

STOCK EXCHANGE PRACTICES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S.Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK
EXCHANGES WITH RESPECT TO THE BUYING AND
SELLING AND THE BORROWING AND LENDING
OF LISTED SECURITIES

AND

S.Res. 56 and S.Res. 97

(73d CONGRESS)

RESOLUTIONS TO INVESTIGATE THE MATTER OF BANKING
OPERATIONS AND PRACTICES, TRANSACTIONS RELATING TO
ANY SALE, EXCHANGE, PURCHASE, ACQUISITION, BORROW-
ING, LENDING, FINANCING, ISSUING, DISTRIBUTING, OR
OTHER DISPOSITION OF, OR DEALING IN, SECURITIES OR
CREDIT BY ANY PERSON OR FIRM, PARTNERSHIP, COMPANY,
ASSOCIATION, CORPORATION, OR OTHER ENTITY, WITH A
VIEW TO RECOMMENDING NECESSARY LEGISLATION, UNDER
THE TAXING POWER OR OTHER FEDERAL POWERS

PART 13

Alcohol Pools

FEBRUARY 14 TO FEBRUARY 20, 1934

Printed for the use of the Committee on Banking and Currency



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STOCK EXCHANGE PRACTICES

WEDNESDAY, FEBRUARY 14, 1934

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

The committee met at 10:30 a.m., pursuant to call, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding. Present: Senators Fletcher (chairman), Bulkley, Gore, Costigan, Adams, Byrnes, Goldsborough, Townsend, Walcott, 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; Millard F. Tompkins, 116 John Street, New York City, attorney for Ruloff E. Cutten.

The CHAIRMAN The committee will come to order, please. Who will you have first this morning, Mr. Pecora?

Mr. PECORA. Mr. Russell R. Brown.

The CHAIRMAN. Please come forward to the committee table, 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. BROWN. I do, sir.

The CHAIRMAN. Take a seat right there opposite the microphone.

TESTIMONY OF RUSSELL R. BROWN, CHAIRMAN OF THE BOARD, AMERICAN COMMERCIAL ALCOHOL CORPORATION, NEW YORK CITY

Mr. PECORA. Mr. Brown, will you give your full name, and address to the committee reporter for the record.

Mr. BROWN. Russell R. Brown, 405 Lexington Avenue, New York City, N.Y.

Mr. PECORA. What is your business or occupation?

Mr. BROWN. I am chairman of the board of the American Commercial Alcohol Corporation.

Mr. PECORA. How long have you been the chairman of the board of that corporation?

Mr. BROWN. Since April of 1931.

Mr. PECORA. Prior to your becoming chairman of the board were you affiliated with the corporation in any other capacity?

Mr. BROWN. No.

Mr. PECORA. Do you know when the corporation was organized?

Mr. BROWN. In March of 1928.

Mr. PECORA. And was it incorporated under the laws of the State of Maryland?

Mr. BROWN. It was, sir.

Mr. PECORA. You were not connected with the corporation in any way at the time of its incorporation, were you?

Mr. BROWN. No, except through an interest I had in the company.

Mr. PECORA. That is, as a stockholder?

Mr. BROWN. As a stockholder, yes.

Mr. PECORA. Now, when did you first become connected with the company in any capacity whatsoever?

Mr. BROWN. On the date I have mentioned, in April of 1931.

Mr. PECORA. Will you give the day of the month, and the year when you became chairman of the board?

Mr. BROWN. It was in April of 1931.

Mr. PECORA. Prior to your becoming chairman of the board of the corporation, what was your business, occupation, or profession?

Mr. BROWN. I was president of the United States Industrial Alcohol Co.

Mr. PECORA. At the present time, Mr. Brown, who are the executive officers of the corporation?

Mr. BROWN. I am chairman of the board, Mr. Richard H. Grimm is president, and Mr. Guy I. Colby is vice president and treasurer, and Mr. Cecil Page is secretary, and Mr. Charles Beebe is auditor, and Mr. William S. Kies is chairman of the executive committee.

Mr. PECORA. How many gentlemen compose the board of directors of the corporation?

Mr. BROWN. If my memory serves me correctly, it is 15.

Mr. PECORA. Can you give the names of those directors either from memory or by reference to any document available to you?

Mr. BROWN. Robert W. Atkins, Russell R. Brown, Marshall H. Runk, James A. S. McMicken, Philip Publicker, Robert L. Pond, J. M. Kessler, S. M. Mayer, Walter E. Buck, J. M. Michell, W. S. Kies. How many have I named now?

The COMMITTEE REPORTER (Mr. Hart). You have named 11.

Mr. PECORA. How about Guy I. Colby?

Mr. BROWN. Yes, sir.

Mr. PECORA. And how about Humphrey W. Chadbourne?

Mr. BROWN. Yes, sir.

Mr. PECORA. How about Warren W. Foster?

Mr. BROWN. Yes, sir.

Mr. PECORA. How about Richard H. Grimm?

Mr. BROWN. Yes, sir.

Mr. PECORA. And how about Cecil Page?

Mr. BROWN. Yes, sir. I am sorry, but I could not recall all of them offhand.

Mr. PECORA. How about Edward S. Paine?

Mr. BROWN. That is correct.

Mr. PECORA. And how about H. G. Atwood?

Mr. BROWN. He is no longer a director. He is out and Dr. J. M. Michell came on the board after Mr. Atwood retired.

Mr. PECORA. At the time of the incorporation of the company, what was its capital structure, Mr. Brown?

Mr. BROWN. Bonds, preferred stock, and common stock.

Mr. PECORA. In what proportions and amounts?

Mr. BROWN. I think approximately \$4,000,000 in bonds, and \$2,000,000 in preferred stock, and the balance in common stock.

Mr. PECORA. How many shares of stock was the corporation authorized to issue, and what were the classifications of stock?

Mr. BROWN. That I do not remember.

Mr. PECORA. Do you know what the capital structure of the company was at the time you became chairman of the board in April of 1931?

Mr. BROWN. There was nothing but common stock outstanding then.

Mr. PECORA. And how many shares?

Mr. BROWN. If my memory serves me correctly, 380,000 shares of no-par value, which was subsequently changed to \$10 par value, and afterwards cut in half to 190,000 shares of \$20 par value.

Mr. PECORA. When was the stock put on a \$20 par value basis?

Mr. BROWN. I think in 1932, if I am not mistaken.

Mr. PECORA. Will you tell the committee what the business is generally of this corporation?

Mr. BROWN. The company has 4 plants, 1 located at Philadelphia, Pa.; 1 at New Orleans, La.; 1 at Sausalito, Calif., across the bay from San Francisco; and then an enormous grain plant at Pekin, Ill. That has a capacity of approximately 100,000 gallons of whiskey and beverage spirits per day.

Mr. PECORA. When did it acquire those plants?

Mr. BROWN. All of these plants came in at the time of the organization of the corporation, with the exception of the California plant, which was acquired at a subsequent date.

Mr. PECORA. When?

Mr. BROWN. I think in 1929.

Mr. PECORA. Would you say generally that the business of the company is the manufacture and sale of commercial alcohol?

Mr. BROWN. I should say, going on with the story about the plants, that the plants at Philadelphia had been used for the manufacture of commercial alcohol as well as beverage spirits in the old days. The plant at New Orleans, I think, was started in 1926 or 1927, and had been used exclusively for the manufacture of industrial alcohol, but today is being used for the manufacture of rum. The plant at Sausalito, Calif., was originally built, as I understand it, for a whisky plant and changed afterward to an industrial-alcohol plant, which business has continued up to the present time, and also devoted to the sale of beverage spirits. The plant at Pekin, Ill., was originally a whisky plant, manufacturing gin and whisky and other beverage liquors. After prohibition it liquidated a great part of its stocks of whisky and then turned to the manufacture of commercial alcohol as long as it was economically feasible, as manufactured either from grain or molasses, and while prices for commercial alcohol were at a sufficient level it was possible to continue the operation of it as an industrial-alcohol plant. It has also been used for the manufacture of grain alcohol for sale to doctors, dentists, and druggists, and also to such concerns as still require grain alcohol in the manufacture of their various industrial products—

Mr. PECORA. What is the total—

Senator W^AL^CO^TT (interposing). Let me ask a question right there: Did any of those plants formerly belong to the Walker Distilling Co.?

Mr. B^RO^WN. No. They had nothing to do with them. It was the American Distilling Co., and the present American Distilling Co., through which our beverage business is conducted, was owned by the successor corporation to the old American Distilling Co.; and that was owned by a family named Wilson in Pekin, Ill.

Mr. P^EC^OR^A. You have said that when you became chairman of the board in April of 1931 this corporation had outstanding 380,000 shares of common capital stock of no-par value.

Mr. B^RO^WN. That is correct.

Mr. P^EC^OR^A. And subsequently that stock was changed to \$10 par value basis.

Mr. B^RO^WN. That is correct.

Mr. P^EC^OR^A. And then thereafter the par value was increased to \$20 a share.

Mr. B^RO^WN. That is correct.

Mr. P^EC^OR^A. Now, since you became chairman of the board have there been any additional issues of capital stock?

Mr. B^RO^WN. That is correct. There have been approximately 55,000 or rather 66,000 shares issued.

Mr. P^EC^OR^A. When was that issue made?

Mr. B^RO^WN. In June or July, or at least in May, June, or July of 1933.

Senator G^OR^E. How much?

Mr. B^RO^WN. What was that?

The C^HA^IR^MA^N. Senator Gore wishes to know how many shares were issued.

Mr. B^RO^WN. Approximately 66,000 shares; of which 25,000 shares were issued in exchange for other corporations, and forty-one thousand-odd shares issued for subscription by stockholders.

The C^HA^IR^MA^N. And did those shares have any par value?

Mr. B^RO^WN. That all has a par value of \$20 a share.

Mr. P^EC^OR^A. Now, Mr. Brown, the charter of this company requires that any additional issue of stock shall first be offered to the existing stockholders of record, does it not?

Mr. B^RO^WN. Not all of necessity. There is a provision in the charter of the corporation which provides that stock may be issued either for property, or for cash and property, and also issued to stockholders.

Mr. P^EC^OR^A. Under what circumstances must it first be offered to the stockholders of record?

Mr. B^RO^WN. When it is offered for other than cash, or for cash and property, or for property.

Mr. P^EC^OR^A. That is, when it is issued except on an exchange basis?

Mr. B^RO^WN. That is correct.

Mr. P^EC^OR^A. Either for cash or property of any kind?

Mr. B^RO^WN. Yes; that is correct.

Senator W^AL^CO^TT. Did the directors have the right to decide that matter?

Mr. BROWN. The directors have the right to decide that at their discretion.

Mr. PECORA. Now——

Mr. BROWN (interposing). With your permission, I have a statement which I should like to read.

Mr. PECORA. Have you a copy of it, Mr. Brown?

Mr. BROWN. I have just this one. I would be glad to submit it to you if you would like to read it.

Mr. PECORA. May I see it, please?

Mr. BROWN. Certainly. I think it will clarify the situation [handing to Mr. Pecora a two-page typewritten statement].

Mr. PECORA (after reading the statement). I have read this statement, Mr. Brown, and it seems to me to read like an apology in advance for certain things that have not yet been brought out.

Mr. BROWN. I would not say it was an apology.

Mr. PECORA. I beg pardon?

Mr. BROWN. I say, I have not offered it in the sense of an apology.

Mr. PECORA. Well, you have indicated a desire to put it in the record now, and I think it is untimely or premature at this stage of the examination. Any statements you have embodied in this paper you will have opportunity to put into the record through the medium of answers to questions or as your own statement at the proper time.

Mr. BROWN. All right.

Senator KEAN. Mr. Chairman, there is no objection to the witness putting in the statement now if he wants to, is there?

The CHAIRMAN. There seems to be some objection to it, and it can come in later when it is more in order, as I understand it.

Senator KEAN. I suppose he has the right to put it in now if he wants to, hasn't he?

The CHAIRMAN. Well, Mr. Pecora thinks it is not in order now.

Mr. PECORA. I think it would be taking the matter up entirely out of order. I have no objection to it except that it is not in accordance with the procedure of the presentation of evidence here.

Senator KEAN. I haven't seen the statement at all, but it seems to me that a man who goes on the witness stand has a right to put in a statement.

Mr. PECORA. He has the right to put in a statement if the committee wants to accord him that right. He is here as a witness, and I have already indicated, after having read the statement for the first time, upon the witness handing it to me a few minutes ago, that it seems to me to be an apology in advance.

Senator KEAN. That may be, but if he chooses to put in a statement I cannot see why the committee ought to object to his doing it.

The CHAIRMAN. Very well; let it go in.

Mr. PECORA. I have no objection to it, and only thought it ought to go in in the regular order.

Mr. BROWN. Do you want me to read it now?

Mr. BROWN. Yes; that will make it all right.

Mr. PECORA. Let us have it marked in evidence and then I will read it. Mr. Chairman, I ask that that may be done.

The CHAIRMAN. Let it be marked in evidence.

(A 2-page prepared statement presented by Mr. Brown was marked "Committee Exhibit No. 1, February 14, 1934", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The statement produced by the witness has been marked "Committee Exhibit No. 1" as of this date, and reads as follows:

Investigators for your committee have had free access to the records and papers of the American Commercial Alcohol Co for the purposes of this inquiry.

Mr. BROWN. Might I interrupt you right there, Mr. Pecora, for an explanation?

Mr. PECORA. Yes.

Mr. BROWN. The stenographer in copying that paper wrote "company" when it should be "corporation." It is in there in that way at several places.

Mr. PECORA. Then we will understand that where the word "company" appears in this statement it should be "corporation."

Mr. PECORA. I will now resume the reading of the statement.

Whatever those records disclose with respect to the issuance and distribution of the shares of stock of the corporation, you or your investigators are fully familiar with

The validity of the issuance of the shares of the corporation was, of course, passed upon by counsel. The importance of what was done as reflected by the records which have been examined by your investigators, consists primarily in its purpose. At the time, the American Commercial Alcohol Co was a corporation with many stockholders, representing a fair value in excess of \$8,000,000. Although it had no funded debt, and there was a substantial ratio between current assets and current liabilities, nevertheless, it had substantial bank loans, and its business required substantial further outlets for its products if the then condition was to continue for even a short time.

The banks were insistent that the loans be paid. In order to protect the stockholders of the company it was necessary that, not a month later, or 60 days later, but immediately, something should be done which would result in expanded outlets for the company's products, and the payment of a substantial amount of its bank debts.

It is unnecessary to call to the attention of the committee the difficulty of financing industrial corporations during the months of March, April, May, and June of 1933. To obtain financing during those periods in the ordinary way, through banks or investment bankers, was wholly impossible, but unless financing were obtained for the purposes above mentioned, a very serious sacrifice of the value of the business was possible, with resultant loss to those who had invested their money and effort in complete good faith in the enterprise.

It was, therefore, with equal good faith and solely for the purpose of properly protecting the investments which had already been made, and for the purpose of making it possible for the business to survive the most serious interval of the depressed condition, that the steps with respect to the common stock of the company, with which your investigators are fully familiar, were taken.

The risk of loss was assumed by the optionees, underwriters and officers of the corporation, and with that risk went the opportunity for profit. In my particular case, as I view the matter, a loss was suffered rather than a profit realized. In other instances I am informed that profits were realized, but whatever profit was realized, in my opinion, constituted small consideration for the service which at the time I and those associated with me deemed necessary if the large investment in the business of the company, which I have mentioned above, was not to be seriously impaired or perhaps destroyed in part beyond any reasonably prompt recovery.

Every conceivable method of handling the situation promptly was surveyed by me and my associates, and the method pursued seemed at the time—and still seems to me—to have been the only method which would fairly accomplish the

result which was accomplished, namely, the protection of the stockholders of the American Commercial Alcohol Corporation.

The plan was my own undertaking, with the intention of aiding the company in its emergency, and in this I had the support of my associates in the company. For their acts in so cooperating I wish to assume full personal responsibility. I, with their help, and through market support, protected the company and its stockholders in a grave emergency, more grave than the emergency of 1929, when, as has been said, undisclosed market support by companies was not only justified but desirable.

The method employed was unusual and abnormal. The emergency and the abnormal time and no selfish motive created the necessity, and the present excellent condition of the company is one of the best evidences of the justification of the steps that were taken.

After reading this statement it seems to me it emphasizes the untimeliness of its introduction into the record at this point because, standing by itself, it is meaningless. But I wish, Mr. Chairman, to examine the witness with a view to working out the detailed facts that this statement in the main has general reference to.

The CHAIRMAN. All right. You may proceed to do that, Mr. Pecora.

Mr. PECORA. Mr. Brown, before I leave this statement temporarily let me ask you: Who prepared it?

Mr. BROWN. I prepared it myself.

Mr. PECORA. When did you prepare it?

Mr. BROWN. I prepared it on yesterday, and then I corrected it after it was written.

Mr. PECORA. You prepared it in anticipation of being asked a number of questions with regard to the stock issues that are referred to in this statement, I presume?

Mr. BROWN. No. I prepared it so as to have a definite statement on the record of the committee that I assume full responsibility for whatever was done.

Mr. PECORA. Well, the transactions that you refer to here were transactions that you anticipated you would be questioned about, weren't they?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you prepared this statement in anticipation of such questions?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, Mr. Brown, have you the balance sheet of your company for the year 1932?

Mr. BROWN. I have it here in the files.

Mr. PECORA. And also the balance sheet for the year 1931?

Mr. BROWN. I do not think I have it for 1931. I had the auditing department get those papers together. I mean by that statement that it was because I did not get the final subpoena until about 4 o'clock yesterday afternoon, and then I had to gather together my own papers, and we brought what papers were required from the company, by my having the company's auditor bring them down this morning.

Mr. PECORA. Will you produce the balance sheet for the company for the year 1932?

Mr. BROWN (calling upon an associate to produce the paper). Yes, sir; I have one here for December 31, 1931, and also I find here the one for December 31, 1932.

Mr. PECORA. Embodied in the one statement?

Mr. BROWN. Yes, sir. They are embodied, apparently, in this listing application that the secretary of the company just handed to me.

Mr. PECORA. Will you let me have that paper?

Mr. BROWN. Yes; certainly [handing over a paper to Mr. Pecora].

Mr. PECORA. Mr. Chairman, I ask that this paper may now be marked an exhibit for identification.

The CHAIRMAN. That will be done.

(The balance sheets of the American Commercial Alcohol Corporation for the years 1931 and 1932 were marked "Committee Exhibit No. 2 for identification, Feb. 14, 1934", and will be found among the papers of the committee.)

Mr. PECORA. Now, during the year 1932, while you were chairman of the board, did you and other directors and officers of the company give any options?

Mr. BROWN. Yes.

Mr. PECORA. Covering the capital stock of the company to any individual or individuals?

Mr. BROWN. Yes.

Mr. PECORA. Did you give more than one such option during that year?

Mr. BROWN. Yes, sir.

Mr. PECORA. How many did you give?

Mr. BROWN. I cannot tell you exactly. I think the first one was given to Mr. Frank E. Bliss, and I think the next one was given to Ames Bros. The next one was given to a man named Goodwin.

Mr. PECORA. Will you talk a little louder? We cannot hear you.

Mr. BROWN. The next one was given to Goodwin, or to Prentice & Slepach.

Mr. PECORA. You will have to talk a little louder. We cannot hear you.

Mr. BROWN. And finally a series of options was given to Mr. Ruloff Cutten.

Mr. PECORA. What was the business of these optionees whose names you have given to us?

Mr. BROWN. Well, they were connected with the stock exchange or—

Mr. PECORA (interposing). Do you mean the New York Stock Exchange?

Mr. BROWN. Either with the exchange, or they worked down in the Street there; yes, sir.

Mr. PECORA. That is—

Mr. BROWN (continuing). All of them were connected with the exchange, I believe.

Mr. PECORA. As members?

Mr. BROWN. I think so.

Mr. PECORA. I now show you what purports to be a photostatic reproduction of the so-called "option" given to Frank E. Bliss, who is named by you as one of the parties, I believe.

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

Mr. PECORA. That is one of the names you have already given to us.

Mr. BROWN Yes, sir.

Mr. PECORA. Will you look at it and tell me if it constitutes a true and correct copy of the first one in point of time of those options?

Mr. BROWN. There was a series of options.

Mr. PECORA. Well, of the series of options given to Mr. Bliss.

Mr. BROWN (after looking at the photostats). These look all right to me.

Mr. PECORA Mr. Chairman, I wish to offer them in evidence.

The CHAIRMAN. Let them be admitted.

Mr. PECORA. There are three option agreements pinned together there, and I suggest that they be marked with the proper number and then lettered A, B, and C.

(The three option agreements granted to Frank E. Bliss, the first one dated Feb. 15, 1932, were marked "Committee Exhibit No. 3, A, B, and C, Feb. 14, 1934", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum of agreement dated February 15, 1932, reads as follows:

Memorandum of agreement made this 15th day of February, 1932, between RUSSELL R. BROWN, party of the first part, and FRANK E. BLISS, party of the second part

Whereas the party of the first part is the owner of American Commercial Alcohol Common Voting Trust Certificates, and

Whereas FRANK E. BLISS desires an option upon such certificates on certain terms,

Now, therefore, it is agreed by and between the parties hereto as follows

(1) In consideration of the sum of Ten Dollars (\$10) paid by the party of the second part, receipt whereof is hereby acknowledged, and the mutual promises herein contained, the party of the first part gives to the party of the second part for a period of thirty (30) days from the date of this agreement, an option to purchase all or any of American Commercial Alcohol Common Voting Trust Certificates in the amount and at the prices herein below set forth:

1500 shares at \$7 00 per share
 1500 shares at \$8 00 per share
 1500 shares at \$9 00 per share
 1500 shares at \$9 50 per share
 1500 shares at \$10 00 per share
 1500 shares at \$11 00 per share.

(2) The party of the first part agrees to loan to the party of the second part at any time during the option period, all or any part of such 6,000 certificates then remaining unsold under this option, such loans to be made according to the usual Street custom, the party of the second part to deposit, upon borrowing such certificates, an amount equal to the market value thereof and keep such deposit up to an amount equal to the market value thereof from time to time thereafter, certificates so loaned not to be called for during the option period except as necessary to fulfill delivery of purchases. Deliveries of stock will be made to the party of the second part upon one day's notice

(3) The party of the first part may buy and sell American Commercial Alcohol Common Voting Trust Certificates, but such orders will be given through such Stock Exchange house as shall be named by the party of the second part, and the party of the first part agrees not to buy or sell stock through any other source

(4) The option herein granted may be assigned by the party of the second part but the party of the second part and such assignee or assignees agree to use all reasonable efforts to maintain an active and stable market for such stock consistent with its value and with its earning possibilities

In witness whereof the party of the first part and the party of the second part have hereunto set their hands this 15th day of February 1932

(Signed) RUSSELL R. BROWN

(Signed) FRANK E. BLISS

Exhibit no. 3-B is, I understand, in identical form with exhibit no. 3-A, except that the parties are Philip Publicker, party of the first part, the optioner, and Frank E. Bliss, party of the second part, as the optionee. The number of shares and the option prices in exhibit 3-B are as follows: 1,000 shares at \$7 per share; 1,000 shares at \$8 per share; 1,000 shares at \$9 per share; 1,000 shares at \$9.50 per share; 1,000 shares at \$10 per share; and 1,000 shares at \$11 per share.

Senator GOLDSBOROUGH. This was after the split-up, from 20 to 10?

Mr. PECORA. These were voting trust certificates.

Mr. BROWN. The equivalent value today would be just twice those figures mentioned.

Mr. PECORA. Who is Philip Publicker?

Mr. BROWN. Mr. Publicker is one of the directors of the company.

Mr. PECORA. Was he a director of the company on the 15th day of February 1932, which is the date of this option marked exhibit 3-B?

Mr. BROWN. Yes, sir.

Mr. PECORA. And he still is a director of the company?

Mr. BROWN. Yes, sir.

Mr. PECORA. And has been continuously since February 15, 1932?

Mr. BROWN. Yes; even before that.

Mr. PECORA. I beg your pardon?

Mr. BROWN. I came in at the time he was originally chairman of the board, and I succeeded him as chairman of the board.

Mr. PECORA. He remained as a director from the time you came in as chairman of the board, in April 1931?

Mr. BROWN. Yes. It was at Mr. Publicker's request that I came into the company.

Mr. PECORA. I notice that the option prices set forth in the "Publicker option", so called, are the same as the option prices set forth in the option agreement which you gave Mr. Bliss on the same day.

Mr. BROWN. I think that is correct. I think they are all the same, in varying quantities.

Mr. PECORA. The third option agreement offered in evidence here, and which has been marked "Exhibit 3-C", is also identical in form with the one that has been read into evidence, the one marked "Exhibit 3-A." It is the same date, but it is made by William S. Kies, as party of the first part, and Frank E. Bliss, as party of the second part. The shares and option prices fixed therein are as follows: 1,000 shares at \$7 per share; 1,000 shares at \$8 per share; 1,000 shares at \$9 per share; 1,000 shares at \$9.50 per share; 1,000 shares at \$10 per share; 1,000 shares at \$11 per share. It is also dated February 15, 1932. I notice, Mr. Brown, that those option prices are the same as those mentioned in the two previous option agreements that have already been referred to.

Mr. BROWN. Yes.

Mr. PECORA. Who is William S. Kies, the optioner on this agreement?

Mr. BROWN. Mr. Kies is a director of the company, and also chairman of the executive committee.

Mr. PECORA. Was he a director of the company on February 15, 1932, when this option was given?

Mr. BROWN. Yes, sir.

Mr. PECORA. When did he first become a director of the company?

Mr. BROWN. At the time of its organization.

Mr. PECORA. That is, back in 1928?

Mr. BROWN. Yes.

Mr. PECORA. And has served continuously as a director ever since?

Mr. BROWN. That is correct.

Mr. PECORA. When did he become chairman of the executive committee of the board?

Mr. BROWN. I think at the time of the organization of the corporation.

Mr. PECORA. And has served in that capacity ever since?

Mr. BROWN. Yes, sir.

Mr. PECORA. The fourth of these option agreements, marked in evidence as "Exhibit 3-D", is identical in form with exhibit 3-A, except that the parties thereto are Richard H. Grimm, party of the first part, and Frank E. Bliss, party of the second part. It bears the same date, namely February 15, 1932, as the options already discussed, and the stock and option prices provided for therein are as follows: 1,500 shares at \$7 per share; 1,500 shares at \$8 per share; 1,500 shares at \$9 per share; 1,500 shares at \$9.50 per share; 1,500 shares at \$10 per share; 1,500 shares at \$11 per share.

Those option prices correspond to the option prices in the three preceding options that have already been referred to, do they not?

Mr. BROWN. Yes, sir.

Mr. PECORA. Who is Richard H. Grimm?

Mr. BROWN. He is the president of the company.

Mr. PECORA. Was he the president of the company on February 15, 1932?

Mr. BROWN. Yes.

Mr. PECORA. Also a director, I presume.

Mr. BROWN. Yes.

Mr. PECORA. When did Mr. Grimm become president of the company?

Mr. BROWN. About the time of the organization of the company.

Mr. PECORA. Back in 1928.

Mr. BROWN. Yes, sir.

Mr. PECORA. And has served continuously in that office ever since?

Mr. BROWN. Yes, sir.

Mr. PECORA. And also as a director?

Mr. BROWN. Yes, sir.

Mr. PECORA. At the time of the giving of these four options to Mr. Bliss, was the stock of this company listed on any public-securities exchange?

Mr. BROWN. On the New York Stock Exchange.

Mr. PECORA. When was it first listed there?

Mr. BROWN. If my memory serves me correctly, in 1928. I am not sure.

Mr. PECORA. Do you recall what the market value of the stock was, as evidenced by the quotations on the New York Stock Exchange, on February 13, 1932?

Mr. BROWN. Approximately those figures.

The CHAIRMAN. I did not get your last answer.

Mr. BROWN. I say approximately those figures.

Mr. PECORA. These figures vary, Mr Brown, from \$7 up to \$11

Mr. BROWN. I do not remember. I really cannot recollect that.

Mr. PECORA. What is that?

Mr. BROWN. I do not remember that, Mr Pecora; I have not the least idea.

Mr PECORA. How many shares were listed at that time on the New York Stock Exchange?

Mr. BROWN. I should say approximately 380,000 shares

Mr. PECORA. Three hundred and eighty thousand

Mr. BROWN. Yes

Senator TOWNSEND. What was the amount of the options given?

Mr. PECORA. There was a total of 30,000 shares covered by these four options.

Mr. BROWN. Yes. At the time the option was given, Mr. Bliss and I met sometime before that. He is an outstanding figure on the exchange; a man of splendid reputation, of real ability, and the sole purpose in the giving of those options, as evidenced by the discussion had with Mr. Bliss at the time the options were given, was that we were not at all interested in having any of the stock called. We purposely did not want the stock called. We simply wanted him to look after the market for the stock, and we accordingly gave him the options.

