

STOCK EXCHANGE PRACTICES

FRIDAY FEBRUARY 16, 1934

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to adjournment on yesterday, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

President: Senators Fletcher (chairman), Adams, Couzens, and Kean.

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver and David Saperstein, associate counsel to the committee; and Frank J. Meehan, chief statistician to the committee.

The CHAIRMAN. The committee will come to order, please. You may proceed, Mr. Pecora.

Mr. PECORA. Mr. Altschul will resume the stand.

TESTIMONY OF FRANK ALTSCHUL, NEW YORK CITY, CHAIRMAN OF THE COMMITTEE ON STOCK LIST, NEW YORK STOCK EXCHANGE—Resumed

Mr. PECORA. Mr. Altschul, you were questioned yesterday afternoon in some detail with respect to the action taken by the stock list committee of your stock exchange, of which you are chairman, on the applications that were filed with it last summer in behalf of the American Commercial Alcohol Corporation, for permission to list additional shares of its capital common stock.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. You will recall that there were two such applications filed, one under date of June 2, 1933, requesting the listing of some 51,000 additional shares, and the second application was dated June 27, 1933, and applied for the listing of 15,000 additional shares.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Now, I want to call your attention again this morning to the second one of these applications, being the one covering the 15,000 additional shares.

Mr. ALTSCHUL. All right.

Mr. PECORA. You will recall that I showed you a typewritten copy of a so-called "proforma balance sheet" of the corporation called "Noxon, Inc.," which was the corporation whose shares were to be acquired by the American Commercial Alcohol Corporation on an exchange of stock basis.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And you stated that that pro forma balance sheet had never been submitted to your committee in connection with that application.

Mr. ALTSCHUL. That is correct. And I so state again.

Mr. PECORA. Yes; you then stated that, and you so state again.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And you also stated that if that proforma balance sheet had been brought to the notice of the committee on stock list, that the committee undoubtedly would not have approved the application.

Mr. ALTSCHUL. That is correct.

Mr. PECORA. You say that is correct.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. In other words, the statements contained in that pro forma balance sheet would have put the committee on notice, and would have prompted it to make inquiry which would have revealed undoubtedly the facts that were testified to here on yesterday by Mr. Brown within your hearing.

Mr. ALTSCHUL. It would have put us on notice, and have caused us to make inquiry.

Mr. PECORA. And if the inquiry had developed the facts testified to by Mr. Brown, your committee would have undoubtedly rejected or denied the application.

Mr. ALTSCHUL. That is correct.

Mr. PECORA. Have you a copy of the printed application in question?

Mr. ALTSCHUL. I have.

Mr. PECORA. Will you look at it and see if it is not a fact that that pro forma balance sheet was actually a part of the application.

Mr. ALTSCHUL. Mr. Pecora, in the printed application that you have in your hand it is a fact that it is a part of the application. On the other hand, I think the situation was one that, apparently, has not been made quite clear to you. The committee does not act on the basis of this printed application. In your files that are subpoenaed here you will find, I think, a complete file of the proofs of this application.

First, you will find proof no. 1, which is the proof on which the committee acted and which was before the committee. The balance sheet which you point out as being a part of the printed application was not in the proof that was before the committee at the time, as I think the files in your hands will evidence. Then there was a second proof which was considered, and in which this balance sheet does not appear. And then, some time between the action of the governing committee, as it seems to us, and the time when this final application was printed, apparently an additional item of information that had been sought in the office, came to the office, being the one that you showed me on yesterday and which I was surprised to see; and which I told you I could not understand, as to its not having been brought to our attention. Some time between the final action of the committee and this final printed application, this thing came into our office, and then, according to our uniform custom or practice of making available to the public anything that seemed advisable or proper, that seems to have been done. The office, ap-

parently, sent this thing over, and it was put into the third revised copy, so as to get the thing complete, and they got the final application, which you have today.

Mr. PECORA. Then am I to understand that the final printed application is the one the committee acted upon?

Mr. ALTSCHUL. No, sir. The committee acted upon the proof.

Mr. PECORA. Was there any difference between the printed final application and the proof that you have spoken of?

Mr. ALTSCHUL. Yes, sir. The proof was of an earlier date. The committee met on a Monday, let us say, and on Monday a proof of the application which represented the work of examiners in cooperation with the representatives of the company, a proof which represented a crystallization of that work, was submitted to the committee. In that application all the information available at that time, which had been dug out up to that time, was made available to the committee; and you will remember that in connection with that information there was comment to the effect that because of the circumstances which they outlined, there was no balance sheet of this company available. Now, that was what the committee had before it at that particular time. Subsequently there was a second proof, which contained some minor modifications, but which, again, did not have that balance sheet, because apparently that balance sheet was not there at that time, the same reasons undoubtedly having been given. Those were the only documents that were before the committee on stock list, and this information was not available to the stock list committee. Then some time between the time when the committee acted, as is very often the case, I mean sometime between when the committee acted and the time when this was finally printed—

Mr. PECORA (interposing). By word "this", as there used, do you mean the final application?

Mr. ALTSCHUL. The final document. You see, after the approval has been passed upon, and after the governing committee has acted, then the final document, which bears the stamp "Adopted by the governing committee", is printed. Between the time of action and the time of printing, in order to correct any minor matters it is possible to correct, in order to add any changes that may have been suggested, sometimes there are a few days' delay. In this instance sometime between the time when this thing was acted upon and the time when it was finally printed—and we are not in position to tell you exactly the date when that happened, although we might find out—this document which you surprised me with on yesterday, reached the committee. The office of the committee sent that document on, apparently, and made it a part of the complete record, as I have said, in line with the general policy of the committee of making publicly available any information that seems to be of interest to the stockholders, that reaches the committee. But that was not before the committee.

Mr. PECORA. When did the committee on stock list of the New York Stock Exchange act on this application?

Mr. ALTSCHUL. Do you mean the actual date?

Mr. PECORA. Yes.

Mr. ALTSCHUL. I think I have that information here some place. Just a second. [Witness looking through his papers.] By the way, have you the minute books?

Mr. PECORA. Yes; I think so.

Mr. ALTSCHUL. Well, the proofs will tell you, I think. I haven't the date here before me. And the minute book will tell you. You have the most of our papers, I am afraid, and, therefore, I cannot look it up, but would you care to look for it, or Mr. Haskell will help you find it if you wish him to do so.

Mr. PECORA. All right. [Mr. Haskell begins to look through the minute book.]

Mr. PECORA. Now, have you that date?

Mr. ALTSCHUL. They are looking it up. But, Mr. Pecora, if you care to have me do so, while they are looking up that date I will be glad to clarify matters and possibly make it easier for all of you to understand the situation, if I may, by giving you a short summary of the way these things go forward in the office.

Mr. PECORA. I thought you gave us on yesterday the procedure followed by the committee on stock list of the New York Stock Exchange in passing upon applications of this character, but if you want to add anything to it, I will be glad to have you now do so.

Mr. ALTSCHUL. I think I should like to read from a memorandum I have here, which might help to clarify that matter in your mind.

Mr. PECORA. Very well. You may proceed.

Mr. ALTSCHUL. Usually the company applying to list shares for the first time, or to list additional securities, has a representative call to discuss general aspects of the listing, character of the company and its officers and directors, and any unusual features known in advance to be involved. Such conferences are usually held with the executive assistant or the chief examiner. Should points initially raised, such as the size of the company, the distribution of its securities, or the character of its management make it appear advisable for the committee to give a preliminary consideration of the matter, the executive assistant or chief examiner submits the question to the committee to determine whether it will receive an application from the company to be considered on its merits.

Should the executive assistant or chief examiner, in the first instance, determine that the application was in proper form to be submitted in the usual way, or should the committee, after preliminary consideration, have indicated that it would be ready to receive and consider on its merits an application, the representative of the applicant is referred to a specially designated examiner. With the examiner's advice as to technical points, the applicant then prepares a printed draft of a listing application—and that is the thing I referred to a minute ago in this particular case—and the various documents which are to be submitted in support of the application.

Simultaneously, the company, or more usually the bank note company which engraves the company's securities—

Senator ADAMS (interposing). That statement to which you refer, is it after the examiner prepares a form, or is it the final work?

Mr. ALTSCHUL. I mean it is our official working in cooperation with the company which prepares it.

Senator ADAMS. All right.

Mr. ALTSCHUL. Simultaneously the company, or more usually the bank note company which engraves the company's securities, submits specimens of these to an examination by the Committee on Stock List's specialist. The actual bonds or stock certificates to be listed are examined to see if they meet the standards of the Exchange with respect to workmanship and engraving, with particular reference as to whether or not they are prepared in such manner as to make forgery difficult.

At the same time, the specimens are examined to see that, in the case of stock, full description of the various preferences and rights of the various classes of securities are described on the certificate. In the case of bonds, certificates of deposit, and other instruments, specimens are examined to see that the description of the security is accurate, that the terms are made clear, and that provisions for negotiability are satisfactorily met.

The examiner handling an application examines not only the application submitted by the company, but also the supporting documents, such as the character of the company, its bylaws, opinions of counsel, and the financial statements.

Now, I do not want to make too long a statement here, and you are certainly being very patient with me.

Mr. PECORA. Go ahead.

Mr. ALTSCHUL. Financial statements are separately referred to another examiner who specializes on such statements, for further examination. Should examination disclose any unusual provisions as may be contrary to the requirements of the committee in documents such as the charter, bylaws, mortgages, indentures, and so forth, the matter is submitted to counsel for the exchange for scrutiny. Should any important question of accounting arise, this is taken up with the chief examiner and executive assistant, and, if necessary, referred to the consulting accountants for the exchange. This period of general examination usually covers from 1 to 2 weeks, and usually involves numerous conferences between the representatives of the committee on stock list and officers, counsel, and accountants for the applicant company.

When the printed form of listing application is ready, preliminary points ironed out—and, you will understand, this is one of the two forms we were discussing a moment ago—and required documents filed or made available, the executive assistant or chief examiner then prepares a detailed written comment which is sent individually to the members of the committee—and that is of the sort I showed you on yesterday—that is sent to the committee for individual consideration several days prior to the meeting at which the committee will consider the application—and, of course, that is one of the early proofs of the application.

The committee, together with its executive assistant, chief examiner, and representative of its own counsel and consulting accountants when required, then meet to consider action to be taken with respect to the application. If the applicant is applying to list securities for the first time, or if any special points have not been satisfactorily resolved by the committee's staff, or if for any other reason the committee desires discussion with representatives of the applicant, an appearance of such representative is arranged.

Now, after being satisfied that the application itself is in order the committee considers the request of the company for listing in the light of all this information. Now, then, I just want to briefly say that then these things come up at a hearing of the committee, and the documents that are submitted are gone into on a hearing by the committee, and the committee's action is either to recommend for listing or not recommend for listing, and then from the committee it goes to the governing committee.

Now, I think that ties in our procedure to the extent of the question you are asking me, and I think there is a misunderstanding between us, which is one that is quite natural to arise, and I am sorry I did not notice it on yesterday, for, if I had, I would have drawn it to your attention. But the point is that this statement was put out for the first time in the public printed draft of the listing application which is made available, and it was not available when the committee on stock list acted. If the examiner had come across this little bit of information, which he in a routine way would incorporate in order that the public should have everything that we had, he would have said: "This is something I will have to take up with Mr. Hoxsey, to see if it would change anything done before." But I suppose he said: "This has happened, and it has no particular bearing, and this will simply give the public information."

Mr. PECORA. When you described the procedure in more detailed than you testified on yesterday, did you read it from any manuscript?

Mr. ALTSCHUL. Do you mean just now?

Mr. PECORA. Yes.

Mr. ALTSCHUL. I have a very rough outline of the procedure, something that I thought you might want.

Mr. PECORA. Would you care to make it a part of our record?

Mr. ALTSCHUL. I would be very glad to make it a part of the record. My only question is, I am wondering if it is to be a part of the record, if you wouldn't prefer to have a more finished job. This is very sketchy and is not a finished document. It only gives a very broad outline of the procedure.

Mr. PECORA. I thought it was quite detailed instead of being very sketchy. We would like to have it for the record.

Mr. ALTSCHUL. This was quickly put together, and we will go over it and see if we cannot put it in better shape.

Mr. PECORA. Mr. Committee Reporter, I assume you took down what the witness was reading?

The COMMITTEE REPORTER (Mr. Hart). Oh, yes; for I could not tell when he was reading and when he was interpolating explanations and comments.

Mr. PECORA. Well, we will have that in the record, Mr. Altschul, and if there is anything additional you can give it to us.

Mr. ALTSCHUL. All right.

Mr. PECORA. Now, Mr. Altschul, have you found out on what date the committee on stock list of the New York Stock Exchange acted upon this application?

Mr. ALTSCHUL. Have you found it, Mr. Haskell?

Mr. HASKELL. Here it is. [And he lays the minute book before the witness.]

Mr. ALTSCHUL. The meeting of the committee on stock list was held on July 10. At that meeting the application was recommended.

Mr. PECORA. At what hour of the day was the meeting held?

Mr. ALTSCHUL. That meeting would take place about 3:10 or 3:20 in the afternoon, and I think we would reach a conclusion at about 4 o'clock or 5:30 o'clock.

Mr. PECORA. Now, at that time what did the committee have before it?

Mr. ALTSCHUL. It had what I think you will find in your files, the first proof.

Mr. PECORA. Is this it? [Holding up a paper.]

Mr. ALTSCHUL. I think I can identify it better by seeing what is in it rather than by seeing what is not in it. [Looking at the paper.] I think this is it.

Mr. PECORA. It is designated as no. 1 in the upper left-hand corner.

Mr. ALTSCHUL. That is it.

Mr. PECORA. Mr. Chairman, I offer this in evidence, but it need not be spread in full on the record.

The CHAIRMAN. Let it be admitted with that understanding.

(The first proof of the printed application was thereupon marked "Committee Exhibit No. 21, Feb. 16, 1934", but will not be spread in full on the record of the hearing but kept among the committee's papers.)

Mr. PECORA. Mr. Altschul, look at that first proof and tell us if it contains a pro forma balance sheet, the one that has been under discussion here, or if it contains any reference thereto.

Mr. ALTSCHUL (after casually glancing at the paper). It does not contain a pro forma balance sheet. [Continuing to look at the paper.] And so far as I can see in a hasty examination it contains no reference to such a balance sheet.

Mr. PECORA. Do you notice the lead pencil notations across the face of the first page of that first proof, at the top of the page?

Mr. ALTSCHUL. Yes.

Mr. PECORA. How does that pencil notation read?

Mr. ALTSCHUL. That pencil notation reads [turning to Mr. Haskell]: Whose handwriting is that?

Mr. HASKELL. I don't know.

Mr. ALTSCHUL. The pencil notation reads: "Get pro forma B. S. Noxon."

Mr. PECORA. The abbreviations "B.S." meant to get a pro forma balance sheet, I take it?

Mr. ALTSCHUL. Oh, yes.

Mr. PECORA. Of Noxon, Incorporated?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Do you know the handwriting of that pencil notation?

Mr. ALTSCHUL. No; I do not. And at the bottom of the second sheet—and the reason I was hesitating was because I was looking at the printed matter—you will find in the same handwriting the statement "Pro forma or opening balance sheet of Noxon."

Mr. PECORA. Now, do you know whether or not those lead pencil notations were on the first proof at the time your committee acted on the application?

Mr. ALTSCHUL. The proof that was before the committee bore no pencil notations whatever. These were just pulls of the proof similar to this. This, apparently, is the working paper of the examiner.

Mr. PECORA. Do you mean the examiner of the committee on stock list?

Mr. ALTSCHUL. Yes, sir. I would assume—if you want me to try to interpret what this probably means?

Mr. PECORA. Yes; please do so.

Mr. ALTSCHUL. I would assume that in developing his final form this matter came up and he put this notation on there, so that when he got the proforma balance sheet, which came into the office at some subsequent date, it would be interpolated in that listing application. In other words, this was the work sheet of the examiner.

Mr. PECORA. Now, I show you another document which was produced from the records of the New York Stock Exchange, and it bears the serial stamp number, no. 10102. It is entitled "Noxon, Inc., Proforma Balance Sheet, June 27, 1933", and bears upon it a stamp which reads as follows: "Received committee on stock list, July 10, 1933, 11:54 a.m." Will you look at it and tell me if you recognize it as one of the records of the New York Stock Exchange.

Mr. ALTSCHUL. Yes; there is no doubt about that. That is one of the records of the New York Stock Exchange.

Mr. PECORA. Mr. Chairman, I offer it in evidence.

The CHAIRMAN. Let it be admitted:

(The pro forma balance sheet of Noxon, Inc., dated June 27, 1933, was marked "Committee Exhibit No. 22, February 16, 1934", and will be found at the end of the day's proceedings.)

Mr. PECORA. Now, Mr. Altschul, you will notice that this proforma balance sheet that bears the receipt stamp of the committee on stock list as of 11:54 a.m., July 10, 1933, is identical in form to the copy of this pro forma balance sheet which was put in evidence here on yesterday.

Mr. ALTSCHUL. Yes, sir; I would say it is the same document.

Mr. PECORA. Now, the committee on stock list met and passed on this application with the first proof before it, some time after 3 p.m., on July 10, 1933.

Mr. ALTSCHUL. That is correct.

Mr. PECORA. This last exhibit indicates that shortly before noon on that day this original pro forma balance sheet in question was received by the committee on stock list.

Mr. ALTSCHUL. Yes, sir; it was received in the office of the committee on stock list.

Mr. PECORA. Well, it was not brought to the attention of the committee on stock list when it met that afternoon and considered this application, you say.

Mr. ALTSCHUL. It not only was not brought to the notice of the committee on stock list, but you will remember in the comments we had before us at that time the statement was made that, because of the fact that this company had formerly been privately owned or something like that, it was said no balance sheet was available. That is my recollection of what was in that comment. Isn't that correct, Mr. Silver? So it was quite clear. We were puzzled about that on

yesterday, and I wondered if it had a time stamp on it, for I wondered when it got into the office. Apparently, from what you show us today, that was in the office at the time the committee on stock list was considering the listing application, but there was no reference made to it. On yesterday there was some question about it, but now there can be no question about it at all; and the document should have been drawn to the attention of the committee but was not drawn to the attention of the committee.

Mr. PECORA. Now, following the action taken by the committee on stock list on an application of this character, what further, under the rules, regulations, or procedure of the stock exchange, is necessary to be done before the application is finally granted or denied?

Mr. ALTSCHUL. The action of the committee on stock list is to recommend the listing; they recommend listing to the governing committee in a case such as this.

Mr. PECORA. All right.

Mr. ALTSCHUL. Then 24 hours before the next meeting of the governing committee copies of printed applications which are to be recommended by the committee on stock list, are circulated and put in the hands of the governors.

Mr. PECORA. That is, the final form of application?

Mr. ALTSCHUL. No; that is still a proof.

Mr. PECORA. It is still a proof?

Mr. ALTSCHUL. Yes; on the basis of that final proof, which is a much more finished proof. It does not look like a printer's proof but it in fact not the final form. It may turn out afterward, and very frequently does, that the form in which the thing was acted on in the governing committee is printed unchanged in the final document, but it also happens with a great deal of frequency that small modifications are made in the thing before the stamp "approved by the governing committee" is put at the bottom and it is printed and made available for general circulation.

In this particular case the application went to the governing committee, and, as I say, in the ordinary course of events it is something which may in the end turn out to be the final form, or sometimes it may be modified. It goes to the governing committee 24 hours before their Wednesday afternoon meeting, either Wednesday right after Monday, or the second Wednesday thereafter, and it is then acted upon by the governing committee. After that action by the governing committee then the thing goes back to be gotten in shape for final printing, and if there are any small changes in the document they are made before the document is finally set up and released.

Now, if you ask me at what particular moment this balance sheet got into the printed form, I cannot tell you, except that I tell you it was not there when it was before the committee on stock list.

Mr. PECORA. Was it before the governing committee?

Mr. ALTSCHUL. I do not know.

Mr. PECORA. Do you know when the governing committee acted upon it after the committee on stock list had approved it?

