Liquor Tax Administration Act
Taxes on Wines

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

SECOND SESSION

ON

H. R. 191

RELATING TO TAXES ON WINES

AND

H. R. 9185

AN ACT TO INSURE THE COLLECTION OF THE REVENUE ON INTOXICATING LIQUOR, TO PROVIDE FOR THE MORE EFFICIENT AND ECONOMICAL ADMINISTRATION AND ENFORCEMENT OF THE LAWS RELATING TO THE TAXATION OF INTOXICATING LIQUOR, AND FOR OTHER PURPOSES

PART 3

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LIQUOR TAX ADMINISTRATION ACT

TAXES ON WINES

FRIDAY, MARCH 6, 1936

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:30 a. m., in room 310 Senate Office Building, Senator William H. King presiding.

Present: Senators King (chairman), Barkley, Bailey, Clark, and Capper.

Also present: C. M. Hester, O. Norman Forrest, and Stewart Berkshire, of the Treasury Department.

Senator KING. The committee will be in order. The amendment proposed by Senator Copeland will be inserted in the record at this point.

(c) Title II of the Liquor Taxing Act of 1934 is amended to read as follows:

"SEC. 201. (a) There shall be levied, collected, and paid upon all distilled spirits sold at retail a tax of $2 on each proof-gallon or wine-gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof- or wine-gallon.

"(b) No tax shall be imposed upon any distiller or importer under paragraph (4) of subdivision (a) of section 600, as amended, of the Revenue Act of 1918, in respect to any distilled spirits taxable under this section.

"SEC. 202. The internal-revenue tax imposed by the preceding section upon distilled spirits shall be collected from retailers, who shall affix to every bottle or other container of distilled spirits at the time of its first retail sale or retail transfer unopened in a container for on or off premise consumption, and to every bottle or other container of distilled spirits out of which any part of the contents is removed for the purpose of retail sale, transfer, or use on or off the premises, before such container is opened, a stamp or stamps indelibly canceled, denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits, and in the case of imported spirits, of all customs duties imposed thereon.

"SEC. 203. Any licensed retailer possessing or coming into possession of distilled spirits upon which all internal-revenue taxes and customs duties imposed by law shall have been paid, shall be entitled to purchase such stamps as are necessary for stamping the containers of distilled spirits in the manner required by the preceding section. Stamps for this purpose may be purchased by such retailer only from the collector of internal revenue for the revenue district in which such retailer's place or places of business for retail sales shall be located. Such retailer shall present satisfactory proof to such collector of internal revenue that such tax and customs duties on such distilled spirits have been paid. Such stamps shall be sold by the collector to such retailer at a price of 1 cent for each stamp, except that in case of stamps for containers of less than one-half pint, the price shall be one-fourth of 1 cent for each stamp.

"SEC. 204. No person shall manufacture, distill, rectify, import, transfer, or sell at wholesale or at retail any distilled spirits unless such person shall have furnished a surety-company bond given by a company, companies, or syndicate of companies approved by the Commissioner of Internal Revenue and guaran-

ecuring the payment of all taxes and customs duties imposed by law on such distilled spirits, with such terms and conditions and in such penal sum as may be approved by said Commissioner. The provisions of this section shall not apply to any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

"SEC. 205. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and canceling stamps required by this title, the form and denominations of such stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps; and (b) such other regulations as he shall deem necessary for the enforcement of this title.

"SEC. 206. All distilled spirits found in any container required to bear a stamp by this title, which container is not stamped in compliance with this title and regulations issued thereunder, shall be forfeited to the United States.

"SEC. 207. Any person who violates any provision of this title, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under this title, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be canceled by this title, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required by this title to be canceled, or who affixes any stamp issued under this title to any container of distilled spirits on which any tax is unpaid, or who makes any false statement in any application for stamps under this title, or who has in his possession any such stamps obtained by him otherwise than as provided in this title, or who sells or transfers any such stamp otherwise than as provided in this title, shall on conviction be punished by a fine not exceeding $1,000 or by imprisonment at hard labor not exceeding 5 years, or by both. Any officer authorized to enforce any provisions of law relating to internal revenue stamps is authorized to enforce the provisions of this section and the provisions of section 7 of the act of March 3, 1897, relating to the bottling of distilled spirits in bond."

(d) This section shall take effect 60 days after the date of enactment of this act.

STATEMENT OF HON. ROYAL S. COPELAND, UNITED STATES SENATOR FROM THE STATE OF NEW YORK

Senator COPELAND. Mr. Chairman and members of the committee, in beginning my statement I desire to speak about the legislative situation as regards this proposed amendment. Last year, this committee, the Finance Committee, adopted the amendment and it was passed by the Senate. Then, in conference with the House, the amendment was eliminated because the House Members took the position that they had not had an opportunity to study the proposal. Of course, I was disappointed and when the conference report came in I expressed my disappointment. I had a conference, which I mentioned on the floor of the Senate on the 24th of August, with Mr. Doughton of the House, Mr. Harrison of the Senate, Mr. Robinson, our leader, and Mr. La Follette of this committee, and I think one or two others, and it was agreed then that both committees would this year give serious consideration to the proposal, to see whether or not it would be wise to include that in the bill which is now pending.

There was a hearing held last year by a subcommittee of this Committee on Finance, presided over by Mr. Walsh, and, as I understand the matter, he made a favorable report of the amendment, and it was adopted by this committee and included in the bill.

Now this amendment which is offered is designed to accomplish four specific objectives.

First, as I view it, there will be an increase in Federal and State revenues from distilled spirits by more than $300,000,000 annually.

Second, it will eliminate bootlegging, rum-running, and other illicit selling, as far as it is possible to do that, because all liquor sold at retail will be tax paid.

Third, it will reduce the liquor prices to consumers by from 25 to 50 percent, which in itself will interfere seriously with bootlegging operations.

Fourth, it makes the buyers, as well as the sellers, of non-tax-paid spirits liable to conviction as conspirators defrauding the Government of lawful taxes.

Senator CLARK. Senator, may I interrupt you right there? Referring to your third objective, as a matter of fact, the only way in which you can eliminate bootlegging completely is to in some manner furnish good liquor at a cheaper price; isn't that correct?

Senator COPELAND. That is correct; and that is my contention as regards this particular measure, as will be brought out in the later discussion of the matter.

The tax now being paid at the bonded warehouse is pyramided. The tax is $2 a gallon. That is practically on a case of liquor, assuming that they are quart bottles, at $6 a case on liquor at the bonded warehouse. Now, when that liquor goes to the wholesalers he adds 25 percent, so that liquor, when it leaves the wholesaler for the retailer, has its tax increased to $7.50. The retailer gets his 33⅓ percent, and so that adds about $2.50. So that by this pyramiding process, as I view it, the liquor is materially increased in price at the retail store because of the pyramiding of the tax. If that could be prevented in some manner, it would mean that the liquor sold to the consumer would be at least 25 percent cheaper than it is today, and also it would be discouraging to the bootlegger, because, improved as his methods are, he cannot make liquor so cheaply as the commercial concerns.

I was convinced last year, and I am now, that this amendment will accomplish all of these four objectives, and whoever has taken the time to study the detailed workings of this proposed system of tax collection agrees with this position. This has been submitted to a great many persons who have, after studying it, taken the same view of the matter as I have. It will put the responsibility of the tax payment on the man who passes the distilled spirits to the ultimate consumer who pays the taxes. Then, and only then, can bootlegging be eliminated and all tax evasion overcome.

Under the present system we are inviting any or all of three individuals who are between the consumer and producer to evade taxes, namely, the distiller or rectifier or importer; second, the wholesaler; and third, the retailer, who either sells by bottle for off-premises consumption or who sells liquor by the glass for consumption on the premises.

The present system, as I view it, has two outstanding disadvantages which could operate to defeat tax-collecting machinery. First, because taxes and import duties are now collected at the source, and the result is what I have already mentioned, the pyramiding of overhead and profit, not only a profit on the manufacturer's cost, but on each successive distributing turnover as each successive handler adds his operating profit not only on the manufactured value of the goods

but the additional taxes and duties as well. On each dollar of tax and duty collected by the Federal Government the consumer pays approximately $9. For every dollar that the Government collects by the pyramiding process it is doubled, it becomes $2.

Senator CLARK. You mean, Senator, when the wholesaler, for instance, adds the tax on the cost to him he also figures his profit not only on his own expenditure in handling it but also on the tax?

Senator COPELAND. He does. When he adds it on to the next man he does the same thing.

Senator CLARK. In other words, on these cost plus contracts which we had during the war, where they added the expense of cigars and traveling expenses and anything else, it was the same thing.

Senator COPELAND. And everything else besides that—food, drugs, and everything else.

There has been opposition expressed by retail liquor sellers who have written me and said that this imposes a great burden of cost on the retail liquor dealer. It does not impose a dollar of added cost to the retail liquor dealer if the tax has actually been paid, because he pays it in the price of his liquor.

I have mentioned one disadvantage, that of defeating tax collection. The second one is because a strip stamp attached to the neck of a bottle acts as the sole evidence that all tax and import duties have been paid. Because of that huge tax evasions are possible, because the strip stamp costs only one penny while that stamp might authenticate tax payment of from 50 to 200 times the cost of the strip stamp.

Now it will be shown here a little later that it is possible to obtain those strip stamps, which cost only a penny, and put them on liquor which has been made by a bootlegger and yet, so far as the honest retail man is concerned, and the consumer who desires to be square with the Government, he has no evidence of the fact that this tax or that this liquor is actually liquor which has passed through a bonded warehouse and paid the Government the tax.

As I said, there has been no objection from anyone except some officials in the Treasury Department who have feared that it might cost too much to operate. I hope that sufficient study has been made on the part of the Treasury officials to prompt them to give this proposal a trial at least of a sufficient period of time so it can prove a means of obtaining hundreds of millions of dollars now due the Government which we are not succeeding in collecting. We are talking now about increased taxes and the necessity for having more money from the taxpayer.

If I am right about this, there is a possibility here of having 2 or 3 hundred million dollars' revenue for the Government which will not come out of the taxpayer as such but will come out of the profits of a group of bootleggers who are certainly not entitled to the money.

Senator CAPPER. Senator Copeland, is that in addition to a tax that is already being collected?

Senator COPELAND. No. Under the present system the $2 a gallon is paid on the liquor that is taken out of the bonded warehouse. That passes on to the wholesaler, to the retailer, and to the consumer. My contention is, and it is borne out by figures which will be given

pretty soon, that even today, with all of our protection, over one-half of the liquor consumed in this country does not pay the tax. It is not in addition to anything, but it is simply a difference in the point of collection. It is founded on the law which we passed in the District which, in my opinion, is the best liquor law ever passed, because here the actual stamp is affixed by the retail store when it goes to the consumer. So it is not a new tax, Senator, to answer your question categorically; it is merely a difference in the place of payment of the tax.

Senator CLARK. Does your amendment provide for relieving the tax at the distillery or bonded warehouse? You remove the tax at the warehouse, likewise the wholesaler's tax, and you impose it purely on the retailer?

Senator COPELAND. That is correct. Now, last year, as I have just said, we had an opportunity to see a similar plan in operation in the District. There is no difference between the District plan and the proposal covered by my amendment, which is an extension to the Federal Government of what we are now actually doing as regards the District tax.

Now, this is a remarkable thing: The District of Columbia is collecting taxes on approximately six times the gallonage on either an outlay or per capita basis that the Federal Government is collecting. I am going to enlarge upon this. In other words, the District tax-collecting method is six times as effective as is the method now used by the Federal Government. Of course, such a result prompts the suggestion that the District system must cost more money to administer. It just so happens, however, that it costs the District of Columbia only about 25 percent of the cost per gallon that it costs the Federal Government. Therefore it may be said the District is collecting six times the tax at one-fourth of the cost. Surely such a demonstration should remove any question in the minds of the committee as to the desirability of adopting this proposal.

I have already told you what the action was last year. I understand that studies have been under way. I believe that many of the difficulties of administration have been ironed out. I am more impressed today than I was when I spoke to the Senate last year that this amendment should be enacted into law. I am convinced that it will result in hundreds of millions of dollars in Federal revenue at a time when we are compelled to find new methods of taxation to raise additional revenue to balance our Budget.

My proposal, to answer Senator Capper, does not contemplate new taxes on liquor. It imposes a hardship on no legitimate businessman or industry. It merely proposes to get for the Government money and profits which are now going into the pockets of bootleggers or racketeers. It will reduce liquor prices to the consumer by from 25 to 50 percent, which is another reason why it would discourage the bootlegger. I am sure it would work because it is working here in the District. For these reasons I ask this committee to make it possible to give this plan a trial.

I am not advised, Mr. Chairman, as to whether the Treasury is here today to interpose any objection to this matter.

Senator KING. I understand that it is.

Senator COPELAND. Would they care to be heard now, before we go on with our argument?

Senator KING. After you get through.

Senator CLARK. Senator, before you pass on, let me ask you where you got your figures about the consumption in the United States of bootleg liquor? The figures given to this committee by the Treasury Department were at variance with your figures.

Senator COPELAND. If you will permit Mr. Greenhut, who is here, to give you the details, he will answer fully all questions, Senator Clark, which you may ask. Therefore, I ask now that Mr. Greenhut may continue his discussion.

Senator KING. Senator, I was not aware of the fact—at least I have forgotten it—that this matter, this proposal, was given a hearing by the Finance Committee, or a subcommittee, at the last session of Congress.

Senator COPELAND. It was, Senator.

Senator KING. Who were the members of the subcommittee?

Senator COPELAND. Senator Walsh was the chairman, I think. The members were Senator George and Senator Hastings, although I am not sure, but Senator Walsh had a formal hearing which is in print.

Senator CLARK. Mr. Chairman, I think you will recall when the liquor bill was up at the last session of Congress it was proposed by Senator Walsh, who had gone into this matter, that the amendment be adopted for the purpose of allowing it to go to Congress, and it did go to Congress. It was never formally acted on by the Senate, except for the agreement that it might go to Congress.

Senator BARKLEY. I did not hear your full statement. Your proposal is to levy the same tax that is now levied, but instead of collecting it from the distiller you collect it from the retailers in proportion to the proof, the quality of liquor which he sells?

Senator COPELAND. Yes, Senator. There is a little pink slip over the top of the bottle of whisky, a little stamp, strip stamp. That is the only evidence of the payment of the tax. Now, what I want is to have pasted on the bottle by the retailer a stamp representing the tax which should be paid, 50 cents on a quart stamp, put the stamp on the bottle so that when the consumer buys a bottle he knows that the tax has been paid, because there is the evidence of the canceled stamp.

Senator BARKLEY. Isn't there a stamp on it now in all retail places?

Senator COPELAND. There is in the District.

Senator BARKLEY. My understanding is when any authorized retailer sells liquor in quantities of a quart, or a pint, or anything else, that there is a stamp which has been placed on it. Now, he hasn't placed it on it; it has been placed on there by the Government.

Senator COPELAND. That is true. This is the same [indicating].

Senator BARKLEY. What I am trying to get at is you increase the points of contact between the Government and the liquor dealers from some 300 to over 200,000 by requiring this payment be made at the retail store instead of at the distillery or the warehouse.

Senator COPELAND. Yes; but the full answer to that is that even though the liquor is sold by the retail store, it may be bootleg liquor; that is, it never went to the warehouse. Before that liquor goes

to the consumer there has to be a stamp put on it representing the full payment of the tax. Now, this, at present, is the only stamp, the only evidence of payment of the tax, this pink slip. That is put on when it leaves the bonded warehouse in a bottle approved by the Government. This other stamp that you see down here [indicating] is the District stamp. That shows this came out of a District store. Where the liquor is made by a licensed distiller—and it should be—or by an unlicensed distiller, when the liquor, under my plan, goes to the consumer, there is a 50-cent stamp on a quart of liquor.

Senator BARKLEY. If a retailer was to buy liquor from an illegal manufacturer, say a bootlegger, a wholesale bootlegger, he would pay a tax on it?

Senator COPELAND. Yes, sir.

Senator BARKLEY. So it would legitimize the bootleg transaction between the retailer and the bootlegger?

Senator COPELAND. It would make certain that the Government of the United States receives 50 cents on that bottle of liquor.

Senator BARKLEY. And give to the bootlegger the respectable standing which he does not now enjoy.

Senator COPELAND. I do not know about that. I would not say that. I have no desire to help the bootlegger. Indeed I have been accused of trying to hurt him. I think all the answers to the questions which have been asked by Senator Barkley and others will be made by Mr. Greenhut.

Senator KING. Senator Murphy, you and Senator Overton desire to be heard this morning. We will hear you and Senator Overton now, whichever wishes to speak first.

Senator OVERTON. Senator Murphy is the proponent of the amendment.

Senator KING. Gentlemen, Senator Murphy has offered an amendment to the pending bill and he desires to be heard for a few moments. I asked him to come this morning. Proceed, Senator.

STATEMENT OF HON. LOUIS MURPHY, UNITED STATES SENATOR FROM THE STATE OF IOWA

Senator MURPHY. Mr. Chairman and members of the committee, my amendment is known as an amendment to the Federal Alcohol Administration Act. [Reading:]

For the purposes of the Federal Alcohol Administration Act the Food and Drug Acts, as amended, and of any act of Congress amendatory of or in substitution for either of said acts of Congress, no product shall be labeled or advertised or designated as "neutral spirits", which is a synonym for alcohol, whisky, or gin, or any type thereof, for nonindustrial use, if distilled from materials other than grain, or if the neutral spirits contained therein are produced from materals other than grain. The term "neutral spirits" includes ethyl alcohol.

(b) The fifth paragraph of section 605 of the Revenue Act of 1918 is hereby repealed.

Now the fifth paragraph of section 605 of the Revenue Act of 1918 reads as follows:

All distilled spirits or wines taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending,

compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

That amendment first appeared in the Revenue Act of 1917 and subsequently appeared in the Revenue Act of 1918, and rides on.

Now the food and drug division of the Department of Agriculture, which was charged under the Food and Drug Act of 1906 with requiring truthful and informative labeling on certain articles, including whisky, shipped in interstate commerce, considered this language as being a revenue statute only and that as such it applied to the Revenue Department in its operations of collecting the tax on the spirits and had no application to the labels placed upon the bottled spirits. No reference is made in the statute to labeling and bottling. "Marking" and "branding" are words which, through long usage in revenue statutes, have come to mean the information which must be placed upon the barrels and packages under the internal revenue law. Consequently the food and drug officials continued to hold after the passage of this act that a mixture of whisky and neutral spirits distilled from molasses was not in fact whisky but a mixture that must be labeled a compound of whisky and molasses spirits. This construction of the law was agreed to by the Bureau of Internal Revenue for it issued no regulations covering the labeling of such spirits.

The foregoing interpretations of this statute appear of particular importance because the statute was first enacted as part of the Revenue Act of 1917, following which it was given the above interpretation by the two departments mentioned. It would therefore seem to follow that in reenacting this identical section of law, Congress intended to accept and approve the administrative construction placed upon the language of the first statute by the two Government departments. Dr. Campbell, head of the Food and Drug Department, has consistently taken the position that section 605 has no application to the labels on distilled spirits and his position in this matter is well known to the Treasury Department.

Not until after 1917, when this amendment was passed, were neutral spirits distilled from blackstrap molasses not used in the manufacture of whisky. Whisky is historically a product of grain distillation. No one ever thought of whisky as being other than the product of grain distillation. It is like thinking of castor oil as a product of castor beans.

The purpose of this amendment, as indicated very clearly, related to the purposes of revenue, and it was not intended to open the door to a degrading of the standards of food and drugs. Now if you open the door to a degrading of the standard of whisky, if you destroy all of that historical background of whisky, if you substitute a bland substance, such as neutral spirits, or alcohol, distilled from blackstrap molasses, you merely cooperate to fool the public in the product that it is getting.

They have just found, for instance, after a great deal of chemical research, that a product from tea is being substituted in olive oil. It took years for them to identify this particular product in olive oil.

Senator COPELAND. The product of what, Senator?

Senator MURPHY. Tea. Why should not we, with just as good intention, permit the substitution of that bland substance in olive oil as permit the introduction of alcohol made from blackstrap molasses into whisky?

Senator CLARK. Senator, may I ask a question? Is it your contention that the neutral spirits made from blackstrap is deleterious to health?

Senator MURPHY. There is no contention made as to that. The chemical research that has been conducted to date has not established that it is deleterious to health. The only thing that is really established to date is that it affects the flavor.

Senator CLARK. It is not as good whisky, in other words?

Senator MURPHY. It is not a good whisky. In terms in which we understand whisky as a beverage, it is not a good whisky.

In the chemical process of making whisky there are a great many oils which have not yet been identified chemically, all embraced in the general term of "fusel oil", which is a deleterious substance. It was the grain distilled overnight and put out the next day, in the days of prohibition, that we used to recognize by the term "rotgut."

Now this whole subject of permitting the substitution of alcohol distilled from blackstrap molasses for alcohol distilled from grain strikes at the very integrity of all our regulations governing food. Certainly if it is right in principle to permit the substitution in the case of whisky it is right in principle to permit the substitution in the case of food, because the substitute is not proven harmful to health, but nevertheless substitutes serve a purpose commercially that ought not to be served, as in the case I pointed out, and which might be multiplied with other illustrations. If those who want gin distilled from blackstrap molasses are told frankly what they are buying, we haven't any objection to it.

Senator KING. May I ask you a question, Senator?

Senator MURPHY. Yes, Senator King.

Senator KING. Assume that a chemical analysis has been made—and that connotes, of course, that it is made by competent chemists—would that show any difference in the chemical qualities, in the elements, between liquor made from blackstrap molasses and liquor made from grain?

Senator MURPHY. No; it would not, Senator.

Senator KING. There would be the same number of atoms or molecules in each?

Senator MURPHY. It would be what would be described, Senator, as ethyl alcohol. I mean the United States Pharmacopoeia commercial test there would show no discoverable difference between the two of them. It would not be possible to take whisky made of ethyl alcohol distilled from blackstrap molasses and whisky made from ethyl alcohol distilled from grain and tell the difference. That is my understanding of the chemistry of it. There is a difference, however, Senator, in the flavor of whisky that contains the two.

Senator KING. Well, a connoisseur then would easily detect the difference?

Senator MURPHY. He need not even be a connoisseur, as I understand it.

Senator KING. Well, if it can be detected by drinking, why not permit a man to buy it, if he wants to buy the blackstrap?

Senator MURPHY. That is perfectly all right, Senator, if you will put it on the label that it is imitation whisky. Then there is no false pretense about this thing.

Senator CLARK. In other words, if a man wants to drink whisky made out of blackstrap, he has a right to do it providing he knows what he buys?

Senator MURPHY. That is about right.

Senator BARKLEY. What is the proportion of whisky of which this blackstrap product is a part as compared to the total consumption of the total product?

Senator MURPHY. The best answer I can make to that question, Senator, is this, that of blackstrap molasses there is four times as much imported as there is produced domestically. We get blackstrap molasses from sugar. As a matter of fact you can get alcohol from anything that will ferment.

Senator BARKLEY. I was wondering what proportion of distilled spirits which is consumed in this country is blended or manufactured from blackstrap as compared to the whole amount of consumption. Is it a considerable part or not?

Senator KING. Mr. Hester, do you know?

Mr. HESTER. The answer is "No", Senator. A great deal of it is used in the blending of neutral spirits that is made from molasses. A great many of the larger operators claim they make it entirely from grain alcohol. We do not know and I do not know whether our figures would show.

Senator MURPHY. This is about the nearest answer I can make to your question, Senator. The molasses alcohol which was tax paid was only about 4 percent of the molasses alcohol produced. As nearly as this research agent whom I had could determine, more than 40 percent of the molasses used in making alcohol came from domestic sources, including insular possessions.

Senator BARKELEY. Of course 96 percent of the alcohol produced from molasses goes into other uses than liquor, as I understand it?

Senator MURPHY. Oh, yes. There are other uses for this alcohol, naturally. Except as to gin, molasses never had the market that this section gives it, or the interpretation put on this section by the Secretary of the Treasury. It was adopted in 1917, and we got prohibition in 1919. They did not have time to get under way with the production of this blackstrap molasses for alcohol. Prohibition came and there was not any legal manufacture of alcohol. When prohibition was repealed, to meet a temporary need they permitted the use of alcohol, the Federal Alcohol Control Administration permitted the temporary use of alcohol distilled from blackstrap molasses in the making of whisky. That was only temporary, however. The Alcohol Control Administration took the view that the Food and Drug Administration had taken persistently, that it was not properly an ingredient of whisky.

Now, when the market's immediate needs were supplied, on August 10, 1934, the Federal Alcohol Control Administration issued regulations relating to the standards of identity which prohibit the use of spirits distilled from any material, except grain, in any product labeled whisky, unless that word is preceded by the word "imitation."

Now, as to the background and the justification for the argument I made—that this attacks the very integrity of all our regulations affecting standards of food—there is the decision of Mr. Justice Butler in *United States* v. *95 Barrels of Alleged Apple Cider Vinegar*. Mr. Justice Butler, in an exhaustive consideration of the subject of adulteration, said:

> The statute is plain and direct. Its comprehensive terms condemn every statement, design, and device which may mislead or deceive. Deception may result from the use of statements not technically false or which may be literally true. The aim of the statute is to prevent that resulting from indirection and ambiguity, as well as from statements which are false. It is not difficult to choose statements, designs, and devices which will not deceive. Those which are ambiguous and liable to mislead should be favorably read to the accomplishment of the purpose of the act. The statute applies to food and the ingredients and substances contained therein. It was enacted to enable purchasers to buy food for what it really is.

Now the Food and Drugs Act as amended down to July 8, 1930, provides that—

> In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound", "imitation", or "blend", as the case may be, is plainly stated on the package in which it is offered for sale.

There isn't any defense in ethics, there isn't any defense if we regard the standards we have established in connection with food and drink as related to health, as related to good faith with the buyer, as related to complete information to him of what he is buying, as to the integrity of the product if we suffer continuance of the deception. So why should we permit the sale of a product as whisky without any indication that it is a compound — — an imitation whisky, when it is made of substances other than ethyl alcohol distilled from grain products? That is upsetting all the history that we have on the subject.

Now, as I have said, the blackstrap molasses interests never had the market except as to gin which I am seeking to protect in the interest of the grain producers. We are not depriving the blackstrap molasses interests of anything they have had heretofore. We are trying to save our own grain interests from being deprived of a market they had prior to prohibition, and I personally feel I am under deep obligation to make the very fight I am making, because, when I went out in the 1932 campaign for election in the State of Iowa, an agricultural State, an overwhelmingly Republican State, and presumably a dry State, I put the issue up to the farmers on the economic basis. They knew that their market had been taken for their surplus products, and here was an opportunity to restore to them a market which they previously had had for the sale of their grain.

Senator KING. How many bushels are annually used in the manufacture of whisky?

Senator MURPHY. Senator, prior to prohibition, in 1917 the consumption of corn for whisky was 36,400,000 bushels.

Senator KING. That would be a very small percent of the production of wheat or corn, would it not?

Senator MURPHY. It is a relatively small percent of the production of corn, Senator, but, if you please, it is not quite looking at the issue from all sides to look merely at the production. What affects our price of corn? Of our entire production of corn aproxi-

mately only 8 percent goes into the commercial market to be sold. All the rest of our corn production goes into feeding stock, for the most part, and, of course, some of it goes into breakfast foods, and all that sort of thing, but it is a very small percent. That 8 percent that goes into the markets fixes the price of corn that stays at home.

Senator BARKLEY. How much of that 36,000,000 bushels of corn goes into whisky and how much of other grains?

Senator MURPHY. I haven't the break-down on that, Senator, but this would be suggestive of it, Senator: Corn for whisky and gin during the fiscal year ended June 30, 1935, shows corn at 7,456,000 bushels and rye at 3,946,000 bushels and unspecified grains at 1,593,000 bushels. Of course, rye goes into whisky and gin, and the great bulk of corn goes into whisky. Blackstrap alcohol has about all the gin market.

Now, I would like to keep this market; I would not like to have the market taken away from us.

I cannot conceive where we are going to do an economic injustice to our friends in Louisiana who are interested in blackstrap molasses when we are importing four times as much blackstrap molasses as we produce locally. We cannot very well affect the price status by retaining for corn and other grains a market that they always had.

As you know, we have recently enacted the Soil Erosion Act, and under that act we will repress the production of corn, because there isn't a market for corn, and this bill is further restrictive of the market for corn; it denies our people an opportunity to develop the potentialities of the soil. It creates this alternative: Will you serve the grain farmer who is here at home with the potentialities of his soil bottled up, choked, or will you serve the interests which produce sugarcane in Cuba, in Hawaii, in Puerto Rico, and other places from which we bring our imports and provide them with a market for their offal? That is what it amounts to.

Now, this amendment which I have introduced has the approval of the Agriculture Department. The Treasury Department, because it is not involved in the question of tax one way or the other, does not take any position. The Alcohol Control Administration, as I have indicated, in its regulations took the position identical with that which my amendment will establish.

Now, there are varying estimates as to what the economic effect on corn and on other grains is.

Senator BARKLEY. Your amendment here does not provide that this gin or whisky produced from blackstrap molasses shall be so labeled, does it? It simply provides that it shall not be labeled as whisky or gin? Even if it is gin, it cannot be so labeled if it is made of anything but grain?

Senator MURPHY. Yes; that is what my amendment provides.

Senator BARKLEY. And the same thing is true with whisky, even though it is whisky, it cannot be labeled as whisky?

Senator MURPHY. Unless it were made out of those products, out of alcohol distilled from those products.

Senator BARKLEY. How would you label it?

Senator MURPHY. You would label it "imitation."

Senator BARKLEY. Imitation?

Senator MURPHY. Yes.

Senator BARKLEY. Suppose it is not imitation? If it is whisky or gin really, if it is not an imitation simply because it is made out of something else besides what has been historically used for that purpose, if the alcohol produced is from the fermentation, as you say, of all the things that you described, which it is, and if out of most of it whisky can be made, depending on the progress, and if it is in fact whisky or if it is in fact gin, it may be in some cases just as good whisky and just as good gin, and I do not know how you can prevent it from being labeled at all, or how you can require it to be labeled "Imitation."