Mr. PECORA. Who took the initiative in the negotiations which led to the giving of these four options to Mr Bliss?

Mr. BROWN. I have forgotten. I had met Mr. Bliss, I should say, probably in 1930 or 1931. I have really forgotten. I do not remember.

Mr. PECORA. Can you not possibly refresh your recollection on that point, Mr. Brown?

Mr. BROWN. No, sir; I cannot. I have not the least idea. The initiative, I assume, came from my side of it. I think I sent for Mr. Bliss.

Mr. PECORA. It is quite probable that it did come from your side?

Mr. BROWN. Yes.

Mr. PECORA. Because you had certain definite purposes you wanted to accomplish through the medium of these options.

Mr. BROWN. I simply wanted a stable market maintained in the stock. That was the only desire.

Mr. PECORA. Had there been much activity in the trading of that stock on the exchange prior to February 15, 1932?

Mr. BROWN. That I cannot tell you. I assume there had been from time to time. I do not remember.

Senator GORE. What was the prevailing price at that time?

Mr. PECORA. I have asked the witness, and he says he does not recall.

Senator GORE. I thought you asked him about the quantity.

Mr. PECORA. I asked him what the quotations were on February 13 or February 15.

Don't you recall what the quotation of that stock was on the New York Stock Exchange on February 15, 1932?

Mr. BROWN. No, sir.

Mr. PECORA. Was it as high as \$11, which is the highest option price fixed in any of these options?

Mr. BROWN. At that time?

Mr. PECORA. Yes.

Mr. BROWN. I cannot tell you. It might have been.

Mr. PECORA. Was it lower than \$7, which is the lowest option price mentioned in those four agreements?

Mr. BROWN. It might have been.

Mr. PECORA. The stock covered by these options was at the time owned by the parties who granted these options?

Mr. BROWN. That is correct.

Mr. PECORA. And all four of these persons, namely, yourself, Mr. Grimm, Mr. Kies, and Mr. Publicker, were officers or directors of the company

Mr. BROWN. That is correct.

Mr. PECORA. You were the chairman of the board; Mr. Grimm was president and chairman of the executive committee—

Mr. BROWN. No; president Mr. Kies was chairman of the executive committee

Mr. PECORA. Mr. Grimm was president and a director

Mr. BROWN. Yes.

Mr. PECORA. Mr. Kies was director and chairman of the executive committee, and Mr. Publicker was a director?

Mr. BROWN. That is correct.

Senator KEAN. I would like to ask a question there. Were those options submitted to the board and approved by the board?

Mr. BROWN. It was stock that was owned by us. It did not belong to the company.

Senator KEAN. It was not submitted to the board at all?

Mr. BROWN. It was not submitted to the board at all.

Senator KEAN. So the board knew nothing about these options.

Mr. BROWN. No; except in informal conversation.

Mr. PECORA. According to records here of the public quotations of that stock on February 13, which was two days before the granting of these options, the stock was quoted at a low of $6\frac{3}{4}$, and a high of 8, on February 13, 1932. Would that accord with your recollection?

Mr. BROWN. I should say approximately those figures.

Mr. PECORA. You said a few moments ago, if I correctly understood your testimony, that you and the other optioners were not desirous of having call made upon you for the stock covered by these options?

Mr. BROWN. That is correct.

Mr. PECORA. Why not?

Mr. BROWN. Because we believed in the company and felt that the company had possibilities, because of its comparatively small setup, the strategic location of its plants, and we were really vitally interested in the company.

Mr. PECORA. Then what was the real purpose of these four option agreements that were given to Mr. Bliss at that time?

Mr. BROWN. Because Mr. Bliss was a man of outstanding reputation on the exchange, and we felt that his being on the floor of the

exchange, it would be possible for him to maintain a stable market there.

Mr. PECORA. Was the market unstable?

Mr. BROWN. It was a very thin market.

Mr. PECORA. Then you wanted to promote activity in the trading of the stock, did you not?

Mr. BROWN. Not necessarily; but to have a man who was interested in the company and probably felt the same as we did about the possibilities of the organization, and he would just watch the market and prevent raiding, and so forth.

Mr. PECORA. How would you expect Mr. Bliss to be able to do that without calling upon you and your associates for the stock that you had optioned to Bliss?

Mr. BROWN. I do not know how Mr. Bliss operates on the market any more than I know how the other members of the exchange operate on the market.

Mr. PECORA. You knew that he had some method of operating the market, did you not?

Mr. BROWN. I knew only by reputation.

Mr. PECORA. And that reputation, you say, was excellent.

Mr. BROWN. Yes.

Mr. PECORA. Did you mean by that that he was a successful operator?

Mr. BROWN. No; not necessarily.

Mr. PECORA. What do you mean by that?

Mr. BROWN. I meant that he was a man of keen intelligence and splendid reputation; that he had lots of friends on the floor; and if they knew he was watching the market that the market might be stable. I assumed that.

Mr. PECORA. How would the fact that he had lots of friends on the floor help to attain the purposes that you and the other optioners had in mind when you granted these options?

Mr. BROWN. I did not know, when the stock was down at that level, with nobody watching the market, but somebody might come in and push the value of the stock down unnecessarily. That is the only reason that this option was ever given to Mr. Bliss, or that any of these options were ever given to anybody.

The CHAIRMAN. What do you mean by raiding the market, Mr. Brown?

Mr. BROWN. I do not mean to use the word "raiding", but I mean, for instance, if somebody came in and wanted to dump a few thousand shares of stock, and there was nobody there protecting the market, it might go down.

Senator TOWNSEND. You mean selling the stock short?

Mr. BROWN. No; just by offering it for sale.

Senator BARKLEY. You thought that his sponsorship of the stock automatically would stiffen it up.

Mr. BROWN. No; not necessarily. My conversation with Mr. Bliss, as I remember very distinctly, at the time the thing was discussed, was that we told him that we were not interested in anything but the maintenance of a stable market.

The CHAIRMAN. You spoke about the danger of raiding the market.

Mr. BROWN. I did not mean the word "raiding" because the stock was down to a low level, and it would not have taken much to push it all the way down.

The CHAIRMAN. Had there been any raiding of it at all?

Mr. BROWN. Not that I remember.

Mr. PECORA. The market had not shown any instability up to that time, had it?

Mr. BROWN. It certainly had not shown much firmness.

Mr. PECORA. Had it shown any instability?

Mr. BROWN. I think so; yes.

Mr. PECORA. When?

Mr. BROWN. Previous to that date.

Mr. PECORA. What were the evidences of it?

Mr. BROWN. The dropping of the prices.

Mr. PECORA. How much did they drop?

Mr. BROWN. I cannot tell you because I don't remember exactly.

Mr. PECORA. Was it anything more than the drop in keeping with the trend of the market generally?

Mr. BROWN. That I cannot remember.

Mr. PECORA. You became chairman of the board of this company in April 1931.

Mr. BROWN. Yes.

Mr. PECORA. And some 10 months later you and associate officers and directors of the company, in your individual capacities, gave these options to a member of the Exchange who, you said, had a splendid reputation, had a lot of friends on the floor, and could watch the stock and protect it.

Mr. BROWN. That is correct.

Mr. PECORA. And keep the market stable. No instability had developed up to that time?

Mr. BROWN. I think the only instability was a constantly lowering of quotations for the stock.

Mr. PECORA. That was visible in the general trend of the market all through that period of 10 months, was it not?

Mr. BROWN. With a low-priced stock such as this was at that time, and with the possibilities that the company had, there was no reason why it should go much further.

Mr. PECORA. What had happened prior to February 15, 1932, that caused you and your associates, in the granting of these options, to conceive the idea of giving these options to a member of the exchange who had a lot of friends on the floor?

Mr. BROWN. The only man who operates on the exchange is a man who is a member of the exchange.

Mr. PECORA. What is that?

Mr. BROWN. The only man who operates on the exchange is a member of the exchange.

Mr. PECORA. All right; but that does not answer my question. The question was, What had happened prior to February 15, 1932, that prompted you and your associates to give these options to that member of the exchange?

Mr. BROWN. Nothing that I remember specifically.

Senator TOWNSEND. What percentage of your holdings did these options cover, Mr. Brown?

Mr. BROWN. I have forgotten. I think at that time that I had probably 24,000 shares.

Senator GORE. How much?

Mr. BROWN. Around 24,000 shares, I think; maybe more—just about that number.

Mr. PECORA. You did not want to part with any of the 9,000 shares you optioned to Mr. Bliss, and which you then owned?

Mr. BROWN. No.

Mr. PECORA. You say at that time you owned approximately 24,000 of these shares.

Mr. BROWN. From 22,000 to 24,000, something like that.

Mr. PECORA. Would not that indicate that the real, or the primary purpose you and your associates had in giving these options was to excite the market in these shares?

Mr. BROWN. No; absolutely not.

Mr. PECORA. And to raise the quotations?

Mr. BROWN. No.

Mr. PECORA. Mr. Bliss did not come to you and ask for these options on his initiative.

Mr. BROWN. No.

Mr. PECORA. How did you expect to profit if you did not expect actually to part with any of your 9,000 shares that you optioned to Mr. Bliss?

Mr. BROWN. I did not expect to profit.

Mr. PECORA. You did not expect to profit?

Mr. BROWN. No.

Mr. PECORA. You would have profited if the market price of the stock had gone up as a result of Mr. Bliss' operations, would you not?

Mr. BROWN. No.

Mr. PECORA. No?

Mr. BROWN. No.

Mr. PECORA. You mean it would have brought a loss to you if the price had increased?

Mr. BROWN. It probably would, because I had 2,400 shares—

Mr. PECORA. Twenty-four thousand?

Mr. BROWN. In that particular lot of my holdings, I had 2,400 shares, I think, that cost me \$40 a share.

Mr. PECORA. But at the time you gave the option, or within 2 days of that time, the stock was selling for between $6\frac{3}{4}$ and 8, and you were optioning these shares to Mr. Bliss at unit prices ranging from \$7 a share to \$11 a share.

Mr. BROWN. Mr. Pecora, I think that Mr. Bliss could confirm to you our conversation, in which I explained to him explicitly that we simply wanted some market sponsorship for the stock, and did not want the stock called.

Mr. PECORA. Before giving these options to Mr. Bliss, did you confer with Mr. Publicker, Mr. Kies, and Mr. Grimm?

Mr. BROWN. Yes.

Mr. PECORA. And reach an accord with them? Did their views coincide with yours with regard to the desirability of giving these options?

Mr. BROWN. Yes.

Mr. PECORA. They had the same purposes in mind as you had?

Mr. BROWN. I assume so; yes.

Mr. PECORA. You know so from your conversations with them, do you not?

Mr. BROWN. Yes.

Mr. PECORA. Do you know what was the extent of Mr. Grimm's holdings in the company stock at that time?

Mr. BROWN. No.

Mr. PECORA. Do you know what Mr. Kies' holdings were?

Mr. BROWN. No.

Mr. PECORA. Mr. Publicker's?

Mr. BROWN. Mr. Publicker's, I think, were probably in excess of 30,000 shares.

Mr. PECORA. Why didn't you want to part with any of the shares you optioned?

Mr. BROWN. Because we felt the company had possibilities, as evidenced by its present situation—not that we visualized anything like the wonderful situation it is in now.

Mr. PECORA. Mr. Brown, I may be very dense, but I do not yet understand what you had in mind when you say that you gave this member of the exchange an option on 9,000 shares of your personal holdings at prices ranging from \$7 to \$11 a share at a time when the market was between 7 and 8. You did not want to let go of any of your shares. What did you want Mr. Bliss to do under these options?

Mr. BROWN. Just maintain a stable market.

Mr. PECORA. But the market was stable up to that time, was it not? There had not been any untoward movement in the stock up to that time, had there?

Mr. BROWN. Except a downward movement, that is all.

Mr. PECORA. Up and down, in keeping with the general trend?

Mr. BROWN. I thought the valuation of the stock, when it was at $6\frac{3}{4}$, was below what a person might reasonably expect it to sell at. I did not expect any wild or violent movement from the stock, and so told Mr. Bliss at the time the option was given to him.

Senator GORE. You had no purpose of selling your own stock?

Mr. BROWN. No, Senator.

Senator GORE. Then what was the point? Why were you concerned about stabilizing the price?

Mr. BROWN. I was naturally interested, having the holdings in the company I did, in having a stable market.

Senator BARKLEY. What do you mean by a stable market? Do you mean freedom from any fluctuations?

Mr. BROWN. No; not freedom from any fluctuations, but the stock had just gone down and down.

Senator BARKLEY. Gone down from what point, and in what period?

Mr. BROWN. Oh, I should say it had just about gone in half within a very short period, which was a value way below what the value of the properties was.

Senator BARKLEY. Then it went from 12 or 14 down to 6 or 7.

Mr. BROWN. I should say so, as my memory serves me.

Senator KEAN. You say you bought some of it at 42?

Mr. BROWN. That was in 1929.

Senator BARKLEY. So that you gave an option on 9,000 shares at from 7 to 11.

Mr. BROWN. Yes.

Senator BARKLEY. You thought the mere fact that Mr. Bliss possessed this stock, which was not to be sold, and the knowledge on the floor that he possessed it, or an option on it, would automatically stabilize the price without anybody buying any more?

Mr. BROWN. Yes; that is true.

Senator GORE. Did you have any of your stock up as collateral?

Mr. BROWN. Yes; I assume I did.

Senator BARKLEY. Did you intend to buy any additional shares that were being sold on the market as a result of this stabilization?

Mr. BROWN. No.

Senator BARKLEY. Did you buy any?

Mr. BROWN. If I remember that particular option, when the option expired, much to my surprise, Mr. Bliss called the entire quantity, all of it. Also, if my memory serves me correctly, I immediately replaced all the stock that had been called by purchase in the open market.

Senator BARKLEY. You mean he called all the 9,000?

Mr. BROWN. Yes

Senator BARKLEY. At less than 11?

Mr. BROWN. I called him one day and told him that we did not want to renew the option.

Senator TOWNSEND. When did the option expire?

Mr. BROWN. I have forgotten.

Mr. PECORA. It was a 30-day option.

Senator GORE. Give us the history of what transpired.

Mr. BROWN. When the option expired—I do not know the range of the stock during the time the option was out, but if my memory serves me correctly, when I called Mr. Bliss and told him that we did not desire to renew the option, he called all the stock. He apparently had disposed of the whole business, and that was very much of a surprise to me, and I immediately went in the market and replaced it.

Senator STEIWER. At what price?

Mr. BROWN. A price above this—around 11 or 12.

Senator BARKLEY. He called this stock, then, in violation of your agreement with him?

Mr. BROWN. He had the option.

Senator BARKLEY. But the private understanding was that it was not to be called.

Mr. BROWN. I told him what our desires were.

Senator BARKLEY. Was his reputation as high afterwards as it had been when you turned it over to him?

Mr. BROWN. He is a very nice gentleman. I still like Mr. Bliss. I think he was wrong in that.

Senator GORE. Was that the last option you placed with him?

Mr. BROWN. That is the last option with Mr. Bliss; yes, sir.

Senator KEAN. In other words, Mr. Brown, you lost on this transaction between the average price and the price at which you had to buy it back.

Mr. BROWN. Yes.

Senator BARKLEY. Did you buy it back at a higher price?

Mr. BROWN. Yes.

Mr. BARKLEY. What did you pay for it?

Mr. BROWN. If my memory serves me correctly it was around 12 or something like that.

Senator BARKLEY. Do you know what he called at?

Mr. BROWN. He called at the prices in the option.

Senator BARKLEY. I know; but had he already sold it, or did he call it and hold it out for a higher price?

Mr. BROWN. I do not think he held it. I think he had a short position in the market against this option.

Mr. PECORA. You know that Mr. Bliss both bought and sold during the period of these options, do you not?

Mr. BROWN. Yes; I have no criticism at all. I like Mr. Bliss today, the same as I ever did.

Mr. PECORA. Apart from your personal feelings and admiration for Mr. Bliss, we want to find out what the facts were with regard to market activities at that time.

Mr. BROWN. All I know is that when the option expired I bought my stock back at more than I got for it under that option.

Mr. PECORA. Was that because the market had gone up?

Mr. BROWN. No; I do not know why it was. When I found out—when it was called, and I was out 9,000 shares, I went into the market and replaced it, if I remember correctly, around 11 or 12.

Senator TOWNSEND. Then you really lost money by the transaction?

Mr. BROWN. Yes; I did.

Mr. PECORA. How much did you lose by virtue of this option agreement, do you know?

Mr. BROWN. I really do not know, Mr. Pecora.

Mr. PECORA. When you gave Bliss this option, although you knew that the option, in terms, gave him the right to call upon you for these 9,000 shares at the various prices set forth in the option, you had a private understanding with him that he was not to call for the stock?

Mr. BROWN. No. In all fairness to Mr. Bliss, I would say that I told him, at the time the options were given, that we did not want any of the stock called. He made no commitment on his part.

Mr. PECORA. Did the same thing happen with regard to the other three option agreements, those given by Mr. Kies, Mr. Publicker, and Mr. Grimm, respectively?

Mr. BROWN. I think they were all called.

Mr. PECORA. All 30,000 shares?

Mr. BROWN. I think so, and I think they were all replaced.

Mr. PECORA. During the period of these options, was the purpose that you had in mind of stabilizing the market well served?

Mr. BROWN. Yes; except that it cost me money.

Mr. PECORA. You said you gave options to Prentice & Slepach?

Mr. BROWN. Yes.

Mr. PECORA. They are a stock brokerage firm?

Mr. BROWN. Yes, sir.

Mr. PECORA. Members of the New York Stock Exchange?

Mr. BROWN. Yes.

Mr. PECORA. How many options were given to Prentice & Slepach?

Mr. BROWN. I do not remember.

Mr. PECORA. I show you what purports to be a copy of an option agreement made by you with Prentice & Slepach, under date of June 11, 1932. Will you look at it and tell us if that is one of the option agreements that you made with Prentice & Slepach?

Mr. BROWN (after examining paper). Yes

Mr. PECORA. I offer that in evidence

The CHAIRMAN. Let it be admitted.

(Copy of option agreement, Brown to Prentice & Slepach, June 11, 1932, was received in evidence, marked "Committee's Exhibit No. 4-A," and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. Now, I show you what purports to be a copy of another option agreement given to Messrs. Prentice and Slepach by you and Mr. Grimm under date of July 11, 1932. Will you look at it and tell me if it is a true and correct copy of such an option agreement so given by you and Mr. Grimm on or about that date?

Mr. BROWN (after examining document). Yes, sir.

Mr. PECORA. I offer that in evidence and ask that it be marked accordingly.

The CHAIRMAN. Let it be admitted.

(Option agreement dated July 11, 1932, from R. R. Brown and Richard H. Grimm to Prentice and Slepach was thereupon designated "Committee Exhibit 4-B, February 14, 1934", and appears in the record following where read by Mr. Pecora.)

Mr. PECORA. Now, I show you what purports to be a copy of a third option agreement given by you and Mr. Grimm to Messrs. Prentice and Slepach on July 22, 1932. Will you look at it and tell me if it is a true and correct copy of such an agreement given by you and Mr. Grimm to Prentice and Slepach?

Mr. BROWN (after examining document). Yes, sir; that is correct.

Mr. PECORA. I offer it in evidence and ask that it be marked "Exhibit 4-C."

The CHAIRMAN. Let it be admitted.

(Option agreement dated July 22, 1932, from Russell R. Brown and R. H. Grimm to Prentice & Slepach was thereupon designated "Committee Exhibit 4-C, Feb. 14, 1934", and appears in the record following where read by Mr. Pecora.)

Mr. PECORA. The first of these exhibits, the one marked 4-A, reads as follows [reading]:

NEW YORK, June 11, 1932

MESSRS PRENTICE & SLEPAK,
25 Broadway, New York City

GENTLEMEN I herewith give you an option to purchase from me for a period of 29 days, from Saturday, June 11th, 1932, to Saturday, July 9th, 1932, Six Thousand (6,000) shares American Commercial Alcohol Corporation Common Stock, or any part thereof, at the prices designated below

2000 shares at 12½, 2000 shares at 13½, 2000 shares at 14½

Payments are to be made to me against delivery of stock to you I agree to keep Two Thousand (2,000) shares of stock in my account in your office, which will be free and can be used by Prentice & Slepach for the exercise of their option

Yours very truly,

(Signed) RUSSELL R. BROWN

Exhibit 4-B reads as follows [reading]:

NEW YORK, July 11, 1932

MESSRS PRENTICE & SLEPACK,
25 Broadway, New York City

GENTLEMEN We herewith give you an option to purchase from us for a period of 32 days, from Monday, July 11th, 1932, to Thursday, August 11th, 1932, Five Thousand (5,000) shares American Commercial Alcohol Corporation Common Stock, or any part thereof, at the prices designated below:

1,000 shares at 12½, 2,000 shares at 13½, 2,000 shares at 14½

Payments are to be made to us against delivery of stock to you We agree to keep Two Thousand (2,000) shares of stock in our account in your office, which will be free and can be used by Prentice & Slepach for the exercise of their option

Very truly yours,

(Signed) R R BROWN
RICHARD H GRIMM

Senator GORE That ties in with the other?

Mr. PECORA. Yes; it does. It immediately follows the other.

The third option agreement, marked "Exhibit 4-C", is as follows [reading]:

NEW YORK, July 22nd, 1932

MESSRS PRENTICE & SLEPACK,
25 Broadway, New York City

GENTLEMEN We herewith give you an option to purchase from us for a period of 21 days, from Friday, July 22nd, 1932, to Thursday, August 11th, 1932, an additional Two Thousand (2,000) shares American Commercial Alcohol Corporation Common Stock, in addition to the option issued to you on July 11th, 1932, for Five Thousand (5,000) shares, making Seven Thousand (7,000) shares for the entire option

The additional Two Thousand (2,000) shares are to be called at prices designated below

1,000 shares at 13½, 1,000 shares at 14½

Payments are to be made to us against delivery of stock to you

Yours very truly,

(Signed) RUSSELL R BROWN,
R H GRIMM

Were these options given upon the initiative of yourself and Mr. Grimm?

Mr. BROWN. I think so, yes, if my memory serves me correctly.

Mr. PECORA. And Messrs. Prentice & Slepach are also well-known members of the stock exchange?

Mr. BROWN. Yes, sir.

Mr. PECORA. With an excellent reputation?

Mr. BROWN. Yes.

Mr. PECORA. Friends of yours?

Mr. BROWN. No

Mr. PECORA. What was the purpose that you and Mr. Grimm had in granting these three options to Prentice & Slepach?

Mr. BROWN. I don't remember.

Mr. PECORA. What is that?

Mr. BROWN. I don't remember.

Mr. PECORA. Well, now, isn't it rather singular that you recalled with some clarity the reason—

Mr. BROWN (interposing). Well, I assume—

Mr. PECORA. Why you and Mr. Grimm and Mr. Kies and Mr. Publicker gave the options in February 1932 to Mr. Bliss, and do

not recall the reason why you gave these options in June and July 1932 to Prentice & Slepach?

Mr. BROWN. No. I assume it is for the same purpose.

Mr. PECORA. The same purpose for which the options were given in February 1932 to Bliss?

Mr. BROWN. How many shares was that?

Mr. PECORA. The first one was for 6,000, second for 5, and the third for 2. That makes 13,000 shares.

Mr. BROWN. Yes. When did they all expire?

Mr. PECORA. The first option, the one for 6,000 shares, expired on July 9, 1932, and the other two options expired on August 11, 1932.

Mr. BROWN. Was that stock called?

Mr. PECORA. Well, I did not have these transactions with Prentice & Slepach. Why do you ask me those questions, Mr. Brown?

Mr. BROWN. Well, I assume that you have the records. That is the only reason.

Mr. PECORA. Well, if we have records we would have your records, wouldn't we?

Mr. BROWN. Yes.

Mr. PECORA. Don't you know what the facts are?

Mr. BROWN. No; I really don't remember the thing. I didn't write those options, because that is not the way I write options.

Mr. PECORA. Who wrote these options to Prentice & Slepach?

Mr. BROWN. I don't know. They must have been written, though, in Prentice & Slepach's office.

Mr. PECORA. Who wrote the four options given to Bliss in February?

Mr. BROWN. I wrote them with him.

Mr. PECORA. You wrote them?

Mr. BROWN. With him, yes.

Mr. PECORA. Which particular member of the firm or representative of Prentice & Slepach did you and Grimm have the negotiations with that led to the granting of these three options?

Mr. BROWN. I think it was Mr. Atkins.

Mr. PECORA. Mr. Atkins?

Mr. BROWN. Yes.

Mr. PECORA. Is he the floor member?

Mr. BROWN. No. I only know that he was a member of the firm. He is also a director of the American Commercial Alcohol Co.

Mr. PECORA. Do you know a Mr. Goodwin?

Mr. BROWN. That is the—

Mr. PECORA (interposing). That is the name, not Atkins?

Mr. BROWN. Well, no; Atkins was the member of Prentice & Slepach, with whom I did business. Goodwin was the man who the option was given to, and I think Prentice & Slepach had the option given directly to them. That is correct.

Mr. PECORA. What was the relationship between Goodwin and Prentice & Slepach?

Mr. BROWN. Nothing that I know of.

Mr. PECORA. What is Goodwin's business?

Mr. BROWN. I don't know.

Mr. PECORA. You have met him, haven't you?

Mr. BROWN. I have met him; yes. I have met him several times. He came in originally and asked for an option on stock and said that he would be able to maintain a stable market, and the option was eventually given to him. Then those documents were worked out apparently in Prentice & Slepach's office. For what reason I don't know, but Goodwin was the man.

Mr. PECORA. What part did Goodwin play in connection with these three options of Prentice & Slepach?

Mr. BROWN. Well, I don't know. He took something out of the account down to Prentice & Slepach's office. That is all I know about it. He had the account down in Prentice & Slepach's office.

Mr. PECORA. What account do you mean?

Mr. BROWN. His own account. He traded in the market through Prentice & Slepach.

Mr. PECORA. How did that give him any interest in these options which were granted to Prentice & Slepach?

Mr. BROWN. Goodwin came in and asked for the option, and instead of drawing the option to him, as long as the account was going to be carried at Prentice & Slepach's, they said they wanted the option drawn to them. Why, I don't know.

Mr. PECORA. To whom did Goodwin go in the first instance to ask for the options, to you?

Mr. BROWN. To me; yes.

Mr. PECORA. To you?

Mr. BROWN. Yes.

Mr. PECORA. And what did he say about it at the time?

Mr. BROWN. He said that he would be able to maintain a stable market.

Mr. PECORA. Did he volunteer to do it?

Mr. BROWN. Yes.

Mr. PECORA. I thought you said that these options were given under the same circumstances as the options to Bliss; that is, upon your and Grimm's initiative.

Mr. BROWN. If I remember correctly on that, they were.

Mr. PECORA. Now, you say that Goodwin came in and said that he could maintain the market.

Mr. BROWN. Well, I mean the same thing.

Mr. PECORA. Well, which is it?

Mr. BROWN. Well, Goodwin came in and said that he could maintain a market.

Mr. PECORA. Did you know Goodwin up to that time?

Mr. BROWN. No.

Mr. PECORA. How do you suppose Goodwin knew that you might be interested in maintaining the market.

Mr. BROWN. I don't know.

Mr. PECORA. You don't know? Had you heard of Goodwin before that time?

Mr. BROWN. No. Not since, either.

Mr. PECORA. Did he identify himself as being engaged in any particular kind of business?

Mr. BROWN. No; except that he was a market operator. That is all.

Mr. PECORA. Is that what he said, that he was a market operator?

Mr. BROWN. He gave that indication. I won't say that he used that language, but that is what I gathered.

Mr. PECORA. That was the meaning that you attached to whatever he said?

Mr. BROWN. Yes, sir.

Mr. PECORA. Concerning his business?

Mr. BROWN. That is correct.

Mr. PECORA. You don't know that he was a member of any exchange?

Mr. BROWN. No; he is not a member of any exchange.

Mr. PECORA. He is an operator in the market executing his orders through brokers?

Mr. BROWN. That is correct.

Mr. PECORA. And the brokers in this case were Prentice & Slepach?

Mr. BROWN. That is correct.

Mr. PECORA. Knowing those circumstances, for what reason were the options given to the brokers and not to the operator himself who came to you and said he thought he could stabilize your market?

Mr. BROWN. I don't know. The brokers apparently have their own reason for it. I don't know.

Senator GORE. Mr. Brown, you say the purpose of all these options was to stabilize the market?

Mr. BROWN. Yes; that was supposed to be it.

Senator GORE. The only way you could do that would be to buy when the stock was too low and sell when the stock was too high, wouldn't it?

Mr. BROWN. I suppose they did that; I didn't do it.

Senator GORE. Was that what you had in mind?

Mr. BROWN. However, they operate in the market. I assume that that would be it.

Senator GORE. It was your idea that they would sell when the price ran up too high?

Mr. BROWN. That is correct. Yes, Senator.

Senator GORE. Now, of course, I don't understand much about this market business—

Mr. BROWN. Neither do I.

Senator GORE. But it seems to me that the only way they could profit by these actions would be by some means to raise the price in the market higher than the price you would stipulate in these options, and then call the options at that higher price.

Mr. BROWN. I don't know.

Senator GORE. These options would not contemplate any sales, as I understand it, certainly not a sale under the price. They would have no motive to sell this stock for less than what they were paying you for it?

Mr. BROWN. That I cannot say.

Senator GORE. And if they wanted to break the price or to depress the price they could have sold short without having this stock on hand?

Mr. BROWN. I will say this to you, Senator: I found out more about the market since I met Mr. Pecora than I thought I knew before.

Mr. PECORA. Mr. Brown, our meeting was at a very, very, recent date, wasn't it?

Mr. BROWN. That is correct.

Mr. PECORA. You did not find out anything about the market from me, did you?

Mr. BROWN. No; I say since I first came in contact with you.

Mr. PECORA. Because I know absolutely nothing about the market, Mr. Brown.

Mr. BROWN. I don't think that is so, either.

Senator GORE. Nobody does when they are called upon to tell.

Mr. PECORA. Did Mr. Goodwin indicate to you what interest he had at that time in stabilizing the market in the shares of your company's stock?

Mr. BROWN. No. I assume simply that he probably traded on that option there and would be able to maintain a market.

Mr. PECORA. He was not a stockholder of the company then, was he?

Mr. BROWN. No.

Mr. PECORA. He would have no interest as a stockholder or an officer of the company to stabilize the market, would he?

Mr. BROWN. No, sir.

Mr. PECORA. Didn't it seem apparent to you that the purpose of this market operator in seeking these options was to use the options in his own market operations for his own profit?

Mr. BROWN. That is probably what he did. I don't know. I don't think any more options were ever given Mr. Goodwin.

Senator GORE. The fact that Mr. Bliss called the options contrary to your wishes did not discourage you with reference to these subsequent options?

Mr. BROWN. No. Subsequent options were given, Senator.

Senator GORE. How?

Mr. BROWN. Subsequent options were given.

Senator GORE. Was your experience any more satisfactory with Prentice?

Mr. BROWN. No; I don't think any more options were given to them.

Senator GORE. That does not quite answer it. Was your experience with the Prentice firm any more satisfactory than with Mr. Bliss? Did he call these options?

Mr. BROWN. That I don't remember. I just cannot place that, because I don't recall those options.

Mr. PECORA. When you and Mr. Grimm granted these options to Prentice & Slepach did you also grant them with any mental reservation or hope that you would not be called upon to deliver the stock covered by the options?

Mr. BROWN. Well, I assume so. I felt that way.

Mr. PECORA. Why did you assume so, Mr. Brown?

Mr. BROWN. I felt that way all along.

Mr. PECORA. Why did you give market operators and exchange members options giving them the right to call upon you for the stock at fixed prices, all the while with a mental reservation or hope in your own mind that you would not be called upon to deliver the stock under the options?

Mr. BROWN. I can express it to you more clearly perhaps, if you will permit me, in this way: That apparently we were always searching for someone who would be interested in the company and be willing to maintain a stable market, as evidenced by the fact that we finally felt quite happy when we established the connection with Mr. Ruloff Cutten.

Mr. PECORA. We are coming to Mr. Ruloff Cutten.

Mr. BROWN. Yes; I am explaining it to you that way. And he sent his statistician up, made a study of the company, before he would consider any kind of a deal.

Mr. PECORA. You are talking about Mr. Cutten?

Mr. BROWN. I am talking about Mr. Cutten.

Mr. PECORA. Let us wait till we get to Mr. Cutten in due course. I will promise you we will bring Mr. Cutten here.

Mr. BROWN. What I wanted to explain to you was that that was the way we felt really very happy, because he made a study of the company before he would consider taking the options.

Mr. PECORA. All that antedated—

Mr. BROWN. That is correct.

Mr. PECORA. The giving of these options to Prentice & Slepach?

Mr. BROWN. That is correct.

The CHAIRMAN. Were you really in hopes of increasing the quotation price, the market price of the stock?

Mr. BROWN. Not necessarily, Senator. I mean we felt that over a period of time if we could ever get out of the doldrums in the business the real value of the company would be reflected.

Senator GORE. What is the price of the stock today?

Mr. BROWN. The stock is selling at approximately \$50 a share.

Mr. PECORA. What is the high that it reached at any time since February 1932?

Mr. BROWN. 89-7/8.

Mr. PECORA. And when did it reach that?

Mr. BROWN. Some time in July 1933.

Mr. PECORA. Do you remember the date?

Mr. BROWN. About July 15 or thereabouts.

Mr. PECORA. Seventeenth?

Mr. BROWN. That might be it.

Mr. PECORA. Do you remember after it reached a high of 89-7/8 what happened to the stock?

Mr. BROWN. I certainly do.

Mr. PECORA. What? What happened?

Mr. BROWN. It went down.

Mr. PECORA. To what?

Mr. BROWN. I don't know. It went down through the earth. I don't know.

Mr. PECORA. Do you remember when it first began that toboggan after it reached the high of 89-7/8?

Mr. BROWN. Well, July 17. Wasn't that the day?

Mr. PECORA. And do you recall within what period of time it slid from 89-7/8 to some substantially lower figure?

Mr. BROWN. I don't know. It seemed like 24 hours to me.

Mr. PECORA. It was within an hour, wasn't it, on the morning of July 18 last?

Mr. BROWN. It went from what? Will you repeat that?

Mr. PECORA. From a high of $89\frac{7}{8}$ to around 40.

Mr. BROWN. Oh, no.

Mr. PECORA. It was not as precipitate as that?

Mr. BROWN. No. It was bad enough, but it was not as bad as that.

Mr. PECORA. How bad was it, as you remember?

Mr. BROWN. I think when the market started to go off that morning—in fact, the first sale was at \$69 a share.

Mr. PECORA. I have before me transcripts of the market quotations. On July 18 the quotations ranged from a low of 77 to a high of $89\frac{7}{8}$.

Senator GORE. That is the closing?

Mr. PECORA. Yes, sir; that was the closing, as I recall it; and 3 days later, July 21, the quotations ranged from a low of $29\frac{1}{8}$ to a high of $44\frac{1}{2}$.

Mr. BROWN. $29\frac{1}{2}$ was low.

Mr. PECORA. Yes; $29\frac{1}{8}$.

The CHAIRMAN. On July 18 it was what?

Mr. PECORA. July 18 the range was from a low of 77 to a high of $89\frac{7}{8}$.

The CHAIRMAN. What was the cause of that; do you know, Mr. Brown?

Senator GORE. That was when the general break occurred.

Mr. PECORA. What is your present best recollection as to whether or not Prentice and Slepack called upon you and Mr. Grimm for the 13,000 shares that were optioned to them under these three option agreements that have been offered in evidence?

Mr. BROWN. That I don't remember.

Mr. PECORA. You also have mentioned heretofore that you gave an option to Stephen M. Ames.

Mr. BROWN. Ames Brothers.

Mr. PECORA. Or Ames Brothers?

Mr. BROWN. That is correct.

Mr. PECORA. The option itself, according to the copy which you furnished to us, runs directly to Stephen M. Ames, and in connection therewith let me show you what purports to be a copy of such an option dated August 9, 1932. Will you look at it and tell me if you recognize it to be a true and correct copy of such an option.

Senator GORE. That ties in with the other?

Mr. BROWN. Yes, this follows right along. (After examining document) yes, that is right.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Option agreement dated Aug. 9, 1932, from Russell Brown to Stephen M. Ames, was thereupon designated "Committee Exhibit No. 5, Feb. 14, 1934", and appears in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The option marked in evidence as Exhibit No. 5 reads as follows [reading]:

NEW YORK, August 9, 1932.

MR STEPHEN M. AMES,
c/o Prentice & Slepack,
25 Broadway, New York City

DEAR SIR: We herewith give you an option to purchase from us for a period of 30 days, from Tuesday, August 9, 1932, to Wednesday, September 7th, 1932,

175541—34—PT 13—3

Ten Thousand (10,000) shares American Commercial Alcohol Corporation Common Stock, or any part thereof, at the prices designated below.

1000 shares at 16½
 1000 shares at 17
 1000 shares at 17½
 1000 shares at 18
 1000 shares at 18½
 1000 shares at 19
 1000 shares at 19½
 1000 shares at 20
 1000 shares at 20½
 1000 shares at 21

Payments are to be made to us against delivery of stock to you We agree to keep Two thousand (2,000) shares of stock in our account with Prentice & Slepach, which will be free and can be used by them for the exercise of your option

Very truly yours,

(Signed) RUSSELL BROWN.

Now, Mr. Brown, I notice that in the body of the option the plural pronoun "we" is used.

Mr. BROWN. Yes.

Mr. PECORA. And this appears to be signed only by you. Was this opinion given by you individually, or was it given by you jointly with anyone else whose name does not appear on it?

Mr. BROWN. It was given possibly with Mr. Grimm, Mr. Publicker, and Mr. Kies.

Mr. PECORA. Given by Mr. Grimm, Mr. Publicker, Mr. Kies, and yourself?

Mr. BROWN. That is correct.

Mr. PECORA. Why is it that your signature is the only one that appears on this copy that you gave to us?

Mr. BROWN. You must have gotten that from the exchange, because I didn't have it. That is the reason. No; I didn't give you that.

Mr. PECORA. Haven't you copies of these options?

Mr. BROWN. I have now. Yes; I got them.

Mr. PECORA. When did you get them?

Mr. BROWN. I just got them.

Mr. PECORA. When.

Mr. BROWN. I got Mr. Bliss' yesterday, and these other options, I got copies of them last week.

Mr. PECORA. When were you first asked by representatives of this committee, Mr. Brown, to produce copies of any options which had been given by you or any of your fellow officers or directors of this company to anybody else?

Mr. BROWN. On December 19, 1933, I was asked by Mr. Flynn to get the copy of the option which was given to Mr. Bragg.

Mr. PECORA. To Mr. Thomas E. Bragg?

Mr. BROWN. Thomas E. Bragg; yes, sir.

Mr. PECORA. You were also asked to produce copies of other options given to anyone else?

Mr. BROWN. Not at that time; no, sir.

Mr. PECORA. Did you at that time tell Mr. Flynn or Mr. Schlenker that you had given any options to persons other than Mr. Bragg?

Mr. BROWN. No.

Mr. PECORA. When did you first tell them or anybody connected with the investigating staff of this committee that you had given these other options?

Mr. BROWN. I don't believe that I ever did.

Mr. PECORA. You were asked about options given by you, weren't you?

Mr. BROWN. I don't think so; no, sir.

Mr. PECORA. And you had no copies of these options until very, very recently; that is, until the last few days?

Mr. BROWN. I had copies of them, but as the transactions were cleaned up I had torn them up and thrown them away. I never kept the copies of the options.

Mr. PECORA. Did you go to the persons to whom you had given these options to try to get copies?

Mr. BROWN. Yes.

Mr. PECORA. For the uses and purposes of this committee?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you succeed?

Mr. BROWN. Yes, sir.

Mr. PECORA. When did you succeed in getting any of these copies of options from those other persons?

Mr. BROWN. I think last week or the week before, and then I got Mr. Bliss's this morning.

Mr. PECORA. Did it take you all that time to get it from those gentlemen?

Mr. BROWN. I asked Mr. Bliss for it, and that was immediately after I had been over to see Mr. Silver. Mr. McEldowney immediately put in a request for the options. I got a hold of Mr. Bliss the end of that week and asked for it, and then I had to call him again yesterday to get them.

Mr. PECORA. Who is Mr. Stephen M. Ames, to whom was given this option of August 9, 1932, marked "Exhibit No. 5?"

Mr. BROWN. He was a member of the exchange at that time, a member of the firm of Ames Bros. & Co.

Mr. PECORA. And on whose initiative was this option given to Mr. Ames?

Mr. BROWN. On my own initiative.

Mr. PECORA. On yours? And what were your purposes in giving him this option?

Mr. BROWN. Some idea that prevailed before.

Mr. PECORA. That is, to stabilize the market?

Mr. BROWN. Yes, sir; if I remember correctly.

Mr. PECORA. Was the market then in need of stabilization?

Mr. BROWN. We thought so.

Mr. PECORA. Had there been any violent movements in the quotations?

Mr. BROWN. Not that I remember.

Mr. PECORA. It had been pretty orderly from February 1932 when you gave the first of these options to Mr. Bliss, had it not?

Mr. BROWN. Well, I mean I really don't remember.

Mr. PECORA. Was not the stock steadily increasing in value on the exchange from February 1932 after you gave the first of these options?

Mr. BROWN. Might have been; yes, sir.

Mr. PECORA. Was there any apparent need at the time you gave this option to Mr. Ames of any stabilization of the market?

Mr. BROWN. Well, we felt so.

Mr. PECORA. Who felt so?

Mr. BROWN. I felt so, with my associates.

Mr. PECORA. What were the evidences showing the existence of that need at this time, in August 1932?

Mr. BROWN. Well, I just don't remember.

Mr. PECORA. As a matter of fact, the market had been steadily going up, hadn't it?

Mr. BROWN. Well, apparently, from the prices at which these options were given.

Mr. PECORA. Can you recall any circumstance that suggested to you a need for stabilization which was effected through the medium of this option to Ames?

Mr. BROWN. No, sir.

Mr. PECORA. Ames had his own office as a stock broker, did he not?

Mr. BROWN. Yes.

Mr. PECORA. Why was this option addressed to him in care of Prentice & Slepach, another firm of brokers?

Mr. BROWN. That is something I don't know.

Mr. PECORA. Who drew up this option exhibit no. 5 to Ames?

Mr. BROWN. I think it reads as though I drew it.

Mr. PECORA. You drew it up. Why did you address it to Ames at Prentice & Slepach's office rather than at his own office?

Mr. BROWN. It must have been at his request.

Mr. PECORA. Do you recall that he made that request of you?

Mr. BROWN. No, I don't; but I certainly would not have addressed it to him there.

Mr. PECORA. Was it possibly because Prentice & Slepach were to execute any of the market orders in behalf of Ames under this option?

Mr. BROWN. It might have been, yes, sir.

Mr. PECORA. Do you know any reason why that should have been done by Prentice & Slepach's office instead of by Ames's own office?

Mr. BROWN. No, sir.

Mr. PECORA. Did Mr. Ames suggest to you any reason for that?

Mr. BROWN. Not that I remember; no, sir.

Mr. PECORA. Do you know whether or not any other person was interested in this option that was given to Mr. Ames?

Mr. BROWN. No, sir; that I don't know.

Mr. PECORA. Do you know a stock broker named Charles Wright?

Mr. BROWN. Yes, sir.

Mr. PECORA. Is he a member of the firm of Wright & Sexton?

Mr. BROWN. Yes, sir.

Mr. PECORA. They are members of the New York Stock Exchange?

Mr. BROWN. Yes, sir.

Mr. PECORA. You have known Mr. Wright pretty well for some time?

Mr. BROWN. No. I should say maybe a year or so.

Mr. PECORA. Did you see him in August 1932 when you gave this option to Ames?

Mr. BROWN. I don't think so; no, sir.

Mr. PECORA. Who was the specialist that handled the stock of the American Commercial Alcohol Corporation on the floor of the New York Stock Exchange in 1932?

Mr. BROWN. Mr. Wright, I believe.

Mr. PECORA. As the specialist in charge of the stock on the floor of the exchange, you knew that any orders given under these options by the optionees would go through Mr. Wright, either in whole or in part?

Mr. BROWN. I knew nothing about it. I say I knew nothing about it.

Mr. PECORA. Did you ever see Mr. Wright with Mr. Ames?

Mr. BROWN. No, sir; I don't think so.

Mr. PECORA. How did you come to pick out Mr. Ames as the person through whom in August 1932 you desired to stabilize the market?

Mr. BROWN. That I don't remember.

Mr. PECORA. Had you known Mr. Ames prior to that time?

Mr. BROWN. I think I had met him sometime during the so-called "Goodwin option."

Mr. PECORA. As a friend of Mr. Goodwin?

Mr. BROWN. No. I have forgotten exactly how I met him, but at that time there was a discussion of this question.

Mr. PECORA. How many of the 10,000 shares covered by this option to Ames were drawn down by Ames under the option?

Mr. BROWN. I don't think any. I may be wrong, but I don't think that any were drawn down. There might have been some, but I don't think there were.

Mr. PECORA. Was it also your hope at the time you gave Ames this option that you would not be called upon to deliver any of the stock under it?

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

Mr. PECORA. How could Mr. Ames profit then by taking this option and then not calling upon you for any of the stock under it?

Mr. BROWN. That I don't know. I assume that he traded in the market and committed himself under the option.

Mr. PECORA. How did you come to pick out Mr. Ames as the optionee in this transaction?

Mr. BROWN. Because he was an outstanding figure in the Street.

Mr. PECORA. Now, you went to three different outstanding figures at three different times, Bliss, Goodwin, and now Ames. You gave them options covering tens of thousands of shares of the stock of your company?

Mr. BROWN. Yes, sir.

Mr. PECORA. To be delivered out of your personal holdings?

Mr. BROWN. And my associates; yes, sir.

Mr. PECORA. You and your associates in the company?

Mr. BROWN. Yes, sir.

Mr. PECORA. And your purpose in giving these options and hope was that the market in the stock would be stabilized?

Mr. BROWN. That is correct.

Mr. PECORA. You cannot point to any specific circumstance that indicated to you at the time that the market needed stabilization?

Mr. BROWN. No, sir.

Mr. PECORA. And you hoped that they would not call upon you for delivery of the stock under the options?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, how in the world did you expect these gentlemen, then, to profit by their activities under these options?

Mr. BROWN. I assumed that they would trade under the options.

Mr. PECORA. You assumed that they would trade for their own account?

Mr. BROWN. Yes.

Mr. PECORA. Couldn't they trade without the options?

Mr. BROWN. Apparently not.

Mr. PECORA. Why not?

Mr. BROWN. I don't know.

Mr. PECORA. There is a provision in this option to Ames which reads as follows: "We"—meaning you and the other optioners?

Mr. BROWN. Yes, sir.

Mr. PECORA (continuing). "Agree to keep 2,000 shares of stock in our account with Prentice & Slepach, which will be free and can be used by them for the exercise of your option."

What was the reason for including that provision in this option agreement?

Mr. BROWN. Why, I assume that that was down there in the event that he was short of the market that would be available for him to borrow. I assume that is the reason.

Mr. PECORA. You said you drew up this agreement. Can't you tell us the specific reason?

Mr. BROWN. Well, I drew it up with Mr. Ames, and I assume that provision was inserted there by him. It must have been at his request, because I don't think that I ordinarily drew options in that way.

Mr. PECORA. Were these 2,000 shares exclusive of the 10,000 shares that were covered by the option agreements?

Mr. BROWN. No; they were inclusive.

Mr. PECORA. Those 2,000 shares referred to specifically in the form in which I have read it to you from the option agreement were to be loaned if necessary to Mr. Ames in connection with his market operations; is that it?

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

Mr. PECORA. What could be the occasion for his borrowing 2,000 shares in view of the fact that he had this option agreement calling for the delivery to him at fixed prices specified in the option of 10,000 shares?

Mr. BROWN. That I don't know, unless the—

Mr. PECORA (interposing). Then why did you draw the option in that form?

Mr. BROWN. I was just going to add on, Mr. Pecora, that unless he was short of the market and wanted to borrow that stock. That is the only reason I can see for that provision there.

Mr. PECORA. This option agreement was drawn up in order to effect the things that you and Ames had in mind, wasn't it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did Ames ask for the inclusion of that provision in the agreement, or did you suggest it?

Mr. BROWN. He must have asked for it.

Mr. PECORA. I notice that there was a similar provision in the option agreements given to Prentice & Slepach.

Mr. BROWN. Yes.

Mr. PECORA. Was that provision put in those three options at the suggestion of Mr. Goodwin?

Mr. BROWN. Must have been at the suggestion of the optionees.

Mr. PECORA. Then he indicated that he might sell the stock short, did he?

Mr. BROWN. He didn't indicate that at all; but he said, if I remember correctly, I assume that he said that he wanted some stock available for borrowing.

Mr. PECORA. Well, you said before in connection with Mr. Ames that he might sell the stock short and that he could then use these borrowed shares for the purpose of making delivery.

Mr. BROWN. Frankly, I don't know enough about market operations to know what they did.

Mr. PECORA. You knew enough about them to participate in the framing of these option agreements, didn't you?

Mr. BROWN. Yes; and I did.

Mr. PECORA. That indicated that you knew something about the purposes of these market operators in wanting a provision in these agreements giving them the right to call upon you for borrowed stock in addition to the shares that you had optioned to them for sale and delivery?

Mr. BROWN. Yes; that is correct.

Mr. PECORA. They could only have occasion to borrow that stock in the event that they sold short?

Mr. BROWN. I assume that is correct.

Mr. PECORA. You knew that?

Mr. BROWN. Well, I assume that is correct.

Mr. PECORA. You knew enough about the market to know that, didn't you?

Mr. BROWN. I know that now; yes.

Mr. PECORA. You didn't know it in 1932, when you signed these option agreements containing those provisions?

Mr. BROWN. I won't say that I didn't.

Mr. PECORA. What is that?

Mr. BROWN. I won't say that I didn't.

Mr. PECORA. Well, now, realizing that you are under oath, you won't say that you didn't. Would you say that you did?

Mr. BROWN. I might have; yes, sir.

Mr. PECORA. Now, I notice that in the options to Mr. Bliss there are provisions corresponding to these that I have specifically called to your attention from the options to Ames and to Prentice and Slepach, respectively.

Mr. BROWN. Yes, sir.

Mr. PECORA. In other words, the Bliss options contain a clause which I will read to you from the option you personally gave Bliss: "The party of the first part"—meaning yourself—"agrees to loan to the party of the second part at any time during the option period

all or any part of such 6,000 certificates then remaining unsold under this option, such loans to be made according to the usual Street custom", and so forth.

You observe that?

Mr. BROWN. Yes, sir.

Mr. PECORA. So that in all of these options, beginning with those given to Bliss in February 1932, the discussion between you and the optionees respectively contemplated short selling too, is that right?

Mr. BROWN. On their part; yes, sir.

Mr. PECORA. On their part, and that was part of the scheme to stabilize the market, was it?

Mr. BROWN. I assume so.

Mr. PECORA. Was it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, you have mentioned an old friend of these hearings, Mr. Ruloff Cutten. He has been here before. You have said that you gave options to Mr. Ruloff E. Cutten.

Mr. BROWN. Yes, sir.

Mr. PECORA. In the stock of your company?

Mr. BROWN. Yes, sir.

Mr. PECORA. How many options did you give Mr. Cutten?

Mr. BROWN. I believe a series of three options.

Mr. PECORA. And did that commence, or rather were they timed to take effect immediately upon the close of the option period, the option given to Ames?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now I show you what purport to be copies of four option agreements.

Mr. BROWN. Four?

Mr. PECORA. Four. [After examining papers.] Three, rather.

Mr. BROWN. Yes; three.

Mr. PECORA. Three option agreements, each made with Ruloff E. Cutten by you. Will you look at them and tell me if they constitute true and correct copies of such option agreements given by you to Ruloff E. Cutten?

Mr. BROWN (after examining documents). Yes.

Mr. PECORA. And here is a copy of a fourth option agreement given by you to Cutten. Will you look at it and tell me if that is a true and correct copy of such an agreement?

Mr. BROWN. Yes.

Mr. PECORA. These are true and correct copies?

Mr. BROWN. I believe so; yes, sir.

Mr. PECORA. I offer all four of these copies of agreements in evidence. I ask that they be marked as one exhibit, with one numeral, and subdivisions A, B, C, and D thereof.

(Four option agreements between Russell R. Brown and Ruloff E. Cutten, dated respectively Sept. 12, 1932; Sept. 12, 1932; Dec. 12, 1932; and Mar. 12, 1933, were designated "Committee Exhibit No. 6-A-B-C-D, Feb. 14, 1934", and appear in the record later where read in whole or in part.)

The CHAIRMAN. There is a yea and nay vote on the floor of the Senate and members have to be over there at this time. That will probably take some time. So we will take a recess now until 2:30. (Accordingly, at 12:45 p.m., a recess was taken until 2:30 p.m.)

AFTER RECESS

The committee resumed its hearing at 2:30 p.m. on the expiration of the recess.

The CHAIRMAN. I will ask Senator Adams to call the committee to order and preside, as I must be absent for a short time.

Senator ADAMS (presiding). The committee will please come to order. Mr. Pecora, I believe you had a witness on the stand when the committee recessed?

Mr. PECORA. Yes. The witness was Mr. Brown.

Senator ADAMS (presiding). Mr. Brown, will you please resume the stand?

TESTIMONY OF RUSSELL R. BROWN—Resumed

Mr. PECORA. Mr. Brown, the option agreements made between Russell R. Brown and Ruloff E. Cutten, marked, respectively, "Committee Exhibits 6-A, 6-B, 6-C, and 6-D", are as follows, and I will read the one marked "6-A" first:

Memorandum of agreement made this 12th day of September, 1932, between Russell R. Brown, 405 Lexington Ave, New York, N.Y., party of the first part, and Ruloff E. Cutten, 61 Broadway, New York, N.Y., party of the second part.

Whereas the party of the first part is the owner of American Commercial Alcohol Corporation common stock and,

Whereas Ruloff E. Cutten desires an option upon such stock on certain terms,

Now therefore it is agreed by and between the parties hereto as follows

1 In consideration of the sum of one dollar (\$1.00) paid by the party of the second part, receipt whereof is hereby acknowledged, and the mutual promises herein contained, the party of the first part gives to the party of the second part—

For a period of ninety (90) days from the date of this agreement, an option to purchase all or any part of American Commercial Alcohol Corporation common stock in the amount and at the prices herein set forth below:

2500 shares at \$22.00 per share
 2500 shares at \$23.00 per share
 5000 shares at \$24.00 per share
 5000 shares at \$25.00 per share
 5000 shares at \$25.00 per share

2 The party of the first part agrees to have shares of American Commercial Alcohol Corporation common stock available at C. E. Welles & Co., 39 Broadway, New York, N.Y., and/or Shearson Hammill & Co., 71 Broadway, New York, N.Y., up to the number of shares given in this option, for borrowing by the party of the second part.

3 It is understood that the party of the second part will conduct transactions under this option in an account known as American Commercial Alcohol Corporation Trading Account. The party of the first part will be entitled to receive twenty-five (25%) percent of the net profits of such account and will not be required to participate in the losses of such account.

In witness whereof the party of the first part and the party of the second part have hereunto set their hands this 12th day of September 1932

(Signed) RUSSELL R. BROWN.

Mr. PECORA. The next is the option agreement which has been marked "Committee Exhibit No. 6-B", and which reads as follows:

Memorandum of agreement made this 12th day of September 1932 between Russell R. Brown, 405 Lexington Ave, New York, N.Y., party of the first part, and Ruloff E. Cutten, 61 Broadway, New York, N.Y., party of the second part.

Whereas the party of the first part is the owner of American Commercial Alcohol Corporation common stock and,

Whereas Ruloff E. Cutten desires an option upon such stock on certain terms,

1. In consideration of the sum of One Dollar (\$1 00) paid by the party of the second part, receipt whereof is hereby acknowledged and the mutual promises herein contained the party of the first part gives to the party of the second part—

For a period of ninety (90) days from the date of this agreement, an option to purchase all or any part of American Commercial Alcohol Corporation common stock in the amount and at the prices herein set forth below:

2500 shares at \$27 00 per share
 2500 shares at \$28 00 per share
 2500 shares at \$29 00 per share
 2500 shares at \$30 00 per share

2. The party of the first part agrees to have shares of American Commercial Alcohol Corporation common stock available at C. E. Welles & Co., 39 Broadway, New York, N.Y., and/or Shearson Hammill & Co., 71 Broadway, New York, NY, up to the number of shares given in this option, for borrowing by the party of the second part

3. It is understood and agreed that the party of the second part will conduct transactions under this option in an account known as American Commercial Alcohol Corporation Trading Account. The party of the first part will be entitled to receive twenty-five (25%) of the net profits of such account and will not be required to participate in the losses of such account

In witness whereof the party of the first part and the party of the second part have hereunto set their hands this 12th day of September 1932

(Signed) RUSSELL R. BROWN

Mr. PECORA. The option agreement known as "Exhibit 6-C" I will only give the essential details of, Mr. Chairman, for the record.

Senator ADAMS (presiding). Very well.

Mr. PECORA. The agreement is dated December 12, 1932, made between Russell R. Brown, party of the first part, and Ruloff E. Cuten, party of the second part. It contains the same recitals as did the two preceding agreements, in substance. The option period is 90 days from the date of the agreement, namely, 90 days from December 12, 1932, and the option covers the following amounts of common stock of the American Commercial Alcohol Corporation:

2,500 shares at \$20 a share
 2,500 shares at \$21 a share
 2,500 shares at \$22 a share
 2,500 shares at \$23 a share
 5,000 shares at \$24 a share
 5,000 shares at \$25 a share.
 5,000 shares at \$26 a share.

A similar provision then follows, in substance the same as in the two preceding agreements, with respect to the party of the first part making available at the office of either C. E. Welles & Co., or Shearson, Hammill & Co., the number of shares provided for in the option, for borrowing by the party of the second part. There is a similar provision with regard to the right of the party of the first part to receive 25 percent of the net profits of the trading account, and that he is not to be required to participate in the losses in said account. This agreement, however, contains the following additional provision, not included in the two preceding agreements:

And it is further understood that the profits accumulated under the agreement of September 12th, 1932, between the above-named parties in a trading account, will be carried along in this account mentioned below

The agreement is signed by Russell R. Brown.

Now, the fourth option agreement is marked "Committee Exhibit No. 6-D", and seems to be similar in form to the one marked "Committee Exhibit 6-C." It is dated March 12, 1933, made by Russell

R. Brown, party of the first part, and Ruloff E. Cutten, party of the second part. The option period is 60 days from the date of the agreement, namely, 60 days from March 12, 1933, and covers the following shares at the following prices:

2,000 shares at \$16 a share.
2,000 shares at \$17 a share
2,000 shares at \$18 a share
2,000 shares at \$19 a share.
2,000 shares at \$20 a share

And there are similar provisions in all other respects to committee exhibit no. 6-C.

Now, Mr. Brown, did you have any associates in the granting of these four options to Mr. Cutten?

Mr. BROWN. Yes; Mr. Grimm, Mr. Publicker, and Mr. Kies.

Mr. PECORA. Then why didn't they sign the agreements, or why aren't they even set up as parties to the agreements?

Mr. BROWN. Well, as to that I cannot explain it, except that it was the practice for me to sign the various options, is all.

Mr. PECORA. Well, the practice originally was for each optioner to execute a separate agreement in his name.

Mr. BROWN. Yes, sir.

Mr. PECORA. That was the practice followed in the case of the four options given to Mr. Bliss?

Mr. BROWN. Yes; that is correct.

Mr. PECORA. Who drew up these agreements with Mr. Cutten?

Mr. BROWN. I think I did.

Mr. PECORA. Was it your contemplation at the time you gave Mr. Cutten these options that he would call upon you for the stock covered by the options?

Mr. BROWN. No.

Mr. PECORA. You agreed, however, to deliver such stock to him upon call by him, at the prices named in the option agreements?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did Mr. Cutten say to you at the time that these option agreements were prepared and entered into that he would not call upon you for any shares covered by the options?

Mr. BROWN. No; he did not.

Mr. PECORA. Well, if you did not expect to deliver any shares to him under the options, why did you make the agreements with him?

Mr. BROWN. Well, it comes down to this, as I explained to you this morning: When I first met Mr. Cutten I told him that we were interested in having a substantial sponsorship for the stock with a good company, and his company representing a very fine house, after discussion he said he would send his statistician up to make a study of the company; and there were several—well, I should say a period of 2 weeks anyhow, that his statistician studied the company, and he seemed to think it was all right, and then consented to take the option.

Mr. PECORA. Who was the statistician that made that study?

Mr. BROWN. I think it was Mr. Coleman.

Mr. PECORA. What is his full name?

Mr. BROWN. I don't know.

Mr. PECORA. Did you get a copy of Mr. Coleman's report?

Mr. BROWN. No.

Mr. PECORA. Do you know whether or not he made a report?

Mr. BROWN. No.

Mr. PECORA. Now, I notice that the first one of these options given to Mr. Cutten is dated September 12, 1932, which coincides with the expiration date of the option immediately preceding this one, being the one that was given by you to Mr. Stephens E. Ames.

Mr. BROWN. Yes.

Mr. PECORA. Did you seek Mr. Cutten out for the purpose of entering into these option agreements with you?

Mr. BROWN. Yes, sir.

Mr. PECORA. Or did he seek you out?

Mr. BROWN. I sought him out.

Mr. PECORA. What was his business at the time?

Mr. BROWN. A member of the New York Stock Exchange.

Mr. PECORA. With what firm was he connected?

Mr. BROWN. With E. P. Hutton & Co.

Mr. BROWN. With E. F. Hutton & Co.?

Mr. BROWN. Yes, sir.

Mr. PECORA. Do you know whether or not Mr. Cutten had any interest as a stockholder in the American Commercial Alcohol Corporation at that time?

Mr. BROWN. No, sir.

Senator ADAMS (presiding). By the negative answer just given, does he mean that Mr. Cutten had no interest or that the witness does not know whether or not Mr. Cutten had an interest?

Mr. PECORA. When you say "no" do you mean that you don't know?

Mr. BROWN. I don't know.

Mr. PECORA. Did you ever learn that he had an interest?

Mr. BROWN. No, sir.

Mr. PECORA. Was any reference made by him at any time in any conversation with you to the effect that he was a stockholder of your company?

Mr. BROWN. Not that I know of; no, sir.

Mr. PECORA. I notice that the total number of shares covered by these four options to Cutten is 65,000.

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you own those 65,000 shares covered by these options?

Mr. BROWN. No, sir.

Mr. PECORA. How many of them did you own?

Mr. BROWN. I think I owned around 11,000 shares.

Mr. PECORA. And who were the owners of the other 54,000 shares?

Mr. BROWN. Well, there were not 54,000 shares, I think, in any of those options running at one time. I do not think there was any option as high as 65,000 shares at any time.

Mr. PECORA. No; but in the aggregate these four options covered 65,000 shares.

Mr. BROWN. That is true, but Mr. Publicker, Mr. Grimm, and Mr. Kies owned the balance.

Mr. PECORA. Those four options covered periods of time commencing on September 12, 1932, and terminating 60 days after March 12, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. That is, up to the 12th day of May 1933.

Mr. BROWN. That is correct.

Mr. PECORA. Now, that is a period of 8 months.

Mr. BROWN. That is correct.

Mr. PECORA. And was it your purpose, and the purpose of your associates whose names you have mentioned—Mr. Grimm, Mr. Kies, and Mr. Publicker—to have Mr. Cutten stabilize the markets during that 8 months' period.

Mr. BROWN. That is correct.

Mr. PECORA. At the time you went into these options, can you point to any circumstance that indicated the market needed stabilization?

Mr. BROWN. No, sir.

Mr. PECORA. I notice that in these option agreements to Mr. Cutten there is a provision which does not appear in any of the preceding option agreements that have been put into the record here today.

Mr. BROWN. That is true.

Mr. PECORA. Namely, a provision that entitled you to 25 percent of the profits from a trading account which the optionee agrees to maintain under these options.

Mr. BROWN. That is correct.

Mr. PECORA. You are not called upon, by specific provision in these agreements with Mr. Cutten, to bear any losses, however, if there are any?

Mr. BROWN. That is correct.

Mr. PECORA. What was the reason for the inclusion of that provision in these option agreements with Mr. Cutten?

Mr. BROWN. I don't remember exactly, but I think it had been suggested to me by some of my associates there, that in view of some of the things that had happened, where some losses had been taken in previous options, that they did not want to go into any more options of that kind; that they wanted the sponsorship of Mr. Cutten, but they felt if there was going to be any money made in it they should participate in it.

Mr. PECORA. Well, what were the things that had happened which had brought that about?

Mr. BROWN. Well, nothing particularly, but—

Mr. PECORA (interposing). You said something had happened. Now, what was that something?

Mr. BROWN. It was pointed out at the expiration of the Bliss option, the stock was called, and so far as I was concerned and my associates, we had to go back and buy the stock back at a higher price.

Senator ADAMS. Had you had a declining market on this stock?

Mr. BROWN. No; but I think there was a declining market during the period of these options.

Senator ADAMS. I notice that running from the option of the 12th day of December to June 12, or rather down to the 12th day of March, there is a substantial decline in the option prices.

Mr. BROWN. Yes, sir.

Senator ADAMS. Did that correspond with the market quotations?

Mr. BROWN. I believe so; yes, sir.

Mr. PECORA. Now, let us see about this: The first of these Cutten options is dated September 12, 1932. And the week beginning September 10 of that year, according to the statistics, the stock was quoted on the New York Stock Exchange within a range of $19\frac{1}{2}$ low to $24\frac{5}{8}$ high; and that at the beginning of the following week, commencing September 17, the quotations covered a range from 22 low to $26\frac{3}{4}$ high. But your option agreement of September 12, 1932, with Mr. Cutten is at prices ranging from 27 to 30, or substantially above the prevailing quotations. You notice that, do you not?

Mr. BROWN. Well, I see that now. I didn't remember the occasion of that.

Mr. PECORA. When you fixed the option prices for the purpose of making these agreements with Cutten, did you give consideration to the market quotations of the stock?

Mr. BROWN. Oh, yes; the option was in the neighborhood of the market.

Mr. PECORA. The option was substantially above the market, wasn't it?

Mr. BROWN. Well, I don't know. I cannot place it there. But I am sure it was not substantially above the market. Every time an option was given to anybody it certainly wasn't substantially above the market. I have never seen anybody take an option at figures substantially above the market. I think I am safe in saying therefore that all of these options were given in the neighborhood of the market at the time each one was given.

Mr. PECORA. I have pointed out to you that the low and the high in the quotations for this stock on the New York Stock Exchange for the week beginning September 10 were: $19\frac{1}{2}$ low, $24\frac{5}{8}$ high. And the following week the low was 22 and the high was $26\frac{3}{4}$. Now, your option prices in this contract of September 12 are from 27 to 30 per share.

Mr. BROWN. I think you will find there is another option there, starting nearer the market.

Mr. PECORA. There were two agreements made as of September 12.

Mr. BROWN. Well, as to that I don't know. But if I remember correctly, one was drawn and given to Mr. Cutten, and he said that was not sufficient volume for him, and for that reason a second one was written. But I am not sure of that.

Mr. PECORA. I am now going to show you the two option agreements dated September 12, 1932. Tell me which is the first one, and which is the second one.

Mr. BROWN (after looking at the two papers). This is the first one, and this is the continuation.

Mr. PECORA. Which is the first one?

Mr. BROWN. This one [holding up a paper].

Mr. PECORA. In other words, this paper which has been marked "Committee Exhibit No. 6-A" is the first option agreement with Mr. Cutten?

Mr. BROWN. Yes, sir.

Mr. PECORA. And this one which has been marked "Committee Exhibit No. 6-B" is the second option?

Mr. BROWN. Yes, sir.

Mr. PECORA. Well, then, aren't the unit prices under these two option agreements of September 12, from 22 to 30 per share?

Mr. BROWN. That is correct.

Mr. PECORA. And the total number of shares covered by the two option agreements of that date is 30,000 shares?

Mr. BROWN. That is correct.

Mr. PECORA. Well, doesn't that indicate prices substantially above the market?

Mr. BROWN. No. It starts at 22.

Mr. PECORA. But it ranges from \$22 to \$30 a share.

Mr. BROWN. That must have been the market at the time when the option was given.

Mr. PECORA. Not according to the published quotations, Mr. Brown, which run from a low of 19½ to a high of 26¾ between September 10 and September 17.

Mr. BROWN. Well, I mean on September 12 it must have been about \$22 a share, because I am confident they were not taking options above the market for the stock.

Mr. PECORA. Well, we will assume that on September 12 it was \$22 a share, and that on that day Mr. Cutten, who was a member of the New York Stock Exchange, a member of the firm of E. F. Hutton & Co., took these options and agreed to pay up to \$30 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. Is that correct, up to \$30 a share?

Mr. BROWN. That is correct.

Mr. PECORA. Why was there included in these option contracts a provision by which you bound yourself to loan to Mr. Cutten in connection with his market-trading operations in this stock, the number of shares that you agreed to sell to him under these options?

Mr. BROWN. I think, if my memory serves me correctly, he insisted on having that provision in there, so as to protect him, because he thought he would be able to maintain a good, stable, and orderly market in the stock.

Mr. PECORA. Well, do you mean by that, that he wanted that borrowing provision in there in order that he might be protected against short sales that he would make?

Mr. BROWN. I assume so; yes, sir.

Mr. PECORA. Did he draw down any of the stock called for by those four options?

Mr. BROWN. Yes.

Mr. PECORA. All of them?

Mr. BROWN. No.

Mr. PECORA. How many shares of the stock?

Mr. BROWN. In the first option, which starts from September, I think none was called down on that; and that none was called down on the December option. But as to the final option, which expired on the 12th of May, he called the entire quantity.

Mr. PECORA. He did what?

Mr. BROWN. He called the entire quantity of 10,000 shares in the final option.

Mr. PECORA. Now, in this case also you sought out Mr. Cutten, did you?

Mr. BROWN. That is correct.

Mr. PECORA. And you interested him in market operations intended by you to stabilize the market in the shares of your company's stock?

Mr. BROWN. That is correct.

Mr. PECORA. And he agreed to do it under the terms of this option and gave you 25 percent of any profits, but held you harmless from any losses that might accrue?

Mr. BROWN. That is correct.

Mr. PECORA. Wasn't this intended to do something more than merely stabilize the market?

Mr. BROWN. Not at all; no, sir.

Mr. PECORA. What was the purpose, then, of providing for a trading account in these options, out of which you were to receive 25 percent of the profits, but not to be responsible for losses, if any?

Mr. BROWN. Well, it was suggested in the negotiations with Mr. Cutten, by one of my associates, that we should have a participation in any profits that he might make, and he agreed to that. And in agreeing to that he suggested that he would open an account called the American Commercial Alcohol Trading Account, and handle the account through it.

Mr. PECORA. Well, why was it deemed necessary to provide for the maintenance of a trading account in which you were to have an interest in the profits?

Mr. BROWN. I assume so as to separate the trades in the account from any other accounts that he might have there; so that he would be able to give an accounting of the profits.

Mr. PECORA. Well, why couldn't that have been done without the trading account provision?

Mr. BROWN. I assume it could have been done, but I don't know. But that was suggested to me.

Mr. PECORA. That provision appeared for the first time in these Cutten options?

Mr. BROWN. Yes, sir.

Mr. PECORA. It had not appeared in any of the previous options given to Bliss, Ames, or Prentice & Slepach.

Mr. BROWN. That is true. That was suggested at the time the negotiations were had with Mr. Cutten, that a participation should be had in the profits that he might make by reason of trading in the account.

Mr. PECORA. Well, if Mr. Cutten under these options drew down from you the shares covered by the option agreements, you would make a profit from the sale thereof, wouldn't you?

Mr. BROWN. That is correct.

Mr. PECORA. Now, Cutten readily agreed to give you this 25-percent interest in the profits of the trading account, did he?

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

Mr. PECORA. Was that 25-percent interest enjoyed entirely by you, or were you to share it with others?

Mr. BROWN. I was to share it with my associates, who were participants in the options.

Mr. PECORA. In what proportions among the four of you?

Mr. BROWN. I cannot remember the exact proportions, except that on the delivery of 10,000 shares I delivered 4,000, and Mr. Grimm

delivered 3,000, and Mr. Publicker delivered 2,000, and Mr. Kies delivered 1,000 shares.

Mr. PECORA. At the time of these options you were the chairman of the board of the company?

Mr. BROWN. I was, sir.

Mr. PECORA. And Mr. Grimm was the president of the company?

Mr. BROWN. Yes, sir.

Mr. PECORA. And Mr. Kies was a director and the chairman of the executive committee of the board of directors of the company?

Mr. BROWN. That is correct.

Mr. PECORA. And Mr. Publicker was a director of the company?

Mr. BROWN. Yes, sir.

Mr. PECORA. And had preceded you as the chairman of the board of the company?

Mr. BROWN. That is correct.

Mr. PECORA. Do you recall that the respective participations of you, Grimm, Publicker, and Kies in this 25 percent interest in the profits of this trading account, were as follows: That you were to have 40 percent of the 25 percent interest; that Grimm was to have 50 percent; that Publicker was to have 20 percent, and that Kies was to have 10 percent?

Mr. BROWN. Well, that is the way the stock was delivered.

Mr. PECORA. Which would represent participation proportionate to the number of shares respectively agreed to be put up?

Mr. BROWN. Well, I have forgotten just how that was split up, but that is the way the deliveries were made. I don't remember how the profits were to be split.

Mr. PECORA. You only owned, at the time you made these agreements in your name to deliver to Cutten a total of 30,000 shares, something like 11,000 shares of stock, didn't you?

Mr. BROWN. That is all that I owned; yes, sir.

Mr. PECORA. And the rest was put up by Grimm, Kies, and Publicker.

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

Mr. PECORA. Why were not their names set forth in these agreements?

Mr. BROWN. Just to simplify matters, was all.

Mr. PECORA. Did you have written agreements with your associates to protect you?

Mr. BROWN. No. I had been associated with these gentlemen for a long period of time. I had confidence in them and they had confidence in me. I had been in business with Mr. Publicker, Mr. Grimm, and Mr. Kies.

Mr. PECORA. Now, the period of time covered by the four Cutten option agreements terminated on May 12, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. You and those same associates of yours had commenced to give options to stock-exchange members as far back as February of 1932, a period of a year and a quarter.

Mr. BROWN. That is correct.

Mr. PECORA. During that time was any announcement made to the stockholders of your company as to you and your fellow officers and directors giving these options?

Mr. BROWN. No.

Mr. PECORA. Do you know who the other participants were in the trading account that was provided to be maintained by Cutten under these four option agreements?

Mr. BROWN. No, sir.

Mr. PECORA. Did you ever learn who they were?

Mr. BROWN. No, sir.

Mr. PECORA. Well, would it surprise you to know that they were as follows:

Mrs. Augusta Edgerton, who, I understand, is the wife of a partner of the brokerage firm of Melady & Co.

Mitchell, Hutchins & Co., Chicago brokers.

Adrienne Ames, who was the wife of Stephen E. Ames, the broker to whom you had given the preceding option.

First Chrold Corporation, which, I understand, is a trading company in the office of E. F. Hutton & Co.

Cutten & Co., Ltd., which we have heard of before in the hearings before this committee, as a Canadian company organized for the benefit of some of the brothers or sisters or relatives of Mr. Arthur Cutten, who is a cousin of Ruloff Cutten.

Now, did you know that before?

Mr. BROWN. No, sir.

Mr. PECORA. Well, in view of the fact that you and your associates had, among the four of you, a 25-percent interest in this trading account, weren't you interested in knowing who the other participants were in that trading account?

Mr. BROWN. I never realized that there were other people in it. I assumed that Mr. Cutten was taking that.

Mr. PECORA. Well, were there profits received by you and your brother officers and directors of the company, from your participation in this trading account?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you received them after the 12th day of May 1933, I presume?

Mr. BROWN. Yes, sir.

Mr. PECORA. Do you recall what the market quotations for the stock of the company were on the termination of this last option agreement with Cutten, namely, May 12, 1933?

Mr. BROWN. No; but I should say something like \$18 to \$20 per share, or something like that.

Mr. PECORA. It ranged on May 12 from a low of 20¾ to a high of 22½. Now, Mr. Cutten is here, and I think, Mr. Chairman, I will examine Mr. Cutten about these options and will suspend temporarily with my examination of Mr. Brown.

Senator ADAMS (presiding). Very well.

Mr. PECORA. But, Mr. Brown, you will remain in attendance here in the committee room.

Mr. BROWN. All right.

(Thereupon Mr. Brown temporarily left the committee table.)

**TESTIMONY OF RULOFF E. CUTTEN, MEMBER OF THE FIRM OF
E. F. HUTTON & CO.—Resumed**

Mr. PECORA. You testified before in hearings held by this committee.

Mr. CUTTEN. Yes.

Mr. PECORA. Mr. Cutten, I show you a copy of four option agreements which have been marked in evidence here as exhibits 6-A, 6-B, 6-C, and 6-D, made between Russell R. Brown, as party of the first part, and Ruloff E. Cutten as party of the second part. Will you please look at them and tell us if you recognize them as being true and correct copies of option agreements to which you were a party?

Mr. CUTTEN. They are; yes, sir.

Mr. PECORA. You are the Ruloff E. Cutten mentioned in these option agreements as the optionee?

Mr. CUTTEN. I am.

Mr. PECORA. Will you tell the committee what your business was in the period between September 12, 1932, and May 12, 1933?

Mr. CUTTEN. I was a broker, a member of the New York Stock Exchange, and a partner of E. F. Hutton & Co.

Mr. PECORA. Were you the floor member of the exchange?

Mr. CUTTEN. I owned a membership on the floor, sir, but I have not been on the floor for some years.

Mr. PECORA. Will you tell the committee the circumstances under which you obtained these option agreements from Mr. Brown?

Mr. CUTTEN. If I recall correctly, I met Mr. Brown at a prearranged luncheon. Mr. Grimm was present, and we discussed his company. He wanted me to become interested in the shares—

Mr. PECORA. Who did—Grimm or Brown?

Mr. CUTTEN. I believe Mr. Brown.

Mr. PECORA. What did he say to you along those lines?

Mr. CUTTEN. How good he thought business would be during the year 1933, what he expected his company to do, and that he wanted the—

Mr. PECORA. Tell us what he said. You are giving us a sort of conclusion. Give us the substance of what he said. How well did he expect his company to do? What did he think business was going to be? Give us the substance of what he said.

Mr. CUTTEN. If I recall, he thought that the stock would earn somewhere around \$3.50 per year in 1932, and that he wanted some sponsorship in that particular stock. He asked me if I would be interested in forming an account in it and interest other people to do something in it, and I said after I made some sort of an examination of the company I would let him know. Subsequently I did make the examination, or have one of our statisticians make the examination. He gave me a confidential report on the company, which I believe is seven-odd pages long.

Mr. PECORA. Did you say seventy-odd or seven-odd?

Mr. CUTTEN. Seven-odd. Then we got together on these various prices.

Senator COUZENS. Have you that report here?

Mr. CUTTEN. Yes; I have [producing paper].

Mr. PECORA. Will you let me have a copy of it?

Mr. CUTTEN. That is the original, Mr. Pecora. That is the only one we have [handing paper to Mr. Pecora].

Mr. PECORA. How long prior to September 12, 1932, which is the date of the first of these four option agreements made with you, did you have this conference with Mr. Brown and Mr. Grimm?

Mr. CUTTEN. Perhaps 2 weeks; perhaps 3. I do not recall, sir.

Mr. PECORA. Was the conference arranged for on the initiative of Mr. Brown or yourself?

Mr. CUTTEN. That I do not know. I was invited to go to lunch with a man by the name of Ames.

Mr. PECORA. Is that Stephen Ames?

Mr. CUTTEN. Yes.

Mr. PECORA. You knew Stephen Ames as a fellow broker?

Mr. CUTTEN. I did.

Mr. PECORA. At that time, in that conference, was any discussion had concerning the previous sponsorship of this same stock by Stephen Ames?

Mr. CUTTEN. I never knew a thing about it; no, sir.

Mr. PECORA. Did you ever know that Stephen Ames had previously sponsored the same stock, under the terms and provisions of an option agreement, given to him by Mr. Brown and Mr. Brown's associates in the company?

Mr. CUTTEN. I did not.

Mr. PECORA. Did you know that previous to this conference with you there had been another sponsorship of the same stock, under generally similar option agreements given by Mr. Brown and his associates to the brokerage firm of Prentice and Slepach?

Mr. CUTTEN. I did not.

Mr. PECORA. Did you know that previous to that there had been another sponsorship of the stock on the New York Stock Exchange by a broker named Frank E. Bliss, under the terms of options given to him by Brown and his associates?

Mr. CUTTEN. I did not.

Mr. PECORA. You knew Mr. Ames pretty well, didn't you, at the time of this conference?

Mr. CUTTEN. I did.

Mr. PECORA. When Mr. Brown asked you to sponsor the stock, did you agree to do it?

Mr. CUTTEN. Not immediately; no, sir.

Mr. PECORA. You agreed eventually, after having had a survey made for you by a statistician in the employ of your firm.

Mr. CUTTEN. That is correct.

Mr. PECORA. Did you give Mr. Brown the results of that report?

Mr. CUTTEN. I did not.

Mr. PECORA. Or the substance of it?

Mr. CUTTEN. I did not.

Mr. PECORA. When you entered into these agreements, which have been marked in evidence as exhibits 6-A, 6-B, 6-C, and 6-D, what consideration did you give to the market quotations prevailing at the time that you entered into those agreements?

Mr. CUTTEN. Considerable

Mr. PECORA. I notice that the option prices fixed in these four agreements are above what was the prevailing market on the dates of those agreements. Did you have that in mind?

Mr. CUTTEN. The average, do you mean, sir, or do you mean the very first option? If I recall, the first price of the first option was perhaps at the market, or may have been a dollar under the market.

Mr. PECORA. A price of \$22?

Mr. CUTTEN. I believe so.

Mr. PECORA. On September 12?

Mr. CUTTEN. I believe so.

Mr. PECORA. On September 10, or the week ending September 10, the low was $19\frac{1}{2}$ and the high $24\frac{5}{8}$. For the week ending September 17 the low was 22 and the high $26\frac{3}{4}$. Then on September 12 you bound yourself to purchase a total of 30,000 shares at prices ranging from \$22 to \$30 a share.

Mr. CUTTEN. No, sir; I did not bind myself.

Mr. PECORA. You did not bind yourself, but you took these options?

Mr. CUTTEN. Yes.

Mr. PECORA. You could not have realized any profits unless the market prices went up to prices exceeding those fixed by the options.

Mr. CUTTEN. That is quite true.

Mr. PECORA. And that is what you hoped to accomplish, was it not?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. How did you hope to accomplish it, Mr. Cutten? By what means?

Mr. CUTTEN. I thought that the earnings of the company would warrant higher prices for it. The stock, as I recall, looking over it, was most inactive. There were many times when there were wide differences between the bid and the asked price, and I sold stock on the scale up, and reentered the purchase on the scale down.

Mr. PECORA. That is, you bought to support the market on a scale down and sold on a scale up?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Did you call upon Mr. Brown and his associates for any of these 30,000 shares covered by the two option agreements of September 12, 1932?

Mr. CUTTEN. No, sir.

Mr. PECORA. Why not?

Mr. CUTTEN. I had sold stock, I think, and had a net short position, by two or three thousand shares, and then the market went into a general reaction and receded, and I repurchased those, and had long shares. By that time the expiration of the first 90 days happened, and then the second option was made, I believe, at a lower figure, and about the same thing happened in that, and it was the fourth option that averaged \$18 a share, which was the only option that was exercised—10,000 shares.

Mr. PECORA. At \$18 a share average.

Mr. CUTTEN. \$18 average. They started, I think, at 16, and went to 20.

Mr. PECORA. I think I will offer in evidence, Mr. Chairman, the copy of the so-called "Confidential report on American Commercial Alcohol Corporation", made to the witness by a statistician of E. F.

Hutton & Co., referred to by him, namely, S. C. Coleman. I ask that it be marked in evidence and not spread on the minutes. It is rather long.

Senator ADAMS (presiding). It may be admitted.

(Copy of confidential report on American Commercial Alcohol Corporation, Coleman to Cutten, was received in evidence, marked "Committee's Exhibit No. 7", Feb. 14, 1934, and the same is not printed here for the reasons stated above.)

Mr. PECORA. I want to read what appears in this confidential report under the caption of "Summary" [reading]:

In summary I would say that American Commercial Alcohol occupies a good competitive position in the alcohol industry, which is now showing a high degree of stability. Indications are that the present profitable price structure will be maintained at least another year. The company has a relatively clean balance sheet, and although its liquid position is not all that could be desired, the officers have no intention of declaring any dividends, but are planning to strengthen the treasury position by retaining all earnings. Indications of earnings for the second half of 1932 are substantial. On the other hand, the company, since its inception in 1928, has not shown steady earning power, and, marketwise the stock is very inactive, and it is my opinion that the stock has been hurt as a result of apparently being shopped around the street in the past year or two. I think we can recommend the stock to those people who want to follow a speculative situation that offers considerable promise over the next six months to a year. I do not think it is suitable for investment in any sense of the word. The exceedingly small capitalization, coupled with the fact that over 50 percent of the stock is very closely held, indicated that the stock could be established at higher levels without any large amount of buying.

This is dated September 8, 1932, and it is signed by S. C. Coleman. What did Mr. Coleman's statement mean to you, where he said, in conclusion here [reading]:

The exceedingly small capitalization, coupled with the fact that over 50 percent of the stock is very closely held, indicates that the stock could be established at higher levels without any large amount of buying.

Mr. CUTTEN. Just that, that a moderate amount of buying power probably would establish the stock at a 10-point price higher than what it was selling, and keep it there, namely, in the thirties instead of the twenties.

Mr. PECORA. In other words, the situation was one in which, through the medium of market operations—we will not call it manipulation—but market operations, which would involve only a small amount of buying power, the quotations on this stock could be pushed up very rapidly?

Mr. CUTTEN. It could; if any one had come in to buy 5,000 shares at the market, of course, it would have gone up most rapidly.

Mr. PECORA. Is not that what Mr. Coleman's report meant to you?

Mr. CUTTEN. That it would be influenced, of course, by any buying, naturally, because 50 percent of it was so closely held. There were only 194,000 shares of the stock, as I recall, outstanding.

Mr. PECORA. And more than 50 percent of it, according to Mr. Coleman's survey, was closely held?

Mr. CUTTEN. That is right.

Mr. PECORA. Do you know who held that proportion of the stock?

Mr. CUTTEN. No; I do not.

Mr. PECORA. It was the officers and directors of the company, was it not?

Mr. CUTTEN. I know that.

Mr. PECORA. Principal among them was Mr. Brown, chairman of the board, Mr. Grimm, president, and Mr. Publicker and Mr. Kies, and they were the four men who gave you these options, were they not?

Mr. CUTTEN. I did not know it at the time; no.

Mr. PECORA. When did you first learn that anyone was associated with Mr. Brown in these option agreements with you?

Mr. CUTTEN. I believe he told me some of his codirectors or associates were supplying some stocks as individuals.

Senator COUZENS. Did you make any profit on this transaction?

Mr. CUTTEN. Yes, sir. The account had a profit of some \$16,000 at the expiration of the 8 months.

Mr. PECORA. I note this expression in Mr. Coleman's report to you, which I have already read [reading]:

I think we can recommend the stock to those people who want to follow a speculative situation that offers considerable promise over the next 6 months to a year. I do not think it is suitable for investment in any sense of the word.

Whom do you think Mr. Coleman had in mind as being the people to whom he thought this stock could be recommended as a speculative situation?

Mr. CUTTEN. I have not any idea, sir. Neither would he have.

Mr. PECORA. What was the sense of his making that sort of report to you, in which he says "I think we can recommend the stock to those people who want to follow a speculative situation" and so forth? To whom was he referring?

Mr. CUTTEN. I do not know that he was referring to anybody in particular.

Mr. PECORA. No; apparently he is not referring to anybody in particular. That is quite apparent from the language, but what class of people was he referring to?

Mr. CUTTEN. A person that wants to speculate.

Mr. PECORA. How would you make recommendations to those persons who wanted to speculate?

Mr. CUTTEN. For instance, if somebody should say to me anything about the alcohol stocks as a group, or as a whole, knowing something, or thinking that I knew something about the American Commercial Alcohol situation, I certainly would suggest the purchase of that in preference to the purchase of other alcohol shares, if I knew nothing about them.

Mr. PECORA. I notice that this report is on printed letterheads of E. F. Hutton & Co., members, New York Stock Exchange, 61 Broadway, New York City, statistical department.

Mr. CUTTEN. Yes.

Mr. PECORA. Mr. Coleman was a statistician in that department?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Do you suppose Mr. Coleman was referring, when he said "I think we can recommend the stock to those people who want to follow a speculative situation" to the customers of E. F. Hutton & Co.?

Mr. CUTTEN. He was not.

Mr. PECORA. He was not?

Mr. CUTTEN. He was not.

Mr. PECORA. To whom was he referring, do you think?

Mr. CUTTEN. Anybody who wanted a speculative thing. It didn't matter whether it was our customers or some one else's customers. That is a confidential report, sir.

Mr. PECORA. I realize it is a confidential report, and that is probably why things are called by plain terms, because it is a confidential report. You never intended that this should reach the eyes of the public, did you?

Mr. CUTTEN. I had it with me, didn't I?

Mr. PECORA. I say, you never intended, when you got this from Mr. Coleman, that it should ever reach the eyes of the public?

Senator COUZENS. When you offered this stock for sale, did you tell them it was speculative stock, as suggested by Mr. Coleman?

Mr. CUTTEN. We never offered it for sale, sir.

Mr. PECORA. Let us see about that. I have before me a document prepared by E. F. Hutton & Co. and furnished to us at our request or suggestion, that contains extracts from market letters of E. F. Hutton & Co., commencing with the date of September 12, 1932. Will you look at it and tell me if you recognize it to be such?

Mr. CUTTEN (after examining papers). Yes, sir.

Mr. PECORA. I offer it in evidence.

(Copy of market letters, E. F. Hutton & Co., commencing with September 12, 1932, was marked "Committee's Exhibit No. 8", Feb. 14, 1934, received in evidence, and portions of the same were read into the record subsequently by Mr. Pecora.)

Mr. PECORA. The document, which has been marked "Committee's Exhibit No. 8" in evidence, reads as follows—

Senator COUZENS. Does it all refer to this particular stock?

Mr. PECORA. Yes, sir. That is, there are references to this stock in every extract that I will read.

Senator ADAMS. These are excerpts?

Mr. PECORA. Excerpts from various market letters, the date of each one of which I will give as I read them.

From the market letter written September 12, 1932—

Senator ADAMS. That is the date of the first option?

Mr. PECORA. That is the date of the first two options; yes, sir. This is marked "Afternoon Market Letter, 4 p.m." I read the following:

A few issues displayed unusually stubborn resistance to further decline, such as American Commercial Alcohol and Coca Cola. The pronounced firmness in the former issue in the face of weakness in U S Industrial Alcohol directs attention to the comparative earning power of these two alcohol companies this year. It is conservatively estimated that American Commercial Alcohol will report net of \$3.50 a share this year, while U S Industrial Alcohol is not expected to earn more than \$2.50 to \$3 on the common. Some students of comparative market values are predicting that American Commercial Alcohol will cross U S Industrial Alcohol.

Some issues that we believe are in a favorable position to score a sharp rally when the list turns are American Can, United Aircraft, North American, American Commercial Alcohol, Southern Pacific, General American Tank, Kenicott, Chrysler, International Telephone, Continental Can, American Power & Light, Atlantic Refining, Gillette, General Electric, Canadian Pacific, Union Carbide

Then, from the opening market letter, 9 a. m., September 13, 1932, I will read the following extract:

Some issues that we believe are in a favorable position to score a sharp rally when the list turns are American Can, United Aircraft, North American, American Commercial Alcohol, Southern Pacific, General American Tank, Kenicott, Chrysler, International Telephone, Continental Can, American Power & Light, Atlantic Refining, Gillette, General Electric, Canadian Pacific, and Union Carbide.

From the morning market letter, 8:50 a. m., September 14, 1932, the following [reading]:

Among stocks we like for trade turns are American Can, Union Carbide, General Electric, North American, New York Central, Southern Pacific, United Aircraft, American Commercial Alcohol, Chrysler, Canadian Pacific, and Commercial Solvents.

From the afternoon market letter, 4 p. m., September 14, 1932 [reading]:

American Commercial Alcohol advanced to a new high for the year in the morning's trading before encountering selling, when the list turned sharply downward. Some students of the alcohol industry who are impressed with the favorable competitive position of this company predict that American Commercial Alcohol will cross U.S. Industrial Alcohol in the not distant future.

From the closing market letter, 4 p. m., October 4, 1932 [reading]:

Among individual issues B.M.T., Aviation Corporation, the Mail Order Issues, American Commercial Alcohol, and Continental Can gave a better than average performance.

From the opening market letter, 8:40 a. m., written on October 6, 1932 [reading]:

Active stocks to watch include American Can, Consolidated Gas, International Telephone, Montgomery Ward, Union Carbide, United Aircraft, U.S. Steel, Aviation Corporation, and Westinghouse Electric. Among less active issues Continental Can and American Commercial Alcohol.

From the closing market letter, 4 p. m., written October 13, 1932 [reading]:

A cold winter would result in substantial sales of antifreeze mixtures by the alcohol companies, swelling final quarter net. It is estimated, in informed quarters, that American Commercial Alcohol earned upwards of 85 cents in the third quarter, bringing 9 months net to \$2.10 a share. It seems likely that balance of income available for the common in the fourth quarter will exceed \$1.50, giving full year net of around \$3.60.

From the closing market letter, 4 p. m., October 28, 1932, I read as follows:

The dribble of third quarter earnings statements continued with numerous specialty issues such as Gillette and American Commercial Alcohol reflecting encouragement over better operating results for the September quarter. American Commercial Alcohol reported net for the first 9 months of \$2.07 per share, compared with a deficit of \$1.35 per share for the corresponding period of 1931, adjusted to the present capitalization. In line with normal seasonal tendencies, American Commercial's third quarter net was the largest quarter so far this year, accounting for approximately 40 percent of net increase for the 9 months. The fourth quarter should make an even better showing than the September quarter, which indicates that full year net for this company will be substantially in excess of \$3.

From the closing market letter, 12:25 p. m., November 5, 1932, which was a Saturday [reading]:

Stocks held well in today's short session, backing and filling on professional transactions, and finally closing slightly up on the day. The market was quite

narrow, with traders inclined to play the long side. The alcohol shares, Standard of N J and Reynolds Tobacco B were the features of strength. The spurt in American Commercial Alcohol and U S Industrial Alcohol accompanied reports of colder weather which usually is reflected in an increased demand for anti-freeze mixtures, which are produced by these companies.

From the closing market letter of December 16, 1932, I read—as follows:

Although estimates of U S Industrial Alcohol's net earnings are being revised downward to around \$1.50 to \$2, it is still expected in informed circles that American Commercial Alcohol will earn approximately \$3 per share for 1932. With no change in the alcohol price structure in the first quarter of 1933, American Commercial Alcohol should better its earnings of 55 cents reported in the first quarter of 1932.

From the closing market letter written January 16, 1933, I read as follows:

American Commercial Alcohol's first quarter net is estimated at 60 cents against 57 cents, United Carbon 10 cents against 8 cents.

From the closing market letter January 26, 1933, I read as follows:

American Commercial Alcohol, on the other hand, showed quiet firmness on the expectation that the 1932 annual report, which should be released within the next day or so, will show earnings of slightly over \$3 per share.

From the closing market letter written January 27, 1933, I read as follows:

At the same time the release of the earnings figures of American Commercial Alcohol for 1932 revealed net income, after all charges of \$586,365, equivalent to \$3.01 per share, compared with a loss of \$597,651 in 1931. In the fourth quarter of 1932 American Commercial Alcohol earned 93 cents per common share, which will be seen to be substantially in excess of the estimated full-year earnings of U.S. Industrial Alcohol. In informed quarters it is estimated that American Commercial Alcohol will earn more in the first quarter of 1933 than it did in the corresponding quarter of 1932.

From the closing market letter written on May 26, 1933, I read as follows:

Repeal stocks continued the rising trend of yesterday and featured during most of today's session, with most issues in this group reaching new highs. Alcohol stocks likewise continued the advance with U.S. Industrial gaining 7½ points and American Commercial Alcohol 4 points.

From the closing market letter written May 25, 1933, I read as follows:

The repeal stocks continued the strength in evidence in the last few sessions and made the best showing of the day. National Distillers was up 8 points, while gains of a point or more were shown by other stocks that will benefit from repeal. Standard Brands was quite active and gained 1¼ points. Alcohol stocks joined in the advance, with both U.S. Industrial and American Commercial Alcohol scoring sharp gains in new high ground.

Senator ADAMS. How are these market letters distributed, how widely, and by what means?

Mr. CUTTEN. They are put over our wires, sir. It is a sheet of paper about the size of that, commenting on how the market acted on the particular day, and market letters are put out in the morning commenting on the night news and mentioning stocks that acted well or did not act so well the previous day.

Senator ADAMS. Do they go to all members of the exchange?

Mr. CUTTEN. Oh, no, sir.

Senator ADAMS. Just affiliated brokers?

Mr. CUTTEN. Those are just our own offices.

Senator ADAMS. They have no circulation among your customers, other than among those who come and get them at your offices?

Mr. CUTTEN. They put them on a pad, and they come in and read them.

Mr. PECORA. They are available to all the customers of your office?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. And very frequently are quoted in the public press, are they not?

Mr. CUTTEN. I believe they are. I do not think they ever mention any particular stock. I believe they just mention the trend of the market, whether the broker is bullish on the market or bearish on the market.

Mr. PECORA. In the face of this evidence, do you still say that your firm did not recommend American Commercial Alcohol to its customers during the times covered by these options?

Mr. CUTTEN. Of course, I look on the recommending of things to a customer as putting out a prospectus and analyzing the individual company to the customer, and suggesting that the customer purchase the shares of that company.

Mr. PECORA. Would you interpret any of these references to American Commercial Alcohol that I have read from these market letters as suggestions to your customers not to purchase American Commercial Alcohol?

Mr. CUTTEN. No; I would not.

Mr. PECORA. They were put in there to influence the customers in purchasing the stock, weren't they?

Mr. CUTTEN. Well, it was to call that particular stock to their attention; yes.

Mr. PECORA. And to call it to their attention in a favorable way, so as to induce them to buy?

Mr. CUTTEN. That is right.

Mr. PECORA. Yes. And that is not recommending a stock to them, is it, according to your conception of the term?

Mr. CUTTEN. Perhaps it is. But no more so than any of the other stocks that are mentioned there, though, sir.

Mr. PECORA. When you recommended the stock in this way did you tell your customers that you had an interest in the stock represented by these option agreements on 30,000 shares?

Mr. CUTTEN. No; I did not.

Mr. PECORA. That is rather a common factor, isn't it, Mr. Cutten, among brokerage houses?

Mr. CUTTEN. That have options you mean?

Mr. PECORA. To have options.

Mr. CUTTEN. Yes.

Mr. PECORA. And then to stimulate the market by recommending the stock in which they have options to customers?

Mr. CUTTEN. It has been; yes, sir.

Mr. PECORA. Do you think it is a good practice?

Mr. CUTTEN. I do not.

Senator ADAMS. You say "it has been." Why do you use that past tense?

Mr. CUTTEN. Well, due to the rules and regulations that the New York Stock Exchange has put into effect today, sir—

Mr. PECORA. Oh, today?

Mr. CUTTEN. No; I don't mean today, not this morning or last night, but in listing the various options of houses that may have them or for their customers, they require information about anything that they may have knowledge of that an individual is doing that is operating against an individual option, and that has undoubtedly curtailed a great deal of that kind of trading.

Mr. PECORA. When did you first reach the conclusion that this was not a good, wholesome practice for a brokerage house having options on stock to recommend that stock to its customers?

Mr. CUTTEN. Well, I for one, sir, have never been in favor of doing that, recommending the stock to the customer, putting out a prospectus on it and selling it. We today—and we did not because we are not a house of issue—do not have any for sale.

Mr. PECORA. Did you evince that attitude to E. F. Hutton & Co. in 1932 and 1933 while these market letters were going out?

Mr. CUTTEN. I don't know whether I did or not, sir; I know we as a firm, E. F. Hutton & Co., have not had a participation in anything since 1929, not even in the underwriting.

Mr. PECORA. Well, the firm may not have had, but how about individual members of the firm like yourself?

Mr. CUTTEN. I never had, sir.

Mr. PECORA. Didn't you have these options here?

Mr. CUTTEN. They were made out to me, sir, but they did not belong to me.

Mr. PECORA. Whom did they belong to?

Mr. CUTTEN. I formed the group.

Mr. PECORA. Whom did they belong to? Who is the group that you formed?

Mr. CUTTEN. The group of names that you called off a minute ago here.

Mr. PECORA. The names that I called off to Mr. Brown?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Did you form that group, Mr. Cutten?

Mr. CUTTEN. I did.

Mr. PECORA. Did I give correctly all the participants in that group?

Mr. CUTTEN. I believe you did.

Mr. PECORA. Well, now, let's see; 25-percent interest was given to Mr. Brown and his three other directors and officers of the company—that you know?

Mr. CUTTEN. I only know Mr. Brown, of course.

Mr. PECORA. Didn't you know Mr. Grimm was in it?

Mr. CUTTEN. No; I didn't know Mr. Grimm was in it.

Mr. PECORA. I thought that at your first conference with Mr. Brown, the negotiations that led to the granting of these four options to you, Mr. Grimm was present.

Mr. CUTTEN. He was.

Mr. PECORA. He was introduced to you then as the president of American Commercial Alcohol?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. You invited Mrs. Augusta Edgerton to participate in this group that you formed?

Mr. CUTTEN. I invited her husband to.

Mr. PECORA. What is her husband's business?

Mr. CUTTEN. He is a broker.

Mr. PECORA. In New York City?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Partner in the firm of Melady & Co.?

Mr. CUTTEN. He was at that time, I believe; yes, sir.

Mr. PECORA. Did you also invite Mitchell, Hutchins & Co into the group?

Mr. CUTTEN. I did.

Mr. PECORA. They are Chicago brokers, aren't they?

Mr. CUTTEN. They are.

Mr. PECORA. With an office in New York?

Mr. CUTTEN. I believe they have; yes, sir.

Mr. PECORA. Did you invite Adrienne Ames, the wife of Stephen Ames, to participate?

Mr. CUTTEN. I invited Mr. Stephen Ames; yes, sir.

Mr. PECORA. He was a broker?

Mr. CUTTEN. He was. He introduced me to Mr. Brown.

Mr. PECORA. Member of the New York Stock Exchange. Oh, he introduced you to Mr. Brown?

Mr. CUTTEN. Yes, sir; Mr. Stephen Ames did.

Mr. PECORA. And he did not tell you at the time that you discussed these options with Mr. Brown and Mr. Grimm, and in the course of which, as I remember your testimony, Brown told you he was through a broker to sponsor the stock that Ames had previously sponsored, or under an option agreement to Brown?

Mr. CUTTEN. He did not.

Mr. PECORA. If you had known that, do you think it would have influenced your mind in any way with regard to these option agreements?

Mr. CUTTEN. I don't know that it would; no, sir.

Mr. PECORA. Who is the First Chrold Corporation which was also a participant in this group that you say you formed under these options?

Mr. CUTTEN. That is a corporation that is managed by one of my partners.

Mr. PECORA. It is a corporation connected with some of your partners?

Mr. CUTTEN. Managed by one.

Mr. PECORA. Managed by him?

Mr. CUTTEN. Yes.

Mr. PECORA. Who is the beneficial owner of that company?

Mr. CUTTEN (addressing Mr. Tompkins in a low voice). Do you know about that?

Mr. TOMPKINS. I think, Mr. Pecora, I can speak about that. Mr. Lowe probably—

Mr. PECORA (interposing). Just a minute. Wait a minute. Mr. Cutten, you said that you formed this group. Now don't you know who the First Chrold Corporation is, or who owns it, whom it represents?

Mr. CUTTEN. Well, yes.

Mr. PECORA. Who owns it?

Mr. CUTTEN. Mr. Walter Evan is the president of the company and I believe the largest individual stockholder.

Mr. PECORA. And is he connected with the E. F. Hutton & Co.?

Mr. CUTTEN. He is not; no. Mr. Gerald Lowe is my partner, and is the manager of the Chrold Corporation, and also I believe a large stockholder in the company.

Mr. PECORA. The Cutten Co., Ltd., who is the beneficial owner of that company?

Mr. CUTTEN. Mr. Arthur W. Cutten's brothers and sisters.

Mr. PECORA. Those that live in Canada.

Mr. CUTTEN. Those that live in Canada.

Mr. PECORA. They were the same brothers and sisters that Mr. Arthur W. Cutten testified about at a previous appearance that he made before this committee at which you were present—do you remember?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Arthur W. Cutten is related to you?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Your cousin, I believe?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Did you invite the Cutten Co., Ltd., of Canada to become a participant in this group or did you suggest it to your cousin, Arthur W.?

Mr. CUTTEN. I suggested it to him. I invited him in.

Senator ADAMS. What interest did you have in this group or syndicate?

Mr. CUTTEN. None at all, sir.

Mr. PECORA. What is that?

Mr. CUTTEN. No interest at all.

Senator ADAMS. What, if any, consideration did you get for forming it?

Mr. CUTTEN. Not a thing except the brokerage commission.

Senator ADAMS. Through the purchase and sale of the stock?

Mr. CUTTEN. Purchase and sale of the stock; yes, sir.

Mr. PECORA. Do you recall the number of shares that you traded in during the life of these four option agreements, that is, between September 12, 1932, and May 12, 1933?

Mr. CUTTEN. Roughly I would say a hundred thousand shares of stock.

Mr. PECORA. That is, you both bought and sold?

Mr. CUTTEN. Bought and sold during the option period.

Mr. PECORA. At times you sold short?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. At times you had a long position?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Now, what consideration prompted you to invite the particular individuals that you did invite into this operating group?

Mr. CUTTEN. No particular thing, sir.

Mr. PECORA. Well, I notice that all of the participants were persons that were connected with market operations. Isn't that so? For instance, Mrs. Edgerton's husband is a partner in the brokerage

firm of Melady & Co. Mitchell, Hutchins & Co. were Chicago stock brokers. Mrs. Ardienne Ames is the wife of Stephen Ames, a member of the New York Stock Exchange and a friend of yours. The First Chold Corporation was managed by one of your partners in E. F. Hutton & Co., and the Cutten Co., Ltd., you invited them through Arthur W. Cutten, who described himself here at a previous hearing as a market operator. Were you looking for market operators in forming this group?

Mr. CUTTEN. Well, no; I wouldn't say that I was, sir; no.

Mr. PECORA. Was it then purely a coincidence that all of the persons and interests invited to participate in this group were connected with market operators?

Mr. CUTTEN. It is; because they all happened to be my friends.

Mr. PECORA. Is your circle of friends limited to market operators, Mr. Cutten?

Mr. CUTTEN. No; it is not.

Mr. PECORA. Wasn't it your desire in inviting persons of that character or that type or classification into this group to invite persons who could stimulate market activities in this stock because of their business?

Mr. CUTTEN. Well, if they had some friends that were willing to speculate in a class of stocks such as this was, yes; that it was a good business man's risk and a good business man's speculation, based on the forecasts that the chairman of the board had made.

Senator COUZENS. You mean a good business man or a good risk, which?

Mr. CUTTEN. Good risk.

Mr. PECORA. In trading to the extent that you say you traded in this stock during the life of these options, what brokers did you use to handle your trades?

Mr. CUTTEN. I think just \$2 brokers on the floor of the New York Stock Exchange.

Mr. PECORA. Who were they?

Mr. CUTTEN. I believe a man by the name of Smith was the principal broker.

Mr. PECORA. Was that Ben Smith?

Mr. CUTTEN. No, sir.

Mr. PECORA. What is his full name.

Mr. CUTTEN. Lyman B.

Mr. PECORA. Where is his office?

Mr. CUTTEN. E. F. Hutton & Co.

Mr. PECORA. That is your firm?

Mr. CUTTEN. Yes, sir.

Mr. PECORA. Who was the other broker you used?

Mr. CUTTEN. Well, I would have to look it up. I would not know off hand.

Mr. PECORA. Who was the specialist in the stock on the floor of the New York Stock Exchange?

Mr. CUTTEN. Charles Wright.

Mr. PECORA. Did you use him?

Mr. CUTTEN. Only limited orders reached him and registered in his book.

Mr. PECORA. What do you mean by limited orders? That is a term that we would like to have you define.

Mr. CUTTEN. If the market in the stock is quoted at 22 and if you put in an order to sell 500, 600, or 700 at 23, you cannot expect a \$2 broker on the floor of the New York Stock Exchange to carry that order around with him all day long. He gives it to the man that has the book, the specialist.

Mr. PECORA. In other words, the specialist?

Mr. CUTTEN. Yes; and he enters it in his book to sell it at the limit price.

Mr. PECORA. Did you deal in any puts and calls in connection with your activities in this stock?

Mr. CUTTEN. I believe I did; yes, sir.

Mr. PECORA. To what extent?

Mr. CUTTEN. Well, I would have to look that up. I don't know.

Mr. PECORA. Can't you tell us even approximately?

Mr. CUTTEN. No; I would not know over a period of that time, Mr. Pecora.

Mr. PECORA. Why did you give puts and calls in the stock during this period of your activity in it? What purpose was derived by it?

Mr. CUTTEN. On the put end, if a broker would be bullish on an alcohol stock or bullish on the market and wanted to buy 2 or 3 hundred shares, sometimes he would call me up on the telephone and say he would buy 2 or 3 hundred shares of this particular stock if I would give him a put on it, say a point under the price at which he may have purchased it. It is limiting their loss.

Mr. PECORA. It is a limitation on the loss of the speculator?

Mr. CUTTEN. That is right.

Mr. PECORA. That is pure speculation, is it—or speculation, leaving out the word "pure"?

Mr. CUTTEN. Yes.

Mr. PECORA. Did you give any of these puts at the same price at which the transaction was put through?

Mr. CUTTEN. I may have. I would have to look it up. I would not know.

Mr. PECORA. You don't recall that?

Mr. CUTTEN. No; I do not.

Mr. PECORA. What would be your purpose in doing that?

Mr. CUTTEN. To give them a put at the same price that they may have purchased the stock at?

Mr. PECORA. Yes.

Mr. CUTTEN. Just so he would buy the stock, that is all.

Mr. PECORA. Isn't it also to guarantee him against loss?

Mr. CUTTEN. Oh, absolutely; of course. To limit his loss.

Mr. PECORA. In other words, it is a process whereby persons might be induced to buy the stock because they are assured of being protected against loss?

Mr. CUTTEN. Absolutely.

Mr. PECORA. What was the advantage to you or to the members of your group in doing that, Mr. Cutten?

Mr. CUTTEN. Well, I don't know in doing that, Mr. Pecora, whether there was any direct advantage or not. It brings in some outsider, of course, with maybe 100 shares or 200 shares or 500 shares of that particular stock. That is what it does. It creates another interest.

Mr. PECORA. It stimulates the market, doesn't it?

Mr. CUTTEN. Yes, in effect.

Mr. PECORA. And that is the purpose for which it is done, isn't it?

Mr. CUTTEN. Yes.

Mr. PECORA. To sort of help churn the market, isn't it?

Mr. CUTTEN. Well, "churn" is a kind of a large word for an account about this size. I don't know whether you could churn 200 shares one day or 300 the next.

Mr. PECORA. You know it is churning just the same, isn't it?

Mr. CUTTEN. All right; call it that; yes, sir.

Mr. PECORA. We are not doing violence to the facts when we call it that, are we?

Mr. CUTTEN. Well, I don't know whether you are or not. You may be in the minds of some people.

Mr. PECORA. In your own mind?

Mr. CUTTEN. No; not in my mind.

Mr. PECORA. I simply want your opinion, of course.

Mr. CUTTEN. No; not in my mind; no, sir.

Mr. PECORA. And is that a device, Mr. Cutten, that, from your experience covering many years as a stockbroker, is often resorted to to stimulate activity in the market of a stock?

Mr. CUTTEN. Sometimes; yes, sir.

Mr. PECORA. And the general effect is to inform the public that there is an activity in the market for that stock without telling the public how the activity is excited?

Mr. CUTTEN. That is quite so. They don't know. Of course not. In other words, the public or any individual could buy a hundred or a thousand shares of that stock and then go out and buy puts on it, and the rest of the people would not know that they had purchased a put. It limits the loss. There are people that are put and call brokers that do that, sell puts and sell calls.

Mr. PECORA. Now, will you give us your reasons for the feeling or opinion you expressed a few minutes ago that it is unsound or unethical or unfair, whatever term you want to use, for a stock brokerage firm that has an option on a stock to recommend to the public or its customers the purchase of that stock? Tell us why you think it is not a sound practice.

Mr. CUTTEN. There are so many abuses. So often an individual, we will say, that you know that has accumulated a block of shares in the market due to the receding market, then says, "You know that I have purchased these shares at such-and-such a price. I would like to resell them". And he does not know how to resell them, remarket them, and so he goes to the brokerage firm and the brokerage firm accepts the options on the stock. They in turn send out letters, prospectuses of the company, and suggest the purchase of it.

Mr. PECORA. Suggest or recommend?

Mr. CUTTEN. I am saying suggest the purchase of them. I don't believe in that; no, sir.

Mr. PECORA. Why don't you believe in it?

Mr. CUTTEN. Because they have something on their shelves that they wish to sell.

Mr. PECORA. Yes.

Mr. CUTTEN. And they may have the option at \$20 a share and the market may be 28 or 30, and they are making 8 points. So they are making 10 points profit on it.

Mr. PECORA. And you think the adoption of measures intended absolutely to eliminate that practice would be in the public interest?

Mr. CUTTEN. In a marked degree; yes, sir. But I do believe, Mr. Pecora, that some operations against options, when it is used to what I call police an account, maintain a market, always be there and offer stock if other people wish to buy it or be there to buy stock if other people wish to sell it, is in a way constructive. There is a better market there for the stockholders of the company if they care to sell. But during a panicky day somebody is always there buying the stock on the scale down. True, they may be covering nothing but a short commitment. True, if you have options that run on a scale above the present market, some outsider has to pass on the stock at a lower average. The stock may be a great deal higher.

Mr. PECORA. I am seeing this confidential report that was made to you by your statistician for the first time. It is rather a voluminous document, so I want to look it over, and then I will probably ask you some questions about it.

(Mr. Pecora perused the document.)

In Mr. Coleman's confidential report to which I refer and from which I will read the statement is made:

Both Mr. Brown and Mr. Grimm have a big stake in American Commercial Alcohol and very large stockholdings. I understand that Mr. Brown and Mr. Grimm and two other officers hold some 64,000 shares of stock, which is about one third of the total capitalization. Mr. Russell Brown is by far the largest stockholder. All the officers together control about 100,000 shares of stock, which would leave some 94,748 shares outstanding in outside sources and in floating supply

That information conveyed to you in this report was of considerable interest to you when you contemplated taking over these options?

Mr. CUTTEN. I believe it was; yes, sir.

Mr. PECORA. And did you discuss those figures with Mr. Brown and Mr. Grimm when you met them?

Mr. CUTTEN. No; I do not. I had met them before I had this confidential report.

Mr. PECORA. From the fact that four of the officers and directors of the company owned more than half of the total outstanding common capital stock of the company, plus the fact that those officers were the ones who granted these options, it was quite apparent to you as an experienced market operator that this stock could be traded in with a view of sending up its price levels on the exchange with comparatively little effort?

Mr. CUTTEN. That is true.

Senator COUZENS. Did these men indicate to you their willingness to lose control of the company by selling below a 50-percent holding?

Mr. CUTTEN. No; they did not, Senator.

Mr. PECORA. Senator Couzens, on that may I say that in the testimony of Mr. Brown, who was the chairman of the board that gave these options, stated that in all the options that he gave—and these are only 4 of a series of 8 or more that he gave all told—he gave the options with the hope and the mental reservation that he would not be called upon to deliver the optionees any of the shares of the options.

Senator COUZENS. Do I understand by that, then, that he intended to keep control and get the shares from someone else?

Mr. PECORA. Well, I don't know, but it would seem to me as though the whole thing was simply planned as a market operation to send up the price.

Senator COUZENS. Without intending—

Mr. PECORA. Without intending to let go of any of his holdings. Or Mr. BROWN phrases it as desire on his part to stabilize the market, although he could not point to any circumstances that indicated to him that the market needed stabilization.

That is correct; isn't it, Mr. Brown?

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

Senator ADAMS. I just happened to be looking at one of these quotations, and the Hutton batting average seems to be a little better on these other recommendations as a whole than it was on this American Commercial Alcohol.

Mr. CUTTEN. American Commercial Alcohol finally went up 60 points.

Senator ADAMS. And then?

Mr. CUTTEN. It is still 30 points higher. It is 50 something now. This was when the stock was 20.

Senator COUZENS. So that is a good reason why we should take your recommendation?

Senator ADAMS. That is what I am trying to find out, just how reliable it is.

Mr. PECORA. I think that is all, Mr. Cutten. Will you leave this report with me?

Mr. CUTTEN. Yes.

Mr. PECORA. I will see that it is returned to you. You say this is the only copy you have.

Mr. CUTTEN. Only one I have. I saw it today for the first time since September 12, or whatever it was.

Mr. PECORA. Now, Mr. Brown, will you resume the stand, please?

TESTIMONY OF RUSSELL B. BROWN—Resumed

Mr. PECORA. You have heard the testimony of the preceding witness, Mr. Cutten, haven't you, Mr. Brown?

Mr. BROWN. Yes, sir.

Mr. PECORA. Heard all of it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Anything that he said that you would disagree with or that collides with your recollection of the facts that he testified about?

Mr. BROWN. No; except as to the quantity of stock that is held by the different people.

Mr. PECORA. Are you referring now to the quotation that I read to him from Mr. Coleman's confidential report?

Mr. BROWN. Yes, sir.

Mr. PECORA. And in which Mr. Coleman said as follows:

Both Mr. Brown and Mr. Grimm have a big stake in American Commercial Alcohol and very large stockholdings. I understand that Mr. Brown and Mr. Grimm and two other officers hold some 64,000 shares of stock, which is about one third of the total capitalization. Mr. Russell Brown is by far the largest stockholder. All the officers together control about 100,000 shares of stock, which would leave some 94,748 shares outstanding in outside sources and in floating supply.

Is that the portion you think is not strictly in accordance with the facts?

Mr. BROWN. Well, I am quite confident I did not indicate to him that I was the largest stockholder, because Mr. Publicker is the largest stockholder.

Mr. PECORA. Was it correct for Mr. Coleman to say that all the officers together—that is, all the officers of your company together—control about 100,000 shares of stock, bearing in mind that this report was written on September 8, 1932?

Mr. BROWN. I think that might be true; I mean in the neighborhood of those figures.

Mr. PECORA. With that sole exception, you have no fault to find with any of the testimony given by Mr. Cutten?

Mr. BROWN. No.

Mr. PECORA. Subsequent to the giving of these four options to Mr. Cutten did you give any options on the stock of your company to anyone else?

Mr. BROWN. On the 2d of May I gave an option to Thomas E. Bragg.

Mr. PECORA. On the 2d of May of 1933?

Mr. BROWN. Yes, sir.

Mr. PECORA. And have you a copy of that option?

Mr. BROWN. Yes, sir.

Mr. PECORA. Will you produce it?

(The witness produced and handed a document to Mr. Pecora.)

Mr. PECORA. Is this a duplicate original or is this the original?

Mr. BROWN. That is a duplicate.

Mr. PECORA. I am going to offer in evidence the copy produced by the witness.

Senator ADAMS (presiding). It will be received.

(Copy of memorandum of agreement dated May 2, 1932, between Russell R. Brown and Thomas E. Bragg was received in evidence, marked "Committee Exhibit No. 9, Feb. 14, 1934", and appears in the record where read by Mr. Pecora.)

Mr. PECORA. The option agreement which has been received in evidence as exhibit no. 9 reads as follows [reading]:

COMMITTEE EXHIBIT NO. 9

Memorandum of agreement made this 2nd day of May 1933 between Russell R. Brown, 405 Lexington Avenue, New York, N Y, party of the first part, and Thomas E. Bragg, Hotel Pierre, New York, N Y, party of the second part

Whereas the party of the first part is the owner of American Commercial Alcohol Corporation Common Stock, and

Whereas, Thomas E. Bragg desires an option upon such stock on certain terms,

Now, therefore, it is agreed by and between the parties hereto as follows:

1 In consideration of the sum of One Dollar (\$100) paid by the party of the second part, receipt whereof is hereby acknowledged, and the mutual promises herein contained, the party of the first part gives to the party of the second part—

For a period of ninety (90) days from the date of this agreement, an option to purchase all or any part of American Commercial Alcohol Corporation common stock in the amount and at the prices herein set forth below

25,000 shares at \$18 00 per share

2 The party of the first part agrees to have shares of American Commercial Alcohol Corporation common stock available at C. E. Welles & Co., 39 Broadway, New York, N Y, and/or Shearson, Hammill & Co., 14 Wall Street, New

York, N Y, and/or such other brokerage houses as may be designated by party of the first part for borrowing by the party of the second part, less and except such number of shares as may be sold and delivered under this option

3 It is understood and agreed between the parties of both parts that the option will be extended for a further period of ninety (90) days if necessary

4 It is understood that this option is to be assigned to a syndicate to be formed by the party of the second part

In witness whereof the party of the first part and the party of the second part have hereunto set their hands this 2d day of May 1933

(Signed) RUSSELL R BROWN

Now, Mr. Brown, is the signature on this document which has been received in evidence as exhibit no. 9 in your handwriting?

Mr. BROWN. Yes, sir.

Mr. PECORA. When were you first asked by representatives of this committee to produce a copy of this option agreement?

Mr. BROWN. December 19, 1933.

Mr. PECORA. What did you say when you were first asked?

Mr. BROWN. I did not have a copy of the option agreement. I looked for it and I found I did not have it.

Mr. PECORA. I cannot hear you.

Mr. BROWN. I looked for it, but found I did not have it.

Mr. PECORA. When did you succeed in getting this one that you have produced here?

Mr. BROWN. January 27.

Mr. PECORA. That is about a month afterwards?

Mr. BROWN. Yes, sir.

Mr. PECORA. Whom did you get it from?

Mr. BROWN. It came in this envelop [indicating].

Mr. PECORA. Whom did you get it from?

Mr. BROWN. 52 Wall Street; no name and address or anything else.

Mr. PECORA. Don't you know who sent it to you?

Mr. BROWN. No, sir.

Mr. PECORA. Do you know anybody at 52 Wall Street?

Mr. BROWN. I have seen Mr. Bragg down there.

Mr. PECORA. Is his office there?

Mr. BROWN. Not that I know of. I have seen him there.

Mr. PECORA. Where did you see him at 52 Wall Street—in whose office?

Mr. BROWN. W. E. Hutton Co.

Mr. PECORA. Is that a firm of stockbrokers?

Mr. BROWN. Yes, sir.

Mr. PECORA. Do you know where Mr. Bragg is now?

Mr. BROWN. I understand he is in Honolulu.

Mr. PECORA. What was Mr. Bragg's business in May 1933, when you gave him this option?

Mr. BROWN. Market operator.

Mr. PECORA. He is not a member of any exchange, is he?

Mr. BROWN. No, sir; not that I know of.

Mr. PECORA. By "market operator" you mean a stock-market operator?

Mr. BROWN. Yes, sir.

Mr. PECORA. Well known as such?

Mr. BROWN. Yes, sir.

Mr. PECORA. Following the making of the request upon you in December last, on behalf of this committee, for a copy of this option

or the original thereof, what efforts, if any, did you make to comply with the request for a copy of it?

Mr. BROWN. I went all through my files.

Mr. PECORA. And you could not find it?

Mr. BROWN. I could not find it; no, sir.

Mr. PECORA. Then what steps did you take to obtain a copy of it?

Mr. BROWN. I have forgotten—I think I tried to get in touch with Mr. Bragg, and I think he was out of town.

Mr. PECORA. Where did you try to get in touch with him?

Mr. BROWN. I called him at Hutton's office.

Mr. PECORA. Did you succeed in establishing communication with him?

Mr. BROWN. Not that I remember.

Senator COSTIGAN. Does your earlier reply indicate that this paper was received from Mr. Bragg?

Mr. BROWN. I think it was received from someone in the office down there, apparently.

Mr. PECORA. In the office of W. E. Hutton Co.?

Mr. BROWN. Yes, sir.

Senator COSTIGAN. Why did you specify Mr. Bragg in your earlier testimony?

Mr. BROWN. I think it was two nights before this that I received calls from Mr. McEldowney, of Mr. Pecora's office, and also from Mr. Silver—and I had just left a board meeting of the company—they insisted on the production of the option, and I again had a search made through the files; and these calls came in with quite some regularity—

Mr. PECORA. And insistence?

Mr. BROWN. And much insistence, about every 15 minutes, until during the course of the evening—I have forgotten who it was that spoke to me, but I think it was Mr. Silver, and he asked me if I knew where Mr. Bragg was. I told him I did not, but I understood he was up in British Columbia at a gold mine, or something. They asked me if I would like to know where he was. I said I would be very happy to know, because I was perfectly willing to do what I could to get this option; and they said he was at the Mark Hopkins Hotel, San Francisco, and that if I cared to I could call him on the phone. I called him on the phone immediately and got him on the phone and asked him where this option was. Apparently he did not know where the option was when I talked to him, and I tried to get it because I told him that there was no reason in the world why the thing should not be turned in, and I just didn't have it. I couldn't remember then what had happened to it. I came down to Washington that night after having been served in the office at half past 9 with a subpoena by Mr. McEldowney, of Mr. Pecora's office; and when I got back to my office the following morning from Washington this was on the desk.

Mr. PECORA. Did it come by mail or by messenger?

Mr. BROWN. It came by mail.

Mr. PECORA. With no covering letter?

Mr. BROWN. No covering letter.

Mr. PECORA. Or memorandum of any kind?

Mr. BROWN. Nothing, except that document that you have here was in the envelop. So apparently what had happened was that I had sent, if my memory serves me correctly now—I had sent the option down and he never had returned a signed duplicate to me; and I also remember distinctly having asked him after the option was given, to return the option to me, to return my copy, but I never got it, and I had forgotten that at the time.

Mr. PECORA. Do you recall that during all these contacts you had with Mr. Silver and Mr. McEldowney and Mr. Schenker of our office in New York you were also asked to produce copies of these other options made with—

Mr. BROWN. I was never asked to produce copies of these other options.

Mr. PECORA. Were you asked if there were such copies in existence?

Mr. BROWN. No, sir; I never was.

Mr. PECORA. Do you have copies of these other options in your possession?

Mr. BROWN. Not until—

Mr. PECORA. Not until very, very recently?

Mr. BROWN. I got these things here the other day from everybody.

Mr. PECORA. From the optionees?

Mr. BROWN. Yes; and Mr. Bliss' received here this morning.

Mr. PECORA. When did you talk to Mr. Bragg last?

Mr. BROWN. The night that some one from your office there suggested that if I wanted to I could call him. I called him then.

Mr. PECORA. He was then out in San Francisco?

Mr. BROWN. He was at the Mark Hopkins Hotel there.

Mr. PECORA. And you called him?

Mr. BROWN. Yes.

Mr. PECORA. You told him we insisted on a copy of this option being produced? In substance you said that to him?

Mr. BROWN. Yes.

Mr. PECORA. Did you suggest to him that his secretary turn over the option to you so that we might get it?

Mr. BROWN. I did.

Mr. PECORA. Did he say in substance that he had no secretary?

Mr. BROWN. Yes.

Mr. PECORA. He has a secretary, has he not?

Mr. BROWN. Not that I know of.

Mr. PECORA. Do you know a Mr. Quinn?

Mr. BROWN. Yes.

Mr. PECORA. Who is he?

Mr. BROWN. There he is, sitting back there [indicating].

Mr. PECORA. Who is he? Is he connected with Mr. Bragg?

Mr. BROWN. I have seen him down in W. E. Hutton's office, but I don't know whether he is connected with Mr. Bragg or not.

Mr. PECORA. Have you no idea at all as to the identity of the person who mailed you this option that has been offered in evidence and received as exhibit no. 9?

Mr. BROWN. No, sir; I have not.

Mr. PECORA. Let us get back to the option. Mr. Chairman, I think I might make this as a sort of preliminary statement before proceeding with the further examination of Mr. Brown. It will be recalled that on about July 18, 1933, there was a very violent fluctuation downward of securities values on the New York Stock Exchange, and the movement was led, according to the current reports of the time that I read, by the so-called "repeal stocks or alcohol stocks", one of which was the American Commercial Alcohol Corporation.

A few days after that date I called upon Mr. Richard Whitney, president of the New York Stock Exchange, and suggested to him that he exercise the powers vested in him by the rules, regulations, and bylaws of the New York Stock Exchange and make an inquiry into the market trades in these alcohol stocks, so called, for a period of 3 preceding months—that is, from May 15 to July 24, 1933—2 months or more. I told him that information had been conveyed to me that these alcohol stocks had been traded in for pool accounts. Mr. Whitney very gladly undertook to make the investigation and said he would give me a report of the investigation when completed. I received such a report from him under date of October 16, 1933, and I have it before me now. I now offer it in evidence with the accompanying letter. On account of the very voluminous character of the document I merely ask that it be marked in evidence but not spread in full on the record. I will make reference to it from time to time.

Senator ADAMS (presiding). Let it be received.

(Copy of report made by accounting department of the New York Stock Exchange covering the period from May 15 to July 24, 1933, was received in evidence and marked "Committee Exhibit No. 10, February 14, 1934.")

Mr. PECORA. I wish only to read the accompanying letter addressed to me by Mr. Whitney. It is on the letterhead of the New York Stock Exchange, and reads as follows [reading]:

RICHARD WHITNEY, *President*

NEW YORK STOCK EXCHANGE,
Eleven Wall Street, October 16, 1933

FERDINAND PECORA, ESQ.,

*Counsel, United States Senate Sub-Committee
on Banking and Currency,
235 Madison Avenue, New York, N Y*

MY DEAR MR. PECORA: As promised in my letter of even date, I enclose here copy of the report made by our Accounting Department concerning the trading in the so-called alcohol stocks during the period from May 15th to July 24th, 1933

Faithfully yours,

(Signed) RICHARD WHITNEY,
President.

I also want to read into the record the letter transmitting the report made by the accounting department of the New York Stock Exchange to the Committee on Business Conduct of the New York Stock Exchange. It is dated October 1, 1933, and reads as follows (reading):

OCTOBER 1, 1933

COMMITTEE ON BUSINESS CONDUCT, NEW YORK STOCK EXCHANGE

GENTLEMEN: In accordance with instructions, I have had examinations and inquiries made in connection with trading and operations during the period May 15, 1933 to July 24, 1933 in the following stocks:

American Commercial Alcohol
Commercial Solvents
Libbey-Owens-Ford Glass
National Distillers Products Corp.
Owens-Illinois Glass
U.S. Industrial Alcohol

Particular attention was directed toward the endeavor to ascertain whether or not operations of a manipulative nature had occurred, especially the accumulation of large long positions by pools or syndicates causing a rise in price and subsequent operations which might be construed as "unloading" by such pools or syndicates

The examinations were based on information supplied by the Stock Clearing Corporation as to firms having any substantial balances to receive or deliver in the above stocks This was broadened as "clearances" for other firms were observed

Various records of the firms in question were inspected in sufficient detail to satisfy the examiner that all transactions for the period were exhibited in each case

With the exception of the situation disclosed at Lehman Bros and Redmond & Co, which situations also are reflected in a minor way in other firms used as their brokers and the possible exception of the situation at W E Hutton & Co, which is still under investigation, no material situation appears

While the limitations of time available for these examinations precluded a detailed examination and "tie up" of every transaction, it is my opinion that there were no material deliberate improprieties in connection with transactions in these securities Although the "repeal" situation appears to have created a public interest in these stocks great enough to account for their activity, each examiner was directed to watch out for any evidence of "wash sales" or of other activities which might have stimulated improperly the activity of these stocks, yet none were reported

However that you may have the facts in detail, if desired, a separate report on the examination made up at each of the 100 firms shown on list herewith is respectfully submitted

(Signed) JOHN DASSAU,
Accountant

It is my purpose, by proofs which I will subsequently offer, Mr. Chairman, to leave it to the determination of this committee as to whether or not in these market operations there were any material deliberate improprieties in connection with the transactions in these alcohol stocks.

It is now 4:30.

Senator ADAMS. The committee will stand adjourned until 10:30 tomorrow morning; and the witness will please return at that time.

(Whereupon, at 4:30 p.m., the committee adjourned until tomorrow, Thursday, Feb. 15, 1934, at 10:30 a.m.)

STOCK EXCHANGE PRACTICES

THURSDAY, FEBRUARY 15, 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.

Present: Senators Fletcher (chairman), Bulkley, Costigan, Adams, Goldsborough, Townsend, and Couzens.

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. Who will you have first, Mr. Pecora?

Mr. PECORA. Mr. Brown will resume the stand.

TESTIMONY OF RUSSELL R. BROWN, CHAIRMAN OF THE BOARD, AMERICAN ALCOHOL CORPORATION, NEW YORK CITY— Resumed

Mr. PECORA. Mr. Brown, there was introduced in evidence toward the conclusion of the hearing yesterday a copy of an option that you gave to one Thomas E. Bragg, covering 25,000 shares of the capital common stock of the American Commercial Alcohol Corporation at \$18 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. That option is dated May 2, 1933, as you know.

Mr. BROWN. Yes, sir.

Mr. PECORA. Let me ask you if anyone was associated with you in the giving of this option.

Mr. BROWN. Mr. Kies, Mr. Publicker, and Mr. Grimm.

Mr. PECORA. The same three gentlemen who were—

Mr. BROWN (interposing). Who have heretofore participated; yes, sir.

Mr. PECORA (continuing). Associated with you in the giving of the other options prior to May 2, 1933, is that right?

Mr. BROWN. That is correct.

Mr. PECORA. In what proportions were they interested in this option?

Mr. BROWN. Well, that was never discussed, I believe. They agreed to join in the whole situation for the purpose of relieving the corporation's financial position. There was never any agreement as to the proportion which each one would assume.

Mr. PECORA. I do not quite understand how, when you say that the option was given to relieve the corporation's financial condition, that would come about. What do you mean by that?

Mr. BROWN. Why—

Mr. PECORA (interposing). The reason I ask you that question is, that this option is not given by the corporation.

Mr. BROWN. No, sir.

Mr. PECORA. But is given in form at least by you?

Mr. BROWN. Yes, sir.

Mr. PECORA. But in fact was given by you in behalf of yourself, Mr. Kies, Mr. Grimm, and Mr. Publicker, is that it?

Mr. BROWN. That is correct.

Mr. PECORA. Well, then, why did you say that this option was given for the purpose of relieving the corporation's financial condition?

Mr. BROWN. Because this option here, as evidenced by the minutes of the board of directors of the meetings of April 27, 1933, and May 2, 1933, and subsequent board minutes, is in line with the statement I submitted to you on yesterday in connection with the entire transaction.

Mr. PECORA. Will you please tell us in your own way just what you are referring to? Here we have an option given by you individually to Mr. Bragg covering 25,000 shares of the common stock of your corporation at \$18 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. The corporation isn't a party to the option.

Mr. BROWN. That is correct, sir.

Mr. PECORA. The corporation, according to the terms of the option, had no interest in it.

Mr. BROWN. That is correct, sir, but—

Senator TOWNSEND (interposing). What was the date of the option, Mr. Pecora?

Mr. PECORA. It is dated May 2, 1933.

Senator TOWNSEND. All right.

Mr. PECORA. Mr. Brown, why was it necessary for the corporation's board of directors to adopt any resolutions at its meetings of April 27 and May 2, 1933, with respect to this option?

Mr. BROWN. There was submitted to the board of directors at a meeting on April 27, 1933, a verbal statement by me to the board, indicating the financial situation of the company at that particular time, and the board members were advised that methods were being studied to bring into the corporation additional funds. As a result of communications by the banks, as was indicated in my statement of yesterday, such moneys as were owned to the banks, it was indicated in no uncertain terms, they wanted paid. And it was purely in order to work out some method by which funds could be brought into the corporation that this method, which was finally adopted, was finally worked out.

Senator TOWNSEND. Have you a copy of the financial statement of your corporation of that date?

Mr. BROWN. Here is one on March 31, which is the nearest statement that I have here. It indicates clearly the situation, which I perhaps better explain. In this business, that is, as the business

existed at that time, it was necessary to purchase very substantial quantities of raw material, of molasses, in advance of its consumption, purchased out of the country, and commitments were made 6 months and sometimes a year in advance, so that the company was always sure of a supply of its raw material, molasses.

Mr. PECORA. Well, now—

Senator TOWNSEND (interposing). What was your indebtedness at that time?

Mr. BROWN. The indebtedness of the company at that time was \$836,500. But trade acceptances of the company at that time were \$539,612.97, or a total of \$1,376,112.97, in notes and acceptances payable. Accounts payable of the corporation were \$191,539.69, making a total of current liabilities of the corporation \$1,567,652.66, as compared to a total assets position of \$2,866,761. That current assets position included raw materials and supplies in the amount of \$979,210.17, and advance payments on raw materials purchased of \$238,907.06. I think it is safe to assume that that in general covers the molasses picture, because in the operation of our main plant in Pekin, Ill., we usually have followed the policy of paying cash for grain, buying and paying cash as the grain was required. That molasses inventory was inventoried on December 31, 1932, at cost or the market, whichever was lower at the time. That price, if I remember correctly, was approximately 4 cents a gallon. Those adjustments or inventory write-downs are made at the end of the year. The inventory, as I remember it on December 31, 1932, was carried at a price of approximately 4 cents per gallon for 0.50 sugar landed in our tanks in this country. The sugar content of molasses varies. It runs sometimes as high as 0.70 sugars, and was for the purpose of our inventories calculated and carried on the price of 4 cents, which I have indicated to you is the base of 0.50 sugar.

Senator TOWNSEND. You had no bonded debt?

Mr. BROWN. There was no bonded debt at the time.

Senator TOWNSEND. And that was the total of your indebtedness?

Mr. BROWN. Yes. But at that time all that total of \$1,218,000 meant that there was approximately 20 million gallons of molasses involved. It might have been somewhat more, as indicated by the advance payments on raw material purchased, which did not represent the total at that time, March 31, 1933. In the latter part of February there was a very sudden and decided shrinkage in the price of molasses. Transactions were had at, I should say, about 2½ cents a gallon landed in the States. It is true that the situation today is completely reversed. The company has very substantial inventories of molasses at prices considerably below the price at which it is being currently quoted. But in going over this entire situation I was interrogated by one of the banks, and I pointed out to them that inasmuch as the company, or that the commitments of the company were known, and there were no other commitments coming along, and in the normal course of business during the year the inventories would be liquidated and the company would be in position to reduce its liabilities as the material was sold; and that I think started in—well, those discussions were some time in March. Then in April the situation became somewhat worse, because in my discussions with the bankers I pointed out that according to past

practices for a great many years in the alcohol industry, substantial quantities of antifreeze alcohol were sold during the months of May and June, and that by going along until May or June it would be possible, as we had found in all previous years, to move substantial quantities of alcohol, probably a million or a million and a half gallons, to the large consumers, and we would then also receive additional cash in addition to the ordinary income of the business.

Then just at that time I learned that the larger companies in the industry suddenly announced that they did not feel that the alcohol companies, that the merchandising policies in the past had been proper, and we felt it would be possible to develop a better merchandising policy, and for that reason I indicated, or they indicated that their policy would be to dispose of their alcohol on a certain basis. The result of that was that a substantial movement in the alcohol industry would not take place until November or December, when there was cold weather, and it was apparent that the company would not have the ordinary receipts from the sale of its merchandise, as it had theretofore had, which made the situation even more desperate than was apparent when the discussions first started.

It then became necessary for us to make a complete study of the situation, to bring funds into the company. I think Mr. Kies, chairman of the executive committee, made a study of the whole situation, made inquiries among friends of his, and of bankers, to see whether or not at that time it would be possible to work out anything by which an offering by underwriters to stockholders could be secured, and by that means funds could be brought into the company. It was deemed that—

Mr. PECORA (interposing). When did the directors or any of the officers of the company first begin to give thought to the development of that situation?

Mr. BROWN. I should say that that came in in March.

Mr. PECORA. In March of 1933?

Mr. BROWN. I think that is so, because I remember that we had a discussion of the whole situation after I came back from a visit to one of the banks.

Mr. PECORA. Well, in March of 1933 the situation already had developed and was visible on the horizon which made it necessary for the company to obtain additional working capital, not only for its business operations, but in order to meet bank loans that were maturing, is that right?

Mr. BROWN. Yes, sir.

Mr. PECORA. When were those bank loans maturing?

Mr. BROWN. Currently.

Mr. PECORA. What was the aggregate of those maturing in the spring of 1933?

Mr. BROWN. They were all maturing at about the same date, because as I have just stated the thing had to be settled, and we were—

Mr. PECORA (interposing). What was the total of those loans, was my question.

Mr. BROWN. It was \$1,376,112.

Mr. PECORA. Maturing when?

Mr. BROWN. Maturing right along in that time.

Mr. PECORA. How many loans represented this aggregate of \$1,376,112?

Mr. BROWN. I should say five different banks. I will say further to you, Mr. Pecora, that the bank we had the largest amount of money from agreed to go along with the company also.

Senator TOWNSEND. Was raw material pledged as collateral for those loans?

Mr. BROWN. Just a certain quantity at New Orleans, which was pledged with the Whitney National Bank at New Orleans. And as the price of molasses decreased they just wanted more molasses put up all the time.

Mr. PECORA. Now, Mr. Brown, do I understand you to say to this committee that the option given to Bragg on May 2, 1933, is in some way directly related to the necessity which became apparent to the officers of the company in March of 1933, that it would have to raise additional working capital?

Mr. BROWN. That is correct, sir.

Mr. PECORA. All right, for that. Now, in view of the fact that this option is not given by the corporation, and does not provide for the corporation receiving any part of the purchase price which the optionee would be required to pay for the 25,000 shares optioned to him at \$18 per share, how did this option serve to provide your company with that increased or additional working capital?

Mr. BROWN. As I have indicated to you, considerable thought was given to the whole problem, to the necessities of the occasion. We viewed the duties of the executives of the corporation as being there, of their duty within all legal means possible to protect the interests of the corporation and the interests of the stockholders. And so, after making a very complete survey of all the possibilities, and realizing at the time that it was absolutely impossible, as the most of us know, to raise additional funds at that time, the study of the whole situation was continued; and we at that time had under consideration, it having been brought to our attention in January, the possibility of securing an interest in an organization which had developed a process for the manufacture of an agricultural spray, which, it was represented, would use very substantial quantities of alcohol. And a study was made of the whole situation by the executive officers of the company, including Mr. Buck of San Francisco, one of the directors, who made a visit to the particular plant to study the whole situation. At the time that this other situation developed it was realized it was absolutely impossible to raise cash in order to carry out this transaction, I mean in the usual way, and—

Mr. PECORA (interposing). What transaction are you now referring to?

Mr. BROWN. For the acquisition of this item I have been talking to you about, this agricultural spray.

Mr. PECORA. Do you mean the acquisition of a company that manufactured some agricultural spray?

Mr. BROWN. Yes, sir; and which was using very considerable quantities of alcohol in the process.

Mr. PECORA. Are you telling us that this option given to Bragg is related in some way to the desire of the American Commercial Alcohol Corporation in the spring of 1933—

Mr. BROWN (interposing). As I have said—

Mr. PECORA (continuing). Pardon me a minute and let me finish my question—to acquire some other interest that manufactured an agricultural spray?

Mr. BROWN. As I continue my story I will give you all of the details of that.

Mr. PECORA. First, if you can answer this one question: You have already made it quite clear to the committee that the reason for the giving of this option to Bragg on May 2, 1933, was to enable your company, the American Commercial Alcohol Corporation, to obtain additional working capital. Now, is that correct?

Mr. BROWN. That is correct.

Mr. PECORA. Now, how in the world was your corporation to get additional working capital through the sale by you individually and three of your fellow officers and directors in the corporation, of 25,000 shares of the capital stock of the company that belonged, not to the corporation, but to you and your three associates? That is what I want to know.

Mr. BROWN. Well, if you will permit me to continue the story I think it will be made perfectly clear to you. We realized that—

Mr. PECORA (interposing). Well, the story I want to bring out if I can is that—

Mr. BROWN (interposing). And I am giving that to you.

Mr. PECORA (continuing). I want to bring out as directly as possible this point: How the money which Bragg was to pay for those 25,000 shares, covered by this option at \$18 a share, and which amounts to \$450,000—

Mr. BROWN (interposing). Yes, sir.

Mr. PECORA (continuing). Was to be paid to the corporation in view of the fact that the corporation was not a party to this option.

Mr. BROWN. I will indicate that to you very definitely and clearly if I can go on with my story.

Mr. PECORA. Oh, well.

Mr. BROWN. It is possible for us under the Maryland charter to issue the stock of the corporation for a profit. At the discussion before the board on April 27, 1933, I indicated to the board that I believed a method had been developed by which this transaction could be accomplished and the finances of the consolidated organization very materially improved. That was, namely, this: There were two propositions under consideration. One was through the Maister Laboratories Co, and the other was Noxon, Inc. The securities of these two companies could be acquired by the issuance of additional common stock of our corporation. I pointed out to the board in a general way that due to the financial necessities of the corporation I was perfectly willing to work out a transaction by which the results desired could be accomplished, feeling that—

Mr. PECORA (interposing). Why couldn't the results have been accomplished by the issuance and sale of those additional shares of capital stock—

Mr. BROWN (interposing). As I have indicated to you—

Mr. PECORA (continuing). To the existing stockholders of the corporation of record—

Mr. BROWN (interposing). As I have indicated to you—

Mr. PECORA (continuing). And in that way an additional amount of working capital would have been brought directly into the treasury of the corporation.

Mr. BROWN. Well, that could not have been accomplished in that way, because it would not have been possible, and it was not possible, as was determined as the result of study, for the company to acquire an underwriting for such stock as it might issue, assuring to the company receipt of the funds from the sale of the stock into the treasury of the company.

Mr. PECORA. All right. Go ahead. I am listening.

Mr. BROWN. Well, that is it.

The CHAIRMAN. How would the proceeds of the sale of this stock get into the treasury of the company?

Mr. BROWN. I will indicate that to you, Senator Fletcher, in this way: It was, as I indicated in my statement on yesterday, a fact that this transaction took place for the entire benefit of the corporation, and at a financial sacrifice to me. And the results of the efforts which were put forth by the management at that time, and handling the transaction as it was handled, improved the financial condition of the company. That is reflected in the condition of the company today, in which the business is very substantial, and it would not have been possible if funds had not been put into the company at that time. The results were accomplished in this way—

Mr. PECORA (interposing). Well, don't tell us about the results as yet, but tell us—

Mr. BROWN (interposing). I am telling you—

Mr. PECORA (continuing). Why this option agreement with Bragg was resorted to on May 2, 1933—

Mr. BROWN (interposing). All right.

Mr. PECORA (continuing). In order to enable your corporation to obtain additional working capital in the sum of \$450,000. Now—

Mr. BROWN (interposing). The plan was—

Mr. PECORA (continuing). If the corporation had made this option or agreement with Bragg to sell to him at the rate of \$18 per share, 25,000 shares of the corporation, it would not be necessary to ask you all these questions, Mr. Brown.

Mr. BROWN. I understand that.

Mr. PECORA. But the corporation did not give the option.

Mr. BROWN. I understand that.

Mr. PECORA. You and three of your fellow officers and directors gave Bragg the option.

Mr. BROWN. That is correct.

Mr. PECORA. Out of your personal holdings the stock was to come.

Mr. BROWN. Yes, sir.

Mr. PECORA. And I am still trying to find out why—

Mr. BROWN (interposing). All right.

Mr. PECORA (continuing). The corporation was expected to obtain \$450,000 of additional working capital through a sale by you and three of your fellow officers and directors, to Thomas E. Bragg, for that sum of \$18 per share, 25,000 shares of your personal holdings in the company.

Mr. BROWN. I discussed the situation, and I evolved this plan that I indicated to you in my statement of yesterday.

Mr. PECORA. Well, I am still trying to find out—

Mr. BROWN (interposing). And I am giving it to you right now.

Mr. PECORA. All right. Go ahead.

Mr. BROWN. I evolved this plan by which Mr. Phagan and Mr. Capdevielle, who were friends of mine, and in whom I had confidence, and who had confidence in me, Mr. Phagan having originally brought the Noxon, Inc., transaction to us—I say, I evolved this plan to enter into an agreement. Mr. Phagan was to organize Maister Laboratories Co. under the laws of the State of Maryland, and he put in his note to that company, in exchange for the stock of the Maister Laboratories Co., for \$180,000. That note was endorsed by his wife, and we believed that the note was good.

Mr. PECORA. You say you believed that a note of Phagan's, endorsed by his wife, was good?

Mr. BROWN. Yes, sir.

Mr. PECORA. What basis did you have for that belief?

Mr. BROWN. The statement I have given you, of having known him for a period of years, and—

Mr. PECORA (interposing). What did you know about his and his wife's financial responsibility?

Mr. BROWN. I did not know definitely. I had to assume that it was good.

Mr. PECORA. Oh! You had to assume that it was good.

Mr. BROWN. Yes, sir.

Mr. PECORA. On what did you base that assumption, merely guessing at it from having known him for a number of years?

Mr. BROWN. From the statement he made to me.

Mr. PECORA. What statement did he make to you that indicated he was good for that amount?

Mr. BROWN. That he was good for that amount, he and his wife.

Mr. PECORA. And you had known him for a number of years?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you invited his cooperation in this plan, you say?

Mr. BROWN. Yes, sir.

Mr. PECORA. Why did you go to Phagan to invite his cooperation in a plan which you say you evolved, and which plan involved his giving a note for approximately \$180,000?

Mr. BROWN. Because Mr. Phagan was a man in whom I had confidence.

Mr. PECORA. What was Mr. Phagan's business?

Mr. BROWN. Certified public accountant.

Mr. PECORA. Did he ever do any work for you?

Mr. BROWN. From time to time; yes, sir.

Mr. PECORA. Did you ever have a financial statement from him?

Mr. BROWN. No, sir.

Mr. PECORA. Did you know anything at all about his income?

Mr. BROWN. No, sir.

Mr. PECORA. Did you know anything at all about his property worth?

Mr. BROWN. No.

Mr. PECORA. And merely because you had known him for a number of years, and he had done some work for you as a certified public accountant, you found he was good for \$180,000; is that it?

Mr. BROWN. That is correct.

Mr. PECORA. Is that the kind of business judgment which you generally display in passing upon such important matters?

Mr. BROWN. Well, no; that is not correct. No; I do not display that kind of business judgment generally.

Mr. PECORA. This was an exceptional case, then?

Mr. BROWN. Yes, sir; this was exceptional.

Mr. PECORA. It was a departure from the usual judgment that you display?

Mr. BROWN. Yes; it was a departure. As I indicated to you on yesterday, it was done in this abnormal way, due entirely to the conditions which existed at that time.

Mr. PECORA. Well, now that you have made that admission, tell us what the plan was. Give us the details of the plan that you say you evolved, and under which it was possible for the American Commercial Alcohol Corporation to receive into its treasury \$450,000 by virtue of this option given by you to Bragg, or given by you and three of your associate officers in your individual capacities.

Mr. BROWN. Mr. Phagan, under my direction, organized Maister Laboratories Corporation, with 10,000 shares of capital stock, and having a value, in my opinion, even with the contracts which were put into the corporation covering this process owned by Dr. Maister, substantially in excess of any note that Phagan gave.

Mr. Pecora. Mr. Committee Reporter, will you please repeat to me that last answer given by the witness?

(Thereupon the committee reporter read the answer. as follows:)

Mr. BROWN. Mr. Phagan, under my direction, organized Maister Laboratories Corporation, with 10,000 shares of capital stock, and having a value, in my opinion, even with the contracts which were put into the corporation covering this process owned by Dr. Maister, substantially in excess of any note that Phagan gave.

Mr. PECORA. Mr. Brown, do you mean by that answer that when you spoke to Phagan, and when you discussed with him the plan you had evolved for the incorporation of Maister Laboratories Corporation, that that Maister Laboratories Corporation, a newly born corporation, at the very outset possessed assets worth at least \$180,000?

Mr. BROWN. I believe it possessed assets substantially in excess of that sum.

Mr. PECORA. What did those assets consist of?

Mr. BROWN. The assets consisted of a contract with Dr. Maister and—

Mr. PECORA (interposing). A contract made by whom with Dr. Maister?

Mr. BROWN. Made by the corporation.

Mr. PECORA. Do you mean made by your corporation?

Mr. BROWN. No; made by Maister Laboratories, Inc.

Mr. PECORA. In other words, this corporation that you had arranged to create entered into a contract with Dr. Maister that gave to the corporation assets worth at the outset at least \$180,000; is that it?

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

Mr. PECORA. What were those assets?

Mr. BROWN. They consisted of certain secret processes for the manufacture of vitamin products which are sold today in very substantial quantities at substantial profits to pharmaceutical houses.

Mr. PECORA. Did Dr. Maister turn over those secret processes?

Mr. BROWN. Yes, sir.

Mr. PECORA. Who was Dr. Maister?

Mr. BROWN. He was a fermentologist from Germany, who came to the American Commercial Alcohol Corporation as a fermentologist.

Mr. PECORA. He was an employee of your corporation, was he, at this time?

Mr. BROWN. He was in charge of this work. Our only understanding with Dr. Maister at the time of his employment, and we had no rights over this process and knew nothing about the process, was that he was purely a fermentologist in charge of our fermentological operations at the different plants.

Mr. PECORA. Was the Maister Corporation caused to be organized or created by you?

Mr. BROWN. Yes, sir.

Mr. PECORA. On what date?

Mr. BROWN. Instructions were issued for the organization of it about the 1st of May, I should say.

Mr. PECORA. Dr. Maister had been in the employ of the American Commercial Alcohol Corporation for how long prior to the giving of this option to Bragg on May 2, 1933?

Mr. BROWN. Perhaps a period of 6 months.

Mr. PECORA. And he was a salaried employee?

Mr. BROWN. He was purely a salaried employee in charge of the fermentation of molasses at the distilleries.

Mr. PECORA. What compensation did he receive from the American Commercial Alcohol Co. for his services as a chemist at that time?

Mr. BROWN. Approximately \$5,000 per annum.

Mr. PECORA. \$5,000 per annum?

Mr. BROWN. Yes.

Mr. PECORA. And this man, \$5,000 employee of your company, had evolved secret formulas and processes—

Mr. BROWN. Yes, sir.

Mr. PECORA. For the manufacture of certain products?

Mr. BROWN. Yes, sir.

Mr. PECORA. Chemical products?

Mr. BROWN. Yes, sir. Let me explain to you—

Mr. PECORA (interposing). And he was going to turn over those secret processes to the company called "the Maister Corporation"?

Mr. BROWN. Maister Laboratories, Inc.

Mr. PECORA. Maister Laboratories, Inc., which you caused to be organized?

Mr. BROWN. That is correct, sir.

Mr. PECORA. In return for what?

Mr. BROWN. I have forgotten just what the details of the contract were.

Mr. PECORA. What, substantially, was the consideration that Dr. Maister—

Mr. BROWN (interposing). He received—

Mr. PECORA. Wait a minute; let me finish my question. Substantially what was the consideration that Dr. Maister was to receive from Maister Laboratories, Inc., for these highly valuable secret processes and formulas?

Mr. BROWN. I think a royalty on the production.

Mr. PECORA. A royalty on the production?

Mr. BROWN. I believe so.

Mr. PECORA. How much has he received under that arrangement?

Mr. BROWN. He has not received anything as yet.

Mr. PECORA. Has not received anything?

Mr. BROWN. No, sir.

Mr. PECORA. What is the matter? These valuable processes have not established any commercial value yet?

Mr. BROWN. No; that is not correct, Mr. Pecora. Immediately upon the organization of this corporation—

Mr. PECORA (interposing). You mean the Maister Laboratories?

Mr. BROWN. The Maister Laboratories—we took on additional employees at our Philadelphia plant, where Dr. Maister was located. We went on, made additional tests at the University of Wisconsin. We bought certain equipment at Philadelphia, and many hundreds of rats over there, which is the testing period. We did work at the Philadelphia plant.

It was then determined that the product which he would turn would be better produced at the Pekin, Ill., plant. Due to the atmospheric conditions out there, better type of water supply, and the use of grain rather than molasses as the base for the manufacture of these vitamin products, it was decided to make the change.

Dr. Maister was transferred, after these tests had been conducted at the Philadelphia plant, to the Pekin plant for work out there, and at that time it became necessary because of prohibition repeal to effect certain changes. The plan was laid out at that time to use one of the old buildings for Dr. Maister's operation, because it requires a down flow of material, and we wanted to save money rather than build a new building. We were having to spend some amount of money on the distillery at Pekin to make it what it is today, and in doing that we have eliminated from the operation the building which is called the mill building, and in that Dr. Maister's installation is to be made.

Mr. PECORA. All of this is part of your explanation, Mr. Brown, as to how the American Commercial Alcohol Corporation was to receive \$450,000 which it needed for additional working capital in May 1933 under this option given by you and your three fellow officers to Bragg?

Mr. BROWN. That is correct, sir. I will go on and tell you how the funds came into the corporation. A meeting was had on April 22 and another meeting on May 2, at both of which meetings the members of the board agreed to support me in my efforts to financially rehabilitate the corporation, and the Maister thing was organized. Phagan's note of \$180,000 was put into the company. He was also—

Mr. PECORA (interposing). What is that?

Mr. BROWN. Mr. Phagan's note for \$180,000.

Mr. PECORA. Oh, his note for \$180,000 endorsed by his wife was put into the company?

Mr. BROWN. That is correct; yes, sir. And the Maister contract went into the organization also. He then was possessed of 10,000 shares of Maister stock.

Senator TOWNSEND. Out of a total of how many?

Mr. BROWN. That is the total issue of stock.

Senator TOWNSEND. He owned it all?

Mr. BROWN. Yes. He was putting in this contract with Maister and the \$180,000 not, into the corporation.

Mr. PECORA. Phagan?

Mr. BROWN. Phagan. Phagan then acquired the 10,000 shares of the Maister stock, and he immediately proceeded to organize that corporation, and I think the contract was made on the 6th day of May and the corporation organization, I think, was on the 8th of May.

Senator TOWNSEND. Who were the owners of the stock?

Mr. BROWN. Mr. Phagan was the owner of the stock.

Then he offered a proposition to the company which was accepted by the board of directors to receive 10,000 shares of American Commercial Alcohol stock in exchange for the 10,000 shares of Maister stock, Maister thereby becoming a wholly-owned subsidiary of the American Commercial Alcohol Corporation. That stock of Phagan's was liquidated under this option at \$18 a share. The cash was received into his account and we liquidated his note.

Mr. PECORA. Wait a minute; just a moment. You say the stock of Phagan was liquidated under this option to Bragg?

Mr. BROWN. Yes.

Mr. PECORA. How?

Mr. BROWN. Delivered to Bragg; either delivered directly to Bragg or delivered to me in return for the option which I had previously given.

Mr. PECORA. Will you go ahead then and continue your explanation of how the American Commercial Alcohol Co. was to get \$450,000 under this option agreement with Mr. Bragg?

Mr. BROWN. Yes, sir. Then at the same time steps were immediately taken in connection with the Noxon, Inc., Capdevielle—

Mr. PECORA. When was the Noxon, Inc., organized?

Mr. BROWN. It was started immediately and I think the organization was completed some time in June.

Mr. PECORA. Of 1933?

Mr. BROWN. Yes.

Mr. PECORA. That is a month after the giving of this option to Bragg?

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

Mr. PECORA. Who caused it to be organized?

Mr. BROWN. I did.

Mr. PECORA. In behalf of the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct, sir; for the benefit of the American Commercial Alcohol Corporation.

Mr. PECORA. For the benefit of whom?

Mr. BROWN. American Commercial Alcohol Corporation Capdevielle organized that organization.

Mr. PECORA. What is that?

Mr. BROWN. Capdevielle organized that corporation.

Mr. PECORA. Capdevielle?

Mr. BROWN. Yes, sir; under my instructions.

Mr. PECORA. A man named Capdevielle?

Mr. BROWN. Yes, sir.

Mr. PECORA. He organized it for you?

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

Mr. PECORA. What is his business?

Mr. BROWN. A molasses broker.

Mr. PECORA. But he merely acted as your instrumentality in that enterprise, did he?

Mr. BROWN. Yes, sir; he acted under my instructions.

Mr. PECORA. In other words, a dummy?

Mr. BROWN. He acted under my instructions.

Mr. PECORA. He was a dummy for you?

Mr. BROWN. I don't think he is a dummy.

Mr. PECORA. I don't mean a dummy intellectually, but in the transaction he filled the role of a dummy?

Mr. BROWN. He was an intermediary; yes, sir.

Mr. PECORA. Is that right?

Mr. BROWN. Yes, sir; he was an intermediary.

Mr. PECORA. Just as Phagan had done in connection with the incorporation of Maister Laboratories; is that right?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Yes. Now go ahead and give us the details of Noxon, Inc. What was its business?

Mr. BROWN. Noxon, Inc., acquired certain assets from a concern called Noxon Chemical Products, Inc., of New Jersey, which had this agricultural spray which had been very carefully considered by the directors earlier in the year.

Mr. PECORA. By which directors?

Mr. BROWN. Directors of American Commercial. And the same procedure was followed in that.

Senator TOWNSEND. Did they have a plant?

Mr. BROWN. They had an operation over in Jersey City.

Mr. PECORA. That is the Noxon Chemical Co.?

Mr. BROWN. The Noxon Chemical Products, Inc.

Mr. PECORA. That was an existing, going corporation?

Mr. BROWN. That is correct, sir.

Mr. PECORA. But the corporation that you caused to be organized was known as "Noxon, Inc."?

Mr. BROWN. Noxon, Inc.; and that corporation acquired certain assets of Noxon Chemical Products, Inc., which was a going concern manufacturing nickel polish, insecticides, and this agricultural spray, which we deemed to be of great value.

Mr. PECORA. What did Noxon, Inc., pay for those assets of Noxon Chemical Co.?

Mr. BROWN. I have forgotten just what the details are in that. I should be happy to give them to you.

Mr. PECORA. Approximately what consideration did Noxon, Inc., pay for those assets of Noxon Chemical Co.?

Mr. BROWN. I just don't remember the details of it, but I will outline what procedure was followed, and I will get to that—

Mr. PECORA. Now, just a moment before you get to that. Where did Noxon, Inc., get any money with which to pay for those assets?

Mr. BROWN. Capdevielle's note for \$270,000.

Mr. PECORA. Capdevielle's note?

Mr. BROWN. For \$270,000.

Mr. PECORA. For \$270,000. That is the note of this molasses broker who acted as the dummy in this transaction?

Mr. BROWN. Yes, sir.

Mr. PECORA. And was that endorsed by his wife, perchance?

Mr. BROWN. He is not married that I know of.

Mr. PECORA. Was Capdevielle good for that note?

Mr. BROWN. I believe that he could have made good on the note.

Mr. PECORA. You believe that he could have made good?

Mr. BROWN. Yes.

Mr. PECORA. Did you know anything about his property worth?

Mr. BROWN. No. He said that if this transaction—I asked him about the note to determine whether there was any real value in it, and he said that if we did not want the company he was so sold on the proposition he would take it himself. So I assumed that he was worth \$270,000, or had associates that would be able to support it.

Mr. PECORA. But was he, to your knowledge, worth the amount of that note?

Mr. BROWN. No, sir.

Mr. PECORA. He was not?

Mr. BROWN. I don't know.

Mr. PECORA. You don't know?

Mr. BROWN. I don't know.

Mr. PECORA. And yet you undertook to get him to act as your dummy in the transaction whereby a new corporation called Noxon, Inc., was formed, and that corporation, having this note of \$270,000 made by Capdevielle—

Mr. BROWN. That is correct.

Mr. PECORA. Issued its capital stock to the American Commercial Alcohol Corporation in return for its capital stock?

Mr. BROWN. That same procedure was followed. In that case 15,000 shares of American Commercial Alcohol Corporation common stock were issued and exchanged for the capital issue of Noxon, Inc., in which—

Mr. PECORA (interposing). Now, wait a minute. When the American Commercial Alcohol Corporation issued 15,000 shares of its common capital stock for the capital stock of Noxon, Inc., what assets did Noxon, Inc., have?

Mr. BROWN. Noxon, Inc., as I remember it, acquired physical properties from Noxon Chemical Products.

Mr. PECORA. For what consideration?

Mr. BROWN. I have forgotten just what that was.

Mr. PECORA. Was that \$80,000?

Mr. BROWN. \$80,000; that is correct; yes.

Mr. PECORA. It had assets which it had paid \$80,000 for; is that right?

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

Mr. PECORA. And those are the physical assets it obtained at that time from the Noxon Chemical Co.?

Mr. BROWN. Noxon Chemical Products; yes, sir.

Mr. PECORA. What other assets did Noxon, Inc., have besides these \$80,000 worth of physical assets?

Mr. BROWN. It had the rights under this agricultural spray process, in which substantial quantities of alcohol presumably would be consumed.

Mr. PECORA. How did it acquire those rights? Were they rights covered by letters patent?

Mr. BROWN. No.

Mr. PECORA. What were they?

Mr. BROWN. Secret processes.

Mr. PECORA. Another Maister secret process, was it?

Mr. BROWN. Well, I wouldn't say it was a secret process to that extent, because—

Mr. PECORA. Whose secret process was it?

Mr. BROWN. It was agreed upon—

Mr. PECORA. Where did it get it from?

Mr. BROWN. Belonged to the principal owners of Noxon Chemical Products, as I remember it.

Mr. PECORA. Wasn't that the process that passed with the \$80,000 worth of assets?

Mr. BROWN. Oh, no. Not that I member; no. Capdevielle had his note in it, Mr. Pecora.

Mr. PECORA. What is that?

Mr. BROWN. Capdevielle's note was in there for \$270,000.

Mr. PECORA. How much would you have given for that note?

Mr. BROWN. I didn't have anything to give then.

Mr. PECORA. How much would you, on the knowledge that you had of Capdevielle's personal property worth?

Mr. BROWN. Well, I know Mr. Capdevielle. I know him as an honorable man.

Mr. PECORA. An honorable man may not be able to meet an obligation represented by a note?

Mr. BROWN. I think he has friends of wealth who probably would have assisted him if necessary to liquidate the note.

Mr. PECORA. Is that the value you attached to the note, namely, that Capdevielle was an honorable man and had friends who might assist him to pay it?

Mr. BROWN. I attached a value of \$270,000 to the note.

Mr. PECORA. What is that?

Mr. BROWN. I attached a value of \$270,000 to the note.

Mr. PECORA. Based upon what?

Mr. BROWN. Based upon my experience with Capdevielle.

Mr. PECORA. What experience had you had with him that gave you any insight at all as to his property worth?

Mr. BROWN. The business experience that I had had with him over a period of a few years, and knowing a great many of his friends who are people of wealth.

The CHAIRMAN. Where did this \$80,000 come from that went into the Noxon Co.?

Mr. BROWN. The procedure, Senator, that was followed in this Noxon case was that Capdevielle's note was in for \$270,000, and there were certain other arrangements with Noxon, Inc., and as a result of that Capdevielle acquired certain securities of Noxon, Inc., which he

in turn made a deal with us which had been orally and verbally accepted in the early part of May 1933 for 15,000 shares of the company's stock, which was delivered under this option at \$18 a share and he received the cash; then, having liquidated American Commercial Alcohol stock, proceeded to liquidate his note for \$270,000.

That then brought under the control of the American Commercial Alcohol Corporation the \$180,000 in the Maister organization, \$270,000 in the Noxon organization, and there is your total of \$450,000, funds which were used to improve the financial situation of the consolidated organization.

Mr. PECORA. Is that your explanation?

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

Mr. PECORA. Well, it is a little bit hard to follow I am going to see if I can put the pieces of the jig-saw puzzle together, in order to get the form of the picture. As I understand it, sometime in the early part of 1933 it became quite apparent to you and your fellow directors of the American Commercial Alcohol Corporation that the corporation would have to raise in the spring of 1933 \$450,000 of additional working capital in order to meet bank loans that were maturing?

Mr. BROWN. And payment of which had been insisted upon.

Mr. PECORA. And payment of which the banks had insisted upon?

Mr. BROWN. That is correct.

Mr. PECORA. That is correct up to that point. Now, at that time you and your three fellow officers and directors who had joined in the giving of the various options which have been put in evidence here were the owners of approximately a hundred thousand shares?

Mr. BROWN. No; that is not correct. They owned and their friends over the country owned a total of 100,000 shares at that time.

Mr. PECORA. I understood yesterday afternoon that you testified that substantially you and your three fellow directors, namely, Kies, Grimm, and Pubheker—

Mr. BROWN. Yes, sir.

Mr. PECORA. Owned among the 4 of you approximately 100,000 shares of the capital stock.

Mr. BROWN. That statement as you read it to me said "owned by control." That is the way I so understood. I don't mean control in the strict sense of the word, but I meant friends throughout the country own it; also Mr. Buckaman in San Francisco, who, with his family, owns something over 7,000 shares. I think that was correct, Mr. Pecora. That was as I understood it.

Mr. PECORA. At that time the total outstanding common stock of the American Commercial Alcohol was approximately 196,000 shares?

Mr. BROWN. Approximately; yes, sir.

Mr. PECORA. The company had a Maryland charter which provided that any issue of additional common stock would first have to be offered to the existing stockholders of record, is that right?

Mr. BROWN. That is not correct; no. As I indicated to you yesterday—

Mr. PECORA (interposing). That is, unless the stock were issued for the purpose of acquiring other properties.

Mr. BROWN. Yes. Stock can be issued in exchange for property.

Mr. PECORA. For some reason or other you and your fellow officers and directors of American Commercial Alcohol concluded that it would be better to raise this additional working capital by issuance of additional capital stock, which was not, however, to be offered and sold to the existing stockholders of record?

Mr. BROWN. I indicate to you again that it was issued for property in compliance with the Maryland law.

Mr. PECORA. And it was done in that way because you and your fellow officers and directors decided to do it that way?

Mr. BROWN. That is not correct. As I indicated to you—

Mr. PECORA (interposing). What was there to prevent the corporation from issuing this 25,000 additional shares and offering them directly to its stockholders of record?

Mr. BROWN. Because, as I have said to you before, we all realized the impossibility of securing any underwriting under any such situation as prevailed in March, April, May, and June of 1933, and feeling that it is encumbent upon the officers of the corporation and the directors of the corporation to protect the rights of the stockholders, and particularly here is a company with a \$8,000,000 investment in it, we feel, or felt at the time and still feel, that every possible means at our disposal within the law should be followed in order to preserve the investment of everyone in that company.

Mr. PECORA. Why didn't you issue the 25—

Mr. BROWN (interposing). Because it was impossible to—

Mr. PECORA (interposing). Won't you please let me finish my question? Please don't anticipate what I am going to ask you. You might be able to do it in most instances, but once in a while you might not.

Why didn't the officers and directors of American Commercial Alcohol adopt the very simple expedient, if it needed \$450,000 of additional working capital, of issuing 25,000 shares additional of capital stock and offering it and selling it directly to its stockholders?

Mr. BROWN. In the first place, it was not a simple expedient, because the financial situation at that time rendered it absolutely impossible of success, because there was no underwriting which could be secured for it.

Mr. PECORA. Did you try to get an underwriting for it?

Mr. BROWN. At the first favorable opportunity.

Mr. PECORA. When?

Mr. BROWN. In June, I think it was.

Mr. PECORA. And did you succeed?

Mr. BROWN. But the situation was radically different at that time.

Mr. PECORA. Did you succeed?

Mr. BROWN. The situation was radically different.

Mr. PECORA. Did you succeed?

Mr. BROWN. We did; yes, sir.

Mr. PECORA. You did?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you try in March or April or May to get such an underwriting?

Mr. BROWN. I indicated to you that at that time Mr. Kies, the chairman of the executive committee, who has had financial experi-

ence, made a survey of the situation and determined the impossibility of it.

Mr. PECORA. Was any effort made to get an underwriting?

Mr. BROWN. He so reported to me; yes.

Mr. PECORA. He reported to you?

Mr. BROWN. Yes.

Mr. PECORA. What effort did he report he had made?

Mr. BROWN. He said he had made a study of the whole situation with his banking friends and had inquired as to the possibility of raising any funds through the issue of additional stock at that time.

Mr. PECORA. Do you know a single banking friend that he put the proposition up to specifically?

Mr. BROWN. That I do not know; no, sir.

Mr. PECORA. All right. Now, on May 8 the corporation called "Maister Laboratories, Inc." was organized at your instance through the use of this man Phagan as a dummy?

Mr. BROWN. Yes, sir.

Mr. PECORA. The Maister Corporation was organized with an authorized capital stock issue of 10,000 shares?

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

Mr. PECORA. What par value, if any?

Mr. BROWN. I think \$20 par value.

Mr. PECORA. The Maister Laboratories issued all of its 10,000 shares upon organization to the dummy, Phagan?

Mr. BROWN. Correct.

Mr. PECORA. And Phagan paid for that stock the sum of \$180,000, but did not pay for it in cash; he paid for it by his note endorsed by his wife?

Mr. BROWN. That is correct, sir.

Mr. PECORA. And you had no knowledge at that time of Phagan being financially responsible for any such amount as \$180,000?

Mr. BROWN. I accepted his statement.

Mr. PECORA. What statement did he make to you on that?

Mr. BROWN. That he could liquidate that note.

Mr. PECORA. Despite your knowledge of him for a number of years past, you merely accepted his statement?

Mr. BROWN. That is correct, sir.

Mr. PECORA. You had had no business experience of any kind with him that caused to believe that he was worth any such sum or that his wife was worth any such sum; is that right?

Mr. BROWN. That is correct.

Mr. PECORA. And you have already said that the business judgment displayed by you in that particular part of the transaction was not of the kind that you ordinarily would display in determining the credit of an individual?

Mr. BROWN. That is correct, sir.

Mr. PECORA. All that Maister Laboratories, Inc., then had was not \$180,000 in cash but Phagan's note for that sum?

Mr. BROWN. At the time of its incorporation; yes, sir.

Mr. PECORA. At the time of its incorporation. Did it acquire any other assets at the time that the American Commercial Alcohol Corporation gave 10,000 shares of its capital stock to Phagan in ex-

change for the 10,000 shares of the Maister Laboratories capital stock which Phagan got for his note?

Mr. BROWN. No. It had the contract which I have spoken to you about before, with Dr. Maister.

Mr. PECORA. It had a contract with a chemist, a \$5,000-a-year chemist in the employ of the American Commercial Alcohol Corporation?

Mr. BROWN. That may be correct, \$5,000 a year, Mr. Pecora, but there is one thing that I want to point out to you, that this man is probably one of the outstanding fermentologists of the country, a man who was a doctor and engineer and was offered his professorship in Germany, but because of the situation in Germany he came over to this country and was willing to accept compensation of \$5,000 per annum simply to supervise our fermentology operations. He is an outstanding figure.

Mr. PECORA. Is he still a chemist in the employ of the American Commercial Alcohol Corporation?

Mr. BROWN. Yes, sir; he is.

Mr. PECORA. At what salary?

Mr. BROWN. Sixty-five hundred.

Mr. PECORA. This paragon is getting 65 hundred?

Mr. BROWN. As soon as these operations in Maister get going along I am sure that there are royalties on the processes that will amount to very substantial amounts.

Mr. PECORA. These royalties, however, are still in the future; he has not yet received a cent under the contract which he made back in May 1933?

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

Mr. PECORA. What do you think was the fair reasonable value of the 10,000 shares of American Commercial Alcohol Corporation which it gave to Phagan for the capital stock of the Maister Laboratories, Inc.?

Mr. BROWN. At that time \$200,000 at least. I frankly feel that the Maister investment, with our knowledge of the situation today, is worth substantially in excess of that.

Mr. PECORA. Have you got a balance sheet of the Maister Laboratories, Inc.?

Mr. BROWN. No; I have the auditor of the company here now.

Mr. PECORA. Has this Dr. Maister, this eminent chemist and engineer and what not, served the Maister Laboratories, Inc., in any capacity since that incorporation was created in May 1933?

Mr. BROWN. Yes, sir.

Mr. PECORA. For what compensation?

Mr. BROWN. No compensation.

Mr. PECORA. He is virtually devoting all his time to the interests of the American Commercial Alcohol Corporation for sixty-five hundred a year?

Mr. BROWN. That is not correct.

Mr. PECORA. Well, correct me.

Mr. BROWN. I will correct you in this way, that he has devoted a great deal of his time with the feeding of a lot of white rats on these tests.

Mr. PECORA. Well, that is valuable.

Mr. BROWN. It is.

The CHAIRMAN. I understand now there is no outstanding stock of the Maister Corporation?

Mr. BROWN. All of the stock which is outstanding, Senator, the 10,000 shares, are owned in its entirety by the American Commercial Alcohol Corporation.

The CHAIRMAN. That is the property of the American Commercial Alcohol Corporation that it got in exchange for its 10,000 shares?

Mr. BROWN. That is correct.

The CHAIRMAN. That went to Phagan?

Mr. BROWN. That went to Mr. Phagan, who was acting, as I said, under my instructions.

The CHAIRMAN. And he disposed of that, I suppose?

Mr. BROWN. He disposed of that. I think part of it was returned to me and to Mr. Grimm against deliveries which we had previously made under the option. I think some of it was delivered directly to Bragg.

The CHAIRMAN. So that now there is no real outstanding stock of that Maister Corporation?

Mr. BROWN. No.

The CHAIRMAN. That has all been taken out?

Mr. BROWN. No; the organization of the company is wholly owned by the American Commercial Alcohol Co.

Senator ADAMS. Mr. Brown, there was a sort of an abrupt termination of this white-rat story. I have to confess a little curiosity, but is that work done purely from the standpoint of pests or for scientific purposes?

Mr. BROWN. Scientific purposes.

Senator ADAMS. In what way?

Mr. BROWN. Those processes involve the manufacture of certain vitamin products for which there is a very substantial demand in the country at the present time, which are sold at substantial figures and from which we would realize substantial profits.

In making these tests they take these white rats, breed them, and then feed them, and they have a great multitude of these animals using, for instance, the Maister product and other products in comparison. Then, they set up curves, which all of these pharmaceutical houses require before they buy the product, showing the varying qualities of the different vitamin products which are now produced; and in addition to tests conducted by Dr. Maister, we also had an examination made at the University of Wisconsin. There is currently a market for the products which we contemplate manufacturing under the Maister processes.

Senator KEAN. I would like to ask some questions there. Which vitamins are you trying to separate?

Mr. BROWN. These vitamins that are present in this particular product are vitamin B-1-F and B-2-G. That does not mean anything to me, but those are the ones.

Senator KEAN. And you are trying to separate those and get them concentrated in food products?

Mr. BROWN. Yes. This is also another fermentation operation, and in the manufacture of it the material comes down through cen-

trifugals and the liquid is thrown off, the water is thrown off in the centrifugals, and there is retained in the centrifugals a paste, and the paste is then put in ovens and dried or something.

Mr. PECORA. All those new vitamins have not yet been manufactured?

Mr. BROWN. They have been manufactured on a very small scale, though.

Mr. PECORA. On a small scale?

Mr. BROWN. Yes.

Mr. PECORA. They have not yet become commercially valuable, have they?

Mr. BROWN. As I told you, the work was done at the Philadelphia plant.

Mr. PECORA. No, no; but have they become commercially valuable?

Mr. BROWN. There is currently a demand for vitamin products of this nature in a substantial quantity.

Mr. PECORA. Has the Maister Laboratories Co. manufactured any vitamin products yet?

Mr. BROWN. Yes. I could have brought you a sample of it.

Mr. PECORA. I do not need it. Have the vitamin products so far manufactured by the Maister Laboratories as result of its elaborate experimentation on white rats, and so forth, been commercially profitable?

Mr. BROWN. They have not been put out on a commercial scale yet.

Mr. PECORA. They have not?

Mr. BROWN. No.

Mr. PECORA. That is what I have been trying to find out. Now, after Maister Laboratories was incorporated who became its executive officers?

Mr. BROWN. I have forgotten—I think I am the chairman of it.

Mr. PECORA. Chairman of the board?

Mr. BROWN. I think so.

Mr. PECORA. Who are the other executives?

Mr. BROWN. I cannot give you the details. I think Mr. Grimm was president, Dr. Maister vice president, or Dr. Maister president.

Mr. PECORA. They were persons connected with the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct; yes.

Mr. PECORA. So far I think we understand that part of the process whereby, under the plan evolved by you, the American Commercial Alcohol Corporation was to obtain \$450,000 of additional working capital through the dummy, Phagan, selected by you, of the Maister Laboratories, Inc., and the issuance of all of its capital stock to Phagan in return for his promissory note of \$180,000?

Mr. BROWN. That is correct.

Mr. PECORA. And then the making of an arrangement between Phagan, as the owner of all of the capital stock of Maister Laboratories, and the American Commercial Alcohol Corporation to exchange those 10,000 shares of capital stock of Maister Laboratories for 10,000 shares of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Those 10,000 shares that your corporation issued to Phagan formed part of the additional issue of capital stock?

Mr. BROWN. That is correct.

Mr. PECORA. Now, the second step had to do with Noxon, Inc.?

Mr. BROWN. Yes, sir.

Mr. PECORA. When was Noxon incorporated or created?

Mr. BROWN. It was created—both companies were—either on the 1st of May or the 2d of May.

Mr. PECORA. I think you are a little bit mistaken.

Mr. BROWN. You mean the incorporation of it?

Mr. PECORA. The incorporation of Noxon, Inc.

Mr. BROWN. The incorporation of Maister—

Mr. PECORA. Not Maister.

Mr. BROWN. On the 8th of May.

Mr. PECORA. Yes; Maister was incorporated on May 8, 1932.

Mr. BROWN. Noxon was on June 19, 1933.

Mr. PECORA. The dummy that you used for the purpose of creating Noxon, Inc., was this broker named Capdevielle?

Mr. BROWN. Yes, sir.

Mr. PECORA. And the original set-up of Noxon, Inc., was as follows: It issued 2,700 shares of preferred stock and also issued to him a block of its common stock?

Mr. BROWN. I think there were 6,000 shares of common.

Mr. PECORA. The capital stock of Noxon, Inc., was 2,700 shares of preferred stock and 6,000 shares of common stock?

Mr. BROWN. That is correct.

Mr. PECORA. Noxon, Inc., made an arrangement with the Noxon Chemical Products Co. to purchase from it for \$80,000 certain property and assets; is that right?

Mr. BROWN. Yes; and I think, in addition, there was an arrangement by which certain exclusive licenses were received by Noxon, Inc.

Mr. PECORA. Those were not licenses protected by any letters patent, were they?

Mr. BROWN. No.

Mr. PECORA. After having acquired for \$80,000 these physical assets of the Noxon Chemical Products Co., Noxon, Inc., issued its entire 2,700 shares of preferred stock and some 3,900 shares of its common stock to the dummy, Capdevielle, for \$270,000?

Mr. BROWN. That is correct.

Mr. PECORA. Which Capdevielle paid by his promissory note?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Then Capdevielle made an arrangement with the American Commercial Alcohol Corporation to transfer to it the 2,700 shares of preferred stock and the 3,900 shares of common stock of Noxon, Inc., which he had acquired for his note?

Mr. BROWN. Yes.

Mr. PECORA. And received in return for those shares 15,000 shares of the capital common stock of American Commercial Alcohol Corporation; is that right?

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

Mr. PECORA. And it was necessary also for the American Commercial Alcohol Corporation to issue 15,000 additional shares?

Mr. BROWN. That is correct.

Mr. PECORA. In order to carry out its part of that transaction?

Mr. BROWN. That is correct, sir.

Mr. PECORA. That plus the 10,000 shares it had had issued to Phagan in exchange for the capital stock of Maister Laboratories, Inc., made up 25,000 shares of additional capital stock which the American Commercial Alcohol Corporation had to issue?

Mr. BROWN. That is correct, sir.

Mr. PECORA. In the spring of 1933?

Mr. BROWN. Yes.

Mr. PECORA. Now, that put the American Commercial Corporation in possession of all of the capital stock of Maister Laboratories, Inc., and all of the preferred stock of Noxon, Inc., plus 3,900 shares of the common stock of the latter corporation?

Mr. BROWN. That is correct.

Mr. PECORA. These 25,000 shares of capital stock of American Commercial Alcohol Corporation at that time had a market value of about \$20 a share, did they not?

Mr. BROWN. Yes.

Mr. PECORA. Or in the neighborhood of half a million dollars?

Mr. BROWN. Yes.

Mr. PECORA. It issued those shares and got in return these shares of capital stock of those two companies, Maister Laboratories, and Noxon, Inc.?

Mr. BROWN. Yes.

Mr. PECORA. And the principal assets of those two companies were the promissory notes, respectively, of the dummy, Phagan, for \$180,000, and the dummy, Capdevielle, for \$270,000; is that right?

Mr. BROWN. Yes; plus.

Mr. PECORA. Plus what?

Mr. BROWN. Plus contracts which those companies had.

Mr. PECORA. Contracts with whom?

Mr. BROWN. With Dr. Maister in the Maister Laboratories.

Mr. PECORA. Those are contracts from which nothing has yet been realized?

Mr. BROWN. Due entirely to the situation that—

Mr. PECORA. Whatever it is due to, the fact is that under those contracts which have been in force now for—well, since last May—nothing has as yet been realized by the two companies that hold those valuable contracts. Is that right?

Mr. BROWN. That is right.

Mr. PECORA. How did you intend by that process to put into the treasury of the American Commercial Alcohol Corporation \$450,000 in cash?

Mr. BROWN. There then came in the control.

Mr. PECORA. Which you said you needed for the purpose of paying bank loans.

Mr. PECORA. Maister came in 100 percent controlled and owned; Noxon came in 65 percent controlled. Immediately funds were borrowed from both of those corporations by the American Commercial Alcohol Corporation and payments were immediately made.

Mr. PECORA. Funds were borrowed from both of them, you say?

Mr. BROWN. Yes.

Mr. PECORA. By American Commercial Alcohol Corporation?

Mr. BROWN. Yes.

Mr. PECORA. Both of those corporations merely had promissory notes.

Mr. BROWN. As I indicated to you during my replies, these shares of stock which were received by Capdevielle and by Phagan were immediately put out by them at \$18 a share. They were then in possession of funds with which they liquidated their notes.

Mr. PECORA. To whom did they put out capital stock of the American Commercial Alcohol Corporation?

Mr. BROWN. They either put it directly to Bragg or listed it for Mr. Grimm and me.

Mr. PECORA. Which did they do?

Mr. BROWN. Half and half, I should say.

Mr. PECORA. In other words, they made deliveries under this option to Bragg, the option which you gave to Bragg on May 2, 1933?

Mr. BROWN. That is correct; yes.

Mr. PECORA. What interest did they have in this Bragg option that you and your three fellow officers gave?

Mr. BROWN. They had no interest in the option. As I have indicated before, they were people that indicated their confidence and people who accepted my instruction, and they were doing this, as we were, for the benefit of the corporation.

Mr. PECORA. But they had no beneficial interest in any of these transactions, did they?

Mr. BROWN. They had a beneficial interest in the transaction in the syndicate which was developed out of this option. Phagan had a \$5,000 interest and Capdevielle had a \$1,000 interest.

Mr. PECORA. All that Phagan and Capdevielle did throughout these transactions they did in furtherance of your instructions?

Mr. BROWN. That is correct, sir.

Mr. PECORA. They had no beneficial interest in the transaction by which they got 25,000 shares of the capital stock of the American Commercial Alcohol Corporation in the proportion of 10,000 shares to Phagan, and 15,000 shares to Capdevielle?

Mr. BROWN. Outside of what I have indicated to you.

Mr. PECORA. So that these men, in view of the fact that all they were doing in the matter was being done in furtherance of said instructions, had no compunction about giving their promissory notes because they knew they never would be called upon to pay them?

Mr. BROWN. I don't think that is quite correct; but whatever they did, they did in furtherance of my instructions.

Mr. PECORA. Was it intended that they should pay those notes out of their own resources, out of their own independent resources?

Mr. BROWN. It was intended that those notes should be paid, as was evidenced by the fact that they were paid.

Mr. PECORA. And they were paid through the sale of the 25,000 shares to Bragg under this option?

Mr. BROWN. That is correct.

Mr. PECORA. And they had no interest in this option to Bragg?

Mr. BROWN. They were not signatories to it.

Mr. PECORA. And they had no interest in it?

Mr. BROWN. Outside of what I have said.

Mr. PECORA. That was an interest which they acquired subsequently in some syndicate?

Mr. BROWN. Yes.

Mr. PECORA. The real purpose of all of that was to enable the American Commercial Alcohol Corporation to issue and sell 25,000 additional shares for \$450,000, was it not?

Mr. BROWN. That is correct.

Mr. PECORA. Was it not necessary, or did not the American Commercial Alcohol Corporation, subsequent to the completion of these transactions that involved the use of Phagan and Capdevielle as dummies, make application to the New York Stock Exchange to list those 25,000 additional shares?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was the New York Stock Exchange told, in the listing application that was filed with it in behalf of the American Commercial Alcohol Corporation, that these 25,000 shares were being issued to be sold for \$450,000 cash for the purpose of providing the company with additional working capital of that amount?

Mr. BROWN. I do not know what was indicated to the stock exchange, but whatever was indicated was disclosed in the listing application accompanied by counsel's opinion that the issues were valid.

Mr. PECORA. What was indicated to the New York Stock Exchange in the listing application as the reason for or the purpose of issuing these 25,000 additional shares?

Mr. BROWN. I do not remember, because this is the first time I have looked at the listing application. I did not prepare it. It was prepared by the secretary of the corporation.

Mr. PECORA. The secretary of the corporation was Cecil Page?

Mr. BROWN. Yes, sir.

Mr. PECORA. He was the secretary, also, of Maister Laboratories, Inc., and Noxon, Inc.?

Mr. BROWN. That is correct.

Mr. PECORA. And who were the executive officers of Noxon, Inc., immediately upon its incorporation; who became its executive officers?

Mr. BROWN. That I cannot answer.

Mr. PECORA. Were they not you and your fellow directors, some of your fellow directors?

Mr. BROWN. Some of them might have served as officers temporarily. I think I am chairman of the board at the present time.

Mr. PECORA. I show you what purports to be a printed copy of the application filed with the New York Stock Exchange by and in behalf of the American Commercial Alcohol Corporation to list these additional 25,000 shares and certain other shares. Will you look at it and state whether it is a true and correct copy of listing application filed in behalf of that corporation with the New York Stock Exchange for leave to list fifty-one thousand-and-odd additional shares of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Printed copy of listing application filed with the New York Stock Exchange by American Commercial Alcohol Corporation for per-

mission to list fifty-one thousand-and-odd shares of capital common stock of American Commercial Alcohol Corporation was received in evidence, marked "Committee Exhibit No. 11, Feb. 15, 1934.")

Mr. PECORA. This application is to list 51,293 additional shares of the common stock of American Commercial Alcohol Corporation and—

The CHAIRMAN. Was the American Alcohol stock listed on the New York Stock Exchange?

Mr. BROWN. At that time; yes, sir.

Mr. PECORA. It is dated June 2, 1933. In the 51,293 additional shares, to list which this application was made, were included the 10,000 shares given to Phagan in connection with the transaction that you have so elaborately described; is that right?

Mr. BROWN. Yes.

Mr. PECORA. And to whom were the other 41,293 shares covered by this application issued?

Mr. BROWN. I think that 40,949 shares were issued to stockholders at \$20 per share.

Mr. PECORA. That is, to the existing stockholders of record of your corporation?

Mr. BROWN. That is correct; and the balance, I believe, has to do with certain warrants that attach to the bond issue that the company had when it was originally organized.

Mr. PECORA. That is only a matter of about 200 shares?

Mr. BROWN. A few shares.

Mr. PECORA. This application was granted, was it not?

Mr. BROWN. Yes, sir.

Mr. PECORA. Subsequently, did your corporation; that is to say, the American Commercial Alcohol Corporation, make application to the New York Stock Exchange to list 15,000 additional shares of its capital common stock?

Mr. BROWN. Yes, sir.

Mr. PECORA. I show you what purports to be a printed copy of that application. Will you look at it and tell me if it is a true and correct copy of the listing application so made on behalf of your corporation?

Mr. BROWN. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Printed copy of listing application dated June 27, 1933, filed with the New York Stock Exchange for permission to list 15,000 additional shares of the capital common stock of the American Commercial Alcohol Corporation, was received in evidence and marked "Committee Exhibit No. 12, Feb. 15, 1934.")

Mr. PECORA. This application was granted, was it not?

Mr. BROWN. Yes.

Mr. PECORA. The application is received in evidence as exhibit 12 and is dated June 27, 1933. The first application is marked in evidence as "Exhibit No. 11", which, as I have already remarked, is dated June 2, 1933, and states the following to be the authority for and the purpose of the issue of these additional shares amounting to 51,293 of the capital common stock [reading]:

At a meeting held May 31, 1933, the board of directors authorized the issuance of 10,000 shares of the common stock of the Company of the par value of \$20 per share in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share, which will then be the only issued and outstanding stock of the latter Corporation. Maister Laboratories, Incorporated, a Maryland corporation, is the owner of valuable processes acquired from Dr Hanns Maister for the manufacture of vitamin yeast and other products. The directors of American Commercial Alcohol Corporation at their said meeting valued this stock at more than \$300,000.

Reading further from exhibit no. 11, being the listing application of June 2, 1933, under the caption of "Authority for and Purpose of Issue", the application says as follows [reading]:

At said meeting the Board also authorized the offering to common-stock holders of the Company of the right to subscribe for additional shares of the authorized but unissued common stock of the Company at the price of \$20 for each share subscribed for, in the proportion of one additional share for each five shares held by common-stock holders of record at the close of business on June 14, 1933, all subscriptions upon such offerings accompanied by payment in full in New York funds to be made at the office of the City Bank Farmers Trust Company, 22 William Street, New York City, New York, on or before 3 p m, July 5, 1933. Said offering will be based on the 194,748 shares of common stock outstanding, the 10,000 shares authorized for issuance in exchange for common stock of Maister Laboratories, Incorporated, and any additional shares which may be issued on or prior to June 14, 1933, pursuant to the exercise of stock purchase warrants outstanding in connection with the original bond issue of the company.

The proceeds of the issue and sale of the said additional common stock offered to stockholders are to be used for the purpose of paying off bank loans and providing funds for working capital.

Now, from the listing application marked in evidence as "Exhibit No. 12", which is dated June 27, 1933, and which refers to an additional listing of 15,000 shares of common stock, I read as follows from the application under the caption "Authority for and Purpose of Issue" [reading]:

At a meeting held June 15, 1933, the board of directors authorized the issuance of 15,000 shares of the common stock of the company of the par value of \$20 per share, in exchange for 2,700 shares of the six percent cumulative preferred stock of the par value of \$100 a share, and 3,900 shares of the common no par stock of Noxon, Inc., a Maryland corporation. The total authorized capitalization of Noxon, Inc., is 3,000 shares of six percent cumulative preferred stock of the par value of \$100 per share and 6,000 shares of common stock without par value. The 2,700 shares of preferred stock is all the issued and outstanding preferred stock of the latter corporation. All of the 6,000 shares of common stock have been issued, 3,900 shares to the company as stated above, and 2,100 shares to other interests.

Noxon, Inc., was organized on June 19, 1933, and has acquired certain valuable formulæ, processes, etc., for the manufacture of a certain cleaner polish, floor waxes and a household insecticide, heretofore manufactured and sold for many years under the trade name of "Noxon", and also certain machinery, equipment, materials and other assets required for the manufacture of said products on an adequate commercial scale. Noxon, Inc., has furthermore contracted with the company to purchase all of its requirements for the manufacture of its products, which consist of alcohol, solvents, etc., so far as they are manufactured or handled by the Company, at prevailing market prices, for a period of ten years. The Company has also acquired as a part of above transactions, exclusive rights to certain formulæ and processes for the manufacture of new agricultural and horticultural plant sprays, which the company believes can be manufactured and sold on a profitable basis. These sprays consist of about 85 percent of alcohol.

By the way, in connection with the valuable secret processes and formulas, and so forth, which Noxon, Inc., you say acquired from

the Noxon Chemical Products Co., were there any that were owned by a man named Nottebaum?

Mr. BROWN. Yes; he was the controlling factor in the Noxon Chemical Products, Inc.

Mr. PECORA. So then the Noxon Co. did not own these secret processes; they were owned by some individual or groups of individuals—

Mr. BROWN. I have forgotten just what the details of the thing were. I think some rights came in to these processes, exclusive rights, as I remember. I have forgotten all the details of the contract.

Mr. PECORA. I show you what purports to be a copy of a letter addressed to the Committee on Stock List of the New York Stock Exchange under date of July 1, 1933, referring to the application dated June 27, 1933, to list the 15,000 additional shares, marked in evidence as "Exhibit No. 12." Will you look at it and tell me if you recognize it to be a true and correct copy of a letter sent to the Stock Exchange Committee on Stock List by Mr. Guy I. Colby, vice president and treasurer of the American Commercial Alcohol Corporation in behalf of that corporation?

Mr. BROWN (after examining paper). Yes.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Copy of letter, dated July 1, 1933, Colby to Committee on Stock List, New York Stock Exchange, was received in evidence, marked, "Committee's Exhibit No. 13," February 15, 1934, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. This letter, marked "Committee Exhibit No. 13", is on the letterhead of the American Commercial Alcohol Corporation, July 1, 1933, and reads as follows [reading]:

The COMMITTEE ON STOCK LIST,

New York Stock Exchange, 11 Wall Street, New York, N Y.

GENTLEMEN: Confirming certain oral statements made to your Mr. Hasselback with reference to our application dated June 27th, 1933, for the listing of 15,000 additional shares of our Common Stock of the par value of \$20 each, the formulæ of processes, etc, for the manufacture of the cleaner polish, floor waxes, and household insecticides are the property of one Ralph Nottebaum, Sr., of Short Hills, New Jersey.

License to manufacture these products has heretofore been held by Noxon Chemical Products Co, Inc, a New Jersey Corporation formed by said Nottebaum, and for a period of approximately 14 years these products have been manufactured and sold by such Corporation

There are not available, however, certified financial statements of such Corporation; and in fact American Commercial Alcohol Corporation has had no dealings with the New Jersey Corporation and has made no investigation of its affairs or history except such investigation as was necessary to verify the statements made by Mr Nottebaum relative to the volume of the products sold and the markets in which the sale of these products has been made. Necessarily in connection with our investigation tests of selling prices and cost of the products have been made to satisfy us of the gross margin of profit existing at the present time

Our negotiations have been entirely with Mr. Nottebaum and insofar as the New Jersey Corporation is concerned our only care has been to see to it that such Corporation is dissolved and any rights or privileges theretofore granted by Nottebaum to it for the manufacture and sale of said products are effectually canceled

Counsel for Mr Nottebaum has advised us that practically 100% stock ownership of said New Jersey Corporation vests in Mr. Nottebaum and that appropri-

ate proceedings will forthwith be instituted for the dissolution of said Corporation.

If any further information is desired by the Committee we will be glad to have appear before the Committee in person one of our Officers to supply, if possible, any information the Committee may desire

Very truly yours,

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By GUY I. COLBY, *Vