitng the Government from selling liquor seized and forfeited to the use of the United States and recommend that same be destroyed or turned over to hospitals or other charitable institutions.

Respectfully,

MORRIS O. ALPRIN.

[Telegram]

JULY 26, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.:

Wholesale Wine and Spirits Merchants Association of New York, Inc., in convention assembled July 25, 1935, invited representatives of various organizations to discuss pro and con bulk provision of pending alcohol-control bill. After discussion association has gone on record in opposition to prevent provision, because it is discriminatory and class legislation extending bulk privileges to hotels and clubs only. Convention evenly divided on proposal permitting wholesalers handling bulk liquors. Urge a proposed amendment to prohibit Government sale seized liquor which would protect and increase revenues of Treasury, defeat smuggling and bootlegging and remove Government low-price competition with legal industry. Letter follows to be included in record of hearing. Regret inability to attend account short notice.

MORRIS O. ALPRIN,
Counsel Wholesale Wine and Spirits Merchants Association.

FINGER LAKES WINE GROWERS ASSOCIATION,
July 30, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: Reference is made to H. R. 8870 having to do with the regulation of wines, distilled spirits and malt beverages.

I represent the Finger Lakes Wine Growers Association and the Eastern Wine Growers Association which are composed of wineries that produce wine from grapes grown east of the Rocky Mountains.

For years there has been a controversy between the California wine growers and the Eastern wine growers relative to the definition of wine. Frankly, there has been a consistent effort on the part of the California wine growers to define wine as the natural fermentation of the grape, instead of the definition of wine that now appears in section 610 and 617, Revenue Act of 1918 (U. S. C. title 26, secs. 441 and 444) and referred to and amended in section 9, paragraph 7, on page 29 of H. R. 8870.

There is a basic difference in the types of grapes grown in California and the grapes grown east of the Rocky Mountains. The California grape has a high sugar content. The eastern grape has a low sugar content. The California grape is a Mediterranean type grape. The eastern grape is similar to the type of grape that is grown in the more northern grape and wine-producing countries such as northern France, Germany, etc. The eastern grown grape produces the sparkling and lighter type of wines, similar to the German and French wines The California grape produces the heavier or higher alcoholic content type of wines such as the Spanish and Italian wines.

Any definition that would prohibit the addition of sugar and the usual cellar treatment as defined in sections 610 and 167, Revenue Act of 1918, and referred to and amended in section 9, paragraph 7, on page 29 of H. R. 8870, would put the Eastern wine grape growing and wine industry practically out of business.

Practically every State east of the Rocky Mountains grows wine grapes and the growing of the eastern type of wine grape is a substantial agricultural activity east of the Rocky Mountains.

The following Eastern States are among the leaders in the growing of eastern wine grapes and the production of wine therefrom: New York, Michigan, Ohio, New Jersey, Pennsylvania, Missouri, Illinois, Virginia, and North Carolina.

Respectfully submitted.

LOUIS B. MONTFORT,
Washington Representative.

To the honorable members of the Senate Finance Committee:

House of Representatives bill 8870 before you for your consideration contains a provision for the sale of whisky in bulk. I wish to state in behalf of the Maine State Liquor Commission that it opposes the enactment of bill 8870. I wish to advance the following reasons:

1. Such a law would tend to destroy the legislative liquor law enactments of the various States as to the transportation and sale of liquor.

2. It would break down the revenue features of the various States having liquor control legislation because it would almost be impossible for the police or revenue agents to check and collect revenue, because of the diverting from the original bulk container of liquor into smaller or bottle containers.

3. It would necessarily mean the employment of additional police and revenue agents of both the Federal and State Governments to control properly the illegal transportation and sale of liquor. I personally think it would necessitate a Federal force as large if not larger than that during prohibition.

4. At the present time one of the most effective means of collecting revenue by the Federal Government is contained in section 30 of the United States Liquor Act of 1934, which requires a Federal stamp on the immediate container. This provision would be a nullity and the Federal Government would lose its best means of collecting liquor revenue if H. R. bill 8870 were enacted.

5. This bill at first might have a tendency to lower prices but I think the alternative would be in the last analysis, that the customer would not receive the quality of merchandise that he would be paying for because, in a short time, liquor would be blended and rectified so that it would in no way be of the quality of the brand represented. In substance, cheaper prices would mean cheaper liquor and materially lower the plane of the liquor business that it now enjoys by sales in bottle containers.

6. It also would be very easy for unscrupulous dealers to sell a brand other than that ordered by a customer and thereby foster fraudulent practices by dealers upon their customers. The customer is entitled to some protection.

7. The Maine law requires that all hotel and club licensees purchase spirituous liquors from the commission. There are two principal reasons for this. One, that the commission can control the sale by the licensee. Two, that it can regulate the profits on sales by the licensee. At the present time it is very easy for the Commission to estimate by comparing purchases with the record of sales the volume of business the licensee may be doing, and it also can, in making this check up, control the profits of the licensee. If the present bill were to be enacted it would be impossible to make this check and as a result the commission would lose effective control of licensee sales.

8. The present bill would encourage smuggling and bootlegging, because it would bring the profit motive back into the liquor business which has always been the evil of it. In the control States or "monopoly system", so-called, it is hoped to regulate the sale and profits from the sale so that liquor may be purchased cheap enough for everyone who may wish to purchase it and to eliminate illegal competition with the bootlegger because of his failure to meet price competition with the monopoly system.

Respectfully submitted.

JOHN P. CAREY, *Legal adviser.*

MAINE STATE LIQUOR COMMISSION,
Bath, Maine.

The CHAIRMAN. The committee will go into executive session.

(Whereupon, at the hour of 11:50 a. m., the hearings were closed and the committee went into executive session.)