Senator MURPHY. The point about it is, Senator, that your premise does not start where mine does. My premise starts with the history of whisky and gin, which were originally grain products. That is the fact historically. It is like any other product that has a history, any food product.

Senator CLARK. How about this Irish whisky that is made out of potatoes?

Senator MURPHY. You can make whisky out of potatoes; you can make it out of anything that has starch; you can convert into whisky anything that has starch in it. You can make whisky that is called poteen, or sometimes mountain dew.

Now, further answering your question, Senator, whisky is not whisky unless it is made from grain. President Taft so ruled. President Taft ruled that whisky is a product of grain distillation. That is what we know whisky is.

Senator CLARK. In other words, Senator, it is your contention, by definition, that whisky is a beverage made out of grain; that if it is not made out of grain it does not fall within the definition of whisky?

Senator MURPHY. Precisely; it is historically that. You convert your grain—that is, your corn and rye—into ethyl alcohol.

Senator Barkley's point is that you start with the ethyl alcohol I do not. I go back of that. What did you derive it from? In any of your food regulations you can create a duplicate of what you have, of nature's product.

Senator BARKLEY. Of course, what I had in mind is that you get a certain alcohol which is practically identical, after it is distilled, with any other alcohol.

Senator MURPHY. Yes; it is alcohol.

Senator BARKLEY. It is alcohol, and you cannot tell one from the other.

Senator MURPHY. Precisely; except as to flavor.

Senator BARKLEY. Well, there may be a different flavor. Now, you might as well say that you cannot label alcohol "alcohol" if it comes from something that you do not think it ought to be distilled from.

Senator MURPHY. Now, there isn't any historical background for that, Senator. I would not defend that. There isn't anything justifying anybody in saying that the people think of alcohol as something which comes from grain only.

Senator BARKLEY. I do not know how the word "whisky" started. I do not know whether there is any particular definition of whisky as being limited to a product of grain. Whisky is whisky because it contains certain things. Now, if it contains those things it is whisky.

Senator MURPHY. On the contrary, Senator, President Taft, in his order held that whisky was a product from the distillation of grain.

Senator BARKLEY. That is all?

Senator MURPHY. That is what he defined whisky as. He did not say that whisky was a product containing ethyl alcohol. He did not say that. He said that whisky was a product of the distillation of grain. That is what he said, and that is the history of whisky, and it is what people have been led to believe.

Senator KING. You mean the grain whisky is the history of whisky?

Senator MURPHY. How many Kentucky whisky drinkers are there who think of whisky as anything but a product of grain?

Senator BARKLEY. Most of our product is drunk outside of the State out there.

Senator MURPHY. How many of them think of whisky as anything but a product of grain?

Senator BARKLEY. Of course, the Kentucky whisky has been made almost exclusively out of grain, and naturally we have associated it with that sort of production, with distillation and so on, especially the Bourbon whisky.

Now, getting away from legal technicalities and from the decisions of the court, a thing is a thing because of what it contains. I am sympathetic with your viewpoint. I am sympathetic with the grain side of the thing, but looking at it from a legislative standpoint I am wondering whether we are justified, if new sources of producing the same thing are found, which are identical, in addition to grain, whether we are justified, by legislation, in saying that although it is the same thing that is produced by grain distillation you cannot do the same thing by other distillation.

Senator MURPHY. Well, Senator, all right. Let us buy a can of olive oil. If we buy a can of olive oil and a chemist produces a substitute for olive oil and it serves the purposes of olive oil, do you think he would be justified in labeling it olive oil?

Senator BARKLEY. Not at all. I do not think that is analogous. If it is not olive oil it is not olive oil. The name "olive" creates the origin of the oil in that case. So it does not seem to me that is exactly analogous; in that case it is not exactly an analogous situation. I would not be in favor of allowing anybody to label an oil "olive oil" unless it had been produced from olives.

Senator MURPHY. Your Food and Drugs Administration is constantly dealing with substitutions in food, to cheapen the cost of production of that food, and they estop the incorporation of those foreign elements in those foods because, for other reasons, they break down the integrity of the food.

Senator BARKLEY. I do not understand that they permit the labeling of oil as olive oil that is not an olive oil. There is a lot of cottonseed oil sold that they do not label as olive oil. I am trying to go through this thing. I am not antagonistic because I am asking questions.

Senator MURPHY. I get your position. At present prices for raw materials molasses alcohol can be produced at about 10 cents per

gallon less than the grain alcohol, which reduces it to a figure about 4 cents per gallon on blended whisky, the retail value of which is about $5. This is a sufficiently large difference to induce distillers to prefer molasses alcohol but is not large enough to interest or to especially affect the retail prices of whisky. In any case the saving to consumers will be an insignificant percent of the retail values.

Now, if we vote this amendment of mine down, we are going to open the way to substitution in brandy and in other beverages, brandy which is made of fruits, and in other beverages, of alcohol that is not distilled from the historical base.

The real question involved in opening the gates to the whisky blends, comprising 80 percent of neutral spirits distilled from blackstrap molasses is whether we are to maintain the standards of the Food and Drugs Act, which require that nothing shall be called whisky that is not a distillation of grain. It is not possible at the moment for any economist to calculate where this regulation will lead us to. The Treasury estimates that it will involve a small quantity of grain. Administrator Davis says it involves a minimum of 5,000,000 bushels. Dr. Doran says that on the basis of pre-prohibition production of neutral spirits for use in whisky blends 15,000,000 bushels of corn will constitute a conservative estimate.

Senator KING. Do you use the word "corn" as comprising rye or wheat?

Senator MURPHY. Not in that particular usage. I am confining it to corn there.

The distillers of experience, who envisage a competitive requirement that they resort immediately to the lower production costs which molasses enjoys over grain in the production of blended whiskies, which constituted approximately 70 percent of the domestic whisky consumption in the United States prior to prohibition, believe also that there would be a further loss to grain growers through a division of consumption in the lower price ranges of straight whiskies ranging in age from 12 to 20 months. The distillers estimate that something like 20,000,000 bushels of grain may be involved.

Now, I appeal to this committee not to take away a market that grain had prior to prohibition. We are restricting the production of our fields now. Why should we restrict the production of our fields to give the market to Cuba, Hawaii, or Puerto Rico, particularly when the conservation of that market for our own people keeps us in line with all the traditions that we have ever had with respect to whisky?

That is all. I thank the committee.

Senator KING. Senator Overton, the committee will hear from you now.

STATEMENT OF HON. JOHN H. OVERTON, UNITED STATES SENATOR FROM THE STATE OF LOUISIANA

Senator OVERTON. Mr. Chairman, I will begin my statement with an apology. I had not intended to make a statement; I had intended to introduce Mr. Clarence Berg, vice president of the American Sugar League, who is entirely informed with respect to this amendment and its effects. Frankly, I am not. I can assist the

committee, however, to the extent of presenting to it such information as has been gathered by my office.

The background of this amendment, as far as my information extends, goes back to, I think, the year 1917, when a provision was inserted in the Revenue Act of 1919 prohibiting any discrimination in respect to material from which the distilled spirits or wines are manufactured. That provision was to this effect:

All distilled spirits or wines taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, content, mixing, marking, branding, and the sale of whisky and rectified spirits, and no discrimination whatever shall be made by reason of the difference in the character of the material from which the same may have been produced.

That has remained the law ever since. At the last session of Congress Senator Murphy introduced an amendment similar to this. It was agreed to by the Senate without any discussion whatsoever. It was killed in conference. Following that, and after the session of Congress, an effort was made to have the regulations of the Federal Alcohol Administration so altered that they would have the same effect as the proposed amendment to the law, and tentative regulations were prepared along the same line as suggested in Senator Murphy's amendment.

When it reached the Secretary of the Treasury he went into the matter; he made a thorough investigation and came to the conclusion that those regulations should not be adopted as proposed. Instead of that the regulations that were put in force in January 1936—that is, January of this year—provide, in section 38 thereof, as follows:

SEC. 38. Presence of neutral spirits and coloring, flavoring, and blending materials.

(a) In the case of distilled spirits other than cordials, liquors, and specialties produced by blending or rectification, if neutral spirits had been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form:

(Blank) percent neutral spirits distilled from grain; or
(Blank) percent neutral spirits distilled from cane products; or
(Blank) percent neutral spirits distilled from fruit; or
(Blank) percent grain (cane products) fruit neutral spirits.

(b) In the case of neutral spirits or of gin produced by a process of continuous distillation there shall be stated the name of the commodity from which such neutral spirits or of gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form:

Distilled from grain or distilled from cane products or distilled from fruit.

Senator KING. Which organization promulgated that?

Senator OVERTON. That is the Treasury Department, the Federal Alcohol Administration. I will file with the committee the complete regulations upon this subject.

Now it occurs to me that that answers the same objection made by Senator Murphy to this effect, that there is nothing to indicate the source from which the manufacture of the alcohol is made.

Senator CLARK. Senator Murphy's suggestion seems to be historically correct, that whisky, by definition is a beverage made from grain alcohol, and the very use of the word "whisky" connotes to the purchaser the fact that it is made out of grain alcohol?

Senator OVERTON. The answer to that is that we are constantly expanding in commerce, in art, and in everything else. You might say

that clothes should be confined to the skin of animals because historically clothes originally consisted of the skins of animals.

Senator BAILEY. Whisky is not always made of grain.

Senator OVERTON. I am very glad to get that information.

Senator BAILEY. The original whisky was made of grapes.

Senator OVERTON. Then historically we get back to grapes instead of grain.

Senator CLARK. It is brandy that the Senator is referring to. That is a well-recognized distinction at the present time. There is a distinction between whisky and brandy.

Senator KING. Camphor originally was a product of trees. Camphor today is a synthetic product, and yet the same word is used. Camphor, as I understand, describes a synthetic camphor that was formerly grown on trees, in the early days.

Senator OVERTON. It may be very true historically that alcohol originated with grapes and then it continued through the distillation of grain.

Senator CLARK. That definition was held to be a legal definition in President Taft's administration, was it not?

Senator OVERTON. I do not know whether it was held to be a legal definition or not.

Senator CLARK. It was held so by Executive order?

Senator OVERTON. I assume that President Taft, in giving this definition, was simply designating the principal source from which our alcohol or whisky was manufactured. Now, it seems to me that the only defense to the Murphy amendment would be to show that alcohol produced from any other source than grain is impure.

I am interested in this legislation, as the Senator from Louisiana, because I believe my State is very much interested in the production of sugar cane from which molasses is produced, out of which alcohol is manufactured.

Senator BAILEY. The liquor that they make from Irish potatoes is called what?

Senator BARKLEY. I think that is called vodka.

Senator MURPHY. That is called poteen or mountain dew.

Senator OVERTON. I will, later on in the statement I am making, give you the different products from which alcohol is presently manufactured.

Senator BAILEY. If liquor is made from molasses would you object to putting that fact on the bottle, that it is made from molasses?

Senator OVERTON. Legislatively?

Senator BAILEY. Yes.

Senator OVERTON. I think the regulations now promulgated by the Federal Alcohol Administration cover the case. They do state that they are manufactured from cane products.

I want to present a statement of Mr. Robert L. O'Brien, Chairman of the United States Tariff Commission, in a letter addressed to me dated February 13, 1936:

> In accordance with the telephone request received from your office, I have made inquiry in regard to the differences between alcohol produced from grain and that produced from molasses.
>
> Alcohol produced from either source is technically the same ethyl alcohol and made to meet the requirements of the United States Pharmacopoeia. There may be slight differences in the minute traces of impurities, however, which are

found in the alcohol from the two materials. In highly rectified grades the difference cannot be detected by chemical means, but might be detected by the sense of smell.

The Commission does not have any information to indicate that when consumed in beverages there are any differences in the physiological effects.

Now, there is a statement of the Chairman of the United States Tariff Commission to the effect that alcohol produced from either molasses or grain is technically the same, and the alcohol produced from molasses has no deleterious effect.

Here is a statement from Mr. W. V. Linder, Chief, Laboratory Division of the Treasury Department [reading]:

Subject, distinction between molasses alcohol and grain alcohol.

Modern distillation and rectification practice has attained such a high degree of refinement that the resulting alcohol is recovered with only extremely minute traces of the original congenerics.

Molasses alcohol which has been highly rectified or purified cannot be distinguished by any known chemical tests from grain alcohol which has been similarly rectified and purified.

Therefore, in the olden times to which Senator Murphy refers, it might have been very proper that alcohol should be manufactured from grain, and alcohol manufactured from any other product was impure because science was unable, at that time, to manufacture it from any other source and get a pure product. But the statement of the chief of the Laboratory Division of the Department of the Treasury shows that alcohol produced from molasses is, today, just as pure as alcohol produced from any other source.

Now, here also, to the same effect, is a letter from Mr. W. G. Campbell, chief, United States Department of Agriculture, Food and Drug Administration of the Department of Agriculture. I quote from his letter:

The response to your inquiry is that alcohol made from grain and alcohol made from molasses are, so far as we are aware, equally suitable for use in alcoholic beverages for human consumption, and the difference between them cannot be determined by any method of chemical analysis as yet generally available.

Senator CLARK. What do they say about taste, Senator? Rum is made of molasses and some people like it, but it has a taste that is very reminiscent of hair oil to many people, and some people do not prefer the taste of hair oil. What about the taste of whisky as compared to the taste of rum?

Senator OVERTON. As I understand the regulations of the Federal Alcohol Administration, the product must be labeled indicating the source from which it is made on the label. Alcohol, for instance, made from molasses would be indicated as a certain percent of it being made from cane products.

Senator KING. I do not quite understand you, Senator. Are you contending that under the word "whisky" you may sell products made from cane without indicating the sources from which it comes?

Senator OVERTON. No. As I understand these regulations—and I just glanced at them this morning—the regulations require that the source from which the alcohol is manufactured must be placed on each product.

Senator KING. Well, under that regulation a bottle of liquor that had been made from cane products would have to state that; is that your idea?

Senator OVERTON. That is the interpretation I place on it.

Senator KING. Is that the present regulation?

Senator OVERTON. That is the interpretation that I place upon it.

Senator KING. Then if that be true, if I understood Senator Murphy, he was willing that we might sell molasses whisky if it should be stated upon the label that it was the product of cane or molasses.

Senator OVERTON. That is the regulation. Shall I repeat the regulation?

Senator KING. I recall what you said about it.

Senator OVERTON. Yes. Here is a statement by Mr. C. A. Browne, Acting Chief of Bureau of Chemistry and Soils, United States Department of Agriculture, and he states as follows.

In the chemical sense, of course, the alcohol derived from either of these materials is identical, providing the distillate is subjected to the proper degree of fractionation. Under efficient conditions of fractionation, such as are obtained in the well-designed fractionating columns available today, it should be possible eventually to fractionate the product of fermentation of both molasses and grains so that no difference in the composition of the alcohol so derived could be detected. However, when less-efficient distilling columns are employed, there will be a difference in the composition of the alcoholic distillate obtained. This is due to the presence in the distillate of certain quantities of so-called congeneric substances. These substances, made up of acids, aldehydes furfural, ethers, and higher alcohols, will differ in composition, depending upon the type of mash from which they are distilled. Thus a fermented corn mash upon distillation will yield an alcoholic solution which will have a different flavor and aroma from that derived from a fermented molasses mash. It is from this property, of course, that whisky and rum derive the characteristics which differentiate them as potable liquors. The amount of congeneric substances present in distilled liquors varies considerably, but in any event they will always be characteristic of the mash from which they were distilled.

Mr. Martin H. Ittner, chairman of the committee on industrial alcohol, American Chemical Society, states, as to the effect of Senator Murphy's amendment, that:

This would have the effect of defining a well-known chemical body which may be and has been produced in a number of different ways, from a number of different raw materials, as necessarily derived from a single raw material. To do this would be to establish to some degree a precedent very inimical to our American chemical industry and might, therefore, at some time later prove to be very harmful to the chemical industry and to the public. One of the things that has been most helpful to progress in the chemical industry is the fact that many different chemical bodies, such as ethyl alcohol, can be produced in a number of entirely different ways from totally different raw materials, thus furnishing opportunity and encouragement to American chemists to undertake research work leading to the development of new methods of manufacture, opportunities to American manufacturers to find new ways to compete with old methods of manufacture, and benefit to the American public from the results of such new methods of manufacture.

I quote from a letter from Mr. H. E. Howe, chairman of the industrial alcohol committee, American Institute of Chemical Engineers, in which he states:

To those of us in the chemical industry it seems absurd to endeavor to define a perfectly well-known, easily identifiable, and definite chemical compound by the source or kind of raw materials from which it is made. We recognize, of course, that it is an effort to obtain an extensive market for one particular agricultural product, but this discrimination seems to us unwarranted and unsound.

Here is a letter from the deputy commissioner, Mr. Stewart Berkshire, of the Treasury Department, in which he gives me tables with reference to the production of alcohol and different statistics in ref-

erence to alcohol for the fiscal year ended June 30, 1935. Table 6 shows that in the production of ethyl alcohol the materials used during the fiscal year 1935 was: From molasses, 187,722,553 gallons, representing 85.49 percent of the total production.

Now, I will call attention of the members of the committee to this statement, that ethyl alcohol today is produced from molasses and from ethyl sulphate, from grain, from hydrol, from pineapple juice, from fermented liquor, and from mixtures of grain, hydrol, and molasses, and of the total production of alcohol of 320 million, in round figures, of 187,000,000, in round figures, is produced from molasses.

Now, the reason possibly behind this amendment is that alcohol can be produced from molasses much cheaper than it can be produced from grain, and it results in a lowering of the price of alcohol. Mr. Robert L. O'Brien, chairman of the United States Tariff Commission, advises me in a letter dated February 13, 1936, as follows:

> These preferences are evidenced by the fact that at the present time 190 proof undenatured alcohol from grain is quoted at about 40 cents per gallon higher than the corresponding grade from molasses.

Senator CLARK. How much higher, Senator?

Senator OVERTON. Forty cents per gallon higher. What is the price per gallon; do you know?

Senator CLARK. No.

Senator OVERTON. Now, in view of the fact, Mr. Chairman, that alcohol is produced from other products than grain, that the alcohol so produced is chemically as pure, under modern methods of rectification, as alcohol produced from grain, why should there be any discrimination made in respect to alcohol that is produced from molasses and from other sources?

Senator BAILEY. Is not the discrimination simply stating from what it is derived? Does not that cover it?

Senator OVERTON. The effect of this amendment would be to prohibit the sale of any neutral spirits, whisky, or gin, that is produced from anything else other than grain.

Senator BARKLEY. It does not prohibit the sale of it, but it prohibits the sale of it as whisky, gin, or alcohol. You can find some other name for it.

Senator OVERTON. You will have to find some other name.

Senator BAILEY. Would you be satisfied if we called it whatever it was, if we named right on the label just how it is made?

Senator OVERTON. Yes; that we make it from cane. We have got that today. We say "cane production" or "grain production", or whatever source it was made from.

Senator BAILEY. You do not object to that?

Senator OVERTON. No; I do not object to that.

Senator BARKLEY. You contend that it is the regulation now?

Senator OVERTON. I contend that is the regulation now. In other words, I am perfectly willing that you keep in the law the requirement that is now prescribed by the Federal Alcohol Administration. Now, I just want to put in the statement made by the American Pharmaceutical Association in a letter addressed to Senator King

under date of February 11, 1936, of which a copy was forwarded to me by the Secretary. I quote as follows:

> The United States Pharmacopoeia defines alcohol synonyms ethanol, ethyl alcohol, spiritus vini rectificatus, for medicinal purposes, as "a liquid containing not less than 92.3 percent by weight, corresponding to 94.9 percent by volume, at 15.56° C. of C_2H_5OH", and gives appropriate descriptions and tests for its identity, purity, and strength. It does not, however, restrict the source, of alcohol and it is our conviction that any attempt to restrict the source of such a necessary basic chemical material is highly undesirable.

Senator KING. Congressman Dirksen wanted a few moments, and we will hear him now.

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

Mr. DIRKSEN. Senator King, and members of the committee, I deeply regret I could not come before your committee this morning, but I was tied up in the Judiciary Committee on the House side. I desire to testify on the so-called Murphy amendment, dealing with grain and blackstrap.

I do not know to what effect those gentlemen testified, and perhaps I have some notions altogether different. My opinion in the matter, of course, has been one of rather long standing, and is fortified somewhat by the fact, first of all, that I have a Corn Belt constituency; and, secondly, we manufacture a lot of grain whisky in my district, which comprises Peoria and Pekin, Ill.

As we consider that blackstrap amendment, we have in mind the general promises we made in 1932 when the prohibition issue began to crystallize, and we went to the country promising the farmers if they would support repeal it would enlarge their grain consumption and we would protect them.

We made all sorts of promises on both sides of the fence, and I was one of those, as well as others. That is one thing which is indisputable.

Secondly, we came along with the farm program, and the program to get rid of surplus agricultural products, and the Soil Conservation Act, which was aimed directly at solving the surplus problem.

There you have the meat of the coconut.

So far as blackstrap is concerned, if we permit sizable quantities of blackstrap to come in from offshore islands, it is in direct competition with our grain.

Senator BAILEY. How about our native cane?

Mr. DIRKSEN. As to our native cane, I will say we do not have nearly enough blackstrap molasses from our native cane to satisfy the needs of the manufacturers of mixed feed.

Senator BAILEY. It is not used in liquor?

Mr. DIRKSEN. No; it is used in mixing dry feeds, such as cut alfalfa, and others.

Senator BAILEY. It is used in rum, too?

Mr. DARKSEN. Surely, but we do not have nearly enough for our own purposes, from the domestic supply, and some has to be imported.

What I am objecting to particularly, and I am selfish about it, is that we permit these large importations of blackstrap, which are in direct competition with grain, and then we have that supplemented by the regulations gotten out by the Alcohol Administration putting molasses spirits on a parity with grain spirits.

When those regulations were gotten out last year, I filed a protest with the Administration on the ground that they permitted distillers and others to place a label on their product, which contained neutral spirits made from blackstrap, which was mixed with some other kind of domestic product to make up a potable drink, and merely reciting that the neutral spirit therein contained was manufactured from cane products.

That looked to me like a complete distortion of the intent and purpose of the Congress when we passed the Federal Alcohol Administration bill.

With that thought in mind, Mr. Hoyt sent the regulations to the Treasury, and they went back and forth and nothing came of it. Then Mr. Hoyt went out of office, and when the temporary administrator was appointed, the regulations went through, with the provision in them that the alcohol used may be distilled from any material.

Secondly, straight whisky is made from corn.

Thirdly, a blended whisky is made from a small percentage of straight whisky, and the rest of it from neutral spirits, so that the net result is we are going to make it possible for blackstrap molasses to be processed into distillate to be mixed with some portion of whisky, and put on the market, without something on the label to indicate that that is the case. I think that is going back on every promise we made to the American farmer, and we are flying in the face of the agricultural program, because it is inconsistent with that program.

The third item is this, and I am glad these gentlemen testified about bootlegging, because that is an excellent peg upon which to hang a few remarks.

I will say, unless you stop this imported blackstrap molasses for domestic purposes, you are never going to stamp out bootlegging. I will not mention names, but a little more than a year ago, 88 cases of whisky came into Washington. A certain gentleman bought them on sample in Baltimore. The load arrived and was checked off. When they began unloading them he noticed the serial number of every one of the cases was the same.

He stopped unloading. It came to my attention. I began digging into it, and what did we find? We found a molasses still within the corporate limits of Baltimore. It was a big one. It was the apparent source of this whisky with so many similar serial numbers. There are molasses stills in other large towns. There is one in a town in New York which has a sign on it called a fur company, and instead of that it is a molasses still.

I think if this amendment is not adopted you will let them put this liquor into our system and deprive the country of the revenue, because you can compactly store molasses, and you do not have to grind it, and all you have to do is mix a little water with the blackstrap, ferment it, and then distill it, and there it goes.

Senator BARKLEY. How would the Murphy amendment affect this?

Mr. DIRKSEN. Does it not stop them from labeling anything as whisky except that which is made from cereal grain?

Senator BARKLEY. This bootlegging you are talking about is not legitimate liquor?

Mr. DIRKSEN. I venture to say I can go into the liquor stores of Washington and find that kind of liquor on sale.

Senator BARKLEY. This matter you mentioned in Baltimore, you cannot find that kind of liquor there.

Mr. DIRKSEN. That was an illicit still; yes. This not only affects the farmers but it has a direct bearing on bootlegging.

Senator BARKLEY. This amendment does not prevent molasses from coming in; it just says it shall not permit the labeling of whisky of blackstrap molasses as whisky.

Mr. DIRKSEN. In that sense, I will go further than Senator Murphy does in this amendment in order to stop it, but I do feel that I want to bring that idea before the committee, but I would not presume on the committee to attempt to tell you about blackstrap molasses made into neutral spirits. I think there is a gentleman here, Dr. Doran, who can tell you about that, and if it would please the committee, I would like to hear him on that subject.

Senator KING. Without your request, the Chairman had his name on the list.

Mr. DIRKSEN. Thank you, that is very nice. I wanted to bring it before you in a brief way, and will let Dr. Doran tell you more about it. He has been identified down there in the Department for a long time, and I think he knows the story.

However, I confess a selfish interest in behalf of the farmer in putting in a provision against the making of any liquor from blackstrap molasses. I think it also violates the Pure Foods and Drug Act.

I also want to call to your attention what whisky is.

Senator KING. Suppose the molasses is shipped over from Hawaii, or from Puerto Rico, both of which, as you know, are under the flag, what moral or legal right would we have to prevent them utilizing the molasses for any proper legitimate purpose, provided in the sale of any product there is no deception, if they indicated the product they are selling, resulted from the use of molasses, on its face?

Mr. DIRKSEN. You mean for the purpose of a potable drink?

Senator KING. Yes.

Mr. DIRKSEN. I would say first of all, it violates that great opinion handed down by President Taft, and concurred in by different Attorneys General, to the effect that whisky is distillated from grain.

Senator KING. That was an executive statement.

Mr. DIRKSEN. To be sure, but it sought to summarize what whisky was.

Senator KING. It was not a legislative declaration, and if so, it would not bind future Congresses, and if it was violative of rights of individuals, it should not have any effect.

The point I am trying to get is, molasses is a legitimate product from the utilization of cane, and if a man produces cane, then produces sugar, and has some molasses after the sugar is produced, why may he not use that molasses to make a potable drink, provided

he is not deceiving the public, and indicates upon the drink it is a drink manufactured from molasses?

Mr. DIRKSEN. If we recede from the position that whisky may be some other distillate than that derived from grain, then I would say to you that has not been had in mind by the Federal Alcohol Administration, when they say that you can write on a label that the neutral spirits here have been derived from cane products.

If it states on the bottle that it was made from blackstrap molasses the average consumer would not buy it, and when you say cane, they think it is something like sugar.

Senator KING. Suppose we required them to say it is derived from molasses?

Mr. DIRKSEN. I think you would be going a long ways.

Senator BARKLEY. I appreciate your viewpoint, and I am somewhat in sympathy with the corn situation, because we produce a lot of corn in Kentucky. We produce a lot of molasses, too, but it is so good we do not spoil it by turning it into whisky.

This amendment here, however, really requires the Federal Alcohol Administration to bar the use of the name of whisky where there is used neutral spirits of ethyl alcohol from any product other than corn. They do make gin out of this sirup?

Mr. DIRKSEN. Yes; they do.

Senator BARKLEY. If they do make gin out of this sirup, and it is really gin, why deny them the right to call it that? If it is gin and you can't call it gin, what are you going to call it?

Mr. DIRKSEN. Understand, I go from what might be considered a very narrow premise. I do not believe we are dealing fair with our farmers.

Senator BARKLEY. There has been a very considerable increase in the use of corn in the manufacture of liquor, as a result of repeal, and we have kept our word. I do not know anything about the argument used all over the country to induce people to be in favor of repeal of the eighteenth amendment on the ground it would make use of a larger number of bushels of corn; but if that was the argument, and we made it, it has been kept to the extent that corn has been used in the manufacture of this liquor, so that we cannot be charged with having reneged altogether on it.

Mr. DIRKSEN. Under the regulations, however, neutral spirits can be put in straight whisky and that neutral spirits can be made from blackstrap.

Senator BARKLEY. I think the amount produced from that source is proportionately small.

Mr. DIRKSEN. It is just beginning, of course. We probably will go through the same experience we went through with industrial alcohol in 1932. They manufactured 142,000,000 gallons of industrial alcohol, and over five-sixths of it was made from blackstrap molasses and very little from corn, and we will have the same experience as far as beverage distilling is concerned, if we do not erect a fence somewhere, and it has got to be done right now.

Thank you.

Senator KING. We will recess until 2 o'clock.

(Whereupon, at the hour of 12:08 p. m. a recess was taken until 2 p. m. of the same day.)

AFTER RECESS

Senator KING. The committee will be in order. Senator Copeland stated he desires you to testify, Mr. Greenhut, and the committee will now be glad to hear you.

May I say we intend to close the hearings as soon as possible? First we will hear you; then if the Treasury Department wants to make a brief reply, we will hear them; then perhaps we will hear Dr. Doran and one other witness.

You may proceed.

STATEMENT OF EUGENE GREENHUT, OF THE EXECUTIVE COUNCIL OF THE NATIONAL CIVIC FEDERATION, NEW YORK, N. Y.

Mr. GREENHUT. My name is Eugene Greenhut, of New York City. I am a member of the executive council of the National Civic Federation which was organized in 1900, composed of representative of capital, labor, and the public, as an educational movement seeking the solution of some of the great problems related to social and industrial progress. It provides especially for the discussion of questions of national import, aids in the crystallization of enlightened public opinion, and promotes legislation when desirable.

The federation's presidents have been successively. Marcus A. Hanna, August Belmont, Seth Low, V. Everett Macy, and Alton B. Parker.

Samuel Gompers was the first vice president for 25 years.

With your permission, Mr. Chairman, I should like to enter into the record the names of the members of the present executive council and national advisory board so that your committee may know the character of men and women who today comprise the National Civic Federation.

The present executive council is composed of the following: Elihu Root, honorary president; Matthew Woll, acting president; Ralph M. Easley, chairman, executive council; Samuel McRoberts, treasurer; Chester M. Wright, secretary; Archibald E. Stevenson, general counsel; Joseph P. Ryan, chairman, committee on Russian affairs; John Hays Hammond, chairman, department on active citizenship; William R. Willcox, chairman, industrial welfare department; Miss Maude Wetmore, chairman, woman's department; Gertrude Beeks Easley, secretary, executive council; Mrs. Coffin Van Rensselaer, executive secretary, women's department; and myself, as special advisor on the American liquor problem.

Additionally, there is a national advisory committee comprising: Herbert Barry, attorney, New York City; Howard E. Coffin, chairman of board, Southeastern Cottons, Inc., New York City; Walter C. Cole, vice president, Michigan Patriotic Fund, Detroit, Mich.; Hon. Cornelius F. Collins, judge of the court of general sessions, New York; Louis K. Comstock, president, Merchants Association of New York, New York City; Hon. Royal S. Copeland, United States Senator, New York City; George B. Cortelyou, former Secretary of the Treasury of the United States, New York City; Lincoln Cromwell, William Iselin & Co., New York City; Brig. Gen. John Ross Delafield, honorary commander in chief, Military Order of the World War,

New York City; F. Trubee Davison, president, the American Museum of Natural History, New York City; Lawrence B. Elliman, president, Pease & Elliman, Inc., New York City; Walter S. Faddis, president, Building Trades Employers' Association, New York; J. B. Forgan, Jr., vice president, First National Bank, Chicago, Ill.; Rt. Rev. James E. Freeman, bishop, Protestant Episcopal Church, Washington, D. C.; Philip H. Gadsen, vice president, the United Gas Improvement Co., Philadelphia, Pa.; William J. Graham, vice president, Equitable Life Assurance Society, New York City; Henry J. Howlett, economist, New York City; C. F. Kelley, president, Anaconda Copper Co., New York City; William Loeb, vice president, American Smelting & Refining Co., New York City; Hon. James W. McCormack, United States Congressman, Boston, Mass.; John J. Mitchell, banker, Chicago, Ill.; Gilbert H. Montague, attorney, New York City; William Fellows Morgan, chairman of the board, Merchants Refrigerating Co., New York City; Dr. William Starr Myers, department of politics, Princeton University, Princeton, N. J.; Dr. Charles O. Neill, manager, bureau of information, Southeastern Railways, Washington, D. C.; Hon. Morgan J. O'Brien, former judge, New York Court of Appeals, New York City; Dr. Frederick D. Robinson, president, College of City of New York, New York City; Victor Rosewater, journalist, Philadelphia, Pa.; Ellison A. Smyth, former president, American Cotton Manufacturers Association; Rt. Rev. Ernest M. Stires, bishop, Protestant Episcopal Church of Long Island, Garden City, Long Island; Arthur O. Townsend, attorney, New York City; Charles R. Towson, former secretary, International Congress of Young Men's Christian Associations, New York City; Frank V. Whiting, general claim agent, New York Edison Co., New York City; Daniel Willard, president, the Baltimore & Ohio Railroad Co., Baltimore, Md.; Clinton Rogers Woodruff, honorary secretary, National Municipal Review, Philadelphia, Pa.; and J. Harvet Williams, president, J. H. Williams & Co., New York City.

In June 1934 the executive council of the National Civic Federation passed the following resolution [reading]:

> Whereas it has become apparent that our public welfare is menaced by a marked increase in bootlegging and racketeering with resulting losses to both Federal and State governments in revenue from taxes: Be it
>
> *Resolved*, That the executive council of the National Civic Federation authorizes a comprehensive survey of present conditions with a view to ascertaining what, if any, remedy of a practical nature may be recommended.

In compliance with that resolution a comprehensive Nation-wide survey was instituted into every phase of liquor control, taxation, administration, illicit sale, and the relation of all these to the public welfare. The survey has required more than a year for its completion. It was conducted at great expense and has resulted in the accumulation of what is probably the most voluminous, authentic, and unbiased compilation of data and information ever assembled by any unprejudiced, independent, and public-minded organization on the subject of liquor control and taxation.

The study definitely demonstrates that there are just two primary factors which in themselves result in losses in collectible revenue of hundreds of millions of dollars annually by encouraging bootlegging, rum running, and illicit distribution, and, at the same time,

cause retail prices to the consumer to be at least 50 percent higher than necessary.

These two primary factors are (1) the present method of collecting at the source the $2 Federal excise tax and the present existing import duties due on foreign spirituous liquors sold in the United States; (2) the use of strip stamps as sole evidence that all taxes and import duties have been paid on any bottle to which a strip stamp has been affixed.

Let us consider the first factor. Because taxes are collected at the source before spirituous liquors have been put into distributive channels, there results a pyramiding of overhead and profit, not only on the manufacturer's cost of the merchandise, but more importantly, there is additional pyramiding on the tax and duty which each successive distributor automatically considers part of his base cost upon which he computes his operating mark-up. Hence, each successive handler adds his operating profit, not only to the manufacturing value of the goods, but additionally he adds his normal percentage of profit to the taxes and duties as well. The net result of this pyramiding practice is that for each dollar of tax or duty collected by the Federal Government, the consumer pays approximately $2.

Thus, a high tax-paid market is created which allows the large margin necessary for bootleggers, rum runners, and all other illicit sellers to continue their operations on a highly profitable basis; it deprives the Federal and State governments of millions of dollars of needed revenue now provided by law; it places unnecessary price burden upon the consumer with no compensating advantages; but most important of all, it encourages the continuation of a disregard for law and order, and, as in the past, provides the principal source of financing for bootleggers, racketeers, kidnappers, and all other elements of the underworld.

Let us now consider the second factor. If the Treasury continued to evidence all tax payments solely with strip stamps, then no matter how efficiently administered the present method cannot ever work because it is a method which is an outgrowth of a system more than 50 years old, designed to collect taxes when the major portion of spirituous liquor was sold in barrels and not in bottles, as is the legally required method of today.

Up to the time of national prohibition perhaps 80 percent of all spirituous liquor sold by distillers, rectifiers, and importers was transferred to the point of actual consumer sale in barrels. On-premise consumption licensees, such as restaurants, hotels, and clubs, could buy barreled whisky for bar use; wholesalers and chain retailers bought barreled whisky and bottled it for local consumer trade, mostly under private labels.

Today Federal law prohibits the sale in bulk. Whisky must be sold in bottles by the distiller to a wholesaler, who in turn sells to the off- and on-sale premise licensee. No sales are made direct from distiller to retailer except in the case of State monopolies, where the monopoly is both wholesaler and retailer.

Previously, as a barrel was taken out of bond, the imposition of the tax upon the contents of the barrel did not lend itself to the pyramiding which is compelled by the present system of distribution,

because sales could be made direct to the retailer; also the tax was lower and the cost of the whisky lower, so that the final retail price was low. Low retail prices offer no inducement to illicit distillers. But as long as initial prices are high, as long as distillers and importers must sell through wholesalers, as long as sales are permitted only in bottles, and as long as taxes and import duties are collected at the source, this pyramiding must continue.

Furthermore, under the old distributing set-up, there was little opportunity for tax evasion. The amount of tax on each barrel was evidenced by a canceled revenue stamp which, immediately previous to the World War, amounted to $55. Hence the initial bookkeeping record required to trace and control a barrel of liquor was a unit involving $55 and covered 50 gallons of tax-paid liquors.

Today, however, the primary bookkeeping record, which would have to be used were the same system of control to be followed, is one pint of liquor, as more pints are sold than any other unit. This involves a tax payment to the Government of 25 cents. Even so, this tax payment is not evidenced by a 25-cent Federal tax stamp being pasted on the pint bottle and canceled, but by what is known as a strip stamp which costs 1 cent. These strip stamps have been readily obtainable not only by the legitimate distiller, rectifier, or importer, but also in large quantities by the illicit operator. Furthermore, counterfeits are available, also in large quantities.

In other words, whereas previous to prohibition one stamp had to be paid for, used, and recorded, which covered 200 pints and cost $55, today 200 individual records, each involving 1 cent, would have to be kept in order that the same amount of control might be exercised. Mathematically, therefore, records would have to be kept on perhaps 1,000,000,000 units of sale annually, whereas the number of units of sale before prohibition on which proper records were to be kept, would not have exceeded 2,000,000 to cover the barrel sales, which represented 80 percent of the total traffic.

For these reasons, we contend that the present method of tax collection can never result in the elimination of illicit selling, even if the apropriations for strict enforcement are greatly increased; the actual mechanical check-up would be too complicated.

Furthermore, we contend that high retail prices to the consumer under the present method of tax collection cannot be substantially reduced regardless of any concessions made by distillers, wholesalers, or retailers unless excise taxes and import duties are deferred until time of retail sale as provided by the Copeland amendment.

Moreover, the plan proposed by the Copeland amendment offers a legal weapon which will probably be the largest contributing factor in stamping out illicit distilling. The Copeland amendment provides a legal instrumentality by which a buyer, who willfully and knowingly purchases non-tax-paid liquor, becomes a party to a conspiracy with the seller to defraud the United States Government of its lawful taxes and therefore the Attoreny General, may prosecute all parties in liquor violation cases not as tax evaders but as conspirators engaged in an effort to defraud the United States Government. The Copeland amendment therefore offers, for the first time, a method to prosecute the buyer as well as the seller.

This interpretation of the Copeland amendment first advanced by Paul Shipman Andrews, dean of the law school of Syracuse Uni-

versity, has elicited the concurrence of a large group of eminent jurists and lawyers.

Here is the basis of Dean Andrews' reasoning:

A Federal tax on spirituous liquor of $20 per gallon is due on every gallon of liquor manufactured in the country.

If the Copeland amendment is adopted, an individual, willfully and knowingly buying liquor without each bottle having affixed to it the proper canceled tax stamps, by that purchase, enters into a conspiracy with the seller to defraud the United States Government.

A retailer purchasing liquor from a bootlegger for the refilling of previously used bottles, likewise, by such purchase enters into a conspiracy with the seller to defraud the United States Government, because he is refilling a bottle bearing canceled or counterfeited Federal stamps.

The retailer selling for off-premise consumption would be unlikely to sell individual bottles without canceled stamps thereon because such sales would be proof conclusive of conspiracy to evade payment of taxes, making both buyer and seller liable.

Obviously then, because of the risk involved and the severe penalties which existing laws require to be imposed, the public and all retail-liquor dealers would refrain from purchasing liquor from illicit sources. This should automatically disable the bootlegger, because bootleggers, like other businessmen, cannot exist if they have no customers.

In July 1935 Senator Harrison sent a copy of the Copeland amendment to the Secretary of the Treasury for comment. The Secretary's reply contained the following:

> Experience has demonstrated that it is more economical to collect taxes on such commodities, as intoxicating liquors from the manufacturers or importers of whom there are relatively few and whose operations can with comparative ease be supervised by Government officers for the purposes of accounting for the liquors produced or imported and otherwise insuring the payment of the tax.

Our general answer to this is that the Secretary can, as he says, with comparative ease, collect the taxes he now gets from manufacturers and importers because those taxes which he succeeds in collecting are only a part of what he is entitled to collect.

If there were no enforcement division, no supervision, no storekeeper gagers at distilleries and rectifying plants, and no customs officials, bonded warehouses, or coast guards—still the Secretary would collect some revenue on liquor, because the taxes due have been imposed by law. There are some people in the liquor business, as in other businesses, who would pay taxes when due regardless of any Treasury Department activity.

But it must be remembered that about the time this letter was written last year the Secretary appeared before the House Ways and Means Committee and asked for passage of the antismuggling bill to protect the revenue because the present method of tax collection did not succeed in collecting the taxes and duties due. Here, in part, is his testimony of March 8, 1935:

> Prior to prohibition this country was not troubled much with smuggling. During the 14 years of prohibition the business of smuggling liquor into the United States from all parts of the world developed to very serious and troublesome proportions.

It was generally expected that with the repeal of prohibition liquor-smuggling operation and frauds on our revenues would be materially reduced. How widespread this opinion was may be evidenced by the fact that the appropriations for the Coast Guard, the first line of defense against the rum runners, was reduced from $25,772,950 for the fiscal year of 1934 to $18,046,400 for 1935. This drastic reduction resulted from a belief that repeal would largely relieve the Coast Guard of those portions of its law-enforcement activities which were directed against smuggling. For a time after repeal such proved to be the case, but, commencing with the spring of 1934, liquor smugglers again appeared along our coasts, and their operations have now increased to alarming proportions. Thus, in March 1934 only 20 smuggling vessels were observed off the coast, but by February of this year this number had increased to 22. Thirty-nine foreign vessels are presently known to the Coast Guard to be regularly engaged in the illicit liquor traffic. Inasmuch as those vessels are hovering beyond our customs waters, they are not subject to seizure under existing laws, and hence they carry on their smuggling operations almost with impunity.

Alcohol constitutes almost the entire cargo of these vessels. This is due to several things. It is very cheap. It can be produced abroad at costs ranging from 20 to 50 cents a gallon. It is highly concentrated. Two and one-half gallons of whisky can be made from a gallon of alcohol. It enjoys a large price differential due to the customs duties and internal-revenue taxes, which amount to $13.10 on a gallon of 190 proof.

A summary of the movements of known alcohol smugglers for the last 4 months of 1934 indicates an outward movement from the principal ports of supply to the coast of the United States of over three-quarters of a million gallons of alcohol. At this rate there would be an annual movement of over 2¼ million gallons. The annual internal-revenue loss on this amount of alcohol, at $3.80 per gallon, would be almost $9,000,000; the loss in customs duties, at $9.50 per gallon, would be over $21,000,000, making a total loss of over $30,000,000.

The principal enforcement agencies engaged in the prevention of smuggling are the Coast Guard and the Bureau of Customs. The appropriations for the Coast Guard for 1935 are $18,340,400; those for the Bureau of Customs (omitting the refund and draw-back figures) are $18,500,000. It is estimated that of these appropriations about 20 percent, or between 7 and 8 million dollars, is properly chargeable to our efforts to prevent smuggling.

The practical difficulties in checking smuggling can hardly be exaggerated. Our 10,000-mile coast line, with the many opportunities it affords for concealment; our comparatively small Coast Guard force of about 10,000 men; the seamanship and daring of the rum runners; and the highly efficient and well-financed smuggling organizations that have grown up since the event of prohibition, all are prime factors in making the smuggling problem one difficult of solution. Another, and not the least important factor, is the inadequacy of existing antismuggling legislation. The ineffective legislative weapons at present at our disposal for this work have time and time again permitted the escape from punishment of vessels which were violating every principle behind our customs enforcement laws, vessels, in fact, which had never earned an honest dollar in their entire seagoing lives, but had been designed, built, and used exclusively for smuggling into the United States.

This statement by the Secretary was not the only one which was quoted by the public press. During the 18 months following repeal, the press of the country had been, almost daily, carrying numerous accounts of the enormity of the bootlegging, rum running, and other illicit liquor traffic. Most of these statements originated with Secretary Morgenthau, former Under Secretary Coolidge, the then F. A. C. A. Administrator Choate, and others in high authority. Here are some of these statements [reading]:

We now have facts from which the reasonable inference is * * * that bootleg production continues on so huge a scale as to constrain us to the conclusion that our people must now be consuming greater quantities of spirits than they did in pre-prohibition days. * * * The Government is losing more taxes than it gets. A colossal criminal industry, necessarily highly organized, still exists. * * * If any progress is ever made in either control or temperance, if ever the expected revenue is to be realized, this criminal industry must be destroyed.—Joseph Choate, Jr., in the public press on April 29, 1934.

In the National Capital bootleggers are delivering liquor in case lots to hotel rooms. During the discussions with distillers and bottle makers, it was disclosed that 90 percent of the business in one well-known type of rum was bootlegged; that only 15 percent of the business of one popular brand of rye was legitimate.—Secretary of the Treasury Morgenthau at a press conference, June 21, 1934.

Thomas Jefferson Coolidge, Acting Secretary of the Treasury, stated that despite repeal there appears to be an increase in liquore smuggling along the Northeastern coast. Mr. Coolidge said, "The Department had been informed of at least 14 smuggling vessels along the seaboard from Delaware to Maine.—New York Herald Tribune, July 24, 1934.

The Treasury's revenue policy carried on vigorously today * * *. Report showed 2,110 persons arrested in what was probably the underworld * * *. In about 24 hours 900 moonshine stills, with a daily capacity of 219,866 gallons, were gathered in by the Alcohol Tax Unit.—New York Times, March 17, 1935. (The annual capacity of these stills exceeds last year's total tax-paid production.)

Obviously, as the first 2 years were passing, conditions were getting worse, not better. In April 1934, Mr. Choate "feared" that seizure of illicit plants for the first 3 months indicated that the year's total would amount to 7,952 illicit plants, with a combined annual capacity of 271,623,080 gallons. Actually the year's total, as reported by Secretary Morgenthau in his year's report, was 10,947, almost 3,000 more than the incredible potential.

According to the Secretary before the House Ways and Means Committee, "in March 1934 only two smuggling vessels were observed off the coast."

Yet less than a year later Secretary Morgenthau, before the House Ways and Means Committee, reported 39 vessels carrying on their smuggling operations almost with impunity. Apparently smuggling was increasing even more rapidly than illicit distillation.

But almost immediately after the F. A. A. bill was passed by both Houses of Congress last August, without the inclusion of the Copeland amendment, practically all information regarding still seizures by the Enforcement Division, rum runners by the Coast Guard, and other enforcement activity of the Treasury ceased to find its way into the public press. While numerous bills were before the Congress in the last session dealing with strengthening liquor control, the press of the country continuously carried accounts of the enormity of the bootlegging and rum-running traffic, most of which emanated from officials of the Treasury Department and the F. A. C. A. However, as soon as these new control measures were passed, a different type of statement found its way into the press definitely suggesting that the bootlegger is on the run, his day is almost over, and within a short time there will be no longer any illicit traffic.

This, Mr. Chairman, is far from the truth.

The bootlegger is resourceful. In the last 2 years, he has merely adapted himself to the new conditions. Large groups of illicit operators own distilleries, import concerns, rectifying plants, wholesale houses, retail package stores, and restaurants and bars—all protected by licenses through which the product which evades taxes passes from point of distribution to point of consumption—operated efficiently and highly profitable. The entire system is well organized. The product is made to appear tax paid and legitimate because strip stamps, legitimate or counterfeit, are attached to all the bottles.

So that you may appreciate the enormity of this traffic, and that you may follow it step by step, it is perhaps advisable first to explain to you just how this traffic today operates.

The illicit traffic is divided into two classifications: namely, supply and distribution. Supplies mainly come from—

1. Distillation of alcohol from molasses, sugar, grain, and other products.

2. Fraudulent diversion by permit of alcohol in bond made by legitimate distillers.

3. Conversion of denatured alcohol into neutral spirits by removing denaturants in "cleaning" plants.

4. Rum running of high-proof spirituous liquors from other countries and blending these with alcohol or essences to make the spirituous product.

These four supply methods of today, as always in the past, account for the nontax-paid product. During the period of prohibition it was always sufficiently plentiful to enable anyone who wanted liquor to buy it. It has been variously estimated that consumption, during the 12 years before repeal, amounted to somewhere between 150 and 200 million gallons annually. In those years, however, the bootlegger could sell his product only to two types of consumers; the individual consumer who would have a case of liquor delivered to him at his home, and the speakeasy, which always had to worry about the law. Of these there were many hundreds of thousands throughout the United States. For instance, the Honorable Grover Whelan, when police commissioner of New York City, estimated that in the city of New York alone there were then about 32,000 speakeasies.

It seems reasonable to suppose that any organized illicit traffic which could operate with impunity during 12 years on so huge a scale while in danger of the law, when scores of millions of dollars were being spent for enforcement and the only possible outlet was either the individual or the speakeasy, now can easily find the method to distribute its product through some portion of the present 225,000 outlets. Our investigation has shown us that few of those who had been engaged in any phase of the liquor traffic during prohibition are not now engaged in it. Today, however, these men are operating under licenses. Practically all of the important operators of yesterday who are not now in jail, for either income-tax evasion or bootlegging activities, are operating as licensed distillers or rectifiers or importers or wholesalers or retailers.

And since the retail price of liquor both for off- or on-premise consumption costs the consumer today almost as much as it did during prohibition days, there exists the opportunity, for those who wish to continue to operate illicitly, for the same kind of profits which they enjoyed heretofore.

However, today there is greater security, considerably less risk, and more assurance of profit for any well-organized illicit group. All they need, on one hand, is the product and strip stamps, real or counterfeit, to authenticate it. Then, on the other hand, a licensed import concern, or rectifying plant, or wholesale house, or a group of licensed retail stores, or a group of bars, taverns, or restaurants for on-premise consumption, and with control of such facilities they pass the illegal product from distillers, rectifying plants, or import firms through the wholesale house to the retailer. And the Government loses its taxes.

How do we know that this illicit product is still being produced in enormous quantities? By a number of methods. For instance,

Secretary Morgenthau, in his report of December 1934, stated that more than 10,000 illicit stills were captured during 1934. On Mr. Choate's computation these stills had an annual capacity in excess of 400 millions of gallons.

The still captures for 1935 were 16,585, and therefore exceeded those for 1934 by 6,000, or 60 percent. If the 1934 seizures had a capacity exceeding 400 millions of gallons, those of 1935 had a 680-million annual capacity. Those who owned and operated these stills had an outlet for this enormous gallonage for as long as they were permitted to operate. If the average life was but 4 months, then these stills sold more than twice the total tax-paid consumption of 1934 and 1935.

If 6,000 more stills were in operation in 1935 than in 1934, it is logical to assume that the outlet for this product still exists. Stills are erected to produce an illicit product for which there must be an immediate and assured demand. Bootleggers do not make alcohol or whisky, facing the prospect of jail and heavy fines, unless and until they know just what they expect to do with their illicit product.

However, in order that moonshine might safely be sold, it is necessary for the illicit operator to have some means of authenticating his product. This is done with the present strip stamp, which, when placed over the neck of a bottle, acts as the sole evidence of tax payment.

Now practically every citizen who sees a strip stamp on a bottle assumes that the stamp itself costs the amount of the tax. This is not so. This stamp costs 1 cent, whereas for domestically made liquor, in the case of a quart, it would represent the evidence of tax payment of 50 cents. In the case of a quart of foreign liquor, such as Canadian bottled in bond whisky, it would represent only the 50-cent full excise tax, but also, up to January 1 of this year, $1.25 of import duty. Furthermore, the tax in most States approximates $1 per gallon and this too is covered by the strip stamp except where local taxes are paid by stamps as they are here in the District.

Hence, if large scale operators could secure these strip stamps they could, for the small cost of the strip stamp, authenticate liquor which had avoided tax payment of from 50 to 200 times the value of the strip stamp.

Have the stamps been available? The Treasury Department says, "No." We say they are available in enormous quantities, perhaps to the extent of from 200 to 400 million, not counting counterfeit stamps which are being counterfeited in large quantities by various groups who then sell them to the illicit producer, who thereby authenticates his product and gives it the appearance of legitimacy.

Mr. Chairman, I went to the Bureau of Engraving and Printing and obtained detailed information on the strip-stamp situation from the date the liquor-taxing act of 1934 became effective through December 31, 1935. The figures I am putting into the record now cover three periods, namely,

(1) From February 1934 to June 30, 1934.
(2) From July 1, 1934, to June 30, 1935.
(3) From July 1, 1935, to December 31, 1935.

These figures cover the issuance of strip stamps to collectors of Internal Revenue, of whom there are, I believe, 62. These stamps are sent out from the Bureau direct to collectors on their own order.

The Bureau keeps on hand, at all times, of different denominations, from 2 to 3 months' supply. The Bureau's inventory on December 31, 1935, was:

Red strip stamps, 263,320,964.

Green bottled-in-bond stamps, 14,970,384.

Blue export stamps, 457,984.

Any stamps which do not reflect actual excise-tax payments in the Treasury Department's Form 7095 (which details monthly collections of internal revenue) should be in the hands of collectors or the trade.

Below, in detail, is the history of the issuance of these stamps to collectors. The column "Gallons authenticated" represents the amount of gallonage-tax payment the issuance of these stamps should cover.

[All figures are in thousands]

Red strip stamps, Revenue Act 1934	Feb. 1 to June 30, 1934	Fiscal year 1935	July 1 to Dec. 31, 1935	Total stamps issued to collectors	Gallons authenticated
Serves less than 1934.					
½ pint	68,383	16,360	17,592	102,307	1,279
Do	51,555	35,240		86,795	5,424
Pints	131,070	87,072		218,142	27,268
⅕ gallon	65,115	30,585		95,700	19,140
Quarts	46,470	24,842		71,312	17,828
Serves 1934 A:					
½ pint		147,365	146,580	293,945	18,371
¼ pint		10,512	674	11,186	4,195
⅛ pint		9,588	1,522	11,111	4,444
Pints		247,720	174,594	422,320	52,715
½ quart		10,092	908	11,000	2,074
⅛ quart		82,975	64,134	141,109	20,422
Quarts		90,252	101,052	191,304	47,826
½ gallon		4,096	128	4,224	2,112
1 gallon		5,402	560	5,963	5,963
	362,593	802,112	507,775	1,707,788	2,308,051
Bottled in bond stamps:					
1/10 pint	4,027	2,025	211	6,264	2,577
¼ pint	331			331	10
½ pint	692	798	993	2,484	155
Pints	14,457	3,909	2,251	20,618	78
⅕ gallon	195	392	70	658	131
Quarts	1,999	1,628	1,275	4,903	1,226
Total stamps issued	384,298	810,867	512,577	1,743,050	243,228

Gallonage the above would authenticate

[All figures are in thousands]

	From Feb. 1 to June 30, 1934	Fiscal year 1935	July 1 to July 31, 1935	Actual gallonage tax paid
Taxes received, 90 cents per gallon, floor taxes	$5,685	$3,021	$44	$9,722
$2 or $1.10 import excise tax	6,577	15,107	7,082	15,533
$2 or $1.10 domestic excise tax	61,889	150,525	106,210	167,358
Less floor tax gallonage and less sales made before strip stamps went into effect (gallons)				28,186
Actual gallonage authenticated by stamps	18,700	79,459	56,456	154,705
Excess stamps issued to collectors or trade (estimated by computing percent tax paid with stamps)	215,207	304,059	107,641	
Total excess in hands of collectors and trade (cumulative)		519,266	626,907	[1] 651,907
In hands of trade (estimated)				25,000
In hands of collectors (estimated)				200,000
Unaccounted for				429,000

[1] Including January 1936.

This table discloses, perhaps, better than anything else which can be submitted the fallacy of using strip stamps to authenticate tax-paid liquor. During the period from February 1, 1934, to December 31, 1935, the Bureau of Engraving and Printing issued 1,743,050,000 strip stamps, which, when affixed to the neck of a bottle, would certify that all taxes and import duties on that particular bottle had been paid.

This amount of stamps actually would authenticate more than 242 million gallons.

The actual amount of gallonage which was authenticated as a result of taxes received by the Federal Treasury in this period was less than 155 million. Hence the amount of strip stamps in the hands of collectors and the trade would be sufficient to authenticate more than 87 million gallons. In terms of stamps, this would mean that at the present time more than 650 million stamps are in the hands of collectors and the trade.

The trade carries for its total requirements a running inventory of between 20 and 25 million stamps. Hence the excess in the hands of collectors should be more than 625 million.

The Bureau of Engraving and Printing has on hand more than 275 million stamps available to all collectors within no more than 2 weeks' time.

These facts show that collectors received in excess of their tax-paid requirements 215 million stamps in the fiscal year of 1934, 304 million stamps in the fiscal year of 1935, 107 million stamps between July 1 and December 31, 1935, and an estimated 25 million for January 1936, an estimated excess of 625 million since the act went into effect.

We admit that some of the stamps are in the hands of collectors and some are in the hands of the trade. Just how many are in the hands of collectors we have been unable to find out. An inquiry to the Treasury Department from Senator Copeland's office brought the following letter from the Honorable Guy T. Helvering, Commissioner of Internal Revenue:

FEBRUARY 1, 1936.

MY DEAR SENATOR: Further reference is made to your letter of January 24, 1936, in the third paragraph of which you request information relative to the number of strip stamps for distilled spirits which were in the possession of various collectors of internal revenue and any other agency of the Treasury Department as of June 30, 1935.

Senator BARKLEY. You say you have made some investigation; what is that organization? Is it an organization that has made this investigation?

Mr. GREENHUT. It is the National Civic Federation.

Senator BARKLEY. Who is the president or the chairman of the Federation?

Mr. GREENHUT. Elihu Root.

Senator BARKLEY. It is not an organization created for the purpose of this legislation.

Mr. GREENHUT. No; I have put in the record that the National Civic Federation was an organization formed in 1900 composed of representatives of capital, labor, and the public, as an educational movement seeking the solution of some of the great problems related to social and industrial progress, and at the present time Mr. Elihu

Root is honorary president and Mr. Matthew Woll is acting president.

Senator KING. Is that Mr. Woll of the American Federation of Labor?

Mr. GREENHUT. Yes, sir, it is, and I have put in the record previously a statement of this group.

The letter I was reading further continues:

> It may be stated for your information that there are three types of strip stamps supplied for the use of the liquor industry for application to containers of distilled spirits, namely, red strips for the ordinary liquor and imported spirits, green strips for bonded liquor marketed in the United States which must be at least 4 years old before it is bottled, and blue strips for the same type of bonded liquor which is exported. The records of the Bureau do not disclose the number of these strip stamps in the hands of collectors of internal revenue on June 30, 1935. However, the records show that during the fiscal year beginning July 1, 1934, and ended June 30, 1935, this Bureau shipped to collectors of internal revenue for sale to the liquor industry a total of 928,540,420 strip stamps of the three types mentioned, in denominations ranging from one-tenth pint to 1 gallon.
>
> Very truly yours,
>
> GUY T. HELVERING, *Commissioner.*

The Commissioner says in his letter that "the records of the Bureau do not disclose the number of these strips stamps in the hands of collectors of internal revenue on June 30, 1935."