Mr. ALTSCHUL. On July 12. And the final application came from the printer, after all the final revisions, about—well, it went to the printer on the 13th, and was available for distribution on

the 17th of July. Some time between the time when the committee on stock list acted and the time when this thing was available for distribution in its final form, the proforma balance sheet was inserted. (Mr. Haskell then held a whispered conversation with the witness.)

The question before us just now was that Mr. Haskell was trying to help me answer as to whether or not the proof that went to the governing committee had already been corrected to the extent of including this or not, but I am not prepared to answer that question because I am not absolutely sure. I think it very likely but I am not absolutely sure, and therefore I cannot make a statement of that kind.

Mr. PECORA. Do you know whether the original proforma balance sheet that was marked in evidence this morning and which was received by the committee on stock list at 11:54 a.m. July 10, was before the governing committee when it considered this application on July 12?

Mr. ALTSCHUL. Do I know that?

Mr. PECORA. Yes.

Mr. ALTSCHUL. What was that question, again?

Mr. PECORA. Do you know whether the original pro forma balance sheet of this company which was marked in evidence this morning and which was received by the committee on stock list at 11:54 a.m. on July 10 was before the governing committee?

Mr. ALTSCHUL. No; that surely was not.

Mr. PECORA. How do you know it was not?

Mr. ALTSCHUL. Oh! I misunderstood your question. I was just trying to see whether that was in the proof that went to the printer or not.

Mr. PECORA. Do you mean whether the document itself was?

Mr. ALTSCHUL. It was not.

Mr. PECORA. How do you know that?

Mr. ALTSCHUL. Because the governing committee does not get these documents. The governing committee gets the printed application with the recommendation of the committee on stock list at the bottom. It does not get any supporting documents that are with the committee. Do you understand the point?

Mr. PECORA. Yes; I think I do. Now, Mr. Altschul, there was put in evidence here a letter addressed to Mr. Hasselbach who is connected with your committee on stock list.

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. A letter addressed by Cecil Page, secretary of the American Commercial Alcohol Corporation, dated July 1, 1933.

Mr. ALTSCHUL. Yes.

Mr. PECORA. In the body of this letter Mr. Page stated as follows to Mr. Hasselbach:

We wanted to read to you before mailing the letter Mr Colby was to write, and we wanted to give you my suggestion as to the revision of the text under "Authority for and purpose of issue"

Do you know what that letter refers to?

Mr. ALTSCHUL. No; I do not, offhand. I understand that—

Mr. PECORA (interposing). Is Mr. Hasselbach here?

Mr. ALTSCHUL. No, sir; he is not. But if you want to see whether we can find out from Mr. Hasselbach what that had reference to

and see whether his memory serves him on that point, we will be very glad to call him up and find out for you.

The CHAIRMAN. There was a letter put into the record on yesterday from Mr. Colby. Could you refer to that, Mr. Pecora?

Mr. PECORA. I was going to produce that, Mr. Chairman. Now, Mr. Altschul, that letter addressed to Mr. Hasselbach, which was marked in evidence yesterday as "Committee Exhibit No. 19", bears the stamped endorsement reading as follows:

Received, committee on stock list, July 5, 1933, 9:02 a m

And I have here a letter addressed to the committee on stock list, dated July 1, 1933, signed by Mr. Colby as the vice president and treasurer of the American Commercial Alcohol Corporation, which also bears a stamp reading:

Received, committee on stock list, July 5, 1933, 9:02 a m

Mr. ALTSCHUL. Yes.

Mr. PECORA. I show you the letter in question.

(Mr. Altschul looking at the letter.)

Mr. PECORA. Is there any doubt that it was a letter received at 9:02 a.m. by your committee on stock list on July 5, 1933?

Mr. ALTSCHUL. There is no doubt about it.

Mr. PECORA. Mr. Chairman, I offer it in evidence, but—

Mr. ALTSCHUL (interposing). I do not know just what is in evidence, but as to—

Mr. PECORA (continuing). It might be marked for identification and not be spread in full on the record.

The CHAIRMAN. Let it be so received and marked.

(A letter dated July 1, 1933, signed by Mr. Colby and addressed to the committee on stock list of the New York Stock Exchange, was marked "Committee Exhibit No. 23, for identification, February 16, 1934", and will not be made a part of the record.)

Mr. PECORA. Mr. Altschul, do you know whether that document, being the letter of Mr. Colby under date of July 1, 1933, was before the committee on stock list when it passed on this application?

Mr. ALTSCHUL. That letter was not before the committee on stock list.

Mr. PECORA. Although it was received 5 days before the meeting.

Mr. ALTSCHUL. It would not normally go before the committee on stock list.

Mr. PECORA. What goes before the committee on stock list? Merely the proof of the application and none of the supporting schedules or documents that might have been filed with the committee?

Mr. ALTSCHUL. No, sir. The file that you have subpoenaed here is always in the room, and the application is before the committee. and beyond the application there is the detailed comment of the executive assistant, and insofar as there is anything in the application that seems to require a study by the committee itself of any of the supporting papers, they are there available to us. And that isn't entirely the complete answer, because beyond the application itself, in cases of bond issues, for instance, the indenture, and documents of that sort, come along to the committee as a matter of routine. But the office correspondence, unless there is something in it that the

executive assistant feels is of such importance or has such bearing on the matter that it should be specifically brought to the attention of the committee, the office correspondence in the routine handling of the matter would not be placed before the committee.

Mr. PECORA. Doesn't it appear to you that somebody connected with the committee on stock list, perhaps the examiner, when he had before him the first proof that has been marked in evidence here this morning, saw the necessity for obtaining a pro forma balance sheet of Noxon, Inc., and wrote the lead pencil notation that appears on the face of the first proof of the application?

Mr. ALTSCHUL. Well, the evidence that has been presented here is, first of all, consistent with that theory, and it may be the correct theory. It would appear to me, however, that what very likely happened was that when this proof was drawn to the attention of Mr. Tirrell or Mr. Hoxsey, they said: Well, it would be a good thing if we could get a pro forma balance sheet. And they just put that note on there.

Mr. PECORA. Well, in due course the pro forma balance sheet came into the possession of the committee on stock list, did it?

Mr. ALTSCHUL. Right.

Mr. PECORA. Several hours before the committee on stock list acted upon and approved the granting of the application.

Mr. ALTSCHUL. That is correct. There is no doubt about that.

Mr. PECORA. Now, Mr. Altschul, I show you what is entitled "Proof No. 3" of this application for listing, dated June 27, 1933, which bears upon its face a stamp reading:

Received, committee on stock list, July 12, 1933, 10:35 a.m

Will you kindly look at it and tell us if you recognize it to be the so-called "final proof" or the final form of the printed application.

Mr. ALTSCHUL (after looking at the paper). This is proof no. 3, and it may or may not be the final form. There may have been some modifications but I could only answer that by—

Mr. PECORA (interposing). Does it contain the pro forma balance sheet?

Mr. ALTSCHUL. Yes; it does.

Mr. PECORA. Mr. Chairman, I ask that it be marked in evidence, but it need not be spread on the record.

The CHAIRMAN. Let it be received and appropriately marked but it will be understood it will not be spread on the record of the committee's hearing.

(Proof no. 3 of the application of the American Commercial Alcohol Corporation, dated June 27, 1933, containing the pro forma balance sheet, was marked "Committee Exhibit No. 24, February 16, 1934", but it will not be spread on the record, being retained in the committee's files.)

Mr. PECORA. This proof no. 3 was received at 10:35 a.m. on the day when the governing committee passed upon the action of the stock list committee on this application?

Mr. ALTSCHUL. That time stamp helps me to answer your question. I can now say to you that the listing application which contains the pro forma balance sheet was not in the hands of the governing committee at the time it acted.

Mr. PECORA. Why not? When does the governing committee act?

Mr. ALTSCHUL. It meets on Wednesday, and the proof goes to the governing committee on the Monday night preceding.

Mr. PECORA. What hour of the day on Wednesday does the governing committee meet?

Mr. ALTSCHUL. 3:10; and they have in their hands the applications that were sent to them on the Monday preceding—

Mr. PECORA. Mr. Altschul—

Mr. ALTSCHUL. Now, wait just a minute. I do not want to make any statement that is open to the slightest misconstruction. The proof is sent to the governing committee on Monday night so they may have an opportunity to familiarize themselves with the thing before the meeting on Wednesday. The proof went to the governing committee in that form on Monday night so that the members could have an opportunity to familiarize themselves with the documents they were going to act on, and they did not have this pro forma balance sheet. Beyond that there is a general folder of printed applications that are coming up for action on the desk of each member at the time they meet. In respect to that particular folder I am not in position to tell you on the basis of what I have seen so far whether this was one of the documents that was in their hands.

Mr. PECORA. By "this" you mean proof no. 3, which has just been marked in evidence as exhibit no. 24, and which contains in printed form this balance sheet?

Mr. ALTSCHUL. Yes; I am unable to tell you positively whether the sheaf of papers which they found on their desks when they got in to the meeting contained proof no. 3 or not. It is possible it may have been there, but if it was it would not have made any deep impression, because the thing that they act on really is the paper they had in their hands before and which they have had a chance to study.

Mr. PECORA. What is the necessity, then, for all these revisions of the application if the revision and the new matter included in subsequent revisions is never brought to the attention either of the stock-list committee or the governing committee?

Mr. ALTSCHUL. The revisions in general are immaterial—matters of typography and matters of that kind; and all I can say about this is that really an important new item was introduced and was drawn to nobody's attention. It was just a clear oversight in the office, and a mistake was made. That is the first time I have ever known of anything of that kind happening. I cannot explain it away on any other ground than that it was a mistake.

Mr. PECORA. In this particular instance there was new matter put into proof no. 3 which had not appeared in the first proof?

Mr. ALTSCHUL. Or the second.

Mr. PECORA. And that consisted, in part, of this pro forma balance sheet of Noxon, Inc.?

Mr. ALTSCHUL. Yes.

Mr. PECORA. And this balance sheet which you testified to yesterday would have caused the committee, in all probability, to have rejected the application if the balance sheet had been before it in committee at the time it acted.

Mr. ALTSCHUL. Correct.

Mr. PECORA. That balance sheet was in proof no. 3 of the printed form, and that proof no. 3 was received by the stock list committee at 10:35 a.m. of the day when the board of governors subsequently, at 3 p.m. that day, approved the application?

Mr. ALTSCHUL. That is right, sir

Mr. PECORA. Have you any knowledge, Mr. Altschul, of just what inquiry or examination was made for the stock list committee by its own examiners in passing upon this application?

Mr. ALTSCHUL. Apart from the general examination and discussion that is the routine examination in the office—

Mr. PECORA. Tell us what you understand to be the routine method employed by the examiners of the stock list committee in passing upon applications of this character.

Mr. ALTSCHUL. Most of that you will find in the statement which I filed with you and which I read

Mr. PECORA. The one you read from this morning?

Mr. ALTSCHUL. Yes; I think that will give you a fair picture of it. I may have something else here that would bear on that. I would like to submit, although I think you probably have this already, a list of the papers we have had submitted with applications. The examiner will check those papers and see if there are any points that seem to him important, and he will discuss them with the proper party [handing a paper to Mr. Pecora].

Mr. PECORA. I am glad you gave me this document, and I offer it in evidence.

The CHAIRMAN. It will be received.

(Document showing list of data and information required by the Stock List Committee and which must be furnished by applicants seeking listing was received in evidence, marked "Committee Exhibit No. 25, Feb. 16, 1934", and will be found in full at the end of today's record.)

Mr. PECORA. The paper which you have produced has been marked in evidence as "Committee Exhibit No. 25" of this date; and it is a list of the data and information which is required by the stock list committee or which must be furnished by applicants seeking listing. Is that it?

Mr. ALTSCHUL. Yes, sir. You will understand that this document is designed primarily to cover all the information that we want to get at the time of the initial listing and any additional listing. It may be that our files already have a great many of those documents, and in that case they do not ask for the same old things over again that the initial listing has rendered unnecessary.

Mr. PECORA. Is it fair to assume that the stock list committee depends primarily upon the examination made by its examiner of these applications?

Mr. ALTSCHUL. I would say that it depends largely on the examination. Let us put it this way: it depends upon the examination made by its examiners in the first instance. The result of their examination is in the second instance discussed with Mr. Hoxsey, Mr. Tirrell, or Mr. Haskell, here, in order that any doubtful points may be clarified and in order to assure themselves that they are going ahead as wisely as they can. After that is done the committee depends beyond that on their own personal study of these docu-

ments and the listing application, or either of them, and upon their discussion with the representatives of the company in connection with the initial application.

Mr. PECORA. You said yesterday that this pro forma balance sheet contained items which, in and of themselves, had they been brought to your notice as chairman of the Stock List Committee would have caused you to reject the application.

Mr. ALTSCHUL. I do not want to quarrel about words. Maybe those are the words that were used; but my opinion yesterday was that just the balance sheet itself, with the conspicuous items of accounts receivable and goodwill value and processes and such things would have suggested something to us that we would have wanted to inquire about.

Mr. PECORA. You notice that the balance sheet shows total assets of \$700,000, and that of that total the sum of \$380,000 represents the items of goodwill, licenses, and processes?

Mr. ALTSCHUL. Yes, sir; I remember that.

Mr. PECORA. In other words, more than half of the claimed total assets are represented by the valuation placed upon goodwill, licenses, and processes?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And that was one of the items that you said yesterday would have excited your suspicion?

Mr. ALTSCHUL. It would have excited our curiosity. I do not want to be misunderstood. There is nothing in that balance sheet, as it stands, that would necessarily have left us at the end of our investigation with the feeling that it proved that the thing was improper, because it is conceivable that the company had presented proper justification for it. But certainly if we had investigated and developed the facts that you developed yesterday it would have certainly put us upon notice to investigate.

Mr. PECORA. Such an investigation would undoubtedly have led to the offices of the American Commercial Alcohol Corporation, the applicant, would it not?

Mr. ALTSCHUL. Yes, sir; without any question.

Mr. PECORA. Do you know whether or not anybody representing the stock list committee ever went to the American Commercial Alcohol Corporation and sought any amplification of detail or information concerning this application?

Mr. ALTSCHUL. My impression would be that the pro forma balance sheet which did not come to the attention of the committee came to the office of the committee as a result of the attempts of our organization to get additional information.

Mr. PECORA. Do you know whether or not the examiners for the committee looked at the minute book of the American Commercial Alcohol Corporation in respect to this application?

Mr. ALTSCHUL. All I can say with a fair degree of certainty, sir, is that they did not, because that would not be one of the steps that would be a part of our investigation.

Mr. PECORA. Is that never one of the steps forming a part of your investigation?

Mr. ALTSCHUL. The copies of resolutions of the board authorizing the issue of the stock would be submitted, and they would be called

for as part of our requirements. But to go to the minute books of corporations in connection with those issues of additional stocks is not a part of our procedure.

Mr. PECORA. Did you ever know that a pro forma balance sheet of Noxon, Inc., this very corporation, was spread in full on the minute book of the American Commercial Alcohol Corporation in connection with minutes of the meeting of the board of directors of that corporation held on June 15, 1933, and that that pro forma balance sheet, which is dated May 8, 1933, shows total assets not of \$700,000, but of \$350,000, and that among those assets the item of good will, licenses, and processes is carried at \$30,000 instead of at \$380,000?

Mr. ALTSCHUL. No, sir; I have never had any access to the minute books of the corporation; and as a practical matter we have no access to minute books of most corporations.

Mr. PECORA. And among the liabilities on the pro forma balance sheet shown in proof no. 3 of the application filed with the Stock List Committee, the item of common stock, 6,000 shares, no par value, is carried at \$350,000, whereas the item of common stock in the pro forma balance sheet in the minute book of the corporation, 6,000 shares, no par value, is given no value at all.

Mr. ALTSCHUL. No, sir; we knew nothing about that, to the best of my knowledge and belief.

Mr. PECORA. Yesterday afternoon you testified as follows—and I am reading from the stenographic transcript of the minutes of the hearing held yesterday, at pages 265 and 266 thereof. The question put to you was as follows [reading]:

Were there not circumstances or allegations set forth in those two applications which, in and of themselves, should have operated to put the committee on notice that it ought to make an independent inquiry and not assume that the directors were acting in good faith with the stock exchange?

To which you made the following answer [reading]:

Well, as I have read these applications over since this matter came to our attention, I do not see just what there is on the face of either one of them that should have led us to think that the acquisitions of these properties were not quite within the realm of the fair business judgment of the board of directors.

Prior to your making that answer you had looked, while you were on the witness stand, at the final printed form of the application which was put in evidence yesterday afternoon and which contains this pro forma balance sheet in question?

Mr. ALTSCHUL. Yes, sir. That was at the very end of the figures. I had not come across that and did not come across it until I went over it last night again to make sure that I answered your question correctly.

Mr. PECORA. While you were on the stand yesterday you overlooked the fact that the pro forma balance sheet was printed as a part of the application?

Mr. ALTSCHUL. Yes. I was looking not at the figures—I did not go into the figures at all; I was just looking at the statements. Will you read that question again?

Mr. PECORA. The question was [reading]:

Were there not circumstances or allegations set forth in those two applications which, in and of themselves, should have operated to put the committee

on notice that it ought to make an independent inquiry and not assume that the directors were acting in good faith with the stock exchange?

Mr. ALTSCHUL. When I looked at this document which was presented to me I looked for allegations and circumstances. I read the authority for and purpose of issue and saw the business plans and propositions and saw nothing that would have aroused my suspicion. I did not go through the figures presented or the agreements or the other general matters.

Mr. PECORA. Then this pro forma balance sheet was overlooked both by the Stock List Committee and by the governing committee, because you say that by some circumstances it was not brought to their attention?

Mr. ALTSCHUL. I do not say that it was overlooked by them; I say it was never drawn to their attention.

Mr. PECORA. I say, it was overlooked by them because it was not brought to their attention?

Mr. ALTSCHUL. They did not see it.

Mr. PECORA. And it was not brought to their attention, because of the dereliction or laxity of somebody connected with the exchange?

Mr. ALTSCHUL. There was a mistake in the office of the Stock List Committee; there is no question about that.

Mr. PECORA. After these applications are granted many copies are printed of the final form of the application, are they not?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And they are distributed widely?

Mr. ALTSCHUL. Widely, and made available to the general—

Mr. PECORA. To whom?

Mr. ALTSCHUL. They are distributed in the first instance to members of the exchange.

Mr. PECORA. To all the members?

Mr. ALTSCHUL. To all the members of the exchange. Beyond that we have a large list of regular subscribers who get these things as a matter of routine, and then we have countless requests for them from all sorts of interested people. They are available to the public generally. The newspapers get them in the first instance. Right after the committee has acted, the newspapers get them. They are sent to all members on the regular mailing list and are made available on request to anybody that wants them.

Mr. PECORA. Then upon the distribution of the final form of the application which contains this pro forma balance sheet, a copy of which was received by every member of the stock exchange, not a single member had his suspicions excited by the extraordinary pro forma balance sheet that was part of the application, so far as you know?

Mr. ALTSCHUL. So far as I know, curiously; but I assume neither the stock exchange nor the great American public made the slightest comment about it.

Senator KEAN. I would like to ask a question right there. As a rule, members of the stock exchange get these in a formal way and they are filed in a book in their office, and, as a rule, the members of the stock exchange do not read these things, do they?

Mr. ALTSCHUL. Oh, I think they may look through them to see if they refer to companies in which they have some particular interest,

and then they are apt to read them very carefully. But I do not think they read all the different applications as they come along.

Mr. PECORA. This was part of the process by which, according to the extract from Mr. Whitney's speech which was read into the record yesterday, the Stock Exchange prides itself on making the most searching investigation in the world of these applications for listing?

Mr. ALTSCHUL. I do not remember Mr. Whitney's speech, but my recollection of it was that he said we had the most searching requirements of any stock exchange in the world. As I said yesterday, that is undoubtedly correct. But, Mr. Pecora, in all fairness to the Stock Exchange, I think you would probably be willing to admit that the mere fact that there is one instance of this sort of a mistake that occurred in the office it would hardly invalidate Mr. Whitney's general statement.

Mr. PECORA. I do not know that this is simply one instance. We have not examined all of the applications filed with the New York Stock Exchange for the purpose of determining in what way the committee on stock list acted on those applications.

Mr. ALTSCHUL. Right.

Mr. PECORA. This was only picked up at random.

Mr. ALTSCHUL. Yes; and in this instance—

Mr. PECORA. And the one connected with General Theatres Equipment Co. which I questioned you about yesterday afternoon, and which indicated that back in October 1929, Mr. Harley L. Clarke, who was the promoter of the company, in the last application filed with the New York Stock Exchange marked up the asset values from \$4,000,000 to \$24,000,000, approximately; and that was also another one picked up at random. The Kruger & Toll instance was another one.

Mr. ALTSCHUL. Over a period of years we are perfectly prepared to admit that there are instances of this sort; and these instances we would think were in no way inconsistent with the general statement that we do make a very thorough and painstaking and careful attempt to do whatever we can to protect the public in the matter of listing. We are trying to improve our procedure by some of the things that have been brought out in this meeting, and to suggest additional points by which it can be further improved. In connection with the American Commercial Alcohol Corporation, this was a clerical error that occurs in offices and occurs in every office of private individuals who are running their own affairs. We try to prevent their recurring too frequently. It is hard to explain it.

Mr. PECORA. Do you think that is all it is—a mere clerical error?

Mr. ALTSCHUL. In this case?

Mr. PECORA. Yes.

Mr. ALTSCHUL. Oh, yes. I do not know what the alternative is that suggests itself to you, but as far as I can see there is nothing—

Mr. PECORA. The general policy of the stock-list committee in passing upon these applications without having any balance sheet before it of the vendor corporation; that is, the corporation that is to be acquired through the issuance of the additional shares for the listing of which the application is made—that is not a mere clerical error, is it? That is a matter of policy.

Mr. ALTSCHUL. You mean, requiring a balance sheet?

Mr. PECORA. Yes.

Mr. ALTSCHUL. Well, that is a matter of policy, but it seems to us it has a certain basis in reason, although it is quite possible that we ought to revise our thinking about it. The way things function normally, boards of directors have very broad powers to work with the affairs of their corporations, and they have the right to issue their stock for property, for cash, or to use the corporation's cash for the acquisition of property, or in whatever way their business judgment dictates. The boards of directors are responsible to the stockholders for the honest discharge of their functions. When boards of directors are directing the American corporation, acting within their rights and according to the custom of American business life—suppose that they have used some stock for the purchase of property; we have not felt that the function of the stock exchange was to try to supervise or inquire into the business judgments of boards of directors or the honesty of boards of directors generally.

We can see, from what has been brought out here, that there are some points that we might want to consider, arising in future; but that has not been any oversight as far as the committee on stock list is concerned. We are perfectly prepared to admit that in some instances things like these come to your attention or to ours that show that boards of directors have done things, from evidence brought forth here today, that look to us, on the face of them, to be very questionable. But by and large American business seems to function honestly, and the actions of boards of directors in disposing of stock for property are generally based upon business considerations that are before them; and we have not felt that they go behind the action of the board of directors which the law itself does not go behind except in cases where there is an allegation of unfair dealing.

Mr. PECORA. Let us see what the policy of the stock list committee is, then. Where a corporation that already has listed its stock on the exchange wishes to make a listing of additional stock, it makes application to the exchange for that privilege, does it not?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And if that additional stock is to be issued for the acquisition of the stock of another company, that fact is required to be set forth in the application?

Mr. ALTSCHUL. The facts are required to be stated; yes, sir.

Mr. PECORA. And does the stock list committee as a matter of procedure or policy pay no attention to the information so given to it where the additional stock sought to be listed is to be given in exchange for the stock of another corporation?

Mr. ALTSCHUL. Oh, no, sir; they do pay attention to that.

Mr. PECORA. They do?

Mr. ALTSCHUL. Yes.

Mr. PECORA. Why do they pay attention to it? What do they hope to find out by paying attention to it?

Mr. ALTSCHUL. They hope to get information for the benefit of the stock exchange, in the first instance, and for the benefit of the public—

Mr. PECORA. Exactly. But in this case the original application and the first proof thereof which came before your committee set

forth in precise terms that the 15,000 shares which were to be issued and for which listing was sought were to be given in exchange for the stock of another corporation, called Noxon, Inc. Is that right?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And there was no balance sheet of Noxon, Inc., in the application when it came before your committee and when it was acted upon by your committee?

Mr. ALTSCHUL. That is right.

Mr. PECORA. Then how in the world did your committee expect to find out whether or not the exchange of stock that was contemplated was one that would be fair or one that would be fraudulent or unfair?

Mr. ALTSCHUL. You are asking a very large question, Mr. Pecora, and I do not know just how to start to answer it, but my first point would probably be that the committee on stock list does not claim to be in a position to pass upon the fairness of the transactions of boards of directors, who are primarily occupied with the business of the corporation. If the board of directors tell us that they are going to issue stock for the purchase of this company, one of two things may happen. If the thing is substantial, we may try to get some information as to just what it is that they are doing, so that the stockholders may know, in general, what they got. But suppose we get that information. Excepting in a case like this one, where there was something in the balance sheet that put us on notice that we should carry the investigation further, we would hardly be in a position to decide on the business wisdom of the transactions of the board of directors. We would get the information as best we could, for the benefit of those it might concern, but the directors are responsible to the stockholders for their business judgment. We would not know.

Mr. PECORA. Then the stock list committee takes it for granted, in passing on these applications, that the board of directors of the corporation making the application is acting in good faith.

Mr. ALTSCHUL. Yes; and applications which are supported by the opinion of reputable counsel in every instance, and which have supporting papers, would lead us to the assumption—barring something that put us on specific notice—and which I frankly admit we would have had in this particular case—we would go on the assumption that the board of directors are acting in good faith.

Mr. PECORA. That is a policy of the stock-list committee, and has been in the past, with regard to applications of this character?

Mr. ALTSCHUL. Yes.

Mr. PECORA. To assume that boards of directors of applicant corporations have acted, or proposed to act, in honesty, equity, and good faith.

Mr. ALTSCHUL. Yes.

Mr. PECORA. Not only toward their own stockholders, but toward the public.

Mr. ALTSCHUL. Oh, yes. We would consider them, in other words, innocent until we had some reason for considering them guilty.

Mr. PECORA. If corporations in general know that that is the policy of the stock-list committee, I venture to say an examination of your applications might disclose many more instances of that

sort. Is it possible for you to find out, by communication with any of your associates, who put the lead-pencil notations on the first proof of this application, about getting a balance sheet of Noxon, Inc.?

Mr. ALTSCHUL. I will ask Mr. Haskell. He would be the only one that would know. I do not recognize the handwriting. Do you recognize the handwriting, Mr. Haskell?

Mr. HASKELL. I do not.

Mr. ALTSCHUL. I think we can very easily find out by telephone. There are 10 examiners. It might have been any one of them.

Mr. PECORA. I will suspend the examination of Mr. Altschul at this point and resume the examination of Mr. Russell R. Brown. I wish you would not leave the hearing room. I would like to have you hear some other testimony which I expect to elicit from Mr. Brown.

The CHAIRMAN. You may be excused for the moment, Mr. Altschul, and Mr. Brown will take the stand.

TESTIMONY OF RUSSELL R. BROWN—Resumed

Mr. PECORA. Mr. Brown, when you were on the stand yesterday your attention was called to certain action taken by the board of directors of the American Commercial Alcohol Corporation at its meeting held, I believe, on May 25, 1933, at which the salaries of the executive officers of the corporation were fixed for the then current year. Do you recall that?

Mr. BROWN. Yes.

Mr. PECORA. The question was then asked by Senator Fletcher what those salaries were. Do you recall that?

Mr. BROWN. No. As I remember it, you, in reading the minutes, mentioned or read that off and said to me, "What were those salaries?"

Mr. PECORA. Senator Fletcher really asked the question, although the record here attributes the question to me. You answered that your salary was fixed at \$21,000.

Mr. BROWN. That is correct.

Mr. PECORA. Is that your salary?

Mr. BROWN. No, sir.

Mr. PECORA. What is it?

Mr. BROWN. \$50,000.

Mr. PECORA. Why didn't you tell that to the committee yesterday?

Mr. BROWN. You were carrying along the examination, reading those minutes, and spoke to me, and said, "What were those salaries?"

Mr. PECORA. The salaries fixed for the current year

Mr. BROWN. Yes.

Mr. PECORA. And you said \$21,000. When was your salary raised to \$50,000?

Mr. BROWN. It was fixed at the end of the year.

Mr. PECORA. That is, in December 1933?

Mr. BROWN. Yes, sir.

The CHAIRMAN. Was it then understood that the salary was to relate back?

Mr. BROWN. That is correct, sir.

The CHAIRMAN. To cover the whole year?

Mr. BROWN. Yes, sir.

Mr. PECORA. I want to read from the minutes of the board of directors' meeting held on December 28, 1933, as contained in the minute book marked in evidence yesterday as "Committee's Exhibit No. 14", as follows [reading]:

At this point Mr Brown left the room and Mr Kies took the chair. Mr. Kies, as chairman of the executive committee, reported for the committee that in view of the fact that Mr. Russell R Brown's salary had never been definitely fixed for the current year, the amounts heretofore paid him being tentative, and the determination of the total compensation being subject to revision at the close of the year when the results of his direction of the company's business could be more definitely determined, he felt that as a result of the extremely satisfactory earnings of the corporation during the year, as explained by the treasurer, Mr Brown was entitled to a very substantial salary. After a discussion of the matter, on motion duly made by Mr Atkins and seconded by Judge Foster, the following preamble and resolutions were unanimously passed:

Whereas the salary of Mr Russell R Brown, chairman of the board, as reported by the executive committee, was to be subject to revision at the close of the year,

Resolved that the salary of Mr. Russell R. Brown, as chairman of the board, for the year 1933 be, and is hereby fixed at the sum of \$50,000, and the treasurer be, and he hereby is, authorized and directed to pay same.

Further resolved that the salary of Mr. Russell R Brown for the current year be, apportioned between this corporation and the American Distilling Company in such manner as may be negotiated between the two companies and be authorized by the executive committee.

Mr. Brown thereupon reentered the room and took the chair

And also, I suppose, took the salary.

When I read the extract to you yesterday from the minutes of the meeting held on May 25, 1933, did it seem to you, from the language of the extract which I read, that the salary which you said was \$21,000 a year, fixed for you for the current year, was only a tentative salary?

Mr. BROWN. I answered the question as you read it, Mr. Pecora. The understanding at the time, both on the part of Mr. Grimm and myself—Mr. Grimm's compensation has not yet been adjusted—the understanding at the time was we all felt in the board that the matter of compensation for the active executive officers should await the results as shown by the year.

Mr. PECORA. You all felt that in May 1933?

Mr. BROWN. That is correct. We also felt, at the same time, that we might have to take lesser compensation, too.

Mr. PECORA. Then, why didn't you say yesterday afternoon, when you were questioned about the action of the executive committee of the board on the matter of fixing salaries for the year 1933—you said your salary then fixed was \$21,000. Why didn't you say it was in reality \$50,000, because the \$21,000 was purely tentative and subject to revision upward or downward?

Mr. BROWN. Simply because you were reading along there very rapidly, and then turned quickly to me and said, "What were those salaries?" and I just answered you quickly, assuming that you had seen the minute books and knew what the situation was at the time. That is my understanding. There was no intention to give you an incorrect answer.

The CHAIRMAN. What were the other salaries?

Mr. BROWN. Mr. Grimm, \$22,500.

Mr. PECORA. Was his revised upward or downward in December?

Mr. BROWN. It has not been as yet.

Mr. PECORA. That is still tentative, is it?

Mr. BROWN. That is correct.

The CHAIRMAN. Any others?

Mr. PECORA. Does Mr. Kies, as chairman of the executive committee, draw a salary?

Mr. BROWN. No.

Mr. PECORA. Mr. Kies was one of the men associated with you in making these individual options that were put in evidence yesterday?

Mr. BROWN. Yes.

Senator COUZENS. When you got the increase from \$21,000 to \$50,000, did you get it in a lump sum?

Mr. BROWN. Yes.

Senator COUZENS. Did you report it in your income-tax returns?

Mr. BROWN. It is to be reported in March of this year for December last year.

Mr. PECORA. I want to call your attention to the minutes of the meeting of the board of directors of the American Commercial Alcohol Corporation, held on June 15, 1933, as they are contained in the minute book marked "Exhibit No. 14." I want to read to you from those minutes the following extract. Before I read it, let me note who were present at that meeting [reading]:

Messrs. Atkins, Brown, Colby, Foster, Kessler, Page, Paine, Publicker, and Runk, being a majority and quorum of the board. Mr. Hersey Egginton, counsel for the corporation, was also present at the request of the board. The chairman, Mr. Brown, presided, and Mr. Page acted as secretary of the meeting.

There was then presented to the meeting the form of agreement made May 8, 1933, between Clarence C. Capdevielle and the corporation, providing, among other things, for the formation of a corporation and for the sale to this corporation of 2,700 shares of the preferred stock of the value of \$100 per share, and 3,900 shares of the no-par common stock of Noxon, Incorporated, in exchange for 15,000 shares of the common stock of this corporation. Said form of agreement was ordered marked Exhibit A and attached to the minutes.

On motion duly made, seconded and unanimously passed by the affirmative vote of all the directors present at the meeting, it was resolved that this corporation confirm the agreement with Mr. C. C. Capdevielle upon the terms and conditions set forth in said letter dated May 8, 1933, addressed to this corporation by said C. C. Capdevielle, and submitted to this meeting, the terms and provisions of which, as then made and presented, are hereby ratified, approved and confirmed.

I have read the entire resolution, but just that portion of it. That letter of Mr. Capdevielle, dated May 8, 1933, referred to in that resolution, is annexed to the minutes for this meeting of June 15, 1933, duly marked "Exhibit A." It is addressed to the American Commercial Alcohol Corporation, and in it he says, in part, as follows [reading]:

GENTLEMEN: I am proceeding to organize Noxon, Inc., under the laws of the State of Maryland, and will cause it to at once acquire certain assets as per pro forma balance sheet, as follows:

Notes receivable, \$270,000

Inventory, \$25,000

Machinery and Equipment, \$25,000.

Good will, licenses and processes, \$30,000.

Total assets, \$350,000.

Liabilities - Purchase contract payable, \$80,000.

Preferred stock, authorized, \$300,000, less unissued \$30,000, outstanding, \$270,000

Common stock, no par value, 6,000 shares, no value

Total liabilities, \$350,000.

It appears, Mr. Brown, from evidence before this committee, that a pro forma balance sheet of this company, known as Noxon, Inc., as of June 27, 1933, 12 days after this resolution was adopted by the board of directors of your corporation, shows total assets, not of \$350,000, but of \$700,000, of which the principal item is one of \$380,000 ascribed to good will, licenses, and processes. That item in this pro forma balance sheet of that corporation presented to your board on June 15, 1933, is written down at \$30,000 instead of \$380,000. How do you explain that?

Mr. BROWN. I have no explanation to make of the item. I spoke to the auditor when I heard Mr. Altschul's testimony here, and he said that he did not understand it, because ever since the books of Noxon, Inc., have been opened the item of \$380,000 in good will appears on the books. He says it has been on the books ever since.

Mr. PECORA. When were those books opened?

Mr. BROWN. At the time of the acquisition of the company.

Mr. PECORA. At the time of the acquisition of Noxon, Inc., by your corporation, on this exchange of stock basis, the books of Noxon, Inc., were opened and attributed a value of \$380,000 to the good will, licenses, and processes of the company.

Mr. BROWN. So I understand.

Mr. PECORA. And yet on June 15, 1933, 12 days before, the pro forma balance sheet of that corporation showed that item to be \$380,000 instead of \$30,000. The board of directors of your corporation acted upon Capdevielle's offer with knowledge that the assets of Noxon, Inc., were worth a total of \$350,000.

Mr. BROWN. I do not keep the books. I have no explanation to make of it. I just do not understand. Of course, the balance sheet of Noxon will not appear in the consolidated balance sheet of the American Commercial Alcohol Corporation.

Mr. PECORA. I am not talking about whether it will appear in any consolidated balance sheet. I am talking about the fact that on June 15, 1933, when you presented this offer on behalf of Capdevielle—who, you said yesterday, was your dummy—

Mr. BROWN. Yes.

Mr. PECORA (continuing). To exchange the preferred stock of Noxon, Inc., and 65 percent of its common stock for 15,000 shares of the stock of your corporation, the information given to your board was that Noxon, Inc., had total assets of \$350,000, and not of \$700,000.

Mr. BROWN. I do not know just what information was given to the board in addition to that balance sheet there, and what may be in the balance of the minutes, Mr. Pecora.

Mr. PECORA. You do not know what information was given to your board? You presided at the meeting.

Mr. BROWN. Certainly I know what information was given to the board, but I mean, on a detail like that, I just have no answer for it.

Mr. PECORA. You mean you cannot explain it?

Mr. BROWN. I cannot explain why that balance sheet is in the minutes there, and why the books of account of Noxon, Inc., carry the item of intangibles at \$380,000. I have not any idea what it is.

Mr. PECORA. Didn't you ever know that this was in the minute book?

Mr. BROWN. I do not read the minute books at the meetings. I just do not remember those things.

Mr. PECORA. Didn't you ever know that this pro forma balance sheet of Noxon, Inc., was in your minute book?

Mr. BROWN. I probably knew at the time; yes, sir.

Mr. PECORA. Mr. Cecil Page, you say, was the secretary of your corporation, the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct.

Mr. PECORA. He is still the secretary?

Mr. BROWN. Yes, sir.

Mr. PECORA. And he is a lawyer?

Mr. BROWN. Yes.

Mr. PECORA. Mr. Page, as secretary, signed the application to the stock exchange for permission to list the 15,000 additional shares of stock that were to be issued in exchange for the stock of Noxon, Inc., did he not?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. Mr. Page signed these minutes of the board of directors?

Mr. BROWN. Yes, sir.

Mr. PECORA. Mr. Page, according to these minutes, was present at the meeting on June 15, 1933?

Mr. BROWN. Yes, sir.

Mr. PECORA. And acted as secretary of the meeting?

Mr. BROWN. That is correct.

Mr. PECORA. Is this the first time that this discrepancy has been called to your attention, Mr. Brown?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you ever read the application for listing these additional 15,000 shares, filed with the New York Stock Exchange?

Mr. BROWN. No, sir.

Mr. PECORA. Do you know who prepared it?

Mr. BROWN. I saw that Mr. Page signed it, so I assume it was prepared by him or someone in the accounting department.

Mr. PECORA. In view of the fact that Mr. Capdevielle, who signed the offer embodied in this exhibit A, forming part of the minutes of the meeting of your board on June 15, 1933, was your dummy, how can you escape responsibility for the statements made by Mr. Capdevielle in his offer to your company?

Mr. BROWN. I am not seeking to escape any responsibility.

Mr. PECORA. Did you know that on May 8, 1933, the good will, licenses, and processes of Noxon, Inc., were estimated to be worth only \$30,000?

Mr. BROWN. My only answer to you on that, in consideration of the whole proposition, is that the only thing with which I concerned myself was, assuming that an interest in this organization was acquired by American Commercial Alcohol Corporation, what were the possibilities, based on continuation of the type of business which was being taken over, including the nickel polish, the proposed agricultural spray, and items which we felt would work in well with

the alcohol business. That is the one thing that I wanted to concern myself with.

Mr. PECORA. You knew all those things on June 15, 1933, did you not?

Mr. BROWN. Considerable discussion was had of the entire Noxon purchase. It originally was taken up in January 1933.

Mr. PECORA. But you knew, on June 15, 1933, what Noxon, Inc., was intended for.

Mr. BROWN. I do not know just what you mean.

Mr. PECORA. You knew that it was intended to take over certain licenses and processes of the Noxon Chemical Products Co.

Mr. BROWN. That is correct.

Mr. PECORA. That was owned substantially by one individual, a Mr. Nottebaum.

Mr. BROWN. Yes; I think there were probably about 12 or 15 other stockholders.

Mr. PECORA. And you knew that all those processes and licenses involved the manufacture of these insecticides, and these other products that you have already testified about?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you knew, on June 15, 1933, that all those licenses and processes, plus the good will of Noxon, Inc., which you testified yesterday you caused to be organized—

Mr. BROWN. Yes, sir.

Mr. PECORA (continuing). Were worth only \$30,000.

Mr. BROWN. I did not say it was worth only \$30,000.

Mr. PECORA. When your dummy, Capdevielle, submitted this letter of offer to the directors of your company on June 15, 1933, that is exactly what he said it was worth; is it not?

Mr. BROWN. That is correct.

Mr. PECORA. And when Capdevielle says that is what it is worth, in reality, you are saying that is what it is worth, because he was your chosen dummy; is not that right?

Mr. BROWN. From that angle you are correct.

Mr. PECORA. I want to read this letter of Capdevielle, which forms part of the minutes of the meeting of the board of the American Commercial Alcohol Corporation on June 15, 1933, into the record, because I think it is important, and we will not have the minute book as a permanent record of the committee. The letter reads as follows [reading]:

MAY 8, 1933.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
405 Lexington Avenue, New York, N Y

GENTLEMEN. I am proceeding to organize Noxon, Incorporated, under the laws of the State of Maryland, and will cause it to at once acquire certain assets as per pro forma balance sheet, as follows

Notes receivable, \$270,000

Inventory, \$25,000.

Machinery and Equipment, \$25,000

Goodwill, licenses, and processes, \$30,000

Total assets, \$350,000.

Liabilities: Purchase contract payable, \$80,000.

Preferred stock, authorized, \$300,000, less unissued, \$30,000; outstanding, \$270,000.

Common stock, no par value, 6,000 shares, no value.

Total liabilities, \$350,000

Noxon, Inc., will have an exclusive license agreement running from Mr. Ralph Nottebaum, for the manufacture of cleaner polish, floor wax, and house-

hold insecticides now being marketed under the registered trade name of "Noxon." It will also possess certain options from Mr. Nottebaum in connection with a plant spray to be manufactured or developed under the trade name of "Toxon." Copy of the contract with said Nottebaum covering the plant spray is attached hereto and made a part hereof.

The preferred stock will be \$100 par value, six percent cumulative, non-voting, callable at 105 at the option of the company. Of the 6,000 shares of no par common voting stock 3,900 shares will be in my possession and 2,100 in the possession of Nottebaum and/or his nominees or assignees. The stock issued to Nottebaum in connection with a certain royalty arrangement, copy of the contract covering said royalty arrangement being attached hereto and made a part hereof goes to said Nottebaum in full payment for the licenses, processes, et cetera.

I offer to exchange the said 3,900 shares of no par common stock of Noxon, Inc. and the 2,700 shares of said preferred stock of Noxon, Inc. for 15,000 shares of \$20 par value common stock of American Commercial Alcohol Corporation and further offer to cause said Noxon, Inc. to enter into a contract for ten years with American Commercial Alcohol Corporation for the purchase of its supplies, materials, et cetera, as per copy herewith, and to assign to American Commercial Alcohol Corporation all rights and interest of Noxon, Inc., and myself in said plant spray.

Very truly yours,

(Signed) C O CAPDEVILLE,

Accepted May 8, 1933

AMERICAN COMMERCIAL CORPORATION,

By (Signed) R H GRIMM, *President*

Senator COUZENS. Did your directors know that this man was your dummy when this was read?

Mr. BROWN. Yes. They knew the arrangement.

Mr. PECORA. The directors knew it because, as you said yesterday, you had told them so informally but not at any formal meeting of the board?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Now, you testified yesterday that a syndicate was formed on or about May 31, 1933, to underwrite the forty thousand-odd shares of additional common stock of American Commercial Alcohol Corporation which was to be offered to the stockholders in the markets of their preemptive rights.

Mr. BROWN. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic reproduction of that syndicate agreement. Will you look at it and tell me if you recognize it to be a true and correct copy thereof?

Mr. BROWN (after examining document). Yes; it is.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Agreement dated May 31, 1933, between American Commercial Alcohol Corporation, Thomas E. Bragg, and syndicate participants, was thereupon designated "Committee Exhibit No. 26, February 16, 1934", and the same appears in full in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The syndicate agreement in question, marked "Committee's Exhibit No. 26" of this date, reads as follows [reading]:

AGREEMENT, dated as of the 31st day of May, 1933, between AMERICAN COMMERCIAL ALCOHOL CORPORATION, a Maryland Corporation (hereinafter called the Company), party of the first part; THOMAS E BRAGG, as Syndicate Manager (hereinafter called the Syndicate Manager), party of the second part; and the SYNDICATE PARTICIPANTS who may become parties hereto in the manner hereinafter provided (hereinafter called the Syndicate Participants (or the Syndicate)), parties of the third part, every such Syndicate Participant being

bound only to the extent of his or its own subscription, and not for any subscriber or subscription.

1 The Syndicate Manager agrees to form a syndicate upon the terms hereinafter set forth within twenty-four hours after the offer to stockholders specified in paragraph Second of this Agreement has been mailed. When the Syndicate Manager has formed such syndicate, notice thereof in writing shall be given by the Syndicate Manager to the Company and not later than three o'clock P.M., Daylight Saving Time, on June 7, 1933, and after the Syndicate Manager shall have given such notice the Syndicate Manager shall be obligated at any time thereafter, upon the request of the Company, to furnish it with a list of Participants in the Syndicate and with the amounts of their respective participations. After the Syndicate Manager has given such notice to the Company, the Syndicate Manager shall have no further obligation to the Company hereunder except to the extent that the Syndicate Manager may be a Syndicate Participant.

2 The Company agrees to pay the Syndicate Manager, as compensation for his services in forming such Syndicate, the sum of \$1.00 per share upon each of the 40,949 shares of the Common Stock of the Company of the par value of \$20, each to be underwritten by the Syndicate as hereinafter provided.

The terms of the agreement of the Company with the Syndicate are as follows.

FIRST. Thomas E Bragg is to be the Syndicate Manager

SECOND: The Company agrees to offer not later than three o'clock P.M. Daylight Saving Time, June 6, 1933, to the holders of its Common Stock the right to subscribe at \$20 per share to 40,949 shares of its Common Stock of the par value of \$20 per share, pro rata in proportion to the number of shares of said Common Stock held by each stockholder of record at three o'clock P.M. Daylight Saving Time, on June 14, 1933, such right to subscribe to be exercised on or before three o'clock P.M. Daylight Saving Time, on July 5, 1933, and to be evidenced by transferable warrants. The Company agrees to deliver to the Syndicate Manager not later than six o'clock P.M. Daylight Saving Time, June 6, 1933, an affidavit sworn to by an officer of its Transfer Agent certifying that a copy of said offer has been mailed prior to three o'clock P.M. Daylight Saving Time on June 6, 1933, to each stockholder of record.

THIRD The Company agrees to give the Syndicate Manager notice on or before July 7, 1933, of the number of shares out of the 40,949 hereinbefore mentioned which have not been subscribed for by the holders of subscription warrants.

FOURTH. The Syndicate Participants agree to purchase, subject to the terms and conditions herein contained and pro rata to the amounts of their respective participations, such part or all of such 40,949 shares of the Common Stock of the Company as shall be stated in the notice provided for in paragraph THIRD hereof as not having been subscribed for by the holders of subscription warrants, and to pay therefor the price of \$20 per share, and the Company agrees to sell to the Syndicate Participants said stock for such price.

Payment is to be made by the Syndicate Participants to the Company of the purchase price against delivery to the Syndicate Manager at the time hereinafter specified of permanent certificates for shares of the said Common Stock of the Company. The certificates for such stock shall be issued in such name or names and in such denominations as the Syndicate Manager shall request. If the notice provided for in paragraph THIRD hereof shall state that the entire 40,949 shares of said Common Stock of the Company have been subscribed for by the holders of the Common Stock of the Company, then the Company agrees that the compensation payable to the Syndicate Manager pursuant to the provisions of this paragraph will be paid to the Syndicate Manager simultaneously with the delivery of such notice.

FIFTH If the notice provided for in paragraph THIRD hereof shall state that less than 40,949 shares of said Common Stock of the Company have been subscribed for by the holders of the Common Stock of the Company, the Syndicate Manager agrees to give at least two days' notice to the Company of the date upon which the Syndicate Participants will take delivery of the shares they are obligated to purchase pursuant to paragraph FOURTH hereof, which date shall be not later than three o'clock P.M. Daylight Saving Time July 10, 1933. The place of delivery shall be at the office of the Syndicate Manager, No. 52 Wall Street, Borough of Manhattan, New York City.

SIXTH: The obligation of the Syndicate Participants hereunder is subject to the following conditions, and the Company warrants and represents to the Syndicate Participants:

That the stock to be purchased by the Syndicate Participants is validly issued and fully paid and non-assessable, and has been listed on the New York Stock Exchange, and that the Company has performed all of the obligations on its part then to be performed hereunder

SEVENTH The Syndicate Manager may, without the consent of the Syndicate Participants, modify or amend this agreement with the consent of the Company

EIGHTH Notices under this agreement shall be in writing and if to the Company shall be sufficient in all respects if delivered in person or sent by registered mail to the Chrysler Building, No 405 Lexington Avenue, Borough of Manhattan, City of New York

NINTH It is further understood that the liability of the Syndicate Participants hereunder shall be limited to the extent of their respective participation in said Syndicate.

TENTH: Failure of any Syndicate Participant to perform any of his or its undertakings under this agreement will not affect or release any other Syndicate Participant, and upon such failure the Syndicate Manager shall have the right to exclude such failing Syndicate Participant from further interest and participation in the Syndicate and to forfeit any payment he may have made. The Syndicate Participants may hold such Syndicate Participant liable for any damages on account of such failure

ELEVENTH: The Syndicate Manager shall not be liable under any of the provisions of this Agreement, or for any matter connected therewith except in each instance for good faith and the exercise of reasonable diligence. The Syndicate Manager may become a Syndicate Participant hereto and in that event he shall be liable for his participation in the Syndicate and shall participate in the profits and losses of the Syndicate in the same way as and ratably with other Syndicate Participants. All expenses of the Syndicate Manager, including counsel fees, brokers' commissions, etc., shall be charged to the Syndicate Participants

TWELFTH Each and every party hereto, upon reasonable request, will from time to time execute, deliver and perform all further written agreements necessary or appropriate to carry this agreement into effect

THIRTEENTH: The respective Syndicate Participants on signing this Agreement shall set opposite their respective names the amount of their respective participations and shall be liable ratably only for the amount of their respective participations. Anything herein contained or otherwise shall not constitute the Syndicate Participants partners with the Syndicate Manager or with one another, or render them liable to contribute more than such ratable amounts as aforesaid

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed in its name and upon its behalf by its President or one of its Vice-Presidents, attested under its corporate seal by its Secretary or one of its Assistant Secretaries, and this Agreement has been executed by the Syndicate Manager and the Syndicate Participants have each subscribed one of said originals or a counterpart thereof as of the day and year first above written

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By R H GRIMM, *President*

ATTEST

Cecil Page,
Secretary

T E Bragg, Syndicate Manager.

And then the participants and the amount of their subscriptions respectively, as follows [reading]:

T E Bragg, 52 Wall St \$102,370 00
K B Phagan, 25 W 43rd St 20475 00
C C Capdevielle, 12 W 44th St 81,898 00

Now, Mr. Brown, the Mr. Phagan and Mr. Capdevielle who were subscribers or participants to this syndicate agreement were the same men that you selected as your two dummies in the transactions you have already testified about?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Were they acting as your dummies also in this syndicate agreement?

- Mr. BROWN. Not entirely, no.
- Mr. PECORA. Not entirely?
- Mr. BROWN. No.
- Mr. PECORA. To what extent did they?
- Mr. BROWN. My participation in there was 10 percent.
- Mr. PECORA. Your participation in this syndicate agreement was 10 percent?
- Mr. BROWN. Yes.
- Mr. PECORA. And in whose name was that participation concealed?
- Mr. BROWN. Mr. Phagan's, I believe.
- Mr. PECORA. Mr. Phagan?
- Mr. BROWN. Yes.
- Mr. PECORA. What other officers and directors of the American Commercial Alcohol Corporation had a hidden interest in this syndicate agreement?
- Mr. BROWN. The same names as I gave you yesterday, I believe.
- Mr. PECORA. What?
- Mr. BROWN. The same names and the same proportions as I gave you yesterday.
- Mr. PECORA. The same names and the same proportions that you gave me yesterday. Well, who are they, in addition to yourself—Mr. Grimm?
- Mr. BROWN. Do you want just the officers and directors?
- Mr. PECORA. Among the officers and directors.
- Mr. BROWN. You want the split-up of those names, don't you?
- Mr. PECORA. Yes.
- Mr. BROWN. Mr. Phagan had 5,000 for himself.
- Mr. PECORA. Mr. Phagan had 5,000 for himself?
- Mr. BROWN. That is correct.
- Mr. PECORA. Although his subscription is for 25 percent of the total issue of 15,000 shares?
- Mr. BROWN. That is correct.
- Mr. PECORA. What else?
- Mr. BROWN. Mr. Grimm, 10,000.
- Mr. PECORA. Mr. Grimm, 10,000. That was the president of your company?
- Mr. BROWN. That is correct, sir.
- Mr. PECORA. That gave this option?
- Mr. BROWN. That is correct.
- Mr. PECORA. That made this syndicate agreement?
- Mr. BROWN. That is correct.
- Mr. PECORA. Yes.
- Mr. BROWN. I was down for 10 percent, too.
- Mr. PECORA. You had 10 percent?
- Mr. BROWN. Yes.
- Mr. PECORA. That makes the 25 percent interest of Phagan, doesn't it?
- Mr. BROWN. That is right.
- Mr. PECORA. That is, Phagan's 25 percent interest represented only 5 percent for himself, 10 percent for you, 10 percent for Grimm?
- Mr. BROWN. That is correct.
- Mr. PECORA. Capdevielle's interest, or the extent of his participation in this syndicate, was 10 percent, wasn't it?

- Mr. BROWN. Yes.
- Mr. PECORA. And who were represented in that 10-percent interest of Capdevielle?
- Mr. BROWN. Mr. Philip Publicker 5 percent.
- Mr. PECORA. Mr. Publicker had 5 of the 10 percent?
- Mr. BROWN. Yes.
- Mr. PECORA. He is one of the directors of American Commercial Alcohol?
- Mr. BROWN. That is correct, sir. I will have to get those others.
- Mr. PECORA. Well now, didn't you have a 4-percent interest, too?
- Mr. BROWN. No. No, sir.
- Mr. PECORA. How much of the 10 percent did Capdevielle have?
- Mr. BROWN. Capdevielle had 1 percent.
- Mr. PECORA. Who had the other 4?
- Mr. BROWN. Mrs. Ewing, my secretary, had 1 percent.
- Mr. PECORA. In her beneficial right?
- Mr. BROWN. Yes; and so retained it and put up the money. W. J. Butler 1,000.
- Mr. PECORA. One thousand what; dollars?
- Mr. BROWN. Yes; \$1,000.
- Mr. PECORA. Would that represent 1 percent?
- Mr. BROWN. Yes, sir.
- Mr. PECORA. Who is Butler?
- Mr. BROWN. Butler is a member of C. E. Welles & Co.
- Mr. PECORA. That is a stock brokerage firm?
- Mr. BROWN. Yes, sir.
- Mr. PECORA. Were they your brokers?
- Mr. BROWN. Yes, sir.
- Mr. PECORA. Is your brother a partner of that firm?
- Mr. BROWN. Yes, sir.
- Mr. PECORA. All right.
- Mr. BROWN. And then H. S. Brown, my brother, had 2 percent.
- Mr. PECORA. Yes; that makes up 10 percent; that was taken in Capdevielle's name?
- Mr. BROWN. That is correct.
- Mr. PECORA. What other persons had hidden or concealed interests in this syndicate?
- Mr. BROWN. Humphrey W. Chadbourne, 5,000.
- Mr. PECORA. He is a director of the American Commercial Alcohol?
- Mr. BROWN. Director.
- Mr. PECORA. Yes. How about Mr. Kies?
- Mr. BROWN. W. S. Kies, 10 percent.
- Mr. PECORA. He is chairman of the executive committee of the American Commercial Alcohol?
- Mr. BROWN. Yes.
- Mr. PECORA. What was the extent of his interest?
- Mr. BROWN. Ten percent.
- Mr. PECORA. All right. Who else?
- Mr. BROWN. I guess that covers it, then.
- Mr. PECORA. How about a Mr. L. B. Manning?
- Mr. BROWN. I never knew anything about Mr. L. B. Manning until, I think, some of your gentlemen advised me.

Mr. PECORA. That is, you never knew it until we found it out for you?

Mr. BROWN. That is correct; yes.

Mr. PECORA. Do you know who L. B. Manning is?

Mr. BROWN. I think he is an associate of Mr. Cord's.

Mr. PECORA. Of Mr. who?

Mr. BROWN. Of Mr. Cord.

Mr. PECORA. E. L. Cord?

Mr. BROWN. Yes.

Mr. PECORA. What is Mr. Manning's business?

Mr. BROWN. I don't know. I don't know the man.

Mr. PECORA. He is a market operator, too, isn't he?

Mr. BROWN. Not that I know of.

Mr. PECORA. Who else had a hidden interest in this syndicate or in the profits of this syndicate?

Mr. BROWN. I don't know.

Mr. PECORA. How about J. W. Bower?

Mr. BROWN. I don't know who he is.

Mr. PECORA. You have heard of his having an interest, a hidden interest, in this?

Mr. BROWN. Yes; I saw his name there. I don't know who he is.

Mr. PECORA. How about L. Young? Who is L. Young?

Mr. BROWN. I don't know. That was the one that you just said was Mr. Manning, wasn't it?

Mr. PECORA. Yes; Manning's interest was covered by L. Young, in L. Young's name.

Mr. BROWN. I don't know that.

Mr. PECORA. Who is C. C. Conway?

Mr. BROWN. President of the Continental Can Corporation.

Mr. PECORA. Did he have an interest in this syndicate?

Mr. BROWN. Yes, sir.

Mr. PECORA. In the profits of it?

Mr. BROWN. Yes, sir.

Mr. PECORA. We know that Thomas E. Bragg had an interest and he was the syndicate manager. Now, how about J. L. Kauffman?

Mr. BROWN. That is Mr. Kies.

Mr. PECORA. That is, Mr. Kies' hidden interest was further hidden in the name of Kauffman; is that right?

Mr. BROWN. That is correct; yes.

The CHAIRMAN. Was there nothing in writing regarding these secret or hidden interests?

Mr. BROWN. No. I have no correspondence as far as I was concerned.

Mr. PECORA. What is Mr. J. L. Kauffman's business?

Mr. BROWN. I think he is a lawyer.

Mr. PECORA. What was the interest that a Mr. Whanger had?

Mr. BROWN. I don't know the man.

Mr. PECORA. You don't know the man?

Mr. BROWN. No, sir.

Mr. PECORA. Didn't you ever hear of him?

Mr. BROWN. No, sir.

Mr. PECORA. This is the first time you have heard of Mr. Whanger?

Mr. BROWN. Yes, sir.

Mr. PECORA. Is Mr. Whanger in the hearing room?
(A man rose in the body of the hearing room.)

Mr. PECORA. Do you recognize Mr. Whanger, the gentleman who has just arisen?

Mr. BROWN. No, sir.

Mr. PECORA. Thank you, Mr. Whanger. Now, you said yesterday that this underwriting syndicate was formed and originally was to receive \$2 a share commission.

Mr. BROWN. That was the basis of the original discussion with Mr. Bragg; yes, sir.

Mr. PECORA. The syndicate agreement that I have just read in evidence provides for a commission of \$1 a share.

Mr. BROWN. That is correct.

Mr. PECORA. When was the change made?

Mr. BROWN. During the course of the negotiations.

Mr. PECORA. This agreement is dated May 31, 1933. How long before that had the negotiations which culminated in this underwriting agreement been initiated?

Mr. BROWN. Just several days before.

Mr. PECORA. On May 31, 1933, as I recall the quotations that were read into the record yesterday, the common stock of American Commercial Alcohol Corporation was quoted in trades on the New York Stock Exchange at prices ranging from a low of about 30 to a high of 33.

Mr. BROWN. Yes.

Mr. PECORA. You recall that?

Mr. BROWN. I believe that is correct; yes, sir.

Mr. PECORA. Now, it was when the market price of this stock was from 30 to 33 dollars a share that this underwriting agreement was made with Thomas E. Bragg as syndicate manager?

Mr. BROWN. That is correct.

Mr. PECORA. To distribute the 40,949 shares provided for in this agreement at \$20 a share to the stockholders of record who cared to subscribe for it?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. Well, in view of the fact that the stockholders of record were to have the privilege of subscribing for this common stock at \$20 a share at a time when it was selling in the market for from 30 to 33 dollars a shares, was there any doubt at all in your mind that the stockholders would absorb the entire issue of 40-odd thousand shares?

Mr. BROWN. That I cannot answer, except that I can say that at that time apparently people felt that repeal was going to come along and—

Mr. PECORA. That would make this stock more valuable, wouldn't it?

Mr. BROWN. That might go along.

Mr. PECORA. Yes. And was there the slightest—

Mr. BROWN (interposing). Oh, certainly.

Mr. PECORA. Mr. Brown, tell us frankly, was there the slightest vestige of doubt in your mind on May 31, 1933, when this underwriting agreement was made, but that the stockholders of record would subscribe eagerly at \$20 a share for all of these 40,000-odd shares?

Mr. BROWN. Yes; but I think there is a period of time which those rights would extend over. I do not think anyone with any certainty could forecast the action of the market for the next 30 days or whatever the period might be. I at least hoped that it would go over, because those additional funds would come in very handy in the corporation.

Mr. PECORA. How many of the stockholders of record actually did avail themselves of their preemptive right to subscribe for these 40,000-odd shares?

Mr. BROWN. I think all except about 700 shares.

Mr. PECORA. All but about 700 shares?

Mr. BROWN. That is right.

Mr. PECORA. Was subscribed for by the stockholders?

Mr. BROWN. That is correct.

Mr. PECORA. You subscribed for your full share?

Mr. BROWN. Yes, sir.

Mr. PECORA. As one of the stockholders of record at that time?

Mr. BROWN. Yes, sir.

Mr. PECORA. So did Mr. Kies?

Mr. BROWN. I believe so.

Mr. PECORA. I presume, and all the other officers and directors?

Mr. BROWN. I presume so. I don't know.

The CHAIRMAN. Then this syndicate handled only 700 shares?

Mr. BROWN. It only had to take up approximately 700 shares. I think some stockholders came in afterward, some delays, and they might have picked up a hundred additional shares after the expiration date.

Mr. PECORA. Mr. Brown, did you ever tell the directors of your company about the secret interest you had in this underwriting agreement?

Mr. BROWN. I spoke to them all individually and told them.

Mr. PECORA. Eventually?

Mr. BROWN. Individually.

Mr. PECORA. Oh, individually?

Mr. BROWN. And told them of it; yes.

Mr. PECORA. And they all approved of it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Thought it was very fair practice, did they; good ethical conduct?

Mr. BROWN. That they did not say.

Mr. PECORA. How?

Mr. BROWN. That they did not say.

Mr. PECORA. Not one of them criticized you for it?

Mr. BROWN. No.

Mr. PECORA. Did you tell them after the agreement had been executed?

Mr. BROWN. I believe I told them afterwards, or about that time. I cannot tell what time I told them.

Mr. PECORA. Were the stockholders ever told of your secret interest in this underwriting agreement?

Mr. BROWN. Plenty of stockholders have been told about it. I mean friends of mine.

Mr. PECORA. I imagine all the stockholders will be told about it

Mr. BROWN. Probably. [Laughter.]

Mr. PECORA. But did you tell any stockholders or did you cause any announcement or statement to be conveyed to your stockholders?

Mr. BROWN. I did not.

Mr. PECORA. Of the fact that you and other officers and directors of the corporation had a secret and concealed interest in this underwriting agreement?

Mr. BROWN. I issued no statement or no announcement to that effect. I called people who were larger stockholders in the company.

Mr. PECORA. The larger stockholders sat with you on the board of directors?

Mr. BROWN. Oh, no; not necessarily.

Mr. PECORA. No?

Mr. BROWN. Not necessarily.

Mr. PECORA. And did they all approve of it, too?

Mr. BROWN. There was no objection as far as I know.

Mr. PECORA. Did you tell them after May 31 or before?

Mr. BROWN. There was no objection recorded by any of them, Mr. Pecora, that I spoke to, because, as I have pointed out to you before, the financial necessities of the corporation were such that it was important that this money be brought into the company.

Mr. PECORA. The financial necessities of the corporation were not important enough to justify your obtaining a secret profit as a secret participant in this underwriting agreement, were they?

Mr. BROWN. I still maintain, as I indicated to you before, that this entire transaction instead of netting me a profit resulted in a loss.

Mr. PECORA. I am not asking you about that; I am asking you about this particular thing.

Mr. BROWN. I did not catch that question.

Mr. PECORA. Read the question to him.

The SHORTHAND REPORTER (Mr. Randolph) [reading]:

The financial difficulties of the corporation were not important enough to justify your obtaining a secret profit as a secret participant in this underwriting agreement, were they?

Mr. BROWN. It might have been handled in a different way; yes, sir.

Mr. PECORA. Now, Mr. Brown, whose idea was it originally to form this underwriting syndicate?

Mr. BROWN. I think it came—as I remember the situation, it developed out of this: In discussions with Mr. Bragg he felt that some of the larger stockholders in the company should go along in order to show their good faith, and that was the basis of my entering into it.

Mr. PECORA. And those large stockholders included you?

Mr. BROWN. Yes, sir.

Mr. PECORA. And the other officers?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, Mr. Brown, in view of the fact that you say you told all the directors individually of your secret interest in this underwriting agreement, in view of what you have just said concerning the judgment of Mr. Bragg with respect to the formation of this underwriting syndicate, why didn't you openly become a member of the syndicate and obligate yourself by your signature to its terms and provisions and liabilities, if any?

Mr. BROWN. I perhaps should have done that.

Mr. PECORA. But why didn't you? I think perhaps you should have done it too, if you were going to do it at all. But that was not the question; the question was, why didn't you?

Mr. BROWN. Phagan was acting as my nominee.

Mr. PECORA. What is that?

Mr. BROWN. Phagan was acting as my nominee.

Mr. PECORA. And Capdevielle also?

Mr. BROWN. Not for me; no.

Mr. PECORA. Phagan assumed the liabilities, if any were to accrue under this agreement, didn't he?

Mr. BROWN. That is correct, but he certainly understood that I assumed my proportion.

Mr. PECORA. Assumed you would make good?

Mr. BROWN. That is correct, my proportion.

Mr. PECORA. Under this underwriting agreement, the corporation, your corporation, obligated itself to pay approximately \$40,000 as a commission to this syndicate?

Mr. BROWN. That is correct.

Mr. PECORA. Syndicate Manager Bragg?

Mr. BROWN. That is correct.

Mr. PECORA. And it did pay it?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you shared in that \$40,000?

Mr. BROWN. I shared in the result of the operation.

Mr. PECORA. Did you agree with Bragg that it was necessary or would be advisable to organize an underwriting syndicate that would obligate itself to take over at \$20 a share such shares as were not subscribed for by the stockholders of record, in view of the fact that at the time the stockholders were invited to subscribe at \$20 a share the stock was selling in the open market for from \$30 to \$33 a share?

Mr. BROWN. Yes; but I had seen the stock—

Mr. PECORA (interposing). Do you think it was fair to subject your corporation to that additional expense of \$40,000 under those circumstances?

Mr. BROWN. I think it is fair under these circumstances, because after all, I felt that the charge was purely nominal. I think it was absolutely necessary.

Mr. PECORA. A dollar a share represented 5 percent of the par value of the stock and 5 percent of the subscription price to the stockholders, didn't it?

Mr. BROWN. That is correct, sir.

Mr. PECORA. And that is purely nominal, is it?

Mr. BROWN. In my opinion; yes, sir.

Mr. PECORA. What benefits did you think your corporation would get under this underwriting agreement?

Mr. BROWN. I thought that the company would be placed in a splendid financial position, and my judgment in that connection I think is evidenced by the situation in which the company finds itself today.

Mr. PECORA. What benefits did you think would accrue to your corporation, not from the issuance of these 40-odd thousand shares

to its stockholders at a price substantially below the market, but from this underwriting agreement under which your corporation obligated itself to pay a commission of 5 percent?

Mr. BROWN. I thought that I was assisting in assuring the company of the success of the underwriting.

Mr. PECORA. That is, you want to assure that all of the shares would be subscribed for at \$20 a share?

Mr. BROWN. I wanted to be sure that all of the money could come into the corporation.

Mr. PECORA. Yes, and the money would come in only through the sale of the 40,000-odd shares covered by this underwriting agreement; isn't that so?

Mr. BROWN. Such stock as was not subscribed for.

Mr. PECORA. Would have to be taken back by the underwriters?

Mr. BROWN. Yes, sir.

Mr. PECORA. And two of the three underwriters were dummies as to whose financial responsibility you gave us some evidence yesterday?

Mr. BROWN. Yes, sir.

Mr. PECORA. You said yesterday while you were on the stand that there was a pool agreement also entered into?

Mr. BROWN. Yes, sir.

Mr. PECORA. When?

Mr. BROWN. Approximately the same time.

Mr. PECORA. Same time as this underwriting agreement?

Mr. BROWN. The same, approximately.

Mr. PECORA. I show you a document which appears to be or purports to be an original agreement. Will you look at it and tell me if that is the agreement under which this pool was formed?

Mr. BROWN. That is correct.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Pool agreement dated May 2, 1933, between Thomas E. Bragg and K. B. Phagan et al., was thereupon designated "Committee Exhibit No. 27, Feb. 16, 1934", and appears in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The agreement has been marked in evidence as "Committee's Exhibit No. 27" and is dated May 2, 1933, and is made "by and between Thomas E. Bragg, hereinafter called the manager, party of the first part, and the persons other than the manager who shall subscribe their names hereto, parties of the second part, each of said persons hereinafter called the subscriber", and the subscribers and signers are as follows:

T E Bragg, manager	
Subscribers	
K B Phagan.....	\$25, 000
John C Brennon.....	5, 000
J L Kauffman.....	10, 000
C C Capdevielle.....	10, 000
T E Bragg.....	12, 500
L Young.....	12, 500
Carle C Conway.....	12, 500

(Committee Exhibit No. 27 is as follows:)

Private and confidential

AMERICAN COMMERCIAL ALCOHOL CORPORATION

COMMON STOCK

Agreement made and entered into this 2d day of May 1933 by and between Thomas E Bragg (hereinafter called the manager), party of the first part, and the persons other than the manager who shall subscribe their names hereto, parties of the second part (each of the persons last named being hereafter called a subscriber, all of such persons being hereinafter called the subscribers, and the subscribers, together with the manager, being hereinafter called the syndicate),

Whereas the parties hereto desire to form a syndicate for the purpose of buying and selling common stock of American Commercial Alcohol Corporation; Now, therefore

In consideration of the premises and of the sum of one dollar (\$1) by each party to the other in hand paid, the receipt whereof is hereby acknowledged, the subscribers hereto agree with one another and with the manager as follows.

First. The subscribers and the manager hereby form a syndicate for the purposes above expressed, and each subscriber, for himself, but not for any other subscriber, hereby has paid to the manager, receipt whereof is hereby acknowledged, the sum set opposite his subscription hereto. The interest of each subscriber in each transaction had by the syndicate shall be that proportion of the total results of such transaction which the sum hereby subscribed to the syndicate by such subscriber shall bear to the total sum so subscribed at the time such transaction is had. The subscribers hereby authorize the manager with the proceeds of the funds subscribed to the syndicate, to buy, sell, and generally trade in common stock of American Commercial Alcohol Corporation, either for long or short account, at such times and prices as the manager, in his sole discretion, shall deem for the best interests of the syndicate; provided, however, that the commitment of the syndicate, either for long or short account, shall not at any one time exceed twenty-five thousand (25,000) shares.

All stock bought by the manager pursuant to the authority hereby given shall be carried by the manager in the syndicate account.

Any subscriber may, at his election, and with the consent of the manager, take up against payment for carrying purposes only, his proportion of any shares of stock then in the hands of the manager for this syndicate. The manager may, at his election, upon 2 days' notice, require any participant to take up against payment for carrying purposes only his proportion of any shares of stock then held by him for the syndicate.

Second. The manager shall have the sole direction and management and the entire conduct of the business and transactions of the syndicate. He shall have power to buy and sell said stock for the account of the syndicate in his uncontrolled discretion, and, in this connection, to hire and employ such brokers and agents as he, in his sole discretion, may deem desirable, and all commissions, fees, charges, and expenses whatsoever in connection therewith shall be deemed to be an expense of the syndicate. All transactions for the syndicate shall be in accordance with and subject to the constitution, bylaws, rules, regulations, requirements and customs of the New York Stock Exchange, as well as of the governing committees, boards of governors, other governing bodies, committees, and officials thereof. The manager may borrow for the syndicate account, either from himself or others, such amounts as he may deem necessary, and may pledge all or any of the stock so purchased, or this agreement, to secure any loan or loans made by him for the syndicate account, he may become a subscriber to the syndicate. He shall have exclusive custody of the funds collected from the subscribers, and may deposit the same in any bank or banks, or with any New York Stock Exchange firm selected by him, and may use the said funds in the operation of the syndicate.

The manager shall receive five (5%) percent of the net profits of the trading account as and for his services to the rendered herein, said payment to be made prior to the distribution of the profits of the syndicate among the subscribers.

Third As soon as subscribers aggregating one hundred thousand dollars (\$100,000 00) are obtained by the syndicate, the manager shall notify the subscribers that the syndicate is operative

Fourth The syndicate shall continue for a period of ninety (90) days from the time when it is declared to be operative, as hereinabove provided, but the manager may, in his discretion and without notice, close the operation of the syndicate at any time prior to the expiration of said period, or may extend it for a further period of 90 days At the expiration of said syndicate, the manager shall prepare a statement of the syndicate operations, and after paying all the costs and expenses of the syndicate, including proper and reasonable charges for legal services incurred in the drafting of this agreement and in carrying out the terms and provisions thereof and settling all of its obligations, all stock and money belonging to the syndicate remaining shall be distributed pro rata among the various subscribers. The acceptance by the subscribers of any statement rendered by the manager at the expiration of the syndicate, together with any payment in stock or money, shall operate as a full and complete release of the manager from any and all liability hereunder.

Fifth Russell R Brown has, under instrument dated May 2nd, 1933, given and granted to the manager, in his individual capacity, an option to purchase twenty-five thousand (25,000) shares of common stock of said American Commercial Alcohol Corporation, on the terms and conditions specified in such option, which option is made a part hereof as though more fully set forth. The manager has simultaneously herewith set over, transferred and assigned to himself, as manager, for the purposes of this syndicate, all his right, title, and interest in and to said option

Sixth The manager shall not be liable under any of the provisions of this agreement or for any matter in connection therewith, or for the exercise of his judgment and discretion in the management of the syndicate except for want of good faith

Seventh The manager shall not buy or sell any shares of the common stock of American Commercial Alcohol Corporation during the term of the syndicate except through the syndicate, under the direction of the manager and for the joint benefit of the subscribers

Eighth Each subscriber hereby ratifies, consents to, and agrees to be bound by any action of the manager assumed to be taken under this agreement, and agrees to perform his undertakings herein as stated in this agreement, but, in no event or under no circumstances shall he be called upon to pay or be liable for any amount beyond the amount subscribed for by him.

Ninth Any notice which the manager or any lender may have occasion to give to any subscriber shall be sufficient for all purposes if given in writing, mailed postpaid to the address of such subscriber set opposite his signature hereto

Tenth. Nothing contained in this agreement or otherwise shall constitute the subscribers partners with or agents for one another or for the manager, or render them liable to contribute, in any event, more than the interest in the syndicate subscribed for by them This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the parties hereto

Eleventh In case of the death, resignation or incapacity to act as manager, a successor or successors shall be appointed in writing by a majority in amount of the remaining subscribers

Twelfth This agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, all of which, taken together, shall constitute one and the same instrument

In witness whereof, the manager, the party of the first part, and the subscribers, parties of the second part, have subscribed this agreement on and after the day and year first above written

T E BRAGG, *Manager*

	<i>Amount</i>
K B Phagan, 24 West Forty-third-----	\$25, 000
Jno C Brennon, 29 Broadway-----	5, 000
J L Kauffman, 72 Wall Street-----	10, 000
C C. Capdevielle, 12 West Forty-fourth-----	10, 000
T E Bragg-----	12, 500
J. W Bowen, 283 Parkside Drive, Brooklyn, N Y-----	12, 500
L Young, 105 West Adams Street, Chicago, Ill-----	12, 500
Carle C. Conway 122 East Forty-second-----	12, 500

Now, Mr. Brown, you had an interest in this pool agreement, didn't you?

Mr. BROWN. Yes, sir.

Mr. PECORA. And in whose name was your interest concealed?

Mr. BROWN. Mr. Phagan's.

Mr. PECORA. Which of the other officers and directors of the American Commercial Alcohol Corporation also had a hidden or concealed interest in this pool agreement?

Mr. BROWN. The same gentlemen that I—same participation as I gave you.

Mr. PECORA. That is, the same gentlemen as you testified in connection with the underwriting agreement?

Mr. BROWN. That is correct.

Mr. PECORA. Had an interest?

Mr. BROWN. Yes.

Mr. PECORA. And concealed in the same way as in that underwriting agreement?

Mr. BROWN. Yes, sir.

Mr. PECORA. And in the same proportions or percentages?

Mr. BROWN. Yes, sir.

Mr. PECORA. I suggest we take a recess now, Mr. Chairman.

The CHAIRMAN. We will take a recess now until 2:15.

(Accordingly, at 1:05 p.m., a recess was taken until 2:15 p.m. of the same day.)

AFTER RECESS

The committee resumed at 2:15 p.m. at the expiration of the recess.

The CHAIRMAN. The committee will resume. Mr. Pecora, you may proceed.

Mr. PECORA. Is Mr. Whanger here?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Please come forward.

The CHAIRMAN. Mr. Whanger, please stand, hold up your right hand, and be sworn:

You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matters now under investigation by the committee. So help you God.

Mr. WHANGER. I do.

The CHAIRMAN. Take a seat opposite the microphone there at the committee table.

TESTIMONY OF J. K. WHANGER, ACCOUNTANT, NEW YORK CITY

The CHAIRMAN. Please state your name, residence, and business or occupation.

Mr. WHANGER. My name is J. K. Whanger, accountant. My office is No. 90 John Street, New York City, and my residence is No 4 West Fifty-third Street, New York City.

Mr. PECORA. Mr. Whanger, how long have you been an accountant?

Mr. WHANGER. For some 10 years.

Mr. PECORA. Are you in business for yourself?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Are you a certified public accountant?

Mr. WHANGER. I am not.

Mr. PECORA. Do you know Mr. J. W. Bowen?

Mr. WHANGER. I do.

Mr. PECORA. Testimony has been given before this committee during the present week with regard to the formation of an underwriting agreement, or a syndicate that underwrote an issue of forty thousand-and-odd shares of the capital common stock of the American Commercial Alcohol Corporation, under date of May 31, 1933. Did you have any beneficial interest in that syndicate?

Mr. WHANGER. I received a check for \$25,000 that I understand was a participation in the syndicate.

Mr. PECORA. Were you a participant in the syndicate?

Mr. WHANGER. I received the check.

Mr. PECORA. I asked you the question: Were you a participant in that syndicate?

Mr. WHANGER. I wouldn't say I was a participant in that syndicate, in that I had anything to do with the formation of that arrangement.

Mr. PECORA. Did you receive a check representing profits in the syndicate?

Mr. WHANGER. It was represented to me as a payment for financial advice and accounting services rendered to Mr. T. E. Bragg.

Mr. PECORA. Rendered by whom?

Mr. WHANGER. By me.

Mr. PECORA. In connection with that syndicate?

Mr. WHANGER. No, sir.

Mr. PECORA. Did you render any accounting services to Mr. Bragg in connection with that syndicate?

Mr. WHANGER. I did not.

Mr. PECORA. Did you know the syndicate to which I refer?

Mr. WHANGER. Not until I heard of this agreement this morning.

Mr. PECORA. Not until you heard it referred to in the course of the examination of Mr. Brown this morning?

Mr. WHANGER. That is, I never heard of this agreement until this morning.

Mr. PECORA. But you had heard of the syndicate before this morning?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Did you render any services in connection with the operations of that syndicate?

Mr. WHANGER. I did not.

Mr. PECORA. When did you render the accounting services for which you say you received a check out of the funds of that syndicate?

Mr. WHANGER. It covers a period of some 3 or 4 years, I should say.

Mr. PECORA. And did that check represent payment for your services rendered during that entire period of 3 to 4 years for Mr. Bragg?

Mr. WHANGER. Do you mean this one check?

Mr. PECORA. Yes.

Mr. WHANGER. No, sir.

Mr. PECORA. Well, what did that particular check that you refer to represent?

Mr. WHANGER. I should say partial payment for services rendered.

Mr. PECORA. Had you submitted a bill to Mr. Bragg for those services at any time in the past?

Mr. WHANGER. I had not.

Mr. PECORA. You say you had not?

Mr. WHANGER. No, sir; and I have not as yet.

Mr. PECORA. And you have not as yet, although you have received payment.

Mr. WHANGER. That is correct.

Mr. PECORA. And have you received other checks at the instance of Mr. Bragg for accounting services rendered by you for his benefit?

Mr. WHANGER. That is right. But I wouldn't only say accounting services. I would include in that statement financial advices

Mr. PECORA. Are you the financial adviser to Mr. Bragg?

Mr. WHANGER. Well, he asked my opinions on certain matters.

Mr. PECORA. Are you the financial adviser to Mr. Bragg? You say you also received payment for financial advices. Now, I ask you, are you the financial adviser to Mr. Bragg?

Mr. WHANGER. I wouldn't consider myself as his sole financial adviser, although I have given him financial advice.

Mr. PECORA. Are you a financial adviser to Mr. Bragg?

Mr. WHANGER. I hardly know just what you are getting at. I have given Mr. Bragg financial advice.

Mr. PECORA. What I am getting at is just exactly this: You stated you received, among others, at Mr. Bragg's instance, a check for \$25,000 that came out of the funds of this underwriting syndicate. And you said that that check was for services as accountant and for the giving of financial advice to Mr. Bragg.

Mr. WHANGER. That is right.

Mr. PECORA. You understand that part of it clearly now, do you not?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Now I ask you again: Are you financial adviser to Mr. Bragg?

Mr. WHANGER. In that sense I am.

Mr. PECORA. In what sense do you mean? I have not limited the term in any way.

Mr. WHANGER. In the sense that you ask the question, I would say that I am financial adviser to Mr. Bragg. He has asked my advice on certain matters, and I have given it to him. If you consider that is financial adviser, I am that.

Mr. PECORA. No. You used the term originally that you received payment from Mr. Bragg for giving him financial advice. Now, I ask you: In what sense did you use that term?

Mr. WHANGER. In the sense that I had given him financial advice.

Mr. PECORA. Then are you a financial adviser to Mr. Bragg?

Mr. WHANGER. Yes, sir; I am.

Mr. PECORA. For how many years have you been a financial adviser to him?

Mr. WHANGER. Well, I have known him for some 4 years, I should say, and it is in consideration of advice I have given him over that period.

Mr. PECORA. Now, how many payments all told have you received from Mr. Bragg, or at his instance, either for accounting services rendered, or for services rendered by way of giving him financial advice during that 5- to 4-year period that you have spoken of?

Mr. WHANGER. Three.

Mr. PECORA. And what is the aggregate of those three checks or payments?

Mr. WHANGER. Approximately \$65,000.

Mr. PECORA. And when did you receive them?

Mr. WHANGER. In December of 1933.

Mr. PECORA. All of them last December?

Mr. WHANGER. All of them in December of 1933.

Mr. PECORA. Although you had been rendering those services for some 3 to 4 years before that, and you had never given him any bill, last December he gave you three checks totaling \$65,000 for that kind of service?

Mr. WHANGER. That is correct.

The CHAIRMAN. How much of it was accounting service and how much of it financial advice?

Mr. WHANGER. There is no way of apportioning it, in my opinion.

Mr. PECORA. How was that amount of \$65,000 ever arrived at, if you know?

Mr. WHANGER. I don't know.

Mr. PECORA. You say you don't know?

Mr. WHANGER. It was never decided what Mr. Bragg would pay me. He always told me he would do something for me, and I left the matter entirely to his judgment. If it had been half of that amount I would have accepted, and if it had been twice as much I would likewise have accepted it.

Mr. PECORA. And if it had been a quarter of that amount you would likewise have accepted it?

Mr. WHANGER. I probably would.

The CHAIRMAN. Why did you call the \$25,000 a partial payment?

Mr. WHANGER. Because I received two other payments in addition to the \$25,000.

Mr. PECORA. Did you receive the three payments aggregating \$65,000 at one time last December, or by way of three different payments?

Mr. WHANGER. I received them at different times, I believe.

Mr. PECORA. What was that?

Mr. WHANGER. I received them at different times, I believe.

Mr. PECORA. What were the respective amounts of the three checks that made up that total?

Mr. WHANGER. One was for the alcohol thing, so I am told, and—

Mr. PECORA (interposing). What alcohol thing?

Mr. WHANGER. The check that came out of this thing.

Mr. PECORA. Do you mean out of the American Commercial Alcohol Corporation underwriting syndicate?

Mr. WHANGER. That is right. That was the \$25,166; I believe.

Mr. PECORA. It was for \$25,161.74, wasn't it?

Mr. WHANGER. I don't remember the exact amount. And another one was for \$15,000.

Mr. PECORA. Another one was what?

Mr. WHANGER. It was for \$15,000.

Mr. PECORA. Wasn't it in fact for \$15,922.23?

Mr. WHANGER. It might have been. I don't remember the exact amount.

Mr. PECORA. Well, it wasn't for \$15,000 exactly, was it?

Mr. WHANGER. Oh, no; but approximately \$15,000.

Mr. PECORA. What was the third check?

Mr. WHANGER. It was for slightly less than \$25,000.

Mr. PECORA. It was for \$24,743.32, wasn't it?

Mr. WHANGER. I wouldn't say whether that is just right or not.

Mr. PECORA. For a total of \$65,827.29.

Mr. WHANGER. I believe so.

Mr. PECORA. Do you know how the compensation for those services over 3 or 4 years was fixed at that exact amount, \$65,827.29?

Mr. WHANGER. No; I do not. All that I know is that Mr. Bragg told me in the late spring or early summer of 1933 that he was going to do something for me, that he was going to make some deals for me. Then in September or October he told me he had made for me \$50,000 or \$60,000.

Mr. PECORA. That was in September or October of last year?

Mr. WHANGER. Of 1933.

Mr. PECORA. He told you he had made for you something like \$50,000 or \$60,000?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Without any investment on your part?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Did he tell you how he had made it?

Mr. WHANGER. He might have said, but I don't remember that part of it distinctly.

Mr. PECORA. Wouldn't you be likely to remember what he said to you as to how he had made this fairly substantial sum of money for you?

Mr. WHANGER. No; I had no necessary reason that I should remember it.

Mr. PECORA. What was that answer?

Mr. WHANGER. There was no necessary reason why I should remember it if he said so at the time.

Mr. PECORA. Those payments aggregating \$65,827.29 you received last December were probably the highest income you received in any one year, weren't they?

Mr. WHANGER. They were.

Mr. PECORA. Or what would you say was the highest income you had received for your services as accountant and financial adviser in any other year?

Mr. WHANGER. I would say from \$6,000 to \$8,000.

Mr. PECORA. Around \$6,000 to \$8,000 in a year?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Well, now, were those three checks payments for services, or were they profits that Mr. Bragg made for you with no investment on your part?

Mr. WHANGER. To me they represented earned income, payment to me in return for services rendered. To Mr. Bragg it might represent participation in various market operations, but I don't know.

Mr. PECORA. What makes you think it might have represented participation in some market operations?

Mr. WHANGER. Because he told me that he was going to do something for me, make a turn for me in the market.

Mr. PECORA. Is this the first time he made any payments to you representing "turns" that he made in the market for you?

Mr. WHANGER. Do you mean these three checks?

Mr. PECORA. Yes.

Mr. WHANGER. Yes, sir.

Mr. PECORA. Did you keep an office record of the accounting services rendered by you for Mr. Bragg during this 3- to 4-year period you have spoken about?

Mr. WHANGER. I did not.

Mr. PECORA. Did you keep any office record of the financial advice you had given to Mr. Bragg during this 3- to 4-year period?

Mr. WHANGER. No; I don't believe I have.

Mr. PECORA. Now, this man who made deals for you in the market that brought you profits without any investment on your part of \$50,000 to \$60,000, you say was seeking financial advice from you?

Mr. WHANGER. Yes, sir; that is right.

Mr. PECORA. Are you still a financial adviser to Mr. Bragg?

Mr. WHANGER. If he were around no doubt I would discuss financial situations with him; yes.

Mr. PECORA. Well, discussing financial situations with him and giving him financial advice are two different things, aren't they?

Mr. WHANGER. No; I would say they are all bound up together.

Mr. PECORA. Oh, well, then, was the kind of financial advice you had given to him in the past, merely by way of discussion of financial matters?

Mr. WHANGER. Largely that; yes.

Mr. PECORA. He did not seek your advice for the purpose of his making investments or conducting market operations, did he?

Mr. WHANGER. Not specifically.

Mr. PECORA. It wasn't that kind of financial advice that you gave him, was it?

Mr. WHANGER. No, sir.

Mr. PECORA. Give us a sample of the financial advice that you gave him, or the kind of financial advice you gave him.

Mr. WHANGER. All right, sir; late in 1931, as I remember it at this time, commodity prices kept going off, and unemployment was still increasing. It seemed to me at that time that the decline in prices would continue, and, necessarily, corporate profits. It occurred to me at that time that gold would be quite an advisable thing to buy. So, instead of going short of commodities or stocks whose market fluctuations are in proportion to commodity prices, it would be the wise thing to do to invest in gold, or in gold stocks. I discussed that thing with Mr. Bragg at considerable length.

Mr. PECORA. Well, did he suggest that to you, or did you suggest that to him?

Mr. WHANGER. I don't remember just how the thing came up originally. The whole thing was part and parcel of a very deep and fundamental problem.

Mr. PECORA. When those discussions were had between you, would he come to you and seek your advice, judgment, or opinion about those financial aspects, or would you go to him and give him your advice, judgment, or opinion?

Mr. WHANGER. I usually saw him at his office, and he would bring up the question himself, or I would possibly.

Mr. PECORA. You would go around to see him at his office and he would bring up those questions?

Mr. WHANGER. Or I might even bring them up myself.

Mr. PECORA. That is, he did not invite your financial counsel or advice, did he?

Mr. WHANGER. Yes, sir.

Mr. PECORA. You say he did?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Do you know whether he acted on it when he got it?

Mr. WHANGER. That I do not know definitely.

Mr. PECORA. And had you intended to charge him for that kind of advice?

Mr. WHANGER. Ultimately I expected some compensation, else I would never have devoted to him as much time as I have.

Mr. PECORA. Have you other clients of the same kind?

Mr. WHANGER. No.

Mr. PECORA. To whom you render similar service?

Mr. WHANGER. I have other clients for whom I render accounting service; yes.

Mr. PECORA. But no service by way of financial advice?

Mr. WHANGER. Not the same as to Mr. Bragg; no.

Mr. PECORA. What is Mr. Braggs' business?

Mr. WHANGER. I would say as speculator.

Mr. PECORA. Speculator in the stock market?

Mr. WHANGER. That is right.

Mr. PECORA. He is a fairly well known speculator, isn't he?

Mr. WHANGER. He is.

Mr. PECORA. And one who speculates on a pretty large and active scale?

Mr. WHANGER. I would say so; yes, sir.

Mr. PECORA. Do you know where he makes his office?

Mr. WHANGER. No. 52 Wall Street.

Mr. PECORA. Has he an office of his own there, or does he frequent somebody else's office?

Mr. WHANGER. There is an office there that he occupies. Whether he pays the rent on it or not I don't know.

Mr. PECORA. Is it his office or is it a room or suite of rooms, or is it a room in a suite occupied by somebody else?

Mr. WHANGER. I could not say, because I have seen Mr. Bragg there and others as well.

Mr. PECORA. Do you know whose name is on the door of the office?

Mr. WHANGER. I do not think there is any name on the door.

Mr. PECORA. No name at all?

Mr. WHANGER. I don't think so. It is a part of a general suite.

Mr. PECORA. Do you know any of his office staff or personnel?

Mr. WHANGER. I have seen quite a few people around there

Mr. PECORA. Do you know any of them?

Mr. WHANGER. Yes; I know them.

Mr. PECORA. Do you know the brokerage firm of E. F. Hutton & Co.?

Mr. WHANGER. E. F. Hutton?

Mr. PECORA. Yes.

Mr. WHANGER. Yes, sir.

Mr. PECORA. I meant W. E. Hutton & Co.

Mr. WHANGER. Yes, sir.

Mr. PECORA. Where is their office?

Mr. WHANGER. At No. 52 Wall Street.

Mr. PECORA. Is Mr. Bragg's office in the same place occupied by W. E. Hutton & Co.?

Mr. WHANGER. I would say so; yes.

Mr. PECORA. Isn't the name W. E. Hutton & Co. on the entrance to that suite?

Mr. WHANGER. W. E. Hutton & Co. have the whole floor.

Mr. PECORA. And Bragg has a room in that suite?

Mr. WHANGER. You walk into a corridor and Mr. Bragg's offices are in the front.

Mr. PECORA. Do you know the name of his secretary?

Mr. WHANGER. I didn't know he had a secretary.

Mr. PECORA. Who is J. W. Bowen?

Mr. WHANGER. He is a man I saw about his office quite often.

Mr. PECORA. About Bragg's office?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Do you know what his relationship is to Bragg, his business or otherwise?

Mr. WHANGER. No; I don't.

Mr. PECORA. Whose check did you get when you got these three checks last December aggregating \$65,000 plus?

Mr. WHANGER. Do you mean the drawer of the checks?

Mr. PECORA. Yes.

Mr. WHANGER. W. E. Hutton & Co., I believe.

Mr. PECORA. W. E. Hutton & Co.?

Mr. WHANGER. I believe so.

Mr. PECORA. How do you know that those checks were given to you for the account of Mr. Bragg?

Mr. WHANGER. Because Mr. Bragg gave them to me.

Mr. PECORA. Now, when he gave them to you what did he say?

Mr. WHANGER. He said, "Here is a play I made for you."

Mr. PECORA. But he did not say, "Here is compensation for your financial advice and accountancy services"?

Mr. WHANGER. No; but it was generally understood that that was what it was.

Mr. PECORA. Now, you have reason to believe that one of these checks, the one for \$25,161.74, came out of the funds of this underwriting syndicate that we have talked about.

Mr. WHANGER. Yes.

Mr. PECORA. Out of what funds or syndicates did the other two checks come from?

Mr. WHANGER. I think the largest one came from an operation in Union Oil.

Mr. PECORA. In Union Oil?

Mr. WHANGER. Yes, sir.

Mr. PECORA. A stock-market operation?

Mr. WHANGER. I presume so, but I don't know.

Mr. PECORA. That was the check for \$24,743.32?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Where did the check for \$15,922.23 come from?

Mr. WHANGER. I think from General Foods.

Mr. PECORA. What was that?

Mr. WHANGER. From General Foods.

Mr. PECORA. Another operation in the stock market?

Mr. WHANGER. I presume so.

Mr. PECORA. Did you have anything to do with any one of those three operations?

Mr. WHANGER. I did not.

Mr. PECORA. Did you know they were being conducted?

Mr. WHANGER. Not as such. I didn't know that until just recently.

Mr. PECORA. Do you mean that you have learned of it since you got the checks?

Mr. WHANGER. I don't know whether I knew it at that time or learned since that time. I don't remember that point.

Mr. PECORA. What is the general nature of the accounting services you have rendered for Mr. Bragg in the last 3 or 4 years?

Mr. WHANGER. Interpretation of balance sheets, computing earnings, and things of that nature.

Mr. PECORA. Do you mean that he submits some corporation's balance sheet statement to you and you interpret it for him?

Mr. WHANGER. That is right. I look it over and tell him what it looks like to me.

Mr. PECORA. You didn't do any accounting work for him by way of keeping or auditing his own accounts, did you?

Mr. WHANGER. No, sir.

Mr. PECORA. How about doing any tax accounting work for him; have you done any of that?

Mr. WHANGER. I have not.

Mr. PECORA. Now, Mr. Whanger, did you understand, and do you now believe, that those three payments made to you last December, one of which came from the funds of this particular underwriting syndicate that has been testified here today in your hearing, were made to you solely for your beneficial right and interest?

Mr. WHANGER. That is correct.

Mr. PECORA. No one else had any interest in those checks?

Mr. WHANGER. They did not.

Mr. PECORA. Or the proceeds of those checks?

Mr. WHANGER. No; that is correct.

Mr. PECORA. Now, you deposited them, didn't you, as soon as you got them?

Mr. WHANGER. Well, I didn't have them long anyway, but I don't remember it.

Mr. PECORA. You recall that you did deposit them, do you?

Mr. WHANGER. Oh, yes; I did deposit them.

Mr. PECORA. To the credit of your own account?

Mr. WHANGER. Yes, sir.

Mr. PECORA. In the Chase National Bank of the City of New York?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Did any person other than yourself have any beneficial right or interest in that account?

Mr. WHANGER. They did not.

Mr. PECORA. Did you open that account specially for the purpose of making a deposit of those three checks?

Mr. WHANGER. I did.

Mr. PECORA. You say you did?

Mr. WHANGER. Yes, sir.

Mr. PECORA. You had not before that time had an account with the Chase National Bank?

Mr. WHANGER. That is right.

Mr. PECORA. Do you recall that you withdrew \$55,000 out of the aggregate of the deposits represented by those checks within a very few days after the deposits were made?

Mr. WHANGER. I did.

Mr. PECORA. And that those withdrawals were made in the form of two checks, one for \$20,000 and the other for \$35,000, were they not?

Mr. WHANGER. That is correct.

Mr. PECORA. And they were drawn to the order of J. R. Williston & Co.?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Is that a firm of stockbrokers?

Mr. WHANGER. They are.

Mr. PECORA. Did you have an account with that firm?

Mr. WHANGER. I did; yes, sir.

Mr. PECORA. Did you have an account prior to the time that you saw these checks?

Mr. WHANGER. I did not.

Mr. PECORA. Have you got it there still?

Mr. WHANGER. Still have it.

Mr. PECORA. Has anyone got any beneficial interest of any kind in that account?

Mr. WHANGER. They have not.

Mr. PECORA. Do you know a Mr. Ben Smith?

Mr. WHANGER. I do.

Mr. PECORA. What is his business?

Mr. WHANGER. Similar to Mr. Bragg's.

Mr. PECORA. That is a market operator and speculator?

Mr. WHANGER. I would say so.

Mr. PECORA. He is also a member of the New York Stock Exchange, isn't he?

Mr. WHANGER. I believe he is. I don't know that.

Mr. PECORA. Mr. Bragg is not?

Mr. WHANGER. I don't think he is.

Mr. PECORA. Did you ever render any accounting or financial service of any kind for the benefit of Mr. Smith?

Mr. WHANGER. I discussed in Mr. Smith's presence with Mr. Bragg various things, but I did not consider Mr. Smith primarily.

Mr. PECORA. Was Mr. Smith also present on various occasions when you interpreted balance-sheet statements for Mr. Bragg?

Mr. WHANGER. He may have been. I don't know.

Mr. PECORA. For whose benefit is this account at Williston & Co. maintained and operated?

Mr. WHANGER. For my own personally.

Mr. PECORA. Your own exclusively?

Mr. WHANGER. All right, title, and interest in the account is vested in me.

Mr. PECORA. Did you give Mr. Bragg a receipt in full for services you have rendered for his benefit in the last 3 or 4 years when you got these checks?

Mr. WHANGER. I did not.

Mr. PECORA. Did you give him any receipt at all?

Mr. WHANGER. No, sir.

Mr. PECORA. As a matter of fact, the \$55,000 you withdrew from this account that you opened last December in the Chase National Bank was used by you for the purchase of certain securities, wasn't it?

Mr. WHANGER. That is correct.

Mr. PECORA. Stock of the New York Shipbuilding Co.?

Mr. WHANGER. That is right.

Mr. PECORA. All of it used for that purpose?

Mr. WHANGER. Yes, sir.

Mr. PECORA. Was that investment made on your own judgment or initiative, or upon the advice of Mr. Bragg or Mr. Smith?

Mr. WHANGER. Mr. Bragg suggested that I invest in this New York Shipbuilding Co.

Mr. PECORA. He has no interest in that account, has he?

Mr. WHANGER. Mr. Bragg? No, sir; he has not. It is all mine. I can sell that stock at this minute if I wanted to.

Mr. PECORA. You have told the committee now in answer to these questions the whole story about the checks given to you last December by Mr. Bragg?

Mr. WHANGER. Yes, sir.

Mr. PECORA. There is nothing you want to add to it?

Mr. WHANGER. No, sir.

Mr. PECORA. Nothing you want to qualify in connection with it?

Mr. WHANGER. No, sir.

Mr. PECORA. When did you last hear from Mr. Bragg?

Mr. WHANGER. Around the first of the year, I believe.

Mr. PECORA. When did you last have any communication with or from him?

Mr. WHANGER. Not since that time.

Mr. PECORA. Not since the first of this year?

Mr. WHANGER. No, sir.

Mr. PECORA. You did not see him prior to his departure for Honolulu during the latter part of January this year, did you?

Mr. WHANGER. I did not.

Mr. PECORA. Did you know he was going there?

Mr. WHANGER. No; I did not know he was going to Honolulu.

The CHAIRMAN. Where was he when you heard from him?

Mr. WHANGER. I have not heard from him since he left New York. The last time I saw him was in his office at 52 Wall Street.

Mr. PECORA. About how frequently in the last 3 or 4 years past did you interpret balance sheets for Mr. Bragg?

Mr. WHANGER. That is rather difficult to say, Mr. Pecora.

Mr. PECORA. It was not a daily service, was it?

Mr. WHANGER. No, sir.

Mr. PECORA. Was not a weekly service?

Mr. WHANGER. No set time. I would drop in his office probably to look at the stock ticker and he would call me in and I would walk in.

Mr. PECORA. You know that there are accountants in the office of W. E. Hutton & Co., don't you?

Mr. WHANGER. No, sir; I do not.

Mr. PECORA. You don't? Don't you think there are any in stock-brokers' offices?

Mr. WHANGER. They probably have bookkeepers.

Mr. PECORA. That could interpret balance sheets?

Mr. WHANGER. Probably it was confidential. Probably there were reasons why he did not care to have bookkeepers and accountants from Hutton, if such there be, to interpret balance sheets for him.

Mr. PECORA. Thank you, Mr. Whanger.

The CHAIRMAN. You will be excused.

Mr. PECORA. Mr. Foster, please.

**TESTIMONY OF CHARLES N. FOSTER, ENGLEWOOD, N.J., PARTNER
IN THE FIRM OF W. E. HUTTON & CO.**

Mr. PECORA. What is your business or occupation, Mr. Foster?

Mr. FOSTER. I am a partner of W. E. Hutton & Co.

Mr. PECORA. And what is their business?

Mr. FOSTER. Stock brokers.

Mr. PECORA. Where is their office?

Mr. FOSTER. Fifty-two Wall Street.

Mr. PECORA. Do you know Mr. Thomas E. Bragg?

Mr. FOSTER. I do.

Mr. PECORA. Does he make his office in the office of W. E. Hutton & Co.?

Mr. FOSTER. No, sir.

Mr. PECORA. Has he a room?

Mr. FOSTER. No, sir.

Mr. PECORA. W. E. Hutton & Co. occupy the entire floor at 52 Wall Street in which their office is located, do they not?

Mr. FOSTER. The fifteenth floor and part of the fourteenth floor.

Mr. PECORA. Fifteenth and part of the fourteenth?

Mr. FOSTER. Yes, sir.

Mr. PECORA. Well, Mr. Whanger, who immediately preceded you on the witness stand, gave testimony which you doubtlessly heard?

Mr. FOSTER. I did.

Mr. PECORA. You heard him testify that Mr. Bragg's office was at 52 Wall Street. Did he occupy any part of the space used by and rented by W. E. Hutton & Co.?

- Mr. FOSTER. No, sir.
- Mr. PECORA. You know Mr. Bragg, don't you?
- Mr. FOSTER. I do; yes, sir.
- Mr. PECORA. Does he carry an account with your firm?
- Mr. FOSTER. No.
- Mr. PECORA. Do you know Mr. Smith, Ben Smith?
- Mr. FOSTER. I do.
- Mr. PECORA. Does he carry an account with your firm?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. Do you know an account known as no. 296?
- Mr. FOSTER. I do.
- Mr. PECORA. For whose benefit is that account operated?
- Mr. FOSTER. From the testimony here, it was evidently Mr. Bragg.
- It was one of Mr. Smith's customers.
- Mr. PECORA. What is that?
- Mr. FOSTER. It was one of Mr. Smith's customers.
- Mr. PECORA. Who opened the account with your firm?
- Mr. FOSTER. Mr. Smith.
- Mr. PECORA. Mr. Smith opened it?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. But you say it is operated or conducted by Mr. Bragg?
- Mr. FOSTER. I don't know.
- Mr. PECORA. Have you got any authorization cards relating to this account no. 296?
- Mr. FOSTER. No.
- Mr. PECORA. What is that?
- Mr. FOSTER. No.
- Mr. PECORA. Have you any authorizations by way of letters or in any other written form referring to account no. 296?
- Mr. FOSTER. Yes, sir. We have an arrangement with Mr. Smith whereby we carry accounts for him on our books.
- Mr. PECORA. Under this account no. 296, then—or was this account no. 296 one of the accounts that you carried on your books under this arrangement with Mr. Smith?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. Mr. Smith is a stockbroker himself, isn't he?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. And a member of the New York Stock Exchange?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. Does he make his office with your firm?
- Mr. FOSTER. He does.
- Mr. PECORA. What is the authorization you have regarding this account?
- Mr. FOSTER. The closing of the account—the checks drawn.
- Mr. PECORA. May I see it?
- Mr. FOSTER. Yes, sir.
- (Mr. Foster thereupon handed documents to Mr. Pecora.)
- Mr. PECORA. I offer in evidence the three documents produced by the witness, and I ask that they be marked in chronological order. One of them is dated July 7, 1933, second one is dated July 31, 1933, and the third is dated August 3, 1933.

The CHAIRMAN. Let them be admitted.

(Letter dated July 7, 1933 from B. E. Smith to W. E. Hutton & Co. was thereupon designated "Committee Exhibit No. 28, February 16, 1934," and the same appears in full immediately following, where read by Mr. Pecora.)

(Letter dated July 31, 1933, from B. E. Smith to W. E. Hutton & Co. was thereupon designated "Committee Exhibit No. 29, February 16, 1934," and the same appears in the record in full immediately following, where read by Mr. Pecora.)

(Letter dated Aug. 3, 1933, from B. E. Smith to W. E. Hutton & Co. was thereupon designated "Committee Exhibit No. 30, February 16, 1934," and the same appears in the record in full immediately following, where read by Mr. Pecora.)

Mr. PECORA. The three documents have been received and marked "Exhibits Nos. 28, 29, and 30." Exhibit no. 28 reads as follows [reading]:

JULY 7, 1933

W. E. HUTTON & Co,
New York, N.Y.

GENTLEMEN. Please receive from the City Bank Farmers Trust Company 793 5 shares of American Commercial Alcohol, and pay them \$15,870
Please deposit to Account #296, Mr T. E. Bragg's check \$40,936 90

Yours very truly,

(Signed) B E SMITH

Second letter, marked "Exhibit No. 29", is as follows [reading]:

JULY 31, 1933.

W. E HUTTON & Co,
New York City.

GENTLEMEN Kindly let me have checks drawn to the following names and for the following amounts, and charge Account No. 296

K B Phagan	-----	\$50,323 47
J C Brennen	-----	10,064 69
J L Kauffman	-----	20,129 39
C C Capdevielle	-----	20,129 39
L Young	-----	25,161 74
C C Conway	-----	25,161 74

Yours very truly,

(Signed) B. E. SMITH

The third letter, marked "Exhibit No. 30", is as follows [reading]:

AUGUST 3, 1933

W E HUTTON & COMPANY,
52 Wall Street, New York City.

GENTLEMEN: Kindly have the bank stop payment on check issued on July 31st to the order of L Young for \$25,161 74, and charged to Account No 296.

After you have been notified by the bank that payment has been stopped on the above, you will then draw a check to the order of L B Manning for \$25,161 74 and charge Account No. 296.

Yours very truly,

(Signed) B. E. SMITH.

Mr. CHAIRMAN. I think it might be observed now that this amount \$25,161.74 referred to in exhibit no. 30 coincides exactly with check that the preceding witness, Mr. Whanger, testified he received from Mr. Bragg, which he said came out of this pool account, or syndicate account. All these checks were drawn in pursuance of the direction of those letters, were they not, Mr. Foster?

Mr. FOSTER. Yes, sir.

- Mr. PECORA. And to whom were they given?
- Mr. FOSTER. To Mr. QUINN.
- Mr. PECORA. Who is Mr. QUINN?
- Mr. FOSTER. Mr. Smith's secretary?
- Mr. PECORA. Mr. Smith's secretary?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. Is he in the office of W. E. Hutton & Co.?
- Mr. FOSTER. In Mr. Smith's.
- Mr. PECORA. In Mr. Smith's room in the office of W. E. Hutton & Co., is that right?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. And you do not know what disposition he made of those checks?
- Mr. FOSTER. No, I do not.
- Mr. PECORA. You know that the checks were all cleared?
- Mr. FOSTER. Oh, yes. Yes.
- The CHAIRMAN. Was payment stopped on the Young check?
- Mr. FOSTER. Yes, sir.
- The CHAIRMAN. And then it was drawn to Manning?
- Mr. FOSTER. It was.
- Mr. PECORA. If you recall, I think Mr. Brown this morning testified that Manning was a speculator who acted for E. L. Cord. Is that right, Mr. Brown?
- Mr. BROWN. No; I did not say that.
- Mr. PECORA. Whom did Manning represent?
- Mr. BROWN. I think my reply was that I understood he was a friend of Mr. Cord's.
- Mr. PECORA. Oh, yes; that is what it was, a friend of his. Now, is there a gentleman named Mr. B. J. Harriman associated with the firm of W. E. Hutton & Co., Mr. Foster?
- Mr. FOSTER. B. J. Harriman? No, sir.
- Mr. PECORA. Do you recall that at any time since last August representatives of the New York Stock Exchange called at the office of W. E. Hutton & Co. and made certain inquiries with regard to trading operations in stock of the American Commercial Alcohol Corporation?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. Who were the representatives that called at your office for that purpose?
- Mr. FOSTER. I have forgotten now.
- Mr. PECORA. Did they confer with you?
- Mr. FOSTER. Yes, sir.
- Mr. PECORA. And did you answer the inquiries that were addressed to you?
- Mr. FOSTER. I did.
- Mr. PECORA. And what were those inquiries about? In other words, what information were you asked to give?
- Mr. FOSTER. I was asked to produce this 296 account.
- Mr. PECORA. And was it produced?
- Mr. FOSTER. It was.
- Mr. PECORA. Were you asked if it was a pool account or syndicate account?
- Mr. FOSTER. I don't think so; no.
- Mr. PECORA. Did you regard it as a pool or syndicate account?

Mr. FOSTER. Well, it looked that way; yes. I should say it would be regarded; yes.

Mr. PECORA. It looked that way; it had all the external appearance of it?

Mr. FOSTER. It did; yes.

Mr. PECORA. Who is Mr. J. C. Duncan?

Mr. FOSTER. He is a partner of W. E. Hutton & Co.

Mr. PECORA. Do you know whether he was interviewed also by the representative or representatives of the New York Stock Exchange at the time these inquiries were made?

Mr. FOSTER. I don't think so. I think they saw me only. I am not sure about that.

Mr. PECORA. Now, for your possible information, what purports to be a copy of a letter or report addressed to the committee on business conduct of the New York Stock Exchange dated September 21, 1933, signed by B. J. Harriman of the accounting department of the New York Stock Exchange, is produced.

Mr. FOSTER. I told you I did not know B. J. Harriman. I do know Harriman, the accountant for the stock exchange. I did not know his initials. I do know Mr. Harriman.

Mr. PECORA. Now I am going to read this letter to you, Mr. Foster [reading]:

September 21, 1933

COMMITTEE ON BUSINESS CONDUCT,
New York Stock Exchange

GENTLEMEN. At your request, a visit was made to the New York office of Messrs W E Hutton & Co to determine the accounts which contained material transactions during the period from May 15th, 1933 to July 24th, 1933 in the following stocks American Commercial Alcohol, Commercial Solvents, Libbey Owens Ford Glass, National Distillers Prod Corp, Owens Illinois Glass, U.S Industrial Alcohol

Inspection of the security record and daily take off of trades disclosed transactions in American Commercial Alcohol for B E Smith #296 account, schedule of which is annexed hereto

I was informed that this account is in reality the account of T E. Bragg and associates as follows:

	Percent
K B Phagan.....	25
J C. Brennan.....	5
J. L. Kaufman.....	10
C. C Coperderville.....	10
T E Bragg.....	12½
J. W. Bowen.....	12½
L B Manning.....	12½
C C Conway.....	12½

100

From May 3rd, 1933 to July 24th, 1933 approximately 29,000 shares of American Commercial Alcohol stock were purchased and approximately 44,000 shares sold for the B E Smith #296 account.

25,794 shares of this stock were taken down from the following:

Shares	Received from	@
24,000	C E Welles & Co.....	\$18 per share
1,000	Shearson, Hammill & Co.....	18 per share
793	City Bank Farmers Trust Co.....	
1	a/c Subscription.....	
25,794		

I was informed that these shares had been acquired from several of the largest stockholders of the company.

Additional transactions in American Commercial Alcohol follow: #130 (B. E. Smith) Member N.Y.S.E.

Date	Bought	Sold
May 15.....	800	800
May 16.....	2,700	2,700
May 25.....	1,100	1,100
May 29.....	2,200	2,200
June 28.....	1,000	1,000
	7,800	7,800

No other accounts were noted which contained material transactions in the stocks under review.

Mr J C. Duncan, a partner, stated that during the period under review the firm did not have any pool or syndicate accounts on its books containing transactions in the stocks above mentioned nor did they hold or issue any options for their own or the account of customers

Respectfully submitted.

(Signed) B J. HARRIMAN.

Accounting Department.

After having heard that letter read, Mr. Foster, let me ask you if the information conveyed by Mr. Harriman to the committee on business conduct of the stock exchange through the medium of this letter was accurate information which he obtained from you or any one of your associates in the W. E. Hutton Co.

Mr. FOSTER. The information is accurate, but that is Mr. Smith's customer, not W. E. Hutton & Co.

Mr. PECORA. What is that?

Mr. FOSTER. I say 296 is Mr. B. E. Smith's customer. It is his account for his customer. It is not W. E. Hutton & Co.'s customer. We were simply carrying this account, this and others, for Mr. B. E. Smith, and we had no knowledge of any pool or option.

Mr. PECORA. You just said in answer to a question put to you before I read this letter that this looked to you like a pool operation or pool account or syndicate account.

Mr. FOSTER. Yes; but I could not prove it. I didn't know anything about it. I had no knowledge of any options. No member of the firm had any knowledge of any options.

Mr. PECORA. Are you familiar with the tradings in that account?

Mr. FOSTER. Yes, sir.

Mr. PECORA. Did you notice that at times deliveries were made at prices under the market?

Mr. FOSTER. Yes.

Mr. PECORA. Did that indicate a pool operation?

Mr. FOSTER. It might; it might mean just an option, a man using an option.

Mr. PECORA. All right; it might mean an option?

Mr. FOSTER. Yes.

Mr. PECORA. What did Mr. Duncan have in mind when he stated:

According to Mr. Harriman's letter, during the period under review the firm of W. E. Hutton & Co. did not have any pool or syndicate accounts on its books containing transactions in the stocks above mentioned—

which included American Commercial Alcohol—

nor did they hold or issue any options for their own or the account of customers.

Mr. FOSTER. His information must have come from Mr. Smith of Mr. Smith's representative on those accounts. We had no knowledge ourselves.

Mr. PECORA. You knew that the representative of the stock exchange came around to inquire of your firm whether or not it had any pool accounts in these stocks which included American Commercial Alcohol, didn't you?

Mr. FOSTER. He did; he examined the account.

Mr. PECORA. And at that time did it seem to you that this account represented a pool operation?

Mr. FOSTER. I had no knowledge of it; no.

Mr. PECORA. Well, you had as much knowledge of it then as you have now, didn't you?

Mr. FOSTER. No; because I have heard this testimony for the last 2 or 3 days.

Mr. PECORA. Oh, it is only what you have heard here that indicated it was a pool account?

Mr. FOSTER. Well, yes.

Mr. PECORA. Now, as a matter of fact, Mr. Foster, I have not yet presented any evidence to this committee with regard to the operation of this particular account, have I?

Mr. FOSTER. I have heard the testimony here that people were interested in that account that I did not know before.

Mr. PECORA. You have heard testimony here that certain people were interested in an account, but the testimony did not indicate that it was account 296 on the books of your firm, did it?

Mr. FOSTER. I know, but it represented that account, identified that account, because that is the only account we had on the books of that American Alcohol of that amount.

Mr. PECORA. In view of the fact that you knew that in the operation of this account or the execution of orders and trades under it deliveries were made at prices below the market, that suggested a pool operation to you?

Mr. FOSTER. It would naturally; yes.

Mr. PECORA. When Mr. Harriman, of the stock exchange, came around to inquire specifically whether your firm carried any pool or syndicate accounts in any of these stocks, why didn't you tell him that perhaps this account might represent a pool account, in view of the circumstance known to you at the time that some deliveries were made under the market price?

Mr. FOSTER. I don't think he asked me that question.

Mr. PECORA. He did not ask it in any such form, perhaps, but didn't he indicate he wanted to know whether there were any pool or syndicate accounts carried by your firm?

Mr. FOSTER. He asked about alcohol accounts.

Mr. PECORA. And this was one of them?

Mr. FOSTER. This was one of them; yes, sir.

Mr. PECORA. Well, now, Mr. Harriman specifically reports to the business conduct committee of the exchange in this letter that Mr. J. C. Duncan, one of your partners, stated that during the period under review the firm did not have any pool or syndicate accounts on its books containing transactions in any of those alcohol stocks. So, Mr. Harriman must have specifically asked about it?

Mr. FOSTER. He must have asked Mr. Duncan.
 Mr. PECORA. He did not ask you, then?
 Mr. FOSTER. No; I don't remember that he did.
 Mr. PECORA. A transcript of that account no 296 was given to Mr. Harriman, was it not, by your firm for the stock exchange?
 Mr. FOSTER. They copied it off themselves.
 Mr. PECORA. Oh, they copied that off themselves?
 Mr. FOSTER. Yes, sir.
 Mr. PECORA. I have here what purports to be a copy of the account as given to the business-conduct committee by Mr. Harriman. Will you look at it and tell me if you would say it is a true and correct statement of the account?
 Mr. FOSTER (after examining document). Did Mr. Harriman take this off?

Mr. PECORA. Yes. We get that from the stock exchange.

Mr. FOSTER. I think so; yes.

Mr. PECORA. I will offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Statement of account no. 296-B. E. Smith-American Commercial Alcohol, with W. E. Hutton & Co. was thereupon designated "Committee Exhibit No. 31, February 16, 1934", and appears in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The paper received in evidence is marked "Committee's Exhibit No. 31" and is entitled "W. E. Hutton & Co., account no. 296, B. E. Smith, American Commercial Alcohol", and it shows the various operations in that account on both the buying and selling side, and the receiving and delivery side from May 3, 1933, down to and including July 24, 1933, and that the account bought during that period 54,894 shares and sold 53,403 shares, leaving it long on July 24, 1933, 1,491 shares of American Commercial Alcohol.

(The committee exhibit no. 31 is as follows:)

Date	Bought	Sold	Re-ceived	De-livered	Date	Bought	Sold	Re-ceived	De-livered
1933					1933				
May 3			4,000		June 19		1,100		
May 4		3,700			June 26	700	1,500		
May 5	600				June 27	3,100		5,000	
May 8	500	1,000			June 28		1,500		
May 9	900				June 29	100	2,800		
May 10	200				June 30	600			
May 11	700	300		1,000	July 3	600			
May 12		1,100			July 5			300	200
May 15	500							4,700	
	200							793	
May 16		900	4,000	1,000	July 7	2,000			
		1,600			July 10	300			
		3,300		1,000	July 13	1,100	1,700		
May 19	600				July 14	3,600	800		
May 22	600				July 17		1,200		
May 24	300	500		2,000	July 18		1,600		
May 25		3,400			July 19	300			
May 26		1,500			July 20	2,600			3
May 29	3,200	4,800		3,000	July 21		2,500	1	
June 1		800	2,000		July 24		500		1,000
June 2	200		2,500						
June 5		1,100	2,500						
June 6		1,900			Recd.	29,100	44,200	25,794	9,203
June 7		1,100				25,794	19,203		
June 12		1,000				54,894	53,403		
June 13		1,000				53,403			
June 14					July 24, long	1,491			
June 16	100								

Mr. PECORA. During the time covered by this account, namely, from May 3, 1933, up to and including July 24, 1933, there was considerable activity in that stock, wasn't there?

Mr. FOSTER. As I remember; yes.

Mr. PECORA. And the price within that period ranged from around \$20 a share in the early part of May to a high of 89 $\frac{7}{8}$ on July 18, didn't it?

Mr. FOSTER. I think so. I am not sure.

Mr. PECORA. And then by July 21 it had gone down to around 29?

Mr. FOSTER. Something like that; yes.

Mr. PECORA. From a high of 89 $\frac{7}{8}$ 3 days before. There was a sort of a debacle of security values on the exchange on July 18 last, wasn't there? Do you remember?

Mr. FOSTER. I don't remember the date, but I guess that is right.

Mr. PECORA. And the movement was led by the so-called "repeal" or "alcohol" stocks?

Mr. FOSTER. Yes, sir.

Mr. PECORA. According to exhibit no. 29, which was one of the letters of instruction which your firm received from B. E. Smith, and which is dated July 31, 1933, wasn't it quite apparent that this account no. 296 was a pool or syndicate account?

Mr. FOSTER. I should say so; yes.

Mr. PECORA. And you had this letter of July 31, 1933, in your files and had acted in pursuance of its instructions, had you not?

Mr. FOSTER. Yes.

Mr. PECORA. And you had it in your files and had taken action under it pursuant to its instructions before Mr. Harriman came around and made his inquiries of your firm for pool accounts in any of those stocks?

Mr. FOSTER. I don't remember the date of Mr. Harriman's visit.

Mr. PECORA. Well, I can tell you that it was around the first week in August that I asked Mr. Richard Whitney, president of the New York Stock Exchange, to make this kind of an inquiry of the brokers that were members of his exchange. I am just wondering, Mr. Foster, why it was that no one told Mr. Harriman, the stock exchange's representative, that this was a pool or syndicate account.

Mr. FOSTER. I for one do not think he asked me. I don't remember that he asked me.

Mr. PECORA. Well, he didn't ask you, but he apparently asked Mr. Duncan.

Mr. FOSTER. Certainly. That letter shows it.

Mr. PECORA. That is all of this witness.

The CHAIRMAN. You may be excused, Mr. Foster.

Mr. PECORA. Mr. Brown.

TESTIMONY OF RUSSELL R. BROWN—Resumed

Mr. PECORA. Mr. Brown, there was introduced in evidence at about the end of your examination just prior to recess this noon the original pool agreement marked in evidence as "Exhibit No. 27", to which you said you were a party, although your interest was concealed in the name of K. B. Phagan?

Mr. BROWN. That is correct, sir.

Mr. PECORA. How long did the pool formed under this agreement operate in the common stock of American Commercial Alcohol?

Mr. BROWN. That I cannot tell you.

Mr. PECORA. What were the profits that the pool made as a result of its operation?

Mr. BROWN. Total of something less than \$210,000, the pool and the underwriting combined.

Mr. PECORA. And you received 10 percent of that?

Mr. BROWN. Yes, sir.

Mr. PECORA. Of that profit?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Because you had a 10-percent interest in both the pool and the underwriting syndicate?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Do you recall when you received that distribution of profit?

Mr. BROWN. I think it was some time in August?

The CHAIRMAN. Did the corporation pay a dividend in 1933?

Mr. BROWN. No, sir. It had substantial earnings, but it has not paid a dividend as yet.

Mr. PECORA. Under the pool agreement which is in evidence here and constituted Thomas E. Bragg as the manager, the manager was given the sole direction and management in the entire conduct of the business and transactions of the syndicate, but he was also given power to buy and sell?

Mr. BROWN. Correct, sir.

Mr. PECORA. The stock of the American Commercial Alcohol Corporation for the account of the syndicate in his uncontrolled discretion?

Mr. BROWN. Correct.

Mr. PECORA. And he was also given the power to hire and employ such brokers and agents as he in his sole discretion might deem desirable, and so forth—you know that, too?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, what was the purpose of the formation of this pool agreement and this pool account?

Mr. BROWN. At the time there was discussed with Mr. Bragg the matter of the underwriting he suggested, and as I remember insisted, that the principal interests in American Commercial should join with him in the underwriting, and at that time the discussion came up about the fee of \$2, which was eventually reduced to \$1 after we had agreed to join with him, and at the same time we joined in the whole group. As I remember it, there are three or four documents in connection with this transaction, the agreement of May 2.

Mr. PECORA. Well, the agreement of May 2 is the pool agreement?

Mr. BROWN. Yes.

Mr. PECORA. What was the purpose of the formation of this pool? What was the pool to do?

Mr. BROWN. To operate in the market.

Mr. PECORA. For what purpose?

Mr. BROWN. For the purpose of bringing into the company the cash from the sale of the securities covered there.

Mr. PECORA. Well now, will you be good enough to tell this committee how the operation of this pool account would serve the purpose of bringing cash into the treasury of the corporation?

Mr. BROWN. It enabled the liquidation of the securities acquired by Capdevielle and Phagan, the payment of their notes, and the bringing in of those funds.

Mr. PECORA. How was the pool account necessary to do that? What was it considered necessary to do that? Why was it considered necessary to have this pool formed to do that?

Mr. BROWN. That I cannot tell you, except that all of those things were joined together at the same time, and the documents were drawn about the end of May 1933 and all joined together at one time.

Mr. PECORA. Oh, no; this document was drawn and dated May 2, 1933.

Mr. BROWN. I think you will find in your files, Mr. Pecora, another document.

Mr. PECORA. There is the underwriting agreement that is in evidence here, of course.

Mr. BROWN. I believe there are other documents besides that in which it is indicated very clearly that—I think the 31st of May—or speaks of pool agreement which had heretofore been drawn up as of May 2, 1933. There is another document there.

Mr. PECORA. This pool agreement specifically states that the purpose of the agreement is as follows:

Whereas the parties hereto desire to form a syndicate for the purpose of buying and selling common stock of American Commercial Alcohol Corporation

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. Now, do you know when this pool started to trade?

Mr. BROWN. That I don't know. The money was put into the pool, I think, on the 7th of June.

Mr. PECORA. On the 7th of June?

Mr. BROWN. Yes.

Mr. PECORA. But when did it start to trade?

Mr. BROWN. I never have seen the account. I have never had a report of the account. I never knew anything about the account.

Mr. PECORA. There is not any doubt in your mind that the account known as "No. 296" carried on the books of W. E. Hutton & Co, is the account through which this pool operated, is there?

Mr. BROWN. I assume so from this testimony; yes, sir.

Mr. PECORA. From the testimony you heard Mr. Foster give?

Mr. BROWN. Yes.

Mr. PECORA. You assume that that is so?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. Now, according to that evidence, the first trades in that account were made on May 3, 1933, and the last trades on July 24, 1933.

Mr. BROWN. I think that is correct.

Mr. PECORA. And yet you say the first moneys were put up some time in June?

Mr. BROWN. Yes; around the 5th of June the first call was made on the participants in the syndicate to put up the funds.

Mr. PECORA. Where did the stock come from from which deliveries were made for the accounts of this pool?

Mr. BROWN. Part of them came from me, part of them from Mr. Grimm, and, if I remember correctly, some from Mr. Publicker; also from Capdevielle and Phagan.

Mr. PECORA. Capdevielle and Phagan were your two dummies?

Mr. BROWN. That is correct.

Mr. PECORA. Any stock they put up they put up for your account?

Mr. BROWN. They put up in accordance with the contracts which were entered into; yes.

Mr. PECORA. They put up for your account, representing your interest.

Mr. BROWN. I simply advanced, as you can appreciate, for the benefit of the company, certain stocks. Some of the deliveries into the Hutton account were made directly from Phagan, and some directly from Capdevielle, as I understand it. Mr. Grimm and I made the initial advances. We had returned to us such advances as we had made, so that ultimately, as far as the option was concerned, we were in the same position as we were before.

Mr. PECORA. During the period from May 3, 1933, to July 18, 1933, the stock of American Commercial Alcohol Corporation went steadily up from around the lower 20's to a high of 89 $\frac{7}{8}$, did it not?

Mr. BROWN. Yes, sir.

Mr. PECORA. What contribution do you think the operations of this pool made to that price movement?

Mr. BROWN. I assume that the pool made some contribution to it, but it is my understanding, from what Mr. Bragg told me, that after it passed 35 he was not interested; that the general public came in and took the market

Mr. PECORA. When did it pass 35?

Mr. BROWN. I have forgotten.

Mr. PECORA. We will show you. [After examining papers:] It reached 35 on June 26. The pool account was not closed on that date, was it?

Mr. BROWN. From what I have heard here, I find out the details of the account for the first time. This is the first I have ever known of what the details of the account were.

Mr. PECORA. From June 26 on, the price went up until, on July 18, it reached 89 $\frac{7}{8}$'s.

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you do any trading in the market in this stock on your individual account, apart from your interest in this pool?

Mr. BROWN. Very slight.

Mr. PECORA. Very slight.

Mr. BROWN. I find myself in about the same position so far as holdings of American Commercial Alcohol stock are concerned today as I was a few years ago.

Mr. PECORA. That is, you never really let go of any of your holdings? You preserved your position?

Mr. BROWN. At quite some expense to myself; because originally, as you will appreciate, the E. F. Hutton option did not expire until the 12th of May, and in line with what I have pointed out to you before, I called Mr. Cutten on the phone and told him that he had better wind the account up, and for the first time he called on the balance of the stock, so that I was put in the position right then and there of delivering 4,000 in advance of any deliveries to Bragg.

Mr. PECORA. From all of the evidence presented here, the greater part of which has been given by you, it is true, is it not, that from February 1932, up to the termination of the pool account that was formed on May 2, 1933, the pool operations in the stock had been maintained continuously?

Mr. BROWN. I should not say pool accounts, because I think you understand that our only idea was to have an orderly market in the stock, each time an option was given.

Mr. PECORA. I know what you say the idea was, yes; but the fact is that the pool accounts were in operation, under options furnished by you and your associates in the company.

Mr. BROWN. That is correct.

Mr. PECORA. From February 1932, up to at least the 24th of July 1933.

Mr. BROWN. I think that is correct; yes, sir.

Mr. PECORA. Are there any options outstanding at the present time?

Mr. BROWN. No, sir.

Mr. PECORA. Have any options been given since the one given to Bragg?

Mr. BROWN. No, sir; and there are not going to be any more given by me, either.

Mr. PECORA. Is that a promise?

Mr. BROWN. Yes.

Mr. PECORA. Can you give this committee the name of any broker or brokers who executed any of the orders under any of these options, or for this pool of May 2, 1933?

Mr. BROWN. No, sir; unless it be Mr. Wright.

Mr. PECORA. Who?

Mr. BROWN. Unless it be Mr. Wright.

Mr. PECORA. Mr. Wright is under subpoena here, and I am going to call him as the next witness.

Mr. CHAIRMAN. I notice the train time has about arrived. Is Mr. Quinn here?

Mr. QUINN. Yes, sir.

TESTIMONY OF FRANK J. QUINN, WESTPORT, CONN.

The CHAIRMAN. Mr. Quinn, you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee. So help you, God.

Mr. QUINN. I do.

Mr. PECORA. Give me your full name and address, please, Mr. Quinn.

Mr. QUINN. Frank J. Quinn, Westport, Conn.

Mr. PECORA. What is your business or occupation?

Mr. QUINN. I am a clerk employed at W. E. Hutton & Co., for the purpose of acting as secretary to Mr. B. E. Smith.

Mr. PECORA. You are employed by W. E. Hutton & Co., as secretary to Mr. B. E. Smith?

Mr. QUINN. Yes.

Mr. PECORA. Your salary or compensation is received from Mr. Smith, or from W. E. Hutton & Co.?

Mr. QUINN. From W. E. Hutton & Co.

Mr. PECORA. Do you take care of Mr. Smith's business matters?

Mr. QUINN. Yes, sir; quite a lot of it; yes, sir.

Mr. PECORA. Does Mr. Smith make his office with W. E. Hutton & Co.?

Mr. QUINN. Yes, sir.

Mr. PECORA. How long has he done that?

Mr. QUINN. Since about the middle of July 1929. Previous to that he was a member.

Mr. PECORA. Previous to that what?

Mr. QUINN. Previous to that he was a member of W. E. Hutton & Co.

Mr. PECORA. Did he withdraw from the firm in July 1929?

Mr. QUINN. Yes, sir.

Mr. PECORA. But continued making his headquarters in their offices?

Mr. QUINN. Yes.

Mr. PECORA. He is a member of the New York Stock Exchange, is he not?

Mr. QUINN. Yes, sir.

Mr. PECORA. Where is he at the present time?

Mr. QUINN. He is on a cruise with his family.

Mr. PECORA. When did he start on that cruise?

Mr. QUINN. Shortly after Labor Day 1933.

Mr. PECORA. Since last September?

Mr. QUINN. Yes, sir.

Mr. PECORA. When is he expected to return?

Mr. QUINN. That is indefinite. I would say possibly 3 or 4 months. I am not sure.

Senator COUZENS. After this committee is through, I suppose. [Laughter.]

Mr. PECORA. The answer is a wink. Who handles his business affairs in his absence on this cruise?

Mr. QUINN. Well, I believe a lot of them pass through my hands—most of them.

Mr. PECORA. Have you handled actively his business affairs since last September?

Mr. QUINN. I would say yes, sir.

Mr. PECORA. Have they been active?

Mr. QUINN. No.

Mr. PECORA. Do you know anything about this account no. 296, carried on the books of W. E. Hutton & Co. as a B. E. Smith account?

Mr. QUINN. Oh, yes.

Mr. PECORA. Are you familiar with the transactions that were had in that account between May 3, 1933, and July 24, 1933?

Mr. QUINN. I would be familiar with part of them; yes, sir.

Mr. PECORA. Do you know what broker or brokers executed the orders for that account?

Mr. QUINN. No; I would not have any means of knowing that.

Mr. PECORA. Do you know who gave the orders for the account?

Mr. QUINN. I have given orders, but not made any decisions.

Mr. PECORA. When you gave orders, upon whose instructions were your orders given?

Mr. QUINN. Mr. Bragg.

Mr. PECORA. Mr. Thomas E. Bragg?

Mr. QUINN. Yes, sir.

Mr. PECORA. Would you say from that that he actively had charge of the operations in that account in the stock of American Commercial Alcohol?

Mr. QUINN. Yes, sir.

Mr. PECORA. Do you know where Mr. Bragg is now?

Mr. QUINN. In Honolulu.

Mr. PECORA. With his family?

Mr. QUINN. Yes, sir.

Mr. PECORA. Do you know whether Mr. Smith has caught up with him in Honolulu—or perhaps it is vice versa.

Mr. QUINN. No, sir. Mr. Smith at the moment, I believe, is somewhere down around Melbourne, Australia.

Mr. PECORA. Mr. Quinn, do you recall that since last October a questionnaire was addressed to Mr. Smith at the instance of this committee?

Mr. QUINN. I seem to recall something about it; yes, sir.

Mr. PECORA. That questionnaire was similar in form to one sent to all members of the New York Stock Exchange and other stock exchanges throughout the country.

Mr. QUINN. That would be correct; yes, sir.

Mr. PECORA. Who made out the returns to that questionnaire?

Mr. QUINN. I believe I must have. I do not recall, but I must have possibly made it out.

Mr. PECORA. Are the answers that were made to the questions on that questionnaire complete?

Mr. QUINN. I believe they are, and I hope they are.

Mr. PECORA. Did you attempt to make complete answers to them?

Mr. QUINN. Yes, sir.

Mr. PECORA. Do you recall what answers you made to the questions about whether or not Mr. Smith was a member of or managed any pool or syndicate operation?

Mr. QUINN. I think I recall that; yes, sir.

Mr. PECORA. What answer do you think you made?

Mr. QUINN. That he was not a member of it.

Mr. PECORA. That he was not a member of it?

Mr. QUINN. Yes, sir.

Mr. PECORA. Not a member of any pool or syndicate operation?

Mr. QUINN. That is correct.

Mr. PECORA. And you say that is a complete and accurate answer to that question?

Mr. QUINN. Yes, sir; except insofar as the account was handled at W. E. Hutton & Co., more or less under an arrangement that he has as a member of the Exchange, with W. E. Hutton & Co.

Mr. PECORA. That questionnaire, which, by the way, was signed by you—

Mr. QUINN. Yes, sir.

Mr. PECORA (continuing). Will be brought to the notice of this committee at some future time, Mr. Quinn. I may want you to come down here again.

Mr. QUINN. I will be glad to.

Mr. PECORA. You are not going to Australia, are you?

Mr. QUINN. Not until tonight [laughter].

The CHAIRMAN. The committee will now take a recess until Tuesday at 10 o'clock.

Mr. PECORA. The only witnesses, Mr. Chairman, of those under subpoena now, that we will require are Mr. Brown, Mr. Wright, and Mr. Grimm.

(Whereupon, at 3:45 p.m., Friday, Feb. 16, 1934, an adjournment was taken until Tuesday, Feb. 20, 1934, at 10 a.m.)

COMMITTEE EXHIBIT No. 22—FEBRUARY 16, 1934

[10102]

Nowon, Inc., Pro Forma Balance Sheet, June 27, 1933

Notes receivable.....	\$270,000.00
Inventory.....	25,000.00
Machinery and equipment.....	25,000.00
Good will, licenses, and processes.....	380,000.00
	<hr/>
Total assets.....	700,000.00
	<hr/>
Purchase contract payable.....	80,000.00
Preferred stock, \$100 par, authorized, 300,000 shares; less un- issued, 30,000 shares.....	270,000.00
Common stock, no par, 6,000 shares.....	350,000.00
	<hr/>
Total liabilities.....	700,000.00

Certified correct this 27th day of June 1933.

CHARLES D. BEEBE,
Assistant Treasurer.

Received, Committee on Stocklist July 10, 1933, 11:54 a.m.