Mr. Chairman, these 625 million stamps could, in the case of imported liquor on which duties as well as taxes are collectible, represent evidence of possible tax revenue exceeding 700 million dollars.

Does it reflect efficient supervision on the part of the Treasury that there are no records of their disposal?

We have done some checking on our own initiative and set forth as our unqualified conviction that these 625 million stamps are not all now in the possession of the various collectors of internal revenue. If they are not, Mr. Chairman, it means that they have found their way into the hands of those who propose to use them to avoid paying the duties and taxes which are due the Federal Government under law. Furthermore, the fact that any appreciable amount of these stamps may have been secured by illicit operators would constitute definite evidence that the system which the Treasury Department insists is the most perfect which can be devised, breaks down completely in its operation because it does not accomplish the purpose for which it was designed, namely, the assurance of collection of all taxes which are due.

Another point which may interest you is the fact that the strip stamp is perhaps the only revenue stamp used by the Treasury Deparment as an evidence of tax payment which does not cost the buyer the full amount of tax which it represents.

The strip stamp which costs 1 penny can be used to authenticate as much as a $2 tax payment. In other words, 200 times its actual cost. No illicit operator would try to obtain these stamps if they cost the full amount of tax payment which they authenticate.

Let me furnish you an additional example which shows that strip stamps are being used to authenticate liquor on which taxes

have not been paid. Here is another letter from Commission of Internal Revenue Helvering to Senator Copeland:

FEBRUARY 17, 1936.

Hon. ROYAL S. COPELAND,
United States Senate.

MY DEAR SENATOR: Referring further to your inquiry of January 24, 1936, the total number of each size liquor bottle manufactured during the fiscal year ending June 30, 1935, as reported by bottle manufacturers, is as follows:

Size of container:	Number of bottles	Size of container—Con.	Number of bottles
1/2 pint	151,767,360	3/32 quart	1,609,632
*3/4 pint	2,817,216	1 quart	88,240,224
4/5 pint	4,135,824	1/2 gallon	1,102,608
*25/32 pint	117,360	1 gallon	2,507,904
1 pint	255,917,520	*13 ounce	16,128
*3/4 quart	884,448	*12 4/5 ounce	28,656
4/5 quart	67,458,240	*20 ounce	1,872

The figures preceded by asterisks denote containers for "specialties", which are not eligible for use in packaging whisky, brandy, rum, gin, or alcohol.

Very truly yours,

GUY T. HELVERING, *Commissioner.*

This letter, translated into stamps needed and stamps actually issued, offers the following comparison:

[All figures in thousands]

	Gallonage represented	Stamps needed to reflect tax payments	Stamps actually issued	Percent issued to those needed
1/2 pint	9,485	151,767	182,605	121
4/5 pint	413	4,135	9,588	234
1 pint	31,989	255,917	334,799	131
3/4 quart	13,491	67,458	113,560	170
1 quart	22,061	88,246	115,094	130
1/2 gallon	555	1,102	4,096	372
1 gallon	2,507	2,507	5,046	200
Total	80,504	517,135		
Domestic gallonage, tax paid	75,262			
Imported gallonage, tax paid	7,553			
Total gallonage, tax paid	82,816	590,535	829,540	141

These bottles, bought by distillers and rectifiers during the fiscal year of 1935, are sufficient for about 80 million gallons. Tax-paid imports in bottles of foreign manufacture added to domestic tax-paid gallonage would increase this total to less than 83 million gallons. The domestic and import requirements therefore would amount to bottles sufficient for 83 million gallons. These bottles, based upon Commissioner Helvering's report of bottle sizes, would need less than 590 million stamps.

Up to June 1934 there had been issued to collectors and the trade 215 million stamps more than needed to authenticate all tax-paid consumption to that date. Hence, these excess stamps should have represented the inventory available to legitimate producers. No

stamps are needed by the legitimate trade in excess of the amount of bottles legitimately used. It is against the law to reuse bottles, so the amount of stamps used should equal he bottles bought.

There were some 250 million more stamps issued than bottles bought during 1935 despite the fact that there had been some 215 million more stamps issued in 1934 than required by the gallonage tax payments.

Furthermore, during the next 6 months again more stamps were issued than needed to the extent of 107 million.

Also in January of this year an additional 15 to 20 million more than required went to collectors.

What becomes of them? Where are they? Commissioner Helverson says the records of his Bureau do not disclose the number in the hands of collectors. Well, our investigation has proved to us that they are not all in the hands of collectors and the legitimate trade, that many are and have been available to the illicit industry; and if these were used exclusively to authenticate liquor on which duties as well as taxes were due, then the tax evasion could amount to many hundreds of millions of dollars.

And that is just what seems to be happening, according to a record which has been made available to us by Messrs. Horwarth & Horwarth, of New York City, who are certified public accountants for hotels, restaurants, and other places for on-premise consumption.

Senator KING. Who did you say they were?

Mr. GREENHUT. They are certified public accountants for hotels restaurants, and other places for on-premise consumption.

This record is an analysis of the sale of the various types of liquor which the drinker-by-the-glass asks for. It shows the proportion of demand for foreign spirituous liquors, such as Scotch whisky, Irish whisky, Cuban rum, and French brandy, as compared to rye, bourbon, and gin of American manufacture. The demand for the foreign product is more than one-half of the demand for the domestically made product. Hence, importations of foreign tax-paid spirits should reflect this consumer demand. However, the Treasurer's report for November 1935 shows that, whereas more than 11 million gallons of the domestic product was tax-paid, less than 800,000 gallons of the foreign product was tax-paid, making the ratio not 2 to 1, but 13 to 1. This might indicate that strip stamps which were being obtained illegally and strip stamps which were being counterfeited were being used mostly to authenticate American-made bootleg products of presumably foreign manufacture.

There are other indications to show that this traffic is expanding rather than diminishing. One is the report of the committee on statistical data of the National Conference of State Liquor Administrators for the full year 1934. The report cites that in Ohio, in the full year 1934, there were 1,887 prosecutions, 1,344 convictions. However, in the 6-month period of 1935 there were 3,342 prosecutions. In other words, in 6 months time there were almost twice as many arrests for illicit sale as for the previous full year.

Mr. Sanford Bates, Federal Director of Prisons, is quoted in an editorial in the New York Herald Tribune of January 6, 1936, as saying that there are "twice as many liquor-law commitments to the institutions under his care in 1935 as in 1934." This would mean that

there had been more than 69,000 prosecutions for liquor-law violations in 1935, which would be a greater amount than in any prohibition year, despite the fact that from 1920 to 1934 there were 665,000 arrests for Federal liquor-law violations, more than 80 percent of which were terminated in pleas of guilty. Even today bootlegging must pay if people will risk going to jail for a Federal offense.

Senator BARKLEY. Those violations were mostly the bootlegger who goes around in hand-to-hand sale.

Mr. GREENHUT. Yes, sir.

Senator BARKLEY. Your plan does not interfere with that.

Mr. GREENHUT. I should not have said "yes" to your question. They were violations of various kinds.

Senator BARKLEY. The bulk of them were unlicensed and unregulated bootleggers?

Mr. GREENHUT. That would be the case in the manufacture. Most of the liquor violations would be people who are using non-tax-paid liquor on the premises.

Senator BARKLEY. The great majority of those violations would not be on the part of legitimate licensed dealers?

Mr. GREENHUT. No, sir; it would not.

Senator BARKLEY. Of course, we know any time a dealer might make a mistake, but it would not be on that account. The great bulk of them are committed by the men who are not licensed.

Mr. GREENHUT. I would not say the majority of them were.

Senator BARKLEY. Would you say the majority were not?

Mr. GREENHUT. I would say the majority of the illicitly manufactured liquor today which is being introduced in the trade is introduced in the trade through the licensee.

Senator BARKLEY. You mean in the manufacture?

Mr. GREENHUT. I mean in the distribution. The manufacturer, of course, is not licensed.

Senator BARKLEY. You mean the licensed distributor or the unlicensed distributor?

Mr. GREENHUT. I mean the licensed distributor.

Senator BARKLEY. Have you any evidence to substantiate that statement, that the majority of these violations you are speaking of have occurred in the places of business of the licensed dealers or distributors?

Mr. GREENHUT. Later on in my testimony, if you will permit me to go on, I will try to show the point you raised, and which was also raised by the Treasury Department.

Senator BARKLEY. It is true, though, that your plan does not deal with the hand-to-hand distributor or the bootlegger?

Mr. GREENHUT. No, sir. That is correct. It deals only with the 225,000 licensed outlets, which I will show later on in my testimony could not remain in business if the volume of business was the amount of tax-paid liquor which the Government is collecting taxes on.

Senator COPELAND. There is a further answer to that. This plan would work, as it here indicates, that liquor would be so much cheaper by reason of the plan there would not be the temptation to buy from the bootlegger.

Mr. GREENHUT. Yes, sir.

Senator KING. Is that all you wanted to say, Senator Copeland?

Senator COPELAND. Yes; that is all.

Senator KING. You may proceed, Mr. Greenhut.

Mr. GREENHUT. In the American Wine and Liquor Journal of November 1935 the Chairman of the National Alcohol Tax Commission, who is also a member of the Ohio A. B. C. Board, said:

> Bootleggers will not long stay in business if the people of the State are able to buy liquor they can rely upon in the State stores as cheap as the illicit dealer is selling at.

In November 1935 the Pennsylvania Liquor Control Board, according to the American Wine and Liquor Journal of that month—

> decided to stage continual warfare on the allegedly steady stream of bootleg liquor coming across the borders. It is understood that 450 additional agents will be appointed, who, it is believed, will be concerned chiefly in operations against bootlegging practices.

Pennsylvania sells liquor under the State monopoly system, and yet in 1934 there were 4,784 prosecutions, 2,674 convictions for violation of the liquor laws, and now, despite the great amount of arrests and convictions in 1934 and 1935, the State authorities find it necessary to increase the staff by 450 additional agents.

On September 27, 1935, the New York Herald Tribune quotes former F. A. C. A. Administrator Choate as saying:

> You see, it is foolish to hope to stamp out bootlegging until the really fantastic profits have been taken out of it, and the only way to take the profits out of bootlegging is to lower the price of tax-paid liquors by lowering the taxes on them.

Mr. Choate is not correct in his assumption. There is another way to reduce the price of tax-paid liquors, namely, the method covered by the Copeland amendment.

Prof. Paul Studenski, professor of economics at New York University, in an article in Mida's Criterion of September 1935, furnishes the following table:

Cost structure of a case of 12 fifths of straight unaged whisky, 94 percent proof, retailing at $1.50 a fifth

I. Distiller:	
Cost of manufacturing (including liquor, $1.25; bottling and packing, $1; delivery, 60 cents; overhead, 12½ percent, 40 cents)	$3.25
Federal tax, $4.51, and strip stamps, 12 cents	4.63
Total cost	7.88
Price obtained	9.10
Net profit	1.22
II. Wholesaler:	
Price paid to distiller	9.10
State excise	2.40
12 to 15 percent mark-up (gross profit)	1.25
Price obtained	12.75
III. Retailer:	
Price paid to wholesaler	12.75
Mark-up 35 to 40 percent in the case of cheap liquors; less in the case of dearer ones (gross profit)	5.25
Price obtained from consumer	18.00

IV. Consumer: Price paid, at $1.50 a fifth	18.00
Summary—Cost structure of a bottle (a fifth) of the foregoing whisky:	
Cost of liquor	.10½
Bottling and packing and distiller's overhead	.11½
Delivery to wholesaler	.05
Profits to distiller	.10
Gross profits of wholesalers (including cost of license)	.10½
Gross profits of retailers (including cost of license)	.43½
Federal and State taxes	.59
Total	1.50

In this table Professor Studenski shows that, whereas the actual cost to manufacture liquor was 10½ cents a fifth, the consumer price was $1.50 a fifth. Under the Copeland amendment this liquor would cost the consumer $13.33 instead of $18 and the Federal and State Governments would collect the same amount of taxes, namely, $4.63 Federal and $2.40 State.

We believe that just as long as such an enormous spread is allowed to continue, due to the pyramiding of overhead and profits on taxes, the bootlegger and all of those associated with him will likewise continue to exist and flourish.

Since bootlegging activities are as widespread as they were last year, it must be conceded that no less than 50 percent of distilled-spirits consumption is not being tax-paid. The full year's Federal internal-revenue collections indicate that tax-paid consumption is running at the rate of approximately 100,000,000 gallons annually. If an equal amount is being illicitly sold, the evidence would indicate that at least 25 percent of the illegal product consists of American-made moonshine distributed in the false guise of legitimately imported and tax-paid Scotch whisky, Irish whisky, Cuban rum, and French brandy. On this amount of illicit selling, if the foreign brands are no more than 25 percent, then the full tax loss on the foreign-brand merchandise would be about $112,000,000, and the tax loss on the remaining 75,000,000 gallons would be $150,000,000. Additionally, the State governments would lose approximately $100,000,000, which would make a total Federal and State tax loss exceeding $360,000,000.

We contend that such an enormous tax loss is made possible only because the method which is used in collecting the tax is a continuation of an out-moded method which was in operation previous to the prohibition period and which was designed for the days when the liquor traffic was conducted primarily in sales in barrels, whereas now it is carried on exclusively in bottles. This contention is substantiated by a letter written to Senator Harrison by Mr. L. H. Parker, chief of staff of the Joint Committee of Internal Revenue Taxation, of March 25, 1935. In his letter Mr. Parker said:

MARCH 25, 1935.

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

MY DEAR SENATOR: As per your request, I have given such time as has been available to a preliminary study of the proposition of collecting the present gallonage taxes on liquor by means of stamps purchased and affixed by the retailers instead of collecting same from the distillers.

The receipts from the $2-per-gallon internal-revenue tax on distilled spirits have been disappointing. Such receipts amounted to $157,496,603 for the cal-

endar year 1934, indicating tax payments on approximately 78,000,000 gallons of distilled spirits. Pre-war consumption averaged between 135,000,000 and 140,000,000 gallons per annum; and, taking into account present conditions and increased population, I do not believe actual consumption in 1934 was less than pre-war consumption.

If this be true we are losing at least $114,000,000 annually through the illegal sale of liquor upon which the $2 tax has not been paid. Many persons of judgment in such matters believe that we are losing a much larger sum.

Senator KING. Is not that rather a false assumption or deduction, because it is contended some of them, and I think with justification for it, that under present conditions there is a larger consumption of beer and of light wines leading to a diminution in the consumption of distilled spirits?

Mr. GREENHUT. That might be said, Senator, except that you have today 225,000 outlets selling distilled spirits. If you had this law they could not stay in business on the volume of spirits on which taxes are paid to the Government.

That is one thing, but to get back to another thing, this is Mr. Parker's letter to Senator Harrison.

Senator BARKLEY. What proportion of the licensed 225,000 are engaged in other business along with the sale of liquor?

Mr. GREENHUT. I am not sure, but I would say 50 percent of the liquor consumed today is sold on the premises, and perhaps 50 percent is going through licensed package stores.

Senator BARKLEY. I had reference to the statement that the number of people engaged in the sale of retail liquor should not be in business if they depended on the sale of liquor, and that would depend whether liquor is the sole business or whether it is sold on the side.

Mr. GREENHUT. As far as the correct interpretation of that is concerned, as to whether he may make money or may not, he may charge a price sufficient to bring his cost down to 20 cents, if he charges 40 cents for a drink, so that it would not be 33⅓ percent. If you have 225,000 outlets it is possible no more than 30 percent of those would be stores selling for off-premise consumption, that is, sold by the bottle, and the balance are restaurants, hotels, and places like that, that have other business.

Senator BARKLEY. On the amount of whisky they sell, they might not be able to sustain themselves, but with the business including a lot of other things, they may be able to do it.

Mr. GREENHUT. I have not been able to get from the Department a break-down of the 225,000 outlets, but if one-third of the licenses are selling by the package and you disregarded entirely the volume which would be sold for on-premise consumption, the volume on which the Treasury Department is collecting $2 a gallon would still not be enough to sustain these people who are still doing a package business, which I will show later, in breaking it down for you.

Continuing the letter to Senator Harrison, it says:

It appears probable that the great majority of the American public desire to buy legal liquor. The trouble with the present system is that the consumer cannot tell whether he is buying legal tax-paid liquor or not. He may think he is buying tax-paid liquor because the bottle bears the strip stamps, but this is no proof that the $2-per-gallon tax has been paid. The bottle may contain bootleg liquor and the only tax paid is the 1 cent for the strip $amp.

In my testimony before your committee on December 11, 1933, I pointed out that existing liquor laws covered some 30 pages of the United States Code

and needed revision and rewriting. These laws are cumbersome not only in form but are ill adapted for use in connection with present-day methods. The liquor business, in the days when these laws were originally written, was carried on largely by sales in barrels; now it is carried on almost exclusively by sales in bottles.

I have been given a copy of an amendment to title II of the Liquor Taxing Act of 1934, which I understand Senator Copeland proposes to introduce.

Senator KING. That is the amendment now before the committee.

Mr. GREENHUT. Yes, sir; a copy of that amendment was sent by Mr. Harrison to Mr. Parker, and also a copy to the Treasury Department for comment, and this is Mr. Parker's letter back to Senator Harrison that I am reading. Continuing, the letter says:

This bill provides briefly as follows:

(1) Rates of tax to be as at present.

(2) No gallonage taxes shall be imposed on the distiller or importer.

(3) Gallonage taxes shall be collected from the retailer by stamp affixed at time of sale.

(4) Protection against illegal practices by distiller, importer, or wholesaler accomplished by bond guaranteeing, in addition, payment of gallonage taxes.

The following advantages claimed for the new plan are worthy of consideration:

(1) Pyramiding of tax by adding a profit on tax would be prevented.

(2) Consumer would be able to tell when he is buying tax-paid liquor.

(3) Unnecessary laying up of capital in liquor inventories would be eliminated.

(4) Prices to consumer would be reduced without reducing tax rate.

(5) Revenue of Government would be substantially increased, through reduction in amount of tax evasion.

Time has not been available in which to do more than survey the general aspects of the plan. From a preliminary examination, it appears that the plan is worthy of consideration and should be the subject of investigation or hearings by the appropriate committees.

Very respectfully,

L. H. PARKER, *Chief of Staff.*

In other words, Mr. Parker agrees with us that simply by changing the method now in vogue to the method proposed by Senator Copeland's amendment, most of the present existing evils will be eliminated. Were this merely a theory with no practical evidence available of the effectiveness of a similar plan, it would be easier to understand the expressed and adamant attitude of the Treasury. However, right here in Washington, is the perfect operating example of how effectively this plan could be used to collect the taxes which are due the Government under the law.

The District collects its taxes by appending stamps representing full tax payments on each bottle, similar to the method proposed in Senator Copeland's amendment, and as a result is collecting more than six times the amount of gallonage taxes of those collected by the Federal Government at the source.

Senator BARKLEY. Is that not true only when the distributor buys his liquor from outside of the District of Columbia, but that tax-paid liquor that is sold in the District does not pay an additional tax?

Mr. GREENHUT. No, sir; liquor which comes in from the outside does not pay any additional tax.

Senator BARKLEY. That tax is paid before it comes in and the stamps are fixed to it.

Mr. GREENHUT. Yes; because the wholesaler or the rectifier or the distiller who makes that liquor buys the stamps in advance and places the stamps on the bottle for the convenience of the merchants here.

Senator BARKLEY. That is where the sale is outside of the District, but where the sale occurs in the District the stamp has already been affixed and the District collects no additional tax.

Mr. GREENHUT. No; all of the liquor sold to the District is subject to a 50-cent-a-gallon tax no matter how it comes in, and that stamp must be affixed to the bottle.

Senator BARKLEY. That is, of course, a District revenue matter and might or might not apply to the whole country. Of course, this tax you are speaking of is an item of District revenue, and Washington is a little differently situated in matters of that sort, from other cities, large or small.

Mr. GREENHUT. In California they have a statute effective in July 1935 which has run only about 6 months, and the revenue has advanced considerably. In the city of Los Angeles in the last 6 months the tax collections on a population basis would be four times the tax collections of the Federal Government.

Senator KING. That is accounted for somewhat by the improved economic conditions.

Mr. GREENHUT. That would be so if we were not taking a comparable period, but I am taking the taxes for the same period paid to the Government and from the time it leaves the distillery until it reaches the retailer is a period of not more than 20 or 30 days and you would not have much of a spread in that period of time.

Senator BARKLEY. The Federal tax is $2 a gallon.

Mr. GREENHUT. Yes, sir.

Senator BARKLEY. What is the District tax, 50 cents on a gallon?

Mr. GREENHUT. Yes, sir.

Senator BARKLEY. What is the California tax?

Mr. GREENHUT. Eighty cents a gallon.

Senator BARKLEY. Of course, they have to collect it from the retailer, because they have no way of reaching the manufacturer. Most of the whisky is made in a few States and shipped all over the country, so that no State could levy a tax at the source, and it has got to tax it at the point of distribution.

Senator COPELAND. What Mr. Greenhut is attempting to show is that it is a system that is in use in the District of Columbia and in the State of California, and is evidence of the amount of turn-out per unit, and I think his argument is, as I understand it, that it is very much in excess of the unit elsewhere.

Senator BARKLEY. Of course, if that is true it is bound to carry the implication that an enormous number of these retail dealers are buying liquor from bootleggers and distributing it. If that is going on, there certainly ought to be some investigation of the character of the people who are getting licenses to sell liquor.

Senator COPELAND. That is my contention, Senator.

Senator KING. Is that all, Senator Barkley?

Senator BARKLEY. Yes.

Senator KING. Just proceed, Mr. Greenhut.

Mr. GREENHUT. For instance, for the 12 months of 1935 Federal excise taxes were paid on about 98,000,000 gallons. According to the Treasury Department there are approximately 225,000 outlets throughout the United States which are licensed to sell spirituous

liquor. Hence, each outlet averaged tax payments on approximately 435 gallons for the full year.

In the District of Columbia there were 653 outlets paying the 50 cents per gallon District of Columbia tax by affixing a canceled tax stamp on each bottle similar to the method proposed by the Copeland amendment. During the same 12-month period the District A. B. C. Board collected taxes on approximately 1,985,000 gallons of spirituous liquor, or more than 3,000 gallons per outlet.

Therefore, during a corresponding period the District of Columbia taxes paid by stamp at point of retail sale were more than six times the Federal excise taxes collected at the source.

The Treasury contends that the cost of the plan proposed by Senator Copeland would substantially increase the cost of enforcement. This statement likewise must be challenged. Although no figures have been made available to us by the Treasury as to the total cost for liquor-tax collection and enforcement, the Secretary, before the House Ways and Means Committee last March, testified that "between 7 and 8 million dollars is properly chargeable to our efforts to prevent smuggling." This approximates $1 per gallon on some 12 percent of last year's import duties on liquor.

Let us compare this cost of collecting import liquor duties—the only figures on such expenses vouchsafed by the Treasury Department—with the operations in the District of Columbia.

The total expense last year of the District's entire operation was $37,650, which included not only enforcement and supervision, but the conduct of all other departments and divisions of the District A. B. C. Board, and represented only 2 cents per gallon or 3 cents operating cost out of each dollar of receipts. So the District is collecting six times as much and at one-fourth the cost per tax-paid gallon compared with the Treasury Department's collection of import liquor duties.

If the comparison of costs were based on percentages derived from the sums allocated by the Treasury Department for collection of internal excise taxes, the District's ratio of expense per gallon would be still lower.

No one in the Treasury has yet suggested any method by which the present enormous tax loss can be recovered for the Federal and State Governments. No plan has been devised by the Treasury which assures that these huge tax evasions can be prevented. We contend that until the Secretary submits a program which will insure collection of this enormous potential revenue that the plan covered by Senator Copeland's amendment should be adopted meanwhile.

We claim that if excise taxes and import duties were to be deferred until a retail sale is made, as provided in the Copeland amendment, there would be little or no tax evasion. A penalty bond in an amount satisfactory to the Secretary would be forfeited upon presentation of proof of illicit selling. Furthermore, both the seller and the buyer would be guilty of a conspiracy to defraud the United States Government, an offense subject to severe penalty.

Additionally, the method covered by the Copeland amendment provides that each retail licensee would be compelled each month to report the amount of his excise-stamp purchases; also that in his

application for a surety bond he would file an initial balance sheet and operating statement. His balance sheet would reflect the amount of his cash on hand, investment in inventory, investments in fixtures and equipment, prepaid insurance, and other assets.

His operating statement would give terms of his lease, amount of his rent, his monthly pay roll to clerks and messengers, his sales in proof-gallons, his sales in dollar value.

Total tax-paid consumption for the fiscal year 1935 amounted to less than 83 million gallons. The Treasury reports there are 225,000 licensed retail outlets selling distilled spirits. This means that each retail outlet averaged sales of less than 370 gallons or approximately 30 gallons per month.

Domestic whisky today costs an average of approximately $1.25 per pint. This would reflect gross sales of about $300 per month in the average retail liquor store. The retailer's gross profit on this amount, due to competition, could not exceed $100. Hence, an investigator of the Government, in checking a New York City retailer's monthly report against receipts for excise-stamp-tax purchases, could logically inquire how this retailer could pay $100 monthly license fee, $200 monthly rent, $300 advertising, association dues, and last, but not least, upkeep of himself and his family, where $100 was the gross amount available for such expenditures. If he spent $10 for each $1 of gross profit, he would not find it easy to explain month after month.

Furthermore, the illustration would be more glaring because the legitimate licensees' reports would reflect considerably higher tax payments and stamp purchases, and, therefore, the illegitimate tax-evading retailer would more quickly be isolated.

Within a very few months the surety companies issuing bonds, to protect themselves against severe penalty losses, would be of great assistance in the analysis of these retailers' reports. If, on the other hand, because a new system had been adopted which assured detection and carried severe penalties, the monthly reports reflected more nearly the amount of tax payments which would be necessary in order that a man's volume would be great enough to keep him in business, the objective for which this plan had been designed would be achieved, namely, that the hundreds of millions of dollars that are now enriching bootleggers and tax-dodgers would be diverted into the revenues of the Federal and State Governments.

High retail prices caused by the pyramiding of overhead and profit on taxes result in a high tax-paid consumer market which encourages illicit selling. Mr. Choate and many others have suggested that taxes be lowered so that retail consumer prices could be lowered. No excise tax or import duty reductions are necessary to bring about low retail prices if the Copeland amendment is adopted, because lower retail prices can be attained by tax deferment than could be possible were the present $2 excise tax to be reduced to $1.10 and all import duties from $5 to $2.50.

The Treasury offers no suggestion as to how the present high retail prices can be reduced, whereas it will probably admit that there is a definite relationship between high retail prices and large-scale illicit selling. Under the present system of tax collection retail prices cannot substantially be reduced, and therefore the Department's in-

sistence that the present method be pursued unwittingly is an encouragement to bootleggers and rumrunners.

Of primary interest to your committee and to the Treasury should be our insistence that the plan will result in the collection of $360,000,000 annually of excise taxes and import duties now due but not being collected. This session of Congress is faced with a problem of finding funds needed to cover money already appropriated. We are not suggesting new taxes—merely a new method for collecting taxes due under the law which are not now being collected, and which will result in $360,000,000 of additional revenue to the Federal and State treasuries.

Hence, the present session of Congress affords the ideal opportunity for the enactment of Senator Copeland's amendment, because it makes available a tax collecting instrumentality which can be used to offset a substantial amount of any new tax burdens.

There is one additional item which I should like to enter into the record. On January 22, 1936, C. M. Hester, Esquire, Assistant General Counsel of the Treasury Department, submitted to the chairman of this committee a memorandum regarding the Copeland amendment in which he raises 12 objections to the Copeland amendment and to which I should like to submit answers for the consideration of this committee.

Mr. Hester's views are summarized below in italic letters, and my reply to each individual objection is in roman type.

1. *That bootlegging has steadily diminished since last year due to more vigorous enforcement methods and to the steadily improving quality and diminishing price of legitimate spirits.*

In my testimony I have submitted concrete evidence supported by statements in the press from Treasury records that conclusively prove that illicit stills and rumrunning have been greatly on the increase; that still seizures in 1935 exceeded those of 1934 by more than 50 percent. Although it might be argued that this would show greater enforcement activity on the part of the Treasury, it also shows that illicit distilling was sufficiently profitable in 1935 to encourage more bootleggers to operate illicit stills in that year than in the previous year. Obviously bootleggers do not build stills with a capacity computed by Mr. Choate's basis, exceeding 600,000,000 gallons annually unless an established market exists for this illicit product.

Furthermore, in my statement I show that the Ohio State Enforcement Division prosecuted twice as many liquor violators in 6 months of 1935 as in the full year of 1934; also that although in Pennsylvania alone in 1934 there were 4,784 prosecutions, the State authorities found it necessary at the end of 1935 to add 450 additional agents to curb illicit activities.

Furthermore, I showed that there were twice as many liquor law commitments to Federal prisons in 1935 as in 1934, which would indicate that there had been 69,000 prosecutions for liquor law violations in 1935, a greater amount than in any prohibition year.

We argue that unless enormous profits continue to exist in illicit distillation and in illicit distribution this great army of bootleggers and rumrunners would not remain in business, subjecting themselves to prison penalties and heavy fines.

2. *That the present-day consumption if it reaches 110,000,000 gallons annually could reflect true demand.*

The Treasury has stated that there are from 225,000 to 250,000 licensed retail outlets. This would mean that each licensee's sales averaged 480 gallons annually, or 40 gallons per month. Furthermore, the Treasury states that more than one-half of the whisky being sold today is priced at $1.50 per quart. License fees for retailers throughout the country average $500 annually; rent would average perhaps $1,200, without considering clerks, insurance, or the maintenance of the owner and his family, costing at least $350 monthly. How can a man remain in business if his gross sales per month amount to $240 of which (as in the case of a package store) his gross profit could not exceed $80, whereas his expenses amount to at least $500 per month?

We conclude, therefore, that, since all these people are remaining in business, licenses are being used as cloaks to sell illicit spirits far in excess of the amount sold which has been tax-paid. We contend that the average package store throughout the country must do a gross business exceeding $30,000 annually (this would mean 5,000 gallons, not 480, at $6 per gallon) in order that it might stay in business. If one-half of the consumption of the country is represented by sales from package stores, then the present consumption would be considerably in excess of 300,000,000 gallons. The best illustration of this is that consumption here, in the District where a system similar to that proposed in the Copeland amendment is in operation, is at the rate of 3,000 gallons annually per outlet, or six times the tax-paid consumption reflected by Federal tax collections.

3. *That counterfeit labels, counterfeit strip stamps, and counterfeit bottles are not being used due to improved enforcement methods and to the supervision by the Department over the manufacture and distribution of liquor bottles and strip stamps.*

If the committee desires, we will produce counterfeit labels, counterfeit American strip stamps, counterfeit Canadian bottled-in-bond stamps, and counterfeit bottles, which are as readily available today as ever they were in prerepeal days. Furthermore, if the committee will guarantee immunity, I will have delivered to it as much as it desires of 100-proof whisky of good quality in quarts or pints bearing legitimate strip stamps and District of Columbia tax stamps, at a cost not exceeding $7.50 per case of 3 full gallons. Obviously this liquor is bootleg, because the $7.50 is only sufficient to cover the cost of the Federal and District tax.

4. *That because excise taxes on distilled spirits are now collected from distillers and importers and because these collections are under the supervision of revenue officers there can be no evasion: That there is no loophole "save for possible instances of collusion between producer and Government officers."*

We have not raised the issue of possible collusion between producer and Government officers. The quotation is Mr. Hester's. It is general knowledge, however, that considerable collusion existed in prerepeal days. If the same men are in the Department in responsible posts who were there during the prohibition days it might be argued that since collusion existed then it continues to exist now.

However, whatever taxes are being collected from distilleries and importers under revenue officers have no bearing on the taxes which are not collected from those who do not pay taxes.

For instance, Treasury agents in 1935 captured more than 16,000 stills. Additionally, the State enforcement agencies captured about an equal amount. These stills were in operation making illicit liquor. Did not the Treasury Department fail to collect the $2 Federal tax which was due the Government on every gallon of liquor distilled by these stills? If they ran only an average of 2 months the tax loss to the Government would be far greater than the total amount of tax collected from legitimate distillers, rectifiers, and importers.

Let me read you from the report of the Governor and legislature of the State of New Jersey, by D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control [reading]:

Alcohol costs but 20 cents a gallon to produce. It bears a Federal tax of $2 and a State tax of $1 per gallon, or a tax of 1,500 percent. When to this is added the expense of distribution and the reasonable profits of the distiller, the wholesaler, and the retailer—say $1.27 altogether—the minimum price at which legitimate alcohol may reach the consumer is $4.47. The bootlegger, however, sells it for $2.50 a gallon. Fair competition is obviously out of question. As long as these high taxes remain, the differential between legitimate and illicit industry is a standing invitation to violate the law. Because the bootlegger pays no tax, he can always undersell the legitimate licensee by a substantial margin. He captures the market of the price-conscious public, who gulp his products while he gobbles the profit.

Senator COPELAND. That is a letter from whom?

Mr. GREENHUT. That was reported to the Governor and the legislature of the State of New Jersey by D. Frederick Burnett, Department of Alcoholic Beverage Control.

An illicit still that produces 1,000 gallons per day costs $10,000 to install. The sale of 1,000 gallons brings a gross income of $2,500. If the cost of bootleg production is 40 cents per gallon, or twice that of legitimate mass production, he has left $2,100. Assuming his distribution cost to be extremely high—say, $1,100 to include the "pay off" to dishonest officials—he still has left $1,000 per day net profit. If he pays less for "protection", his net profit is even higher. If he runs 10 days unmolested, his capital cost is repaid. If we are able to detect and seize his still in a month from the time it started, he forfeits his property, to be sure, but he has his original investment in hand and enough profit to start two new stills "on velvet." The result is the same whatever the gallon capacity, since the ratio to cost of installation is roughly 1 to 10. Thus a still of 100-gallon capacity costs $1,000. Hence, with a small capital investment, the bootlegger is on his way to fortune. He himself not only pays no taxes, but every gallon sold slakes a demand which otherwise would be satisfied from the lawful supply and so bear its share of tax. He is not only a tax evader, but he deprives the State of taxes which, otherwise, would be collected from legitimate sources. So long as enormous profits are to be made, men will take the risk.

5. That the proposed system would obviously facilitate fraud on the part of retail dealers because all liquor coming into their hands today is tax-paid; that it would be relatively easy for retailers to sell liquor without affixing stamps to the bottles.

All liquor coming into retailers' hands is not tax-paid, although all or most of it when on their shelves or on their bars has strip stamps on the bottles.

Regarding tax stamps required by the Copeland amendment, the manufacturer might be required to state on his label the amount of

tax which would be due on the bottle; and furthermore, the label might include warning to the customer that unless a canceled revenue stamp in that amount had been affixed to the bottle, definite penalties could be imposed against the buyer as well as the seller. It is inconceivable that a buyer of liquor, purchasing a 1-pint bottle on which a 25-cent Federal tax was due, would make himself liable to severe punishment in order that he might save some part of that 25 cents. Today there is no risk if the bottle has a strip stamp affixed, even if the retailer knows that the contents have not been tax-paid.

6. That the only outlets for illicit spirits are dwelling houses, speak-easies, dives, and so forth.

What ever illicit selling takes place in dwelling houses, speakeasies, and dives is small. We admit this. We contend, however, that the greatest amount is through present-day licensed channels.

7. That the proposed system would very substantially increase the rate of taxes on distilled spirits.

The custom of the trade is to add a percentage for operating expense and profit on the cost of the product. It stands to reason that where the cost is reduced initially, by perhaps one-half, because the taxes are not included, the retail price must be substantially less than the price now charged.

8. That retailers might be required to use as many as 675 different denominations of excise-tax stamps.

Mr. Hester has not carefully studied the Copeland amendment. It requires no more denominations of tax stamps than those now used by the District of Columbia Control Board, which is eight in all. The number of denominations of strip stamps now issued by the Treasury under its present system is 21.

9. That the cost of the proposed system would be very great, requiring not fewer than 20,000 additional employees.

Less employees would be needed rather than more. In my statement a comparison was made between the Secretary's estimate of the Treasury's cost in collecting revenue and the actual expenses of the District A. B. C. Board's entire operation. This showed that the District is collecting six times as much revenue at one-fourth cost, due to the system it is using in the District, and which we propose should be nationalized. The District has two investigators on its pay roll covering 653 outlets. On the same basis the Federal Government would need some 700, or about one-fourth of the number now in the Treasury doing similar work.

10. That the system of bonding all distillers, rectifiers, importers, wholesalers, and retailers so that payment of the taxes would be guaranteed becomes confusing, because it would be impossible to discharge the bonds when spirits ultimately had reached the retailers.

This view shows that Mr. Hester has not analyzed how bonds would operate. All bonds would cover the tax liability of any bonded individual just so long as title to the untaxed goods remained with that individual. As title passes, the protection in the bond passes with the title. Hence, the distiller, shipping a carload of 1,000 cases to a wholesaler, is bonded to guarantee payment of taxes due. When title passes to the wholesaler, by virtue of his receipt of these goods, his bond assumes the liability. When he, in turn, passes the goods to perhaps 1,000 retailers, the 1,000 retailers' bonds assume the liability.

When the retailers pay the tax by affixing the proper amount of stamps to each bottle as the individual bottles are sold or opened for use, automatically the affixing of these stamps cancels the obligation under the original bond, because the affixed stamps cancel the tax obligation. In each case the bond is not on a specific transaction, but is on the continued responsibility of the distiller, or the wholesaler, or the retailer, to pay all taxes which are due while the untaxed goods are in his possession, or until they are passed on to someone whose bond assumes the full responsibility. In the case of the retailer, however, the responsibility would be not only for the taxes due but likewise would operate as a guaranty to the Government for any fines or penalties.

11. That the tax as now imposed is not "pyramided" by reason of a percentage "mark-up"; that all handlers of liquor fix arbitrary amounts on each transaction in dollars and not in percentages; that the dollar element would remain constant regardless of the cost of the goods to manufacturers, wholesalers, and retailers.

We are prepared to submit to the committee printed price lists showing what are the retail "mark-ups" on practically all distilled spirits now being sold throughout the country. These price lists are compiled by manufacturers and establish the retail selling price. They show that the "mark-up" is a definite percentage, ranging from 33½ percent to 40 percent on the cost of the goods to the retailers, regardless of the price of the goods.

All retailing is done in all lines of business on what is known as a retail "mark-up", namely, a specified percentage on the cost to the vendor of the goods. If the goods cost less, the "mark-up" in dollars is less; if the goods cost more, the "mark-up" in dollars is more and the percentage remains constant. Hence, if the goods included prepaid taxes, which on all liquors represent from two to five times the actual value of the distilled spirits themselves, the "pyramiding" of these taxes means that the consumer pays from 30 to 50 percent more for goods which are tax paid than he would under the Copeland amendment.

12. That the present high prices are not due to any "pyramiding" but to the scarcity of liquor of prime quality. That many brands of domestic whisky are available at $1 a quart and that more than one-half of the whisky being sold today is $1.50 per quart.

There is no scarcity of liquor today. There are more than 235 million gallons in bonded warehouses; about 15 million gallons are being added to these reserves monthly. The high price charged at retail is caused primarily by the "pyramiding" of the tax, as shown in Professor Studenski's example which I gave in my statement. This shows that liquor costing 10½ cents one-fifth costs the consumer $1.50 one-fifth.

The average sale throughout the country is approximately $1 a pint and this only recently due to the reduction of import duties principally on Canadian whisky, which has been used as the basis during the last 2 years for all domestic blends.

In January 1936 import duties on Canadian whisky were reduced from $5 per gallon to $2.50. Resultant retail prices again demonstrate how duties and taxes are pyramided. For instance, on Scotch liquor, coming into the United States under the now $2.50-per-gallon duty, the retail price was reduced 90 cents a fifth or $10.80 a case

containing 2-4/10 gallons of 86 proof. The actual reduction in duty was $5.13 per case. On Canadian Club, 90 proof, the duty reduction amounted to $6.75 per case; the retail reduction to consumers $13.50 per case.

These two illustrations prove that duties and taxes, imposed at the source, are pyramided as the product passes through channels of distribution.

In conclusion, we should like to offer the suggestion that Senator Copeland's amendment be adopted for a period of 2 years in order that a comparison may be made between the income derived during the last fiscal year under the present method and the income which will result from the operation of the method proposed by his amendment.

I thank you, Mr. Chairman.

Senator KING. Thank you, Mr. Greenhut. Mr. Berkshire, we will hear you.

STATEMENT OF STEWART BERKSHIRE, DEPUTY COMMISSIONER, BUREAU OF INTERIAL REVENUE, TREASURY DEPARTMENT

Senator KING. Have you any matters you desire to discuss before the committee, and particularly do you desire to make any observations concerning the testimony just given?

Mr. BERKSHIRE. Yes, sir; Mr. Senator, under the present system of tax collection in the Treasury Department, the production of all legitimate liquor in the distilleries and rectifying plants, industrial alcohol plants, and brandy distilleries in the country, is under the control and supervision of Government officials from the time that the grain goes into the distillery until it is withdrawn from the cistern room, proofed and weighed out by a Government officer, and entered into a Government warehouse, which is under the supervision, also, of a Government officer, who carries the keys to the warehouse.

The tax is paid upon the withdrawal from the warehouse, and we understand this is the plan by which the tax is collected on intoxicating liquor in every country in the world, that when the spirits are removed from the Government's custody, the tax must be paid.

Up to that time we know that we are getting all of the tax on all of the spirits produced in all of the distilleries in the United States.

Now, Mr. Greenhut has made the statement that somewhere along the line, between that point and the point of retail sale, there is introduced into that flow of liquors something in the neighborhood of, as he says, 50 percent of illicit liquor sold behind spurious brands and through counterfeit strip stamps, or stamps which have been procured through the loose handling of Government officers.

I take it that is a fair statement of what he has said.

We do not think that anything like that is happening at all, under the present system.

Under the present system liquor may be bottled only in marked bottles, the bottles manufactured under Government permit also, and the bottles are sold only to distilleries and rectifiers.

Into each of those bottles is blown the number representing the permitee, the manufacturer who made the bottle; the number representing the registered distillery who purchased the bottle from him; and the date; so that an officer in checking any retail establishment

may examine the bottles and know the name of the manufacturer of the bottle, and the person who packaged that bottle of whisky.

That is in addition to this strip-stamp provision which has been discussed so much at length. The strip-stamp provision and the bottle regulations go hand in hand, and I want to say that these spirits are bottled under the direct supervision of Government officers, either at the distillery at the time of withdrawal, if it is bottled in bond, or by a rectifier under supervision of Government officers, and only rectifiers and distilleries may bottle spirits for retail trade.

Senator KING. Are there many of those?

Mr. BERKSHIRE. There are 379 rectifiers, 106 distilleries, and 158 banded distilleries in the United States. Those are the places where we now supervise the bottling of the spirits which go into these retail stores. The strip stamps are issued by the Government officer in this way:

The distillery must make application to the district supervisor for the strip stamps required for his bottling activity for a stated length of time; that is approved by the district supervisor. It is then taken by the distiller to the Collector of Internal Revenue and buys that number of stamps. The stamps are not turned over to the distiller or rectifier, but the Collector of Internal Revenue sends them to the Government officer in charge at that plant, in whose custody they remain at all times under Government lock and are passed out to the rectifier or distiller for his day's requirements, the bottling being under the direct supervision of the particular officer who delivers to him those strip stamps.

Senator BARKLEY. The strip stamp is a little confusing, that is just something put over the neck of the bottle indicating the tax has been paid?

Mr. BERKSHIRE. Yes; it is a stamp put over the neck of the bottle to show the tax has been paid. The tax was paid on the barrel of whisky as it come out of the warehouse.

Senator BARKLEY. And the color of the stamp, green, pink, or pale red, indicates how old the whisky is?

Mr. BERKSHIRE. If it is a green stamp, it will state, for example, produced in the spring of 1915 and bottled in the spring of 1934. That is the old bottling-in-bond stamp, Senator.

The red stamp does not indicate the age of the whisky.

Senator BARKLEY. That indicates it is newer than the other one?

Mr. BERKSHIRE. The label would probably indicate the age of the whisky, in that case.

Senator KING. But the strip stamp is the same whether it is aged whisky or new whisky, if it is bottled in bond?

Mr. BERKSHIRE. If it is bottled in bond it will be a green stamp, and the red strip stamp is provided in the liquor-tax law of 1934, and is applicable to liquor other than bottled in bond.

Senator BARKLEY. What about liquors that are not rectified?

Mr. BERKSHIRE. Considerable liquors are reduced in proof by the rectifier and bottled without rectification, but in either event the strip-stamp provision applies just the same.

The thing we want to emphasize is this, that no one can get possession of those strip stamps except the distiller and rectifier, and they are placed on the bottles as we see them every day in the store, under the supervision of Government officers.

On this question of counterfeiting stamps, there has been an occasional case of the counterfeiting of the red strip stamp prior to 1 year ago, when the requirement went into effect that these red strip stamps must be serially numbered.

That is a very important point. The Secretary of the Treasury himself conceived the idea a year ago, when there was a certain amount of counterfeiting cases showing up, that if a serially numbered stamp was used there would be no counterfeiting. When the collector issues those stamps to the distiller he keeps a record of the serial numbers for that plant, and inspectors use these records checking stock in stores. That is a thing which has practically cut out counterfeiting of strip stamps.

An investigation by the office of Chief Moran of the Secret Service Bureau in the Treasury Department indicates that since stamps have been numbered we have had only one case on record where there has been an attempt to counterfeit these serially numbered strip stamps. They must counterfeit the stamp; then they must put on a counterfeit number, which will run into some serial number already in effect.

Senator KING. Do they counterfeit the serial numbers and avoid the tax?

Mr. BERKSHIRE. Yes; they attempt to counterfeit them, but when they do then they duplicate them or get one that is not in existence.

Our inspectors and investigators each month are furnished with the numbers in their district, so that when go around and investigate stocks of goods they have the serial numbers of the stamps issued during that month, and if other numbers show up, they know something is wront immediately.

Senator KING. Where there is opportunity of counterfeiting, if that properly expresses it, with the numbers duplicated, could that be done?

Mr. BERKSHIRE. They would have to guess the number.

Senator KING. Could they go around and notice the bottles on the shelves of the retailer and get the serial numbers, or whatever there is to identify the stamp, then go and counterfeit it?

Mr. BERKSHIRE. They could. They attempt to counterfeit our money, and they will attempt to counterfeit these stamps, and we are watching it all of the time, but we know it is not anything like a major problem today.

We know what the problem is, and we know they are making bootleg liquor in illicit stills, and we think we know where it is going.

It is going to the speak-easies and the dives, and it is being drunk by those people who know what they are buying, and this proposed plan does not touch that problem anywhere.

Senator KING. Is that liquor introduced to the public through the licensed liquor dealers?

Mr. BERKSHIRE. No; it is not.

Senator KING. I was interested in the statement made by the alcohol administrator in his report to the Governor of New Jersey, or the legislature, I do not know which, in which he refers to the large number of plants where this liquor is manufactured. What kind of an explanation can you make of that?

Mr. BERKSHIRE. Mr. Burnett is the commissioner up there, and he works with us splendidly. I think he did make the statement some 12 months ago he thought half of the liquor consumed in his State was bootleg, and I happen to know he has withdrawn that and in recent statements has said the Treasury Department has been doing a splendid job in enforcing the law.

Senator BARKLEY. It took the people up there some time, I suppose, to get out of the habit of making and drinking bootleg liquor.

Mr. BERKSHIRE. Senator, a year and a half ago the legitimate distillery and the legitimate dealer had little to offer, and until legal liquor came into existence the bootlegger did not have any competition.

In 1934 something like 35,000,000 gallons were produced, and in 1935 there were over 300,000,000 gallons produced, so that you can see it will not be long before we will have a stock of liquor in the country that will be good and within reasonable price range.

Senator BARKLEY. At the present time, anybody going into a retail liquor store and seeing a bottle of liquor, whatever the brand may be, with one of these stamps on it, he knows now with reasonable certainty that liquor has been manufactured under Government supervision?

Mr. BERKSHIRE. That is correct.

Senator BARKLEY. Suppose this plan is adopted, and you do away with taxation at the source, and simply tax by putting a stamp which has been paid for on a bottle by the retailer, from whatever source he may get it, would the purchaser of that liquor, seeing the stamp, have any way of knowing whether it was purchased legitimately, or whether it was bootleg liquor, except in case where there are certain well-known brands, which he would want and pay for, but would he have any assurance in that case that the bottle had not been refilled with some spurious product and sold under the brand he was familiar with?

Mr. BERKSHIRE. No.

Senator BARKLEY. I understood the witness to make the statement today, one of his reasons for saying it would bring more revenue, was that it would tax bootleg liquor at the point of distribution, and the same sort of stamp would be put on it that would be put on all other liquor, and the point I am raising is whether the public would know when they bought a bottle of liquor whether they were getting the real or a spurious product.

Mr. BERKSHIRE. They would not know.

Senator BARKLEY. As a matter of fact, would there be any reason for Government supervision if you take away this supervision at the source?

Mr. BERKSHIRE. We think we would still be required to supervise the manufacture of spirits. If we are going to assume that the retail dealer is going to make collection at the time of the retail sale to the customer of the amount of tax which is owing to the Government on that bottle of liquor, there must have been some supervision somewhere in order to know the alcoholic content of that bottle, whether it was 80 or 90 proof, in order that the retailer might know the amount of tax he is to collect.

Senator BARKLEY. He is not to collect the tax at so much per pint, according to the size of the bottle, but he has got to ascertain the contents, the alcoholic contents, so as to be able to fix the tax according to the proof of the whisky which he is selling by the pint, or quart, or whatever it may be. Is that true?

Mr. BERKSHIRE. I must say, the way the bill is drawn I cannot tell whether it is contemplated they will pay so much a bottle or whether they are going to estimate the tax on the basis of the proof of the liquor in the bottle.

Senator KING. Under the present system the tax is collected based on the proof?

Mr. BERKSHIRE. That is correct, Senator.

Senator KING. Paid by the manufacturer, distiller, or rectifier?

Mr. BERKSHIRE. The law as stated in the Copeland amendment is the same as the present law, $2 per proof-gallon or $2 per wine-gallon if below proof. Today the whisky is withdrawn from the warehouse in the barrels, at 100 proof or over, so that they pay only $2 per proof gallon, but under this plan, as I take it, if it is 80-percent proof, that bottle of liquor must either pay a tax the same as 100 proof, or the retail dealer himself must estimate eighty one-hundredths in order to determine how much tax must be paid on that bottle.

Senator COPELAND. Mr. Chairman, may I ask that Mr. Greenhut answer that particular argument, as I am not myself technically acquainted with it.

Senator KING. Certainly.

Mr. GREENHUT. Mr. Chairman, in the bill it says that liquor sold at 100 proof would pay the $2 tax based on the 100 proof, but if below proof it would be based on the wine-gallon. Is that right?

Mr. BERKSHIRE. I am asking you.

Mr. GREENHUT. That was drafted by the legislative counsel of the Senate, and that is the way it reads.

Senator KING. Is that the way you understand it?

Mr. GREENHUT. Yes, sir. The tax in the District is on the bottle basis.

Mr. BERKSHIRE. It is on the bottle basis and not the proof basis?

Mr. GREENHUT. That is right.

Mr. BERKSHIRE. The man who sells liquor at 80 proof that came out at around 60 proof is going to pay a tax much higher than $2 a gallon, and the result of the Copeland amendment is to materially increase the tax on liquors.

Senator KING. Especially if diluted below a hundred proof.

Mr. BERKSHIRE. If it is reduced to 50-proof, he will pay at the rate of $4 a proof-gallon, because he will pay twice as much tax, so that the effect of the Copeland amendment will be to raise the tax materially.

Senator COPELAND. Mr. Chairman, in view of the fact I am not technical in the matter, I respectfully ask when such a point as this is discussed, that Mr. Greenhut will be privileged to answer it.

Senator KING. Either that, or when the witness is through you can ask Mr. Greenhut to reply to it.

Mr. BERKSHIRE. The effect, I take it, would be to encourage the sale of liquors at high proof, which I understand is not the policy

of our Government, but that the policy is rather to encourage the consumption of liquors of lighter proof.

Senator KING. If it were sold by the bottle, then it would encourage the dilution below a hundred proof, and there might be more bottles sold.

Mr. BERKSHIRE. No, Senator; it would be the other way, it would have just the opposite effect, because a quart of liquor at a hundred proof bears a 50-cent stamp, and a quart of liquor at 50 proof bears a 25-cent stamp, but under this plan, a quart of liquor at 50 proof would bear a 50-cent stamp, the same as a hundred proof.

Senator BARKLEY. Have you made any estimate of the number of men who would be required to inspect all of these retail establishments over the country, 225,000 establishments, and the extent of that inspection, in order that the tax might be collected and the law enforced?

Mr. BERKSHIRE. Yes, Senator; we have thought a great deal about that, and we think it would take instead of our force of some 4,500, at least 20,000, to check anything like adequately some 200,000 retail outlets.

On the point of the 200,000 retail outlets, and one of the things which was emphasized by Mr. Greenhut, particularly on the question of profit that each one of these establishments must make in order that he may stay in business, I might say this:

That for illustration, in the State of New York, we checked 14,000 retail liquor dealers, and determined that only slightly over 1,000 of those 14,000 were in the liquor business alone, and that almost 13,000 of them had taken out the occupational stamp.

Senator BARKLEY. That is the $25 a year stamp?

Mr. BERKSHIRE. Yes; that is correct. They had a stock of liquor in connection with their drug store, grocery store, or other business, so that this was a side line, and not the only business of the dealer.

Senator BAILEY. How many bonds would be required?

Mr. BERKSHIRE. It would require some 200,000 bonds.

Senator KING. Have you anything else, Mr. Berkshire?

Mr. BERKSHIRE. We have a plan in effect whereby all of the liquor establishments in the United States are being regularly inspected, and in connection with that inspection program we have made, within the last 12 months, more than 400,000 inspections in those places.

Senator KING. In various parts of the country?

Mr. BERKSHIRE. All over the country, and in cities of 100,000 population or more, they make regular inspections.

By those inspections we have discovered less than 15 percent where there is any violation of law at all. More than 85 percent are operating strictly in accordance with all laws and regulations.

Of the 15 percent violating the law, 50 percent of them did not have their occupational stamp. The other violations were failure to have a stamp on bottle, which may have dropped, but in less than one-half of 1 percent was there the sort of violation which Mr. Greenhut described, that is, the introduction of illicit liquor through spurious labels.

On January 2 I wrote a letter to each of the district supervisors, requesting that they list all cases where they had found non-tax-paid

liquor seized, and all of the details in connection with the report of labels, stamps, and so forth, in connection with those seizures. I also asked for a statement of opinion as to whether they have a problem in connection with the sale of non-tax-paid liquors, put up in an imitation label, either with or without counterfeit stamps, and say whether it is a major or minor problem.

I have received letters from each of the 15 supervisors, and have taken short excerpts from each of these letters, which I should like to read in the record at this time.

They are as follows:

Boston district, which comprises Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut [reading]:

The duplication of domestic brands of liquor in packages used by the various legitimate American firms has never gained a strong foothold in this district. There have been no proven cases of counterfeit bottled-in-bond stamps. There have been no proven cases of counterfeiting Internal Revenue red evidentiary strip stamps. Since the advent of the serially numbered red evidentiary strip stamp, there have been virtually no instances where a duplication of a domestic package has been found bearing such stamps. The loose method of handling the old red strip stamp resulted in this stamp being found on any type of package regardless of its contents. The indicia bottle has not been used in this area in the duplication of domestic brands. Shortly after repeal and extending well through 1934, rare instances, particularly in the Maine area, were found of duplications of American brands, but these duplications were amateurish in character and were similar to duplications during the prohibition era. The paraphernalia used was similar to that manufactured on a large scale in this country prior to repeal. The strip stamps were usually of the pale green variety with the word 'Export' or some other similar legend printed thereon. The use of this stamp on a domestic package would immediately disclose it as being rank imitation. It is safe to say that since repeal there has been no major seizure of duplicating American brands which would bear the scrutiny of any person at all well versed in the liquor business. Duplication of this type of merchandise is not considered a problem in this district.

From the New York district, which comprises the State of New York [reading]:

It is believed that since the establishment of the retail liquor dealer inspection units, practically no liquor dealers are, to any extensive degree, carrying on their shelves or in their stocks any spurious liquors. If they have any transactions along this line, it is done on the outside of their premises. The discoveries made by the retail liquor dealer inspectors have dwindled to a marked degree since a year ago, as reflected by the reports rendered by the retail liquor dealer units. It is believed that insofar as the general sale of spurious or non-tax-paid liquors as conducted through retail or wholesale liquor stores is concerned, such a condition is surely under excellent control and at a minimum.

From the Philadelphia district, which comprises the State of Pennsylvania [reading]:

This problem has dwindled to the point where it has become a minor one, and in each of the instances cited the seizures were so small as to have warranted no attention during prohibition. It is not believed that there is any place in this district which deals in such counterfeits at this time, as inquiries by investigators have developed the information that, while the same can be furnished, it is necessary to order them from out of the district. Finally, in those instances where seizures were made, the stamps and labels did not appear to be new and fresh, and it is a natural conclusion that the same were manufactured during prohibition.

From the Newark district, comprising the States of New Jersey and Delaware [reading]:

Since the successful seizure of the enormous quantity of labels and plates as listed in our case N. J. 28, which involved the arrest of one George Mistler, at 416 Central Avenue, Newark, N. J., it is the opinion of the Secret Service representative and this office that we have successfully stopped the source of supply for such spurious stamps and labels. From a review of this type of violation in this district, it is the opinion of this office that we now have under arrest or indictment all persons who have in the past been printing or distributing imitation labels and counterfeit stamps and that this type of violation is no longer a problem in this district.

From the Baltimore district, which comprises the States of West Virginia, Virginia, Maryland, North Carolina, and District of Columbia [reading]:

It appears from the reports submitted of the different States comprising this district that the imitation-package problem has been greatly reduced, and it is, as far as this district is concerned, a minor enforcement problem.

From the Atlanta district, which comprises the States of South Carolina, Florida, Georgia, and Alabama [reading]:

It might be stated at the outset that the imitation-package problem in this supervisory district is of a minor nature. We rarely seize liquor bearing counterfeit internal-revenue stamps or so-called cutting plants in this district.

From the Louisville district, which comprises the States of Tennessee and Kentucky [reading]:

The use of either counterfeit strip stamps or imitation labels in this district is unusual. The few cases listed above were given wide publicity at the time of the seizure and as a result the representatives of the various distilleries have kept a close watch on the liquor stocks of the various dealers, thus cooperating with this office in an attempt to stop the use of counterfeit strip stamps and imitation labels.

Recently we have received two reports of violations of this nature; one of these has been investigated and found to be false; the other is under investigation at this time.

Nearly all of the non-tax-paid liquor sold in this district is sold as such in plain bottles without any attempt being made to make it appear as legitimate liquor.

From the Cleveland district, which comprises the States of Michigan and Ohio [reading]:

You will note that there have been 31 cases made in this district since repeal, wherein imitation strip stamps, labels, and bottles have been seized containing tax-unpaid spirits. It might be well to remember that this district has not concentrated on this type of violation, but has confined its efforts wherever possible to the source of supply of illicit alcohol and moonshine spirits. In the last few months we seem to be getting more of this type of violation, and in almost all cases the imitations are of Canadian brands. The operations are by the old cutting-and-bottling syndicates that operated during prohibition.

In Detroit the sale of this imitation liquor has been quite prevalent among bellboys of certain hotels, selling to guests in the hotel who believe they are getting Canadian liquor brought across the river. It might be that the bellboy himself believes this, because it has been noticed that these illicit rectifiers have been getting rather high prices for their imitations.

In Cleveland we have had two gangs, particularly, which seem to peddle their imitation liquors in the smaller towns of Ohio, West Virginia, and Pennsylvania.

However, it is the opinion of this office that this form of violation is rapidly being curtailed, due to present bottle regulations, the inspections by the retail liquor dealers' inspection section, and a more concentrated drive on this particular type of violation.

Chicago district, comprising the States of Wisconsin, Illinois, and Indiana, reports [reading]:

It is only on rare occasions that non-tax-paid distilled spirits bearing imitation labels or counterfeit strip stamps are found by inspectors or investigators of this district. When such spirits are found they ordinarily consist of one or two bottles of "Three Star Hennessy" brand or some of the favorite brands of Scotch whisky which have been sold to dealers at regular prices.

It is the further opinion of this office that such traffic as is now being conducted in non-tax-paid distilled spirits in this district is confined largely to the so-called slum area, or to the shipment of alcohol and other non-tax-paid spirits to points in territories which are either classified as "dry" or where State controlled liquor stores are being operated.

New Orleans district, which comprises the States of Louisiana, Mississippi, and Texas, reports [reading]:

In the San Antonio district, which is comprised of the southern and western judicial districts of Texas, there was no case made in 1933 involving the subject under discussion. During 1934 there was only one case made, while in 1935 there were three cases made.

In the Dallas district, composed of the northern and eastern judicial districts of Texas, during 1934 there was one case involving this subject. In 1935 there was one case involving this subject.

The records of the Mississippi district show that there has been no seizure since 1934 and 1935 involving this subject.

Investigator in Charge J. M. Koons, of the State of Louisiana, in discussing this subject, makes the following statement:

It is my opinion that at the present time there is not any great traffic in imitation labels, wrappers, corks, caps, bottles, and counterfeit stamps and other paraphernalia going to make up imitation packages in this district. Instead, the illicit trade is merely refilling empty bottles and selling them simply as cheap whisky, with no claim whatever to the purchaser that he is getting the genuine article. Strip stamps are not placed on the bottles, and also plain, unlabeled flasks are used.

The Kansas City district, which comprises the States of Missouri, Kansas, Oklahoma, and Arkansas, reports [reading]:

The above-listed cases indicate that the use of imitation labels and counterfeit strip stamps within this district is only occasional, and this office has been very vigilant in watching for violations of this type.

The investigators of this district have been on the lookout for counterfeit stamps, stolen stamps, or stamps being reused, and in addition, instructions were issued to the retail inspectors to watch closely for imitation stamps in all of their inspections of retail liquor dealers.

In addition, we have been watching closely the samples transmitted to the chemist for analysis, thinking that it might be possible that the investigators were slipping up on such possibilities, but there are no indications that at this time counterfeiting stamps or imitation labels and other paraphernalia are being used in the distribution of liquor within this district.

It is our belief that the situation is well under control and that non-tax-paid spirits are in the main being sold as non-tax-paid spirits, and not, at this time at least, with any attempt to give the appearance of tax-paid.

The St. Paul district, which comprises the States of North Dakota, South Dakota, Minnesota, Nebraska, and Iowa, reports [reading]:

There is set out above the analysis of the situation in this district, as far as the sale of non-tax-paid spirits under imitation label, wrapper, and counterfeit or genuine stamps of the old issue, is concerned. This is a gradually diminishing problem and at the present time is considered a minor enforcement problem in this district.

The Denver District, comprising the States of Wyoming, Utah, Colorado, Arizona, and New Mexico, reports [reading]:

The problem of counterfeit strip stamps, imitation labels, wrappers, etc., in this district causes us little concern, as we have never to any extent been bothered by the sale or attempted sale of such liquors, which is well proven by the fact that only two such cases, both minor ones, have been made in the Thirteenth District since repeal of the eighteenth amendment.

Our problem is almost wholly that of moonshine whisky, which, in most cases, is sold as such; and little attempt, if any, is made to dispose of such liquor as tax-paid.

It is felt, and is doubtless very true, that a certain percentage of non-tax-paid liquors, both moonshine and rectified whiskies, are being dispensed and disposed of by way of the bar bottle; but the quantity, I believe, is very small, and does not offer a very serious problem even in this district.

The San Francisco district, comprising the States of California, Nevada, and Hawaii, reports [reading]:

Arrests, seizures, and investigation discloses at this time that the use of foreign or domestic labels or counterfeit strip stamps has practically ceased in this area. It is to be presumed that dealers in set-ups or such imitation labels and counterfeit strip stamps have discontinued such business, and the only supplies of such set-ups are those that some few violators may have in their possession which they secured either prior to repeal or very shortly following repeal.

The general use by violators of the new bottles coming under regulations 13 is not a very serious matter. In no seizure which this office has made, have we found that any violator had any considerable number of bottles of one type or bearing the same labels. Where violations of regulations 13 have been discovered, it has usually been in small quantities and the bottles have been of a large assortment bearing different labels and probably coming from several different sources. Dealers in used bottles who formerly made a practice of supplying bootleggers are very careful that their stock of such bottles contains none of the new bottles coming under regulations 13.

The Seattle district, comprising the States of Washington, Oregon, Montana, and Idaho, reports [reading]:

There has been no seizure made in this district since repeal of non-tax-paid spirits under imitation label, wrapper, and counterfeit or genuine stamps of the old issue. There is no evidence whatsoever that this practice is resorted to in this district. Moonshine whisky in all instances is sold as moonshine whisky. Cut-alcohol whisky is sold as cut-alcohol whisky.

Attention is called to the fact that Mr. Greenhut uses the system of tax collection now in effect in the District of Columbia as an example and states in effect that it is the same plan as he proposes.

The system used in the District of Columbia does not impose a tax at the point of sale. The law requires the wholesaler to purchase stamps representing the tax, which stamps must be placed upon the bottles before the spirits are sold to the retailer. The only exception to this procedure is in the case of purchase by a retailer from a distributor outside the District, in which case the retailer must purchase stamps and place them on the bottles within 24 hours of the time spirits are received by him.

It will be observed, therefore, that all stocks of liquor in the District of Columbia must be tax paid at all times and that the present system is not a tax at the point of retail sale, as proposed in the Copeland amendment.

With reference to our statement as to 110,000,000 as against the statement of Mr. Greenhut a moment ago of 150,000,000, or whatever it was, for 5 years' consumption before repeal, I have the exact figures for the 5 years before repeal, which I will read into the record, as follows:

	Gallons
For 1915	123, 860, 000
For 1916	135, 850, 000
For 1917	164, 291, 000

That is the year before war prohibition, and they were getting rid of their stocks. Then war prohibition came along and it dropped to the following:

	Gallons
For 1918	90, 000, 000
For 1919	83, 000, 000

Then, national prohibition came along in 1920.

The average of those five sets of figures is in the neighborhood of 119,000,000, and we have figures which we can produce, which indicate clearly that there is somewhere in the neighborhood of 9 or 10 million gallons per year which were withdrawn then tax-paid and went into the manufacture of hair tonics and for other industrial purposes, which are today withdrawn under our present law tax-free.

That is how the average figure of 110,000,000 for the 5 years before prohibition came about.

The consumption this year will run in the neighborhood of 110,-000,000. At the close of November 1935 the previous 12 months ran something like 93,000,000, so you see we are rapidly approaching the figure of consumption which existed prior to prohibition.

Senator BARKLEY. What is the present tendency in the price of whisky?

Mr. BERKSHIRE. The tendency of quality has greatly improved, as it remains in the wood longer, and the price is lower. I can say today you can buy a whisky on the market at retail stores which has been in the wood as much as 1 year for around $1.25 a quart. That is something very near the old preprohibition price. I think they used to pay a dollar a quart, 50 cents a pint, and 25 cents a half pint for fairly good whisky in the old days.

Senator BAILEY. Not so fairly good.

Mr. BERKSHIRE. That was fairly good comparable to the prices of today.

Senator BARKLEY. I saw a lot of advertisements in yesterday's Post, Belle of Anderson, at $1.49 a quart, then I saw another brand $1.29 a quart. This latter is a year old and the other, I think, is at least supposed to be 2 or 3 years old. How does that compare, for that type of liquor, with the pre-war price?

Mr. BERKSHIRE. Very well; very near the same price. I do not think you could ever buy 2-year-old whisky much under $1.50 a quart. I understand that is correct—I would not attempt to be entirely correct there, but I think that is correct.

The Treasury prepared a memorandum which I expected to read. I take it from the statement of Mr. Greenhut that he has seen that memorandum, and he commented on the 12 points raised in the memorandum. In view of the fact he has commented on the 12 points,

I do not think I will take the time of the committee in reading from it, but I will introduce it for the record.

Senator KING. It may be received.

Senator COPELAND. How many inspectors did you say would be necessary to make sure the retail dealers carry out the plan, if my plan would be adopted?

Mr. BERKSHIRE. That is merely an estimate, Senator, but if you are going to make anything like a proper check of 200,000 liquor dealers and be sure you are getting anything like the tax due, I should say it would take in the neighborhood of 20,000.

Senator COPELAND. How many have you now?

Mr. BERKSHIRE. We have in the neighborhood of 4,500—that is, taking the two branches of our service—one, the enforcement, which looks after the bootlegger, catching the still, and prosecuting cases, and something like half of that is supervising legitimate operations.

Senator COPELAND. What is the average pay of these men?

Mr. BERKSHIRE. The average pay of these men, I would say, is $2,200 or $2,400.

Senator COPELAND. Then, if you had to have 15,000 more men at $2,400 a year, it would cost $32,000,000, but by that expenditure you would be sure these retail stores were carrying out the law and actually paying the taxes which are due to the Government; and if there is possibility of any such saving as we have been alluding to, would it not be a pretty good investment to spend $32,000,000 for the sake of getting two or three hundred millions?

Mr. BERKSHIRE. Senator, my answer must be this. I think it is conceded the product of the illicit distiller is now being disposed of through the speak-easy, or the dive, and does not come near your retail liquor dealer's store.

We are collecting 99 percent of the tax on the legitimate product under the present plan, and I understand that under the proposed plan it is conceded it will not assist us in collecting the tax on the strictly illicit product.

We think, instead of gaining anything, we stand to lose a material fraction of the tax which we are now sure we are collecting.

Senator BAILEY. How would it operate in the States where they sell the liquor by the State?

Mr. BERKSHIRE. State-stores plan, how would it operate?

Senator BAILEY. Yes.

Mr. BERKSHIRE. I would rather Mr. Greenhut explain that.

Senator BAILEY. Do you not think the Federal Government could control the sales tax on liquor sold in State stores?

Mr. BERKSHIRE. We have had a case decided in Pennsylvania within the last year in which the courts held that the Pennsylvania stores did have to pay the Federal tax on liquor.

Senator BAILEY. That is not in the Supreme Court of the United States?

Senator KING. That was in the Federal Court?

Mr. BERKSHIRE. The Supreme Court of Pennsylvania held that, as I understand.

Senator COPELAND. You made a point of the bottles. I take it from your testimony you thought there was great safety there by reason of the fact you supervise the bottles. What happens to those bottles when they get empty, in my State of New York?

Mr. BERKSHIRE. The law requires that they be destroyed.

Senator COPELAND. Are they?

Mr. BERKSHIRE. I think so. We find bottles many times, and we see that they are, when we locate them, but that is just another of our problems in attempting to enforce the law.

Senator COPELAND. If you had these inspectors, you would see they were destroyed; but as a matter of fact I am advised that hundreds of thousands of empty bottles are being purchased and used.

Mr. BERKSHIRE. We do not think it is anything like that.

Senator BARKLEY. If anybody takes a pint of liquor out with him and consumes it on the road and throws the bottle on the side of the road, there is no way to prevent that, unless you have a lot of bottle pickers-up.

Mr. BERKSHIRE. It is just another deterrent. They are hard to get in large quantities. If you were figuring on a man cheating the Government by picking up second-hand bottles, he might do it, and coupled with his ability to get these strip stamps, he could do it, but it is just another stumbling block for the bootlegger, and we think it has been of great aid to us in enforcing the law.

Senator COPELAND. My only anxiety is to help enforce the law, and how and where we are going to get the money. I know of men in New York who used to be ragpickers, and are now bottlepickers, to use the language from Kentucky, and are now picking up bottles; what is being done with them I do not know, but I have a suspicion.

I want you to know, too, as far as I am concerned, I am not reflecting on the Treasury one single bit. I know how hard a problem this has been, but if there is in this amendment a possibility of increasing the revenue by a large amount of money by the expenditure of some more money, it seems to be the logical thing to do. That is my idea.

Mr. BERKSHIRE. We have never questioned the intentions of the Senator, I am sure, one time. We cannot see the plan as a practical one, Senator, that is all.

Mr. HESTER. There is one point I might add. Yesterday in New York we inspected indiscriminately in Manhattan and in the Bronx 170 retail outlets and did not find a single violation, and within the past few months in New York City the check of the revenue agents and the check of the men—Commissioner Valentine's men—in 36,000 inspections during that time, they found only 168 retail dealers selling non-tax-paid liquor. They did find 600 who did not have an occupational license, selling tax-paid liquor.

Senator COPELAND. Did your inspectors inspect each bottle and check the serial number?

Mr. BERKSHIRE. They do. When they make an inspection they go into the plant, and the only thing we have been accused of, I think, Senator Copeland, is of making too careful an inspection.

Senator COPELAND. You would not want to leave the impression with the committee that the $25 stamp you spoke of is the only expense involved in selling liquor, even though it is a side line?

Mr. BERKSHIRE. No; they have the State license to pay.

Senator COPELAND. And that costs about $1,200?

Mr. BERKSHIRE. I do not think so, for the retailer. They vary in each State.

Senator COPELAND. The point involved, as Mr. Greenhut stated, is that it would not be possible to carry the overhead on the small amount of gallonage. If there is a $1,200 tax, and I think that is the tax in my State and city, that is $1,200 in New York City and $800 in the smaller cities, there must be a profit to meet that expense, as well as the smaller expenses.

Mr. BERKSHIRE. That is true, and, of course, they are going broke every day, and that is one of the points we make, as we do not believe that class of individual who is operating on a shoestring and going broke every day, is a proper person to collect taxes for the Government. We think that would be one of our serious problems if we attempted to put this plan into effect.

Senator BARKLEY. What would be the moral situation on the question of consistency on the part of the Federal Government in trying to stamp out bootlegging, with nonsupervised manufacturers of it, and at the same time putting a tax on to raise revenue for the Government, because, if I get this plan correctly, it makes it a legal proposition for this retailer to buy the bootleg liquor from the manufacturer of the spirits, or from the bootlegger, and sell it over the counter, provided he puts a strip stamp on it before he sells it.

Mr. BERKSHIRE. I think it would be a question whether this act has the effect of repealing all of the revenue acts, which provide that liquor must be made in a qualified registered distillery.

Senator BARKLEY. Now, if the nonsupervised and so-called illegitimate liquor produced by the man who is not willing to come in under Government supervision, shall have the same standing, because it has not paid the tax, what encouragement is there for the legitimate manufacturer to be legitimate?

Mr. BERKSHIRE. None, I suppose.

Senator KING. May I ask one question? Is bootlegging, from your experience, diminishing, I mean, the production of bootleg liquor?

Mr. BERKSHIRE. Every evidence which comes into the Treasury Department indicates that bootlegging is greatly on the wane.

The big racket has been broken up, and I want to say this, in connection with the statement about the still seizures. It is a fact that we seize just about as many stills today as we did last year, but the stills we seize today are of a capacity of one-half to one-third the capacity of those which we seized a year ago.

The big racketeer operated in a big way, and he had a big still, and made his money fast. Those big rackets have been broken up, and we know that a great many of those fellows are now in the penitentiary.

As the result of that, as the capacity of the stills diminish, our tax payments increase. In most places in the United States we have the situation well under control.

Senator COPELAND. In regard to your inspectors, during the past year, have there been many dismissals?

Mr. BERKSHIRE. We have dismissals right along.

Senator COPELAND. Could you give us an idea of the number in the past year?

Mr. BERKSHIRE. You mean for cause?

Senator COPELAND. Yes.

Mr. BERKSHIRE. I should say during the past year we would not run more than one a month. I take it you mean our men have caught in collusion with violators?

Senator COPELAND. Yes.

Mr. BERKSHIRE. I should say not more than 10 or 12 in a year.

Senator COPELAND. They were dismissed because of collusion?

Mr. BERKSHIRE. Yes, sir; that is correct.

Senator KING. Are you troubled much with bootleg liquor imported, particularly since the last law we passed in which we created a customs unit out on the high seas?

Mr. BERKSHIRE. No; that has been reduced to a minimum.

Senator KING. So that you do not have the boats out at sea as you formerly had?

Mr. BERKSHIRE. That is right. We have not made a large seizure of liquor within recent months, which we could determine definitely as having been brought in.

Senator BARKLEY. Most of the illicit stills being small, it is more easy to conceal a small one than a large one, and more difficult to detect?

Mr. BERKSHIRE. That is correct, and as you break up these gangs of individuals in large operations, they will scatter, and will invest in a small pot still that they can move about. And it does not involve as great a tax evasion as formerly.

The additional statement on behalf of the Department, which I offer now, is as follows:

The Copeland amendment would have the effect of imposing the excise tax on distilled spirits at the point of retail sale. In considering this proposal, the discussion should fall under three heads, as follows:

First, present-day conditions with respect to production and sale of illicit distilled spirits, that is, spirits not tax-paid.

Second, the present system of tax collection.

Third, the system contemplated by the Copeland amendment.

As to the first, the Copeland amendment assumes that bootlegging is still rampant, on a very wide scale. Its proponents claim that tax evasions now amount to from $200,000,000 to $300,000,000 annually. They claim that a substantial proportion, if not a majority, of retail dealers sell bootleg spirits to their patrons and customers. They claim also that much of the supposedly legitimate spirits now sold to the public is untax-paid spirits behind spurious labels bearing either genuine strip stamps procured through the looseness of internal-revenue regulations, or counterfeit stamps. The whole argument for the Copeland amendment depends upon these and other similar assumptions.

None of these assumptions is correct. Bootlegging has steadily diminished since repeal, due partly to more vigorous enforcement methods by both Federal and local authorities, and partly to the steadily improving quality and the steadily diminishing price of legitimate spirits.

The present-day consumption of tax-paid spirits, when allowance is made for abnormal economic conditions, compares favorably with pre-war consumption. During the 5-year period from 1910 to 1914, inclusive, the total consumption of tax-paid-beverage spirits in the

United States was approximately 127,000,000 gallons annually. During the 5-year period from 1915 to 1919, inclusive, the total consumption of tax-paid-beverage spirits averaged approximately 110,000,000 gallons annually. During the 12-month period ended November 30, 1935, the total consumption of the tax-paid-beverage spirits amounted to approximately 90,000,000 gallons; and the Department now estimates that during the fiscal year 1936 the total consumption of tax-paid-beverage spirits in the United States will not fall far short of the 110,000,000-gallon average which prevailed during the 5-year period immediately preceding the adoption of national prohibition.

If it is a fact that the Government is today losing from $200,000,000 to $300,000,000 in taxes on distilled spirits by reason of illicit sales, this means that the consumption of bootleg spirits amounts to from 100,000,000 gallons to 150,000,000 gallons a year; or, in other words, it means that the total consumption of all distilled spirits in the neighborhood of from 200,000,000 to 260,000,000 gallons a year by comparison with a maximum preprohibition of approximately 127,000,000 gallons.

In comparing present-day consumption figures with corresponding figures for the period prior to the adoption of the prohibition amendment, some weight must, of course, be given to the population increase which has occurred in the meantime. Weight must be given also in considering the figures for the 5-year period from 1915 to 1919 to the fact that for many months this country had upward of 2,000,000 men overseas. It is considered fair, however, to offset against these abnormal circumstances the present abnormal economic situation of the country in which a substantial proportion of the population is unemployed and reduced to the barest necessities of life.

It is not to be supposed that there is no longer any important traffic in illicit spirits. It is a fact, however, that such illicit traffic as remains is almost entirely confined to sales made from private residence, speakeasies, dives, and other unlicensed places, with no pretense whatever that the product is anything but bootleg liquor. There are approximately 200,000 licensed retail dealers in distilled spirits, including clubs, restaurants, hotels, taverns, and so forth, as well as package stores, in the United States. During the past year all licensed dealers have been subjected to routine inspection by the Bureau of Internal Revenue and in all cities having a population in excess of 100,000 this inspection is continuous. In making such inspections the Bureau of Internal Revenue has encountered evidence of illicit liquor in only a negligible number of cases, certainly not exceeding a half of 1 percent of the total number of places inspected.

In the days of prohibition it was common practice for bootleggers to merchandise their product behind counterfeit labels, thus deceiving their customers into believing that the product was of legitimate origin. This practice continued for a time after repeal, but due to improved enforcement methods and to effective supervision on the part of the Bureau of Internal Revenue, as well as to legislation enacted by Congress controlling the manufacture and distribution of liquor bottles, it has now virtually ceased to exist. Liquor bottles can be manufactured only by companies licensed by the Treasury

Department. They can be sold only to registered distillers and rectifiers.

Strip stamps were provided by the Liquor Taxing Act of 1934 (Jan. 14, 1934). Although originally sold to wholesale and retail liquor dealers to be affixed to floor stocks, they can now be produced only by registered distilleries, rectifying plants, and importers. When so sold they are delivered to Government officers at the plants, to be issued by them from day to day to correspond to quantities of tax-paid liquor bottled under their supervision.

All strip stamps are serially numbered and registered at the time of sale in the name of the distiller, rectifier, or importer procuring them. Under these circumstances it has become virtually impossible for illicit operators to disguise an illicit product as legal or tax-paid spirits.

All of the assumptions of the proponents of the Copeland amendment are thus negatived by the records and experience of the Bureau of Internal Revenue.

As to the second point, the present system of tax collection, the excise tax on distilled spirits is now collected at the point of production; that is to say, at the distillery and general bonded warehouses, and as to imported spirits, by customs officers in connection with the collection of duties. The following is the number of beverage plants now in operation: 106 whisky, gin, or rum distilleries, 162 brandy distilleries, 176 bonded warehouses, and 363 rectifying plants.

All distilleries and warehouses are attended constantly by Government officers. Tax payment occurs at the time spirits are withdrawn from warehouse under the supervision of these officers. All spirits are withdrawn in bulk packages (barrels) and usually in large quantities. The number of storekeeper-gaugers assigned at producing distilleries, warehouses, and rectifying plants is today approximately 1,200, and virtually the entire cost of liquor tax collections is represented by the salaries and expenses of this number of officers.

Not only is the production and tax payment of spirits carried on under the supervision of internal-revenue officers, but internal-revenue officers likewise are in constant attendance at all plants which under the law are permitted to bottle spirits for retail sale. As above stated, the manufacture and sale of all liquor bottles, as well as the sale and distribution of strip stamps, are at all times kept within observation and control of internal-revenue officers for the express purpose of preventing the introduction of untax-paid spirits into legitimate channels of trade. The Bureau of Internal Revenue is firmly of the opinion that this system leaves no loophole, save for possible instances of collusion between producers and Government officers, for evasion of taxes or the introduction of illicit spirits so far as licensed distributors and retailers are concerned. Such trifling instances as have been found in recent months of illicit sales by licensed places have been found to be cases where unscrupulous bartenders introduce untax-paid spirits in bottles after they have been opened at the bar.

The third point, the system contemplated by the Copeland amendment: The proposed system appears to contemplate tax payment of distilled spirits by retail dealers at the point of retail sale, whether

in unopened packages or by the drink. It is believed that a thorough canvass of the subject matter covered by the previous discussion will demonstrate that the present system is thoroughly satisfactory and should not be superseded by any other system. Quite apart from this, however, the proposed system appears to be wholly impracticable. The following points should be noted:

First. The proposed system would obviously facilitate fraud on the part of unscrupulous retail dealers. At the present time liquor coming into their hands is tax-paid, except for such as may be surreptitiously introduced. Under the proposed system all liquor coming into their hands would be un-tax-paid. Assuming their willingness to defraud the Government—and this is one of the assumptions of the proponents of the system—it would be relatively easy for them to sell at least a portion of their merchandise without affixing stamps to the bottle. This would be true even in the case of sales of unopened packages, but it would be true more particularly of sales by the drink, where the package may not come into the view of the purchaser. Under the tax-collection system now in vogue, as above described, the Government receives exactly 100 percent of all excise taxes due on distilled spirits produced by registered distilleries. Under the proposed system the conclusion cannot be escaped that the Government would be bound to lose some fraction, and perhaps a substantial fraction, of such taxes.

Second. The proposed system, as admitted by its proponents, would have no effect upon sales of bootleg liquor through unlicensed outlets, such as dwelling houses, speak-easies, dives, and so forth. Except for negligible quantities sold by licensed places through the device of refilling bottles at the bar, this constitutes virtually the whole traffic which exists today in un-tax-paid spirits.

Third. The proposed system would have the effect of increasing very substantially the rate of tax on distilled spirits. The amendment provides for the collection of the tax at the rate of $2 for each proof-gallon, or wine-gallon when below proof. This is apparently considered by the proponents of the scheme to be a necessary arrangement in order to provide some degree of uniformity and standardization in the issuance of stamps to be affixed to retail packages. It would mean, however, that a quart of whisky bottled at 85 degrees proof would pay the same amount of tax as a quart of whisky bottled at 100 degrees proof. The rate, in other words, would be 50 cents a quart, 25 cents a pint, 12.5 cents a half pint, and so on, without regard to the alcoholic content of the spirits contained in the bottle. Bottled mixed drinks, such as highballs and cocktails, frequently run in proof at low as 25 degrees; that is to say, they contain as little as 12.5 percent alcohol. Under the proposed scheme such products would be subject to tax in the same amount per bottle as full-proof spirits—that is to say, spirits containing 50 percent alcohol. The effect of this provision, while securing the standardization and uniformity necessary to make the scheme appear to be feasible, would be to put a definite penalty on alcoholic beverages of low alcoholic content—a penalty which probably would be sufficient to drive these commodities out of the market altogether in favor of beverages of higher proof. A further result would, of course, be to bring about a substantial increase in the cost to the consumer of all low-proof beverages.

If it should be said that this result is not intended and that the real intention is that the tax shall be, as it is at the present time, proportionate to the alcoholic content of the beverage, the result is even worse. There is no uniformity at the present time in the alcoholic content of different whiskies, gins, brandies, rums, and alcoholic specialties. The standard proof is 100 degrees. Whiskies and gins, however, are commonly sold at lower proofs, such as 93 degrees, 92 degrees, 90 degrees, and so on, down to 85 degrees. In the case of cordials and liqueurs, the variation and the range of variation are even greater. with respect to these commodities, the proof may range as low as 60 degrees. In the case of mixed drinks, such as highballs, cocktails, and so forth, the proof may be as low as 25 degrees.

It would follow, if it is not intended to alter the present rate of taxation, that stamps would have to be provided in an endless number of denominations for each bottle size, and that each retail dealer would be required to select and affix the proper stamp to correspond to the proof of the particular spirits in each bottle. There are at the present time nine approved bottle sizes. If the tax is to be imposed, as at the present time, on the basis of proof, this would mean that every retail liquor dealer would be required to carry in stock stamps of not fewer than 75 denominations for each bottle size, or a total of 675 different denominations. Further comment on this point is believed to be unnecessary.

Fourth. The cost of the proposed system would be very great. It would involve the detailed checking of the accounts and records of all retail-liquor dealers periodically by internal-revenue officers in order to see that their tax payments corresponded, at least approximately, with their records of purchases and sales. Since there are approximately 200,000 licensed dealers, a huge number of additional employees, estimated by the Bureau of Internal Revenue at not fewer than 20,000, would be necessary in order to insure against fraud.

Fifth. The proposed system contemplates that each distiller, rectifier, importer, and wholesale and retail dealer, would give bond guaranteeing the tax payment of spirits produced or sold by him. It is not seen how the proposed bonding system would be of advantage to the Government. This may be illustrated by the case of the distiller who would be required to give bond to guarantee tax payment on a day's production of, say 1,000 barrels of whisky. The distiller would sell this quantity to, say 20 different rectifiers. Each of these 20 rectifiers would, of course, be required to give bonds guaranteeing tax payment upon his portion of the total quantity.

The 20 rectifiers, to keep the case as simple as possible, would bottle the spirits without rectification, and each would sell on to, say, 20 different wholesalers, each of whom would in turn be required to give bond for the spirits bought by him.

We now have 400 wholesale dealers, each with a portion of the original 1,000 barrels, which on an equal division would amount to about 40 cases.

Each wholesale dealer would sell on to, say, 20 retail dealers, an average of two cases to each such retail dealer. So that in the end the original lot of 1,000 barrels would find its way into the hands of 8,000

retail dealers, located in all parts of the country, who would put the spirits on their shelves and sell, bottle by bottle, to the retail trade.

If the liquor were all bottled in quart containers, the number of bottles involved would be about 400,000; if in pint bottles, the number would be 800,000; if in half-pint bottles, the number would be 1,600,000. Retail sales of this particular lot would probably extend over many months, and possibly years. The Department has been unable to understand what evidence it could procure under these circumstances which would enable it to discharge the bonds given by the distiller and, successively, the 20 rectifiers and the 400 wholesale dealers to guarantee the tax payment made ultimately by the 8,000 retail dealers over this protracted period.

Sixth. It is claimed by the proponents of the Copeland amendment that the effect of the amendment would be a substantial reduction in the cost of alcoholic beverages to the consumer. This claim is based upon the premise that under the present system of tax collection at the point of production, the tax is "pyramided" by reason of a percentage mark-up applied by all intermediate distributors through whose hands the merchandise passes between the point of production and tax payment and the point of retail sale. This premise is also considered to be unsound. Rectifiers, wholesale dealers, importers, and distributors generally add to the price of the product only their costs of handling, including overhead, plus an amount calculated to enable them to carry on their business profitably. It is believed obvious that should spirits be sold ex-tax, prices charged by distributors would continue to be influenced as they are today mainly by the close competitive conditions that prevail in this market, and that in the end the transfer of the tax to the retail dealer would have little, if any, effect on the price charged the consumer.

It is important, in considering prevailing liquor prices, to understand that at the time of repeal the stocks of distilled spirits in the United States were extremely limited, and that there has always been a scarcity of spirits of good quality. This, and not any system of "pyramiding" prices, has been responsible for the high prices which have been charged, and still are charged, for liquor of prime quality. As to spirits of current production—that is to say, spirits produced since repeal—prices are moderate. Notwithstanding the higher rate of tax, spirits of fair quality can now be procured in all parts of the country at prices comparing favorably with the prices which obtained during the preprohibition period. Many brands of domestic whisky a year or more old and gin can be had at prices in the neighborhood of $1 a quart or fifth, and, according to information furnished by the Distilled Spirits Institute, more than half the whisky being sold today is priced at less than $1.50 per quart. There is no reason to suppose that under the present system of tax payment the time will not soon arrive when distilled spirits of the best quality will be available everywhere at prices but slightly in excess of preprohibition figures.

Thank you.

Senator KING. Thank you, Mr. Berkshire.

(Subsequently the clerk was instructed by the chairman to place in the record the following communication received from the Secre-

tary of the Treasury regarding the proposal offered by Senator Copeland:)

TREASURY DEPARTMENT,
Washington, February 27, 1936.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

MY DEAR SENATOR KING: As you requested, Mr. Oliphant talked with Mr. Greenhut on Tuesday with reference to the proposed legislation sponsored by Senator Copeland which would shift the collection of the excise tax and import duties on distilled spirits from the point of production or importation to the point of retail sale.

Mr. Oliphant reports that Mr. Greenhut submitted no evidence or argument in the course of the discussion which had not already been carefully considered by officers of this Department, and I am compelled to say that the Department must remain of the opinion that his plan is impracticable, would be extremely expensive to administer, would have no effect on the present illicit traffic in liquor, and would open the way to tax evasion and fraud with respect to the spirits produced by legitimate distillers and imported by legitimate importers upon which the Federal excise tax and customs duties are now fully paid at the source.

The views of the Treasury Department with respect to the proposed legislation were recently expressed at some length in a report transmitted to the Joint Committee on Internal Revenue Taxation under date of November 18, 1935, which is undoubtedly available to you. Under these circumstances, it is considered unnecessary for me to rehearse the objections to the Greenhut plan at this time. It should be sufficient to say again that all beverage spirits legitimately manufactured in this country are produced at fewer than 300 distilleries, all of which are constantly attended by internal-revenue officers; that all such spirits are tax paid at the time of withdrawal from bonded warehouses, of which there are fewer than 200, all likewise constantly attended by internal-revenue officers; that the customs duty and excise tax applicable to legally imported distilled spirits are collected at the time of the importation of such spirits or the withdrawal thereof from customs bond under the supervision of customs officers; that under the internal-revenue and customs regulations now in force the Treasury Department is now collecting upwards of $240,000,000 annually in excise taxes and customs duties applicable to such spirits, with a minimum of administrative cost and inconvenience to the taxpayers; and that under the present system there is no reason to suppose that there is any loss of revenue whatsoever with respect to spirits legitimately produced or imported.

The Department naturally would view with great concern any proposal which would require the release of spirits from internal revenue or customs custody to be manipulated, rectified, bottled, and packaged, and to move through the customary trade channels into the hands of some 200,000 retail dealers without the prepayment of internal-revenue taxes and customs duties. The collection of the applicable taxes and duties from this number of retail outlets under whatever system might be used would obviously entail tremendous difficulties and expose the revenue service to such risks of fraud that the adoption of such a system would be regarded as nothing short of disastrous.

Mr. Greenhut suggested that he was desirous of avoiding public hearings on this subject for the reason that, as he said, he feared that an open discussion of the proposal would reflect discredit upon this Department. You, of course, know that the Department has no such apprehension. Should the committee conclude that public hearings would be desirable, the Department will be glad to send its representatives for the purpose of furnishing any information with regard to the proposal which the committee desires. It is suggested that should a public hearing be decided upon, it would be advisable to invite the appearance of representatives of the various trade groups which would be affected by the proposal, that is to say, distillers, rectifiers, importers, and wholesale and retail liquor dealers.

Yours very truly,

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Senator KING. We will hear from Dr. Doran.

STATEMENT OF DR. J. M. DORAN, REPRESENTING THE DISTILLED SPIRITS INSTITUTE

Dr. DORAN. Mr. Chairman and Senators, I represent the Distilled Spirits Institute, the trade association of manufacturing distilleries. Discussing the Murphy amendment, it is a fact that ethyl alcohol may be made from blackstrap molasses the same as ethyl alcohol may be made from corn. Likewise, there is an ethyl alcohol made from petroleum in this country and, if anything, is the superior of both of them. I do not believe the Murphy amendment seeks to deprive the industrial users of the country of the cheapest and purest raw material, ethyl alcohol, from whatever source, or by whatever process it is produced.

However, unless the use of ethyl alcohol from grain is confined to use for beverage purposes a highly undesirable situation would likely come about. Before prohibition about 70 percent of all beverage spirits was the so-called blended whisky, the base being whisky of the character made in Kentucky, taken to the rectifying plant and blended there with neutral spirits made from corn.

It has been my estimate that on account of the cheaper raw material, particularly blackstrap, brought into seaboard plants, of which there are just a few of them, owned by large corporations, the whole price level will be reduced to the blackstrap price plus the conversion cost.

Senator BAILEY. You said it is just as good.

Dr. DORAN. I will say this, Senator: I do not think anybody can tell the difference.

Senator BAILEY. What would be the ultimate effect?

Dr. DORAN. I would not say there would be any difference, but it will have this economic effect; hundreds of men who have spent millions of dollars in plants in the West based on the F. A. C. A. regulations as to the use of corn in spirits will have their businesses destroyed, and the business would be transferred to a few seaboard molasses plants.

Senator BAILEY. It is your argument that it protects you?

Dr. DORAN. It is an argument of the utilization of anywhere from 25 to 30 million bushels of corn. While it is true that is only a small percentage of the total corn used, yet it is a very substantial percentage of the corn that goes to market.

While the chemists are continually developing new processes at cheaper prices—and I happen to be a chemist myself and have no quarrel with that procedure—I do say if we are going to permit the cheaper, or what I might say, synthetic substitutes, to continually whittle away the food uses for products of the farm, you will see the time when we will not have anything like the use that we have now, whether it is molasses, oil, or what.

I think the ordinary man in the street, whose opinion is worthy of consideration, believes his whisky, whether it is good for him or bad for him, whether he can tell the difference or not, is made from

corn and is not made from blackstrap molasses or from rubber tires, or petroleum.

I do not think it is a question of whether it is just as good or whether he can tell the difference, but I think you are dealing with principle of proper labeling, in conformity with the policy laid down by Congress in its Food and Drugs Act.

I would not want the pharmaceutical people to be injured in the slightest, and I think the amendment should make a distinction between beverage and nonbeverage use.

Senator BARKLEY. This amendment does not prevent the manufacture of whisky, but you do not want to call it whisky, and what would you want to call it?

Dr. DORAN. I would call it imitation or compounded whisky.

Senator BARKLEY. It is not an imitation; it is real whisky.

Dr. DORAN. I am sorry to disagree with you, Senator. Historically whisky is from grain spirits.

Senator BARKLEY. Historically that was so.

Dr. DORAN. Up to 60 days ago it was grain distillate.

Senator BARKLEY. If you cannot tell the difference according to the algebraic rule, what is equal to the same thing is equal to each other, then you are not denying the right to a thing to be labeled what it ought to be, so that what will you call it, the proposed amendment does not bar the manufacture of it, and you can go on making it out of blackstrap molasses; but what will they call it if they do not call it whisky?

Dr. DORAN. I think they can call it imitation whisky.

Senator BAILEY. It is not imitation whisky.

Dr. DORAN. I think it is.

Senator BAILEY. Rayon may be imitation silk, but it is not sold as silk and it is not labeled as silk.

Senator KING. Equally, would not corn whisky be an imitation of blackstrap whisky?

Dr. DORAN. If there had been such a thing, I would say yes.

Senator BARKLEY. What is troubling me, we are legislating a legislative function into existence; you are declaring a thing not a thing which it is.

Dr. DORAN. Here is what occurred: Following repeal, the F. A. C. A. made a regulation which had been adhered to up to the last few weeks, following out the finding of President Taft, which was developed from several years of very intensive research and inquiry, and which held that whisky was a distillate of grain.

Under the Revenue Act of 1917 discussed here before, it was required that the Commissioner make uniform rules with respect to the marking of all mixtures, regardless of origin. That was academic. Then war prohibition came on, and national prohibition came before that act became effective, and when the repeal came, the F. A. C. A. in conjunction with the food and drugs people, went back to the old Taft decision and said whisky is a distillate from grain, yet the Treasury Department feels they are bound by the terms of the 1917–18 revenue act, which, as I say, was never operative in any material degree.

I believe you can make blended whisky out of a distillate from any source, and I want to say right now it will not be blackstrap.

It, in all probability, will be petroleum, and in my humble judgment, that is probably the cheapest raw material for the manufacture of neutral spirits, and I do not look on that with any degree of satisfaction from the standpoint of the user or the distiller, particularly the small distiller, and from the standpoint of the man in the street.

Senator BARKLEY. What is the total production of corn in this country in bushels?

Dr. DORAN. It runs around 2½ billion bushels, but the great bulk is used on the farm.

Senator BARKLEY. What is the proportion used commercially?

Dr. DORAN. I understand less than 10 percent goes to the market and is sold as cash corn, that is, 25 or 30 million bushels that I speak of placed on the market as cash corn. If the farmer is denied that market, I suppose he will get along, but it is just one of those things making it a little more difficult.

Senator KING. Would not a part of what you call the cash market be used for breakfast foods and such purposes?

Dr. DORAN. I would not imagine there would be any great change one way or the other, as to what goes into starch and breakfast foods, and things of that sort.

Senator KING. You do not say so, but do you think that the Congress is bound by the regulations that may be promulgated by the Pure Food Administration?

Dr. DORAN. No, sir; I make no such statement.

Senator KING. If they ruled a certain thing was whisky and nothing else would be called whisky, we would not be bound by that.

Dr. DORAN. No; not at all. Not in any sense. I do think, though, in all equity, when a market is now established, Congress ought to protect that market and not permit a cheap material to work into it. It is not depriving anyone of anything, but it is merely maintaining a status quo.

Senator KING. I recall several years ago when we were considering a tariff act, some of the importers of camphor objected to synthetic camphor and insisted that no synthetic camphor was as good as that grown in the Orient, and it should not be sold, because it was interfering with business set up in camphor. Do you think Congress ought to have said synthetic camphor, which was as good or a little better, should not be sold?

Dr. DORAN. I think it should be so marked. I do know that oil of wintergreen, distilled in Tennessee, is the same material, chemically, as methyl salicylate, which is made synthetically, and I think the Department has attempted to maintain the distinction of markings in order to preserve what was a real, established industry; and that is the only purpose of my discussing this Murphy amendment—to maintain the status quo and not ruin people and deprive the farmer of this very substantial market.

Senator BARKLEY. For my own information, who is urging this amendment mostly; the producers of grain or the distillers of grain?

Dr. DORAN. The distillers have had nothing to do with it. This is the first time I have discussed it. The American Farm Bureau Federation and a number of others interested in the use of farm products have been very much interested in it.

Senator BARKLEY. What is the proportion of this whisky produced from blackstrap and whisky produced from grain?

Dr. DORAN. Up to now it is nil because none has been made. It has been used in gin, but not in whisky, and therefore we have no experience on the proportions.

Senator BARKLEY. When did they begin making whisky out of it?

Dr. DORAN. The regulations have just been made, as a matter of recent days, and we have not yet felt the effect of it.

Senator BARKLEY. Is there a plan for the manufacture of legitimate whisky under Government supervision from blackstrap?

Dr. DORAN. Now, I understand informally from the Treasury that some molasses alcohol is now being used in blended whisky, but it is a very recent occurrence. I will say there is a sufficient capacity in the molasses distilleries to swamp this whole situation.

Senator BAILEY. You do not think they will rapidly go into the manufacture of whisky from petroleum?

Dr. DORAN. I think it will ultimately happen, if the people owning the petroleum-alcohol business see fit to enter that operation.

Senator BARKLEY. What do you mean by saying it would be manufactured on the seaboard?

Dr. DORAN. For this reason: You have the molasses at the seaboard ports in tank ships, and that would not be delivered in your State, because you could not bring it up to your State.

Senator BARKLEY. I understood you to say that if the distilleries on the seaboard were at full capacity they could swamp this whole situation. What did you mean by that?

Dr. DORAN. There are eight or nine large molasses plants engaged in making alcohol from blackstrap for commercial purposes, and the market would follow the lower level that the distiller from corn could not meet.

Senator BARKLEY. Could you estimate the amount of blackstrap produced in Louisiana and anywhere else in the States?

Dr. DORAN. I think the figures quoted this morning show that probably about five gallons are imported for every domestic gallon used, but I have never known a single gallon of Louisiana molasses being distilled for beverage purposes, and in the last few years not for industrial purposes, because of the local feed value, as Congressman Dirksen pointed out, in mixing, makes it more valuable for feed purposes than for distilling.

Then, there is some beet-sugar molasses produced in this country that is more valuable for yeast plants. There is a lot of that molasses distillation going on in Utah merely because of the fact the by-product there costs too much to ship it to the eastern markets, and it is turned into industrial alcohol for local use in automobile anti-freeze, but not any of that ever goes into beverage purposes.

Senator KING. Is there anything further?

Dr. DORAN. I would like to discuss Senator Copeland's amendment.

Senator CAPPER. May I ask you, is the Murphy amendment in the present form all right, or have you any suggestions as to it?

Dr. DORAN. It says for nonindustrial use, and I think it would be pleasing to the druggists if it said nonbeverage use, or for other than beverage use, or something of that sort, because the phrase "nonindustrial use" relates to the bottle regulations of the Treasury,

but it would place all minor lots of prescription alcohol in this beverage class, and I think it should be amended as to that phrase, "beverage purposes", to completely clear the pharmaceutical manufacturers of any fear of being imposed upon by higher-priced material, and not being given a completely clear market.

On the Copeland amendment, superficially this would seem to be a good thing for the distiller, and would save a lot of capital invested, and the price would probably be reduced to the consumer, but I discussed the matter at some length with Mr. Greenhut, and listened carefully to what I considered a careful study of this matter, and I have the following comments:

In the first place this amendment would seek to destroy the revenue system in effect for 75 years, analogous to every revenue system in every State which collects excise taxes on liquor, and which is a modification of the English system, and they have, I think, the best system of any state.

The question of bonds is what concerns me right away. There are 225,000 retail outlets, and presumably a bond must be executed on each one. If we estimate the bond would be anywhere from 1 to 2 thousand dollars, we see that the final principal sum would run to about 4 billion dollars.

In addition this amendment would not even relieve the distiller or wholesaler from his bond liability, which could only be discharged, as the amendment is worded, after the goods were sold to the customer he might have.

We know just enough about the troubles of the retailer, and mind you, we are not dealing so much with the package store because that is not a problem at all, he is pretty clean, and I am not saying the others are not clean, but here is the problem that would be met with most of the retailers:

Most of our retailers are hotel and restaurant men and so-called combination men, and it does seem to me a very grave thing to impose on hotel and restaurant keepers the duties of keeping these numerous records, keeping up the bonds, going to the collector's office every day, when there are 36,000 of them in New York City alone, and many of them are very small businessmen, with a very limited amount of capital.

On further examination, it seems to us that the exactions to be made of the retailer would be most unreasonable, and we believe the whole surety situation is unsound. We believe the premiums to be paid on the $400,000,000 of bonds is unreasonable.

When it is all said and done, from what my experience has been, we have had in the Treasury Department before and during prohibition, a system which has been satisfactory, and I cannot conceive a commissioner of internal revenue taking the responsibility for the collection of liquor taxes, a very difficult commodity to handle, with 225,000 outlets.

Personally I would not assume any responsibility to the President or Congress for the collection of the taxes without an Army of men.

As much as I appreciate the very good features of this, and I believe Senator Copeland conceived the idea very honestly and conscientiously, that this is a tendency to increase the revenue and decrease the prices, but I doubt its practicability.

While it would relieve the distillers—no doubt they could do business on less capital—yet I do not think it would be a very good thing for the Government.

Senator BARKLEY. Thank you, Dr. Doran.

We will hear Mr. Curtes.

STATEMENT OF MICHAEL CURTES, NEW YORK, N. Y., REPRESENTING NATIONAL RETAIL LIQUOR PACKAGE STORES ASSOCIATION

Senator BARKLEY. On whose behalf do you appear?

Mr. CURTES. On my own behalf, and on behalf of the National Association of Retail Package Stores.

Senator KING. That is off-sale stores?

Mr. CURTES. Yes, sir. I have a package store of my own in New York. I was trying to understand the proposition stated by Mr. Greenhut in explaining Senator Copeland's amendment. I was trying to understand how I would go about keeping the books and records.

I was trying to understand where I was going to get all of the money to hire the extra bookkeeper and to pay for bonds to carry out the regulations that would be laid down if this amendment was passed.

I was trying to understand how I would figure out, if I had one or two customers in the store, how much taxes I am to collect for that particular bill, for selling that particular bottle.

I was trying to understand how I would figure out from a mathematical viewpoint where I would start.

Some bottles come into our store for retail purposes that are 12-ounce bottles, some 16-ounce, and some 23½-ounce bottles, and I was trying to figure out how we would come to an understanding whereby the consumers would not feel they were being cheated.

If this amendment were passed, I know that the consumer would feel that the Government is allowing illicit and illegitimate and very unhealthy liquor to reach their stomachs. According to the amendment, if a bottle of liquor is in my store, all I have to do is to put a stamp on it for the tax, and sell it to the customer. The consumer then begins to worry as to whether or not I bought that from a legitimate distiller or whether I bought it from a bootlegger, the consumer knowing, no matter where it came from, that the law is covered when I put the tax stamp on the bottle.

The consumer today has all of the confidence in the world in the bottle of liquor that I sell or that I show, and in most cases they are women.

That will give you an idea, Mr. Senator, what the amendment would do in our particular part of the country, while at this time the consumers have the greatest amount of respect and confidence in our type of stores, and they have no fear.

Senator BARKLEY. Your argument is emphasizing the fact that all of these women buy it for medicinal purposes.

Mr. CURTES. No; they don't buy it for medicinal purposes; I beg to differ. They buy it for cocktail parties and bridge parties. I know the consumer today has no fear as to the quality of the liquor I sell them.

Senator KING. Do you think the purchasers have the same confidence in all parts of the country that they have in you?

Mr. CURTES. In retail package stores throughout the country they have the same confidence.

Reports submitted to the Governor of New York by ex-Commissioner Mulrooney stated that in the past year and a half there was not one violation under the retail package store law in New York, and he was proud to say that was a good example of true enforcement and a good example of the system as set up by the State of New York.

We have no such thing as bootleg merchandise in our stores; and I feel bad to have a man come in here to back up some idea he has, and in order to carry it out, he throws at you that old bugaboo of bottleggers and tells you about the package store in New York and the amount of bootleg liquor on the shelves; then along comes the law-enforcement officer and the United States Treasury and tell you that there has not been one violation in the past year and a half.

Whom must we believe? Must we believe the man who tells you that to back up his theory or the man who tells you the facts?

Senator CAPPER. You say there is no bootlegging going on?

Mr. CURTES. I say there is no bootleg merchandise carried or sold in the retail package stores throughout the country, knowingly, by the owner.

Senator CAPPER. How about outside of the package stores?

Mr. CURTES. I claim the amount of bootleg merchandise that is sold through licensed outlets throughout the country is no negligible it is not worthwhile talking about.

I also can purchase that $7.50 case of whisky the gentleman talks about, but I have to go into some back alley where nobody is around to have the transaction, which would never come from a licensed dealer. The licensed dealer is proud of his franchise and will not jeopardize it by making a few dollars on some shady transaction.

Senator CAPPER. To what extent is there bootlegging that is not licensed?

Mr. CURTES. I cannot answer that question.

Senator BARKLEY. It is all unlicensed.

Mr. CURTES. I understand your question, Senator.

Senator BARKLEY. How much of the traffic is bootlegging?

Mr. CURTES. I could not answer that by trying to give you a false impression I had made a survey on the bootlegging, in the same way the statement of this gentleman was made, because he cannot prove to me how much investigation he made and how many investigators he had that he could prove how much bootlegging there was in the country. If he could do it, the Government would have him right away.

Senator BARKLEY. If he could do that he would be valuable to the Government.

Mr. CURTES. He would be so valuable they would take him before he could leave the room.

In closing, I want to say that retailers, whether hotel owners, package-store owners, or any other member of the industry, feel we would not be able to carry out without a law whereby we would have to keep up the books and records that are required by this act.

Senator BAILEY. Dr. Doran spoke of the sale of whisky made from petroleum; do you think there is any likelihood of the American people buying that sort of whisky if they found out it was made from petroleum?

Mr. CURTES. Facing the consumer, as I do, about 16 hours a day, I would say he would be afraid to buy it, because he would feel he was buying himself a physic.

Senator KING. Are there any other witnesses who want to be heard, because the committee is going to close this hearing in a few minutes?

Mr. WALLACK. I would like to be heard.

Senator KING. Please come forward and give your name.

STATEMENT OF NATHAN N. WALLACK, PRESIDENT OF THE LIQUOR DEALERS ASSOCIATION, STAR LIQUOR CO., WASHINGTON, D. C.

Mr. WALLACK. Senator Copeland, I believe, made the statement that the dealers in the District of Columbia placed all of the stamps on the bottles, but that is incorrect; the stamps are not placed on them by the retailer but are placed on there by the jobber before we get them in our store.

He also made the statement our liquor board by the A. B. C. Board was earning a very small amount of money, but we find that the District of Columbia system of running may appear negligible to some people. We know the A. B. C. Board has asked the Commissioners and the police department for help because it is difficult for them to inspect all of the stores, and we know that the police department have two inspectors and a crew of eight men going around examining the stores, and for that they are appropriating money from the police fund.

Senator BARKLEY. How many outlets are there in the District of Columbia?

Mr. WALLACK. Four hundred package stores.

Senator BARKLEY. How many retail stores are there altogether?

Mr. WALLACK. You mean selling off sale and on sale also?

Senator BARKLEY. Yes; altogether.

Mr. WALLACK. 1,800. A great many dealers in the District of Columbia are very anxious to sell their stores. Only last week six stores were advertised in the local newspapers for sale.

In most cases where arrests were made in the District of Columbia for liquor violations it was found that it was legitimate tax-paid merchandise, only it was sold after hours.

It would cause a stifling of most of the small dealers throughout the United States if this amendment should be adopted.

Senator KING. You mean the Copeland amendment?

Mr. WALLACK. Yes, sir. The good reputation most of the small liquor dealers bear now warrants the wholesaler in extending them credit; and if this new law is passed, it would mean an additional expense of the bond and an outlay of about $3,000, and that, of course, would drive all of the small dealers out of the business.

Senator BAILEY. What would be the expense of the bond?

Mr. WALLACK. I carry a stock of $40,000, and my bond would probably be rather high.

Senator BAILEY. Do you not have a bond to the District now?

Mr. WALLACK. Yes, sir.

Senator BAILEY. How much is that?

Mr. WALLACK. I think it is a very small amount.

Senator BARKLEY. Your bond now is obligating you to observe the law.

Mr. WALLACK. Yes; in case I am fined.

Senator BARKLEY. If this bond provided here was given, it would guarantee you would turn over to the Government all of the money you collected, and it would be a large amount, and a higher premium.

Mr. WALLACK. Yes, sir.

Senator BAILEY. You could probably get a cash bond.

Mr. WALLACK. No; I would get it from the bonding company, if I could get it.

Senator BAILEY. This bond you have now, it is to secure payment of fines in case you are convicted?

Mr. WALLACK. Yes, sir.

Senator KING. Thank you. Will the next witness come forward?

STATEMENT OF W. M. KOCHENDERFER, HOTEL ASSOCIATION OF WASHINGTON, D. C.

Mr. KOCHENDERFER. Mr. Chairman, I would like to submit this statement on behalf of Mr. H. P. Somerville, representing the American Hotel Association legislative committee.

Senator KING. Is it in favor or opposed to this amendment?

Mr. KOCHENDERFER. Opposed to it.

Senator KING. You may proceed.

STATEMENT SUBMITTED BY H. P. SOMERVILLE, REPRESENTING THE HOTEL ASSOCIATION

Representing the American Hotel Association, which comprises a membership of over 5,000 hotels in the United States, I wish to express our disapproval of the proposed amendment by Senator Copeland to revolutionize the method of collecting the internal revenue on distilled spirits in the United States.

Just what particular results would accrue to the benefit of the Federal Government or the ultimate consumer of alcoholic beverages is not apparent. Whereas a distillery invariably produces but a limited number of various kinds of spirits as to proof, etc., also a limited number of sizes, it is not difficult for that particular distillery to handle the payment for the necessary stamps, and to have sufficient stamps on hand to cover the various sizes and qualities of spirits that they manufacture. On the other hand, a retailer, such as hotels, would probably be compelled to carry hundreds of different-priced revenue stamps in order to cover the diversified merchandise that they must keep on their shelves. Placing the burden on the retailer would result in chaos, unnecessary additional expense in bookkeeping, etc., plus the enormous amount of money necessary for the Government to set up an inspection service adequate for the number of retail dealers throughout the country.

We strongly urge the rejection of this amendment and the continuation of the present system which is not alone practical and satisfactory at the present time, but was in like manner satisfactory for 75 years previous to the advent of prohibition.

STATEMENT OF MANUEL J. DAVIS, COUNSEL FOR THE NATIONAL ASSOCIATION OF RETAIL LIQUOR PACKAGE STORES

Mr. DAVIS. Mr. Chairman, there were assertions made as to the law of the District of Columbia by Mr. Greenhut which were unfounded and unbasic, and if the committee desires a brief submitted, I would be glad to submit a brief covering the point as to the placing of stamps, and also the amount of taxes.

Senator KING. You may submit it, and the committee, if it feels the situation calls for its insertion in the record, it will be inserted, but you must submit it tomorrow.

Mr. DAVIS. I will be glad to do so.

(Subsequently the following brief was submitted by Mr. Davis:)

BRIEF COVERING THE MANNER, PLACE, AND TIME WITHIN WHICH TO AFFIX STAMPS ON DISTILLED SPIRITS IN THE DISTRICT OF COLUMBIA

Mr. Greenhut, appearing in behalf of the Copeland amendment, which was offered to the subcommittee of the Senate Finance Committee by Senator Copeland, made various statements as to the method by which stamps were affixed to distilled spirits in package form. The statements made by Mr. Greenhut relative to this phase of the District law are unbasic and without foundation.

I quote section 26B of the liquor regulations of the District of Columbia, which set out the manner, place, and time within which stamps must be affixed to packages of distilled spirits in the District of Columbia. It can be readily noted that it is the exceptional case when the law requires the retailer to affix the stamp:

"1. *Manufacturer in District of Columbia to affix stamps.*—On all beverages manufactured in the District of Columbia by a licensed manufacturer, the stamps so required shall be affixed to the immediate container, as the same is hereinafter defined, of the beverage if the beverage is sold by such manufacturer in broken-case lots. If the beverage is sold or delivered by such manufacturer in unbroken-case lots, the manufacturer shall either affix the stamps to the immediate container, as the same is hereinafter defined, or affix the stamps by placing the required number of stamps in an envelope and firmly and securely affixing the envelope containing the stamps to the outside or case container of the beverages."

In all events the stamps must be so affixed by the manufacturer before the beverage is removed from his warehouse or licensed premises.

"2. *Wholesaler in District of Columbia to affix stamps.*—(a) Upon beverages, except taxable light wines, imported or brought into the District of Columbia by any licensed wholesaler, the stamps shall be affixed by the wholesaler to the immediate container, as the same is hereinafter defined, of the beverage if the same is sold or delivered in broken-case lots. On beverages, except taxable light wines, imported or brought into the District of Columbia by any licensed wholesaler and sold and delivered by him in unbroken-case lots, the wholesaler shall either affix the stamps to the immediate container, as the same is hereinafter defined, or affix the stamps by placing the required number of stamps in an envelope, firmly and securely affixing the envelope to the outside or case container of the beverages. In all events the stamps must be affixed before the removal of the beverage from the place of business or warehouse of the wholesaler for delivery to a purchaser.

"(b) Upon taxable light wines imported or brought into the District of Columbia by any licensed wholesaler, the stamps shall be affixed to the immediate container, as the same is hereinafter defined, within 24 hours (excluding Sunday from the count) after such wines are received at the licensed premises of the wholesaler and before such wines are sold by the wholesaler.

"3. *Retailer to affix stamps.*—Upon beverages purchased outside the District of Columbia by any licensed retailer, the stamps so required shall be affixed by the retailer to the immediate container, as the same is hereinafter defined, within 24 hours (excluding Sunday from the count) after the beverage is received at the licensed premises of said retailer and before the beverage is sold by the retailer. Upon beverages purchased by a retailer within the District of Columbia from a licensed manufacturer or licensed wholesaler and upon which the stamps have not been affixed to the immediate container, as the same is hereinafter defined (the stamps being in an envelope attached to the outside container), the retailer shall affix the stamps to the immediate container of the beverages within 24 hours (excluding Sunday from the count) after such beverages are received at the licensed premises of the retailer and before said beverages are sold by such retailer."

Pursuant to an act of Congress, passed during the first session of this Congress, the Commissioners adopted section 11 of the regulations, which regulation, in effect, further restricts the placing of stamps on packages of distilled spirits. Section 11 is quoted as follows:

"(a) No licensee shall purchase any beverages within the District of Columbia for resale except from the holder of a license to sell such beverages to such licensee for resale.

"(b) No licensee holding a retailer's license, class A, B, C, D, or E shall transport, or cause to be transported, into the District of Columbia, any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel, and beverages owned by a retail licensee at the time of the adoption of this regulation): *Provided, however*, that the Alcoholic Beverage Control Board may issue a special permit or permits to the holder of a retailer's license to transport, or cause to be transported, into the District of Columbia, alcoholic beverages which said Board is satisfied that beverages bearing the same brand or trade name are not obtainable by such retail licensee from a licensed manufacturer or wholesaler in the District of Columbia in such quantity as reasonably to satisfy the immediate needs of such retail licensee. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beverages to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beverages during their transportation in the District of Columbia to the licensed premises of such retail licensee, and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, after said beverages are received by the retail licensee, be retained by him and shall be marked "cancelled" by the retail licensee as soon as the stamps denoting the payment of the tax to the District of Columbia are affixed to said beverages. Each holder of a retailer's license who shall have transported, or caused to be transported, into the District of Columbia, any alcoholic beverages during any calendar month, shall, on or before the 10th day of the succeeding month, furnish to the Board, on a form to be prescribed by said Board, a statement under oath showing the quantity and character of each brand of beverages so transported, the name and address of the seller, the number of the special permit, and the date of receipt of such beverages by such licensee."

Summarizing this phase of the District of Columbia liquor laws, it can be readily ascertained that the retailer can purchase stamps for distilled spirits for only that merchandise which is not handled by a local wholesaler. This merchandise amounts to less than 10 percent of all the distilled spirits sold in package form in the District of Columbia.

Mr. FILLIUS. Mr. Senator, Mr. Harry L. Lourie, the executive secretary of the National Association of Alcoholic Beverage Importers, was very anxious to appear and be heard, but he was unavoidably called to New York. He did not learn of the hearing until last night, and he would like to have the privilege of filing a brief.

Senator KING. He may do that, but it will have to be done promptly.

Mr. FILLIUS. When may it be filed?

Senator KING. Just file it as soon as you can.

Senator BAILEY. Is that on the Copeland amendment?

Mr. FILLIUS. Yes.

(Subsequently the following letter was submitted by Mr. Harry L. Lourie, executive secretary, National Association of Alcoholic Beverage Importers, Inc.:)

STATEMENT IN OPPOSITION TO SENATOR COPELAND'S AMENDMENT H. R. 9185

NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, INC.,
Washington, D. C., March 9, 1936.

Senator WILLIAM H. KING,
Chairman, Subcommittee, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR KING: This association, representing more than 90 percent of the total importations of alcoholic beverages in the United States, desires to go on record as being opposed to the amendment proposed by Senator Copeland in H. R. 9185 with respect to a change in the method of collecting internal-revenue taxes on imported and domestic distilled spirits. This association, after careful examination of available public facts, as well as of the facts in its possession, does not believe that the proposed legislation will increase the revenue of the United States $300,000,000 a year, nor does it believe that it

will destroy bootlegging, smuggling, and other illicit operations. Its position is summarized below:

1. An examination of the tax-paid withdrawals of United States' whisky for the years 1934 and 1935 indicates that in 1935 the withdrawals were approximately 62,000,000 gallons of whisky, which is only slightly below the quantities tax paid and withdrawn in the preprohibition period, 1910 to 1918. The tax-paid withdrawals of imported whisky for 1934 and 1935 were between three and four times as great as the quantities prior to prohibition. The sharp increase in revenues collected by the Federal Government in 1935 over 1934 is in itself a sufficient indication that the operations of bootleggers and smugglers are definitely on the decline.

This association has spent considerable time and money in investigations with respect to illicit operations. It abandoned such work in the spring of 1935 when it became convinced that the Federal Government, through its own operations, had reduced the illegal sale of distilled spirits in wet States to a minimum. An indication of the decline in illicit operations is shown by the fact that in Chicago, which at one time was the hotbed of bootleggers, one group offered members of this association for a rather small sum the dies which they had used for counterfeiting labels and capsules on foreign spirits. This association feels convinced that the efforts of the Treasury Department in the past 2 years have reduced bootlegging to a minimum. We admit that the illicit distillation of spirits has not been stopped and we do not feel that it ever will be stopped since in certain sections of our country it has been going on for a hundred years. It is our belief that illicit operations in the United States may be divided into the following classes:

(*a*) Illicit distillation of spirits to be distributed mainly in dry States or in States having a liquor-store monopoly.

(*b*) The smuggling and sale of tax-paid legal spirits into dry States and into States maintaining a liquor monopoly.

We do not believe that in retail package stores there is any important sale of illicit spirits. The records of the Alcohol Tax Unit indicate a continuous check-up of the operations of retail establishments.

2. The tax-collection system proposed to our mind will be difficult to enforce and may result in losses of revenue. There are 235,000 establishments in the United States holding retailers' tax stamps issued by the Treasury Department. The physical impossibility of maintaining a close supervision over every one of these retail outlets is obvious. It is from these retail establishments that the tax would be collected under the proposal. Contrast collecting the tax from 235,000 individual business establishments with the present system whereby the tax is collected from some 300 distillers and 600 rectifiers. In the case of importers, the tax is collected by the customs at the time of withdrawal of the goods from customs custody. Obviously, it is easier to collect the tax at the source from approximately 1,000 individuals than it would be to collect it at the point of distribution from some 235,000 individuals. The cost of collecting the tax to the Government would increase tremendously and at the same time it is doubtful if a control could be exerted to prevent evasion of the payment of the tax.

3. The proposal would not stop bootlegging in the United States. It might result, if effectively enforced, in the collecting of the internal-revenue tax on illicit spirits, but it would not stop the manufacture of the spirits. It might result in the introduction of illicit spirits in legal channels and the tax being collected on such spirits. It is obvious that under the present and proposed system illicit operators, even if their products finally paid the Federal taxes, could still operate at a profit, because they do not pay the occupational taxes imposed by the States, nor do they operate under the heavy bonds required by both the Federal and State governments.

4. The cost of the necessary bonds would definitely offset any of the benefits the consumer is supposed to obtain through the proposed method of collecting the tax. Under the amendment, bonds to cover the taxes involved would have to be posted by distillers, rectifiers, importers, wholesalers, and retailers. At the present time wholesalers and retailers and importers do not post bonds. Bonds are posted by distillers and rectifiers to cover their general operations. Presumably the new bonds would be in addition to those now required by the Government. It is estimated that the bonds which would be required by the amendment would amount to the amazing sum of between 300 to 400 million dollars a year.

It is doubtful if the bonding companies could afford to issue such large sums of bonds for a particular industry at a low rate. Many bonding com-

panies could not afford to take on more than a small percentage of their total business in the form of bonds for the liquor industry. The bulk of the bonding costs would fall on the retail establishments which at present represent the weakest chain in the financial structure of the liquor industry.

5. Retailers would face a difficult financial burden if they had to advance the funds for the Federal taxes. At the present time retailers purchase goods at a price which includes the various taxes involved. Their business is financed on such a basis. If the system is changed and retailers purchased their goods on a tax-free basis, it would be necessary for them to change their financial set-up in order to obtain funds for the purchase of the Federal tax stamps. Furthermore, the cost of doing business to retailers would be greatly increased not only because of the time it necessarily will take for a retailer to affix the proper stamp to the particular bottle in question, but also because of the necessity of keeping close and accurate records for the Federal Government. The question of the stamps, themselves, represents an interesting problem. Distilled spirits of various kinds are not sold in uniform bottles. For whiskies, gins, rums, brandies, and similar distilled spirits, the following-sized bottles are allowed: 1 gallon, ½ gallon, 1 quart, ⅕ quart, 1 pint, ½ pint, 2 ounces, 1.6 ounces, and 1 ounce.

For cordials, liqueurs, and similar specialties, there are no standards, and it is a well-known fact that the bottles vary in size from a 1-ounce container up to a 1-quart 2-ounce container. There are encountered in the trade, particularly with respect to imports, cordials, and liqueurs, not only in bottles varying by an ounce from 1 ounce to 34 ounces, but varying in fractions of an ounce. The tax stamp would have to be one which exactly coincided with the quantity of spirits in each bottle. Furthermore, the alcoholic proof of all of these spirits varies tremendously from as low as 25 proof in the case of mixed distilled spirits, such as highballs, to as high as 152 proof in the case of certain rums. Thus an impossible tax-stamp situation is presented. We estimate at least 1,000 different stamps would have to be employed in order for the retailer to place a stamp on the bottle which accurately reflects the necessary tax. We regard this feature of the bill as impossible of achievement without greatly increasing the costs to the retailers. It is, of course, obvious that in the 235,000 retail establishments any number of errors will be made with respect to the affixing of the proper tax stamp to the proper bottle.

6. In the case of importers there will be a divided tax collection. Collectors of customs will exact the usual tariff rates from imported spirits, but the internal-revenue tax will be collected presumably from the retailers. Nevertheless, the importers will be held responsibe under a bond for the collection of the proper internal-revenue tax after the goods have left customs custody. At the present time all taxes are collected at the time of withdrawal from customs custody and the importer who distributes the goods is relieved of any further requirements under the bonds he has filed with collectors of customs.

7. For probably 2 or 3 years retail establishments would have on their shelves tax-paid goods which they have purchased under the present system as well as tax-free goods which they would purchase if this proposal is adopted. The confusion attendant by the maintaining of a stock of goods of such mixed elements is obvious. The difficulty of controlling such a situation appears to us insuperable.

CONCLUSION

This association feels that the present tax system which has been followed in the United States for almost a hundred years should not be abandoned at this time. The system is similar to one adopted by the leading spirit-producing countries of the world. The proposal overlooks the important fact that in addition to the Federal taxes which are collected with respect to distilled spirits practically everyone of the wet States imposes a State gallonage tax. The State gallonage taxes are collected at various points and such collection is usually indicated by the affixing of a stamp to the bottle. Obviously, uniformity in tax collection cannot be achieved when both the Federal and State Governments are collecting different taxes from the same product. We believe that there is no merit to the contention that the Federal Government has been deprived of $700,000,000 revenue with respect to spirits. Nothing has been shown at the public hearings to prove the validity of the claim. We, therefore, respectfully recommend that the Senate Finance Committee reject the proposed amendment because it is not only unworkable but will not achieve the ends claimed by its proponents.

Respectfully submitted.

HARRY L. LOURIE, *Executive Secretary.*

STATEMENT OF JAMES P. McGOVERN, GENERAL COUNSEL FOR THE INDUSTRIAL ALCOHOL INSTITUTE, INC., NEW YORK CITY

Mr. McGOVERN. Mr. Chairman, at the last session, you gave me permission to file a brief after the Treasury submitted its amendment, and I would like to ask if there will still be time for me to submit for the record such a brief?

Senator KING. You mean in reply to the amendment?

Mr. McGOVERN. Yes. There are two amendments, one to section 308, as to which I would like to submit some further statements, if the Treasury Department and ourselves do not reconcile our differences.

Senator KING. What is the amendment?

Mr. McGOVERN. That is the amendment that seeks to amend section 602 of the Revenue Act of 1918. That was a statute relating solely to alcohol, which antedated the passage of the National Prohibition Act. In looking up in the Code Revisions, I find it was superseded by title 3 of the National Prohibition Act and has not been carried into official or the Annotated Code and I am apprehensive lest any attempt to revive that statute for the purpose of the registered distilleries, especially if similar language be used, might actually jeopardize the objects and the purposes of title 3.

Senator KING. I suggest you confer with Mr. Hester, and if you do not reconcile your differences opportunity will be given to file a brief.

Mr. McGOVERN. I would also like to set forth here at this time a bulletin I prepared for the members of the Industrial Alcohol Institute on a feature of the Murphy amendment which was just slightly touched upon today. I did not intend to appear as a witness at all, but Senator Capper wanted to know whether, if this amendment were not entirely satisfactory to the proponents, was there any amendment that might be suggested.

Dr Doran spoke about the possibility of the pharmaceutical interests being affected. Having that in mind, and having reached the conclusion that the amendment as drawn would seriously affect the status of ethyl alcohol under the Food and Drugs Act and other laws, for medicinal purposes, and mind you, I am addressing myself entirely now to the nonbeverage uses of alcohol, my institute not having taken any stand as such, on this beverage phase, because this is primarily an Industrial Alcohol Institute, but, of course, if the amendment be not adopted, then the neutral spirits or ethyl alcohol, as the law now provides, could be utilized for all lawful purposes.

I would like to have in the record this bulletin which confines itself to that rather serious effect, which the passage of the Murphy amendment might have on the status of ethyl alcohol under the Food and Drugs Act for medicinal purposes.

My own opinion is that as drawn, the Murphy amendment provides that ethyl alcohol for medicinal purposes could only be that made from grain, despite the fact that according to the United States Pharmacopoeia the specifications of alcohol would be identical regardless of the source from which it comes.

Senator KING. We would like to have that bulletin in the record.

Mr. McGOVERN. The bulletin is as follows (reading):

BULLETIN No. 2256.—RE H. R. 9185, ALCOHOL FOR MEDICINAL PURPOSES

Situations are constantly arising which seriously affect, if not threaten, the status of industrial alcohol and the utmost vigilance is required to keep abreast of abrupt and unexpected changes. The provisions of new laws and regulations must be studied carefully, and frequently interpretations are discovered which, althought not intentional, may result in a subsequent construction causing no end of mischief. If the purpose and policy of proposed laws and regulations be sound, there should be no occasion for ambiguity in the language employed to establish them.

A study of the provisions of the amendment proposed to H. R. 9185, as set forth in Bulletin No. 2248, dated February 5, discloses the possibility of a danger of the type above indicated and which, it is believed, is worthy of careful consideration.

Under such proposed amendment it is provided that "no product shall be labeled or advertised or designated as neutral spirits, * * * for nonindustrial use if distilled from materials other than grain * * *." It is also therein provided that "the term 'neutral spirits' includes ethyl alcohol" and that the new restrictions are "for the purposes of the Federal Alcohol Administration Act, the Food and Drugs Act, as amended, and of any act of Congress amendatory of or in substitution for either of said acts."

There are two provisions in such proposed amendment which stand out impressively and attract immediate attention; first, the reference to and inclusion of the Food and Drugs Act and, secondly, the declaration that "the term 'neutral spirits' includes ethyl alcohol."

The Food and Drugs Act is not referred to or mentioned in the Federal Alcohol Administration Act, the purposes and objects of which, as stated in the introductory clause, are "To further protect the revenue derived from distilled spirits, * * * to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes." There can be no reason for applying restrictions relating to the labeling and advertising of ethyl alcohol "for nonindustrial use" to the purposes of the Food and Drugs Act, if distilled from materials other than grain, unless it be that ethyl alcohol to be used as a medicine or drug must be distilled or produced from grain.

The efforts to exclude the medicinal use of ethyl alcohol under the various codes adopted under the National Recovery Act may be recalled. The regulations issued by the former Federal Alcohol Control Administration, however, persisted in classifying the medicinal use of ethyl alcohol as a nonindustrial or beverage use (F. A. C. A. Regulations No. 4, relating to the nonindustrial use of distilled spirits, approved January 22, 1935, sec. 3, subsec. c), and the sale of ethyl alcohol in containers of 1 gallon or less, except anhydrous alcohol, and alcohol withdrawn for tax-free purposes were deemed to be nonindustrial or beverage use (regulation no. 4 above, sec. 4, subsec. b).

The Federal Alcohol Administration Act, approved August 29, 1935, relates to distilled spirits, including ethyl alcohol, "for nonindustrial use" (sec. 17 (a),subsec. 6) instead of distilled spirits "for beverage use" as previously covered by the aforesaid codes. There may have been a subtle reason for this change of expression, but it seems clear that the use of the spirits was to determine the application of the statutes and not the inherent character or properties of the spirits themselves. The present reference to the "nonindustrial use" in the Federal Alcohol Administration Act, must be assumed to be the same as the reference to "beverage use" previously employed in the aforesaid codes adopted under the National Recovery Act.

In the regulations issued under the Federal Alcohol Administration Act the use of distilled spirits, including ethyl alcohol, as a medicine is still regarded a "nonindustrial use" or beverage use (regulations no. 2, approved Dec. 20, 1935, sec. 2, subsec. b) and the sale of distilled spirits, including ethyl alcohol, in containers of a capacity of 1 gallon or less, except anhydrous alcohol and alcohol withdrawn tax free, is still deemed to be for "nonindustrial use" (regulations no. 2, above, sec. 3). In this connection reference should be had to the preambles and resolution adopted at a meeting of the board of directors of the Industrial Alcohol Institute, Inc., on October 24, 1935, copies of which were attached to Bulletin No. 2177, dated October 29, 1935. Interested scientific societies and trade organizations communicated directly with the Administrator of the Federal Alcohol Administration and the Secretary of the Treasury in vigorous support of such preambles and resolution.

The only justification for the inclusion by regulation of the medicinal use of ethyl alcohol as a "nonindustrial use" under the Federal Alcohol Administration Act is presumably based upon the theory that the latter act was enacted to carry forward the purposes and policies of the aforesaid codes under the National Recovery Act.

The basic purposes of the Food and Drugs Act (act of June 30, 1906) are to prevent the manufacture, sale, or transportation of adulterated or misbranded food and drugs. The bill, S. 5, now pending in Congress, constitutes a general revision of such Food and Drugs Act and extends its provisions to cosmetics and "devices." There is no reference in the Food and Drugs Act to the industrial or nonindustrial use of distilled spirits or the beverage or nonbeverage use of same. The operations of such act are confined to the character and quality of the articles enumerated and not primarily to their use. The term "drug" as defined in the Food and Drugs Act (sec. 7) includes "all medicines" and preparations recognized in the United States Pharmacopoeia and is further defined in S. 5, referred to above (sec. 201, subsec. b) as "all substances and preparations recognized in the United States Pharmacopoeia."

It is hardly necessary to refer to the fact that ethyl alcohol has long been recognized in the United States Pharmacopoeia and other authorities as one of the most essential and important drugs or medicines vital to the public health. It is sufficient to herein state that the United States Pharmacopoeia recognizes and accepts ethyl alcohol as a definite chemical substance regardless of the materials from which it is distilled or produced provided that it conforms to the specifications therein set forth.

While the use of distilled spirits, including ethyl alcohol, in the manufacture of medicinal, pharmaceutical, or antiseptic products is considered as an "industrial use" under above regulation no. 2 of the Federal Alcohol Administration, the use of ethyl alcohol as such "as a medicine" is regarded as a "nonindustrial use." At this point it should be noted that the Secretary of the Treasury is required to approve regulations issued under the Federal Alcohol Administration Act (sec. 2, subsec. d), and that he also is authorized, with the Secretary of Agriculture and the Secretary of Commerce, to make regulations to carry out the provisions of the Food and Drugs Act (sec. 3). If, therefore, the medicinal use of ethyl alcohol is carried forward as a "nonindustrial use" in construing the provisions of the Food and Drugs Act and to effectuate the purposes of that act, as contemplated by the amendment under discussion, it follows that ethyl alcohol, included in the term "neutral spirits" could not be labeled, advertised, or designated as neutral spirits, for nonindustrial or medicinal use unless distilled from grain. Also, if the term "neutral spirits" is to include "ethyl alcohol", the provisions in the proposed amendment are likewise susceptible of the construction that even "ethyl alcohol" could not be labeled, advertised, or designated as "ethyl alcohol" for nonindustrial or medicinal purposes unless such ethyl alcohol itself is distilled or produced from grain. It is not now claimed that such provision could be so construed but it might be.

Assuming administrative policies find it necessary to restrict the use of all distilled spirits, including ethyl alcohol, for nonindustrial or beverage purposes to these spirits only which are distilled from grain, it is submitted that the industrial or nonbeverage use of spirits, especially ethyl alcohol, should not be subjected to the doubtful construction and uncertainties which the proposed amendment creates.

All interests concerned with the industrial or nonbeverage uses of ethyl alcohol, particularly the representatives of pharmaceutical associations and scientific societies who have heretofore approached me on the subject, should study carefully the provisions of the amendment in question and promptly take such action as they feel necessary and proper.

(Mr. McGovern subsequently submitted the following:)

THE INDUSTRIAL ALCOHOL INSTITUTE, INC.,
420 Lexington Avenue, New York City, February 1936.

BULLETIN NO. 2248

Re proposed amendment to H. R. 9185.

The Congressional Record shows that Senator Louis Murphy, Democrat, of Iowa, submitted yesterday an amendment to be proposed by him to H. R. 9185. Such amendment reads as follows:

"SEC. —. (a) For the purposes of the Federal Alcohol Administration Act, the Food and Drugs Act, as amended, and of any act of Congress amendatory of or in substitution for either of said acts, no product shall be labeled or advertised or designated as neutral spirits, whisky, or gin, or any type thereof, for nonindustrial use, if distilled from materials other than grain, or if the neutral spirits contained therein are produced from materials other than grain. The term "neutral spirits" includes ethyl alcohol.

"(b) The fifth paragraph of section 605 of the Revenue Act of 1918 is hereby repealed."

H. R. 9185 is the omnibus bill referred to in previous institute bulletins. It passed the House August 22, 1935, and is now the subject of hearings before a subcommittee of the Senate Finance Committee.

The text of the fifth paragraph of section 605 of the Revenue Act of 1918, as amended, will be found in bulletin no. 2225, dated January 16, 1936.

JAMES P. MCGOVERN, *General Counsel.*

INDUSTRIAL ALCOHOL INSTITUTE, INC.,
420 Lexington Avenue, New York City, January 16, 1936.

BULLETIN NO. 2225

Re H. R. 10200.

Attached hereto will be found copy of H. R. 10200, being "a bill to repeal the fifth paragraph of section 605 of the Revenue Act of 1918, as amended" (U. S. C., 1934 ed., title 26, sec. 1151 (c–1). It was introduced on January 14 by Representative Everett M. Dirksen, Republican, of Illinois, and has been referred to the Committee on Ways and Means.

The paragraph of the above-mentioned statute which would be repealed by the enactment of H. R. 10200 reads as follows:

"All distilled spirits or wines taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced."

The foregoing paragraph was originally incorporated in section 304 of the Revenue Act of 1917, approved October 3, 1917, without, however, the words "or wines", which were included in the above-quoted paragraph of section 605 of the Revenue Act of 1918, approved February 24, 1919.

Section 605 of the Revenue Act of 1918 is that which imposes "a tax of 30 cents on each proof-gallon and a proportionate tax at a like rate on all fractional parts of such proof-gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3244 of the revised statutes, as amended: *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics." For the purposes of this bulletin it is not deemed necessary to quote the complete text of such section 605.

JAMES P. MCGOVERN, *General Counsel.*

[H. R. 10200, 74th Cong., 2d sess.]

IN THE HOUSE OF REPRESENTATIVES.
January 14, 1936.

Mr. Dirksen introduced the following bill; which was referred to the Committee on Ways and Means, and ordered to be printed:

A bill to repeal the fifth paragraph of section 605 of the Revenue Act of 1918, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifth paragraph of section 605 of the Revenue Act of 1918, as amended (U. S. C., 1934 ed., title 26, sec. 1151 (c) (1)), is hereby repealed.

JAMES P. MCGOVERN,
COUNSELOR AT LAW,
Washington, D. C., March 7, 1936.

HON. WILLIAM H. KING,
Chairman, Subcommittee, Committee on Finance,
United States Senate.

Re section 308, H. R. 9185.

DEAR SENATOR KING: In accordance with the permission given to me at last evening's session of the public hearings on H. R. 9185 to supplement my views for the record, I would now direct attention to a situation which impresses me as quite important in regard to section 308 of H. R. 9185, amending section 602 of the Revenue Act of 1918.

It is understood that the Treasury Department has furnished amendments to the bill which include radical changes in said section 308. The observation herein made relates to the purposes and objects of such section as it appears in the original act, and any amendment now proposed to such section should be considered in view of the original intent.

I am, as you may know, very much interested in this section as it relates to alcohol, and reference may be had to the correspondence addressed by me to you under date of January 17, 1936, and which is set forth in part 1 of the hearings held January 13, 15, and 16, 1936, at pages 121 to 127.

Section 602 of the Revenue Act of 1918, now sought to be amended, consists of four paragraphs. This section appeared in the official 1925 edition of the Code of the Laws, title 26, the separate paragraphs being sections 369, 370, 310, and 322, respectively. The section also appeared in title 26 of the United States Code Annotated at sections 369, 370, 310, and 322. The proposed amendments (sec. 308, H. R. 9185) relate to the first paragraph of section 602, same being section 369 of the code.

The code was revised and a new edition issued in 1934. Title 26 of the United States Code Annotated was also revised in 1935, new volumes issued covering such title, and the provisions relating to distilled spirits are found in volume 3, embracing sections 1150 to the end. The sections, as contained in the original 1925 editions, were renumbered in the new 1935 editions, and in the front of the new volumes of the annotated code (title 26) will be found a Table of Corresponding Sections showing the section number of the 1925 edition and the corresponding number in the new 1935 edition.

In the new 1935 edition, after the reference to section 369 (which, as above stated, constitutes the paragraph of sec. 602 now sought to be amended) the statement is made that such section was superseded by chapter 3 of title 27. Section 369 of the 1925 edition of the official code does not now appear in the 1935 revision nor does such provision appear in the 1935 edition of the annotated code.

Chapter 3 of title 27 of the United States Code Annotated, which, as above stated, superseded section 369, constitutes title III of the National Prohibition Act relating to industrial alcohol and still appears as chapter 3 of title 27 of the code.

It is, therefore, most interesting and impressive to note that the authorities who revised the code, both the official edition and the annotated code, were of the definite opinion that the first paragraph of section 602 of the Revenue Act of 1918, now sought to be amended, had been superseded and taken over by title III of the National Prohibition Act and was therefore regarded no longer applicable, necessary, or proper. This is also a very strong indication that section 602 in question related solely and exclusively to alcohol as distinguished from other spirits. It is possible that such section may have been expressly repealed but, if not, it was the view of the revision committee in charge of revising the code that such section had been superseded by the provisions of title III of the National Prohibition Act and was therefore inapplicable and unnecessary. Title III is, as you know, still in effect and has, in fact, been reaffirmed, broadened and strengthened by subsequent legislation (Liquor Law Repeal and Enforcement Act, approved Aug. 27, 1935).

It being, therefore, most convincingly shown that the first paragraph of section 602 of the Revenue Act of 1918 (26 U. S. C. A. 369) relates exclusively to alcohol, any amendment to such section should now be considered in its relation to alcohol. No modification or change in the section should be approved which in any way whatsoever adversely affects the production, warehousing, distribution, or use of alcohol in accordance with the purposes and

objects of title III of the National Prohibition Act and regulations issued thereunder.

With assurances of esteem, I remain,

Very sincerely yours,

JAMES P. McGOVERN,
General Counsel, the Industrial Alcohol Institute, Inc.

Senator KING. Is there anything further from any witness? Do you desire to say anything further, Judge DeVries?

Judge DEVRIES. We have nothing further.

Senator KING. At this point I desire to submit for the record a letter I have received from Mr. H. E. Howe, of the American Institute of Chemical Engineers.

(The letter referred to follows:)

FEBRUARY 10, 1936.

Hon. WILLIAM H. KING,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR KING: As chairman of the industrial alcohol committee of the American Institute of Chemical Engineers, an organization of approximately 1,400 technical men, I wish to have placed in the record the opposition of that body to the amendment proposed by Senator Murphy, of Iowa, to H. R. 9185.

The proposed amendment is to a bill drawn to insure the collection of revenue on intoxicating liquor, to provide for the more efficient and economical administration and enforcement of the laws relating to the taxation of intoxicating liquor, and for other purposes. The amendment undertakes to define according to its source a perfectly definite identifiable chemical compound, namely, ethyl alcohol. The American Institute of Chemical Engineers as such is not directly concerned with the nonindustrial use of ethyl alcohol, where it is affected by the Federal Alcohol Administration Act, but it is convinced that it is both unsound and unwise to set up for this or any other purpose a definition of a chemical compound as something derived from a particular source in contradistinction to the established properties of the product, regardless of how it is made.

The basic purposes of the Food and Drug Act are to prevent the manufacture, sale, or transportation of adulterated or misbranded food and drugs, but there is no reference in the Food and Drug Act nor in the bill S. 5, now pending, to the industrial or nonindustrial use of distilled spirits or the beverage or nonbeverage use of alcohol. The Food and Drug Act has to do with the purity and quality of the articles which it covers and not their use, and in the pending legislation the term "drugs" refers to preparations recognized in the United States Pharmacopoeia, in which ethyl alcohol as such has long been recognized, quite irrespective of the source of its manufacture, being concerned only with its quality and purity.

Under the wording of the proposed amendment all other sources than grains themselves would be barred as a source of ethyl alcohol. This would include sugars, whether derived from the cane, the beet, or corn; starches that might be converted into fermentable carbohydrates; various farm crops, such as the Irish and the sweet potato; artichockes, which are being widely discussed as a source of alcohol to give variety to farm crops; and many agricultural wastes. Ethylene as a source would likewise be barred. Since alcohol is alcohol, regardless of the raw material from which it is made, it is not difficult to foresee numerous difficulties and unjustifiable expense in the enforcement of such a plan of manufacture, and the amendment can scarcely be viewed as anything else than an effort to discriminate in favor of one small group at the expense of the others.

We urge that action on the amendment be unfavorable.

Very truly yours,

H. E. HOWE,
Chairman, Industrial Alcohol Committee,
American Institute of Chemical Engineers.

Senator KING. The hearings will now be closed and the committee will go into executive session.

(Thereupon, at 5:10 p. m., the hearing was closed.)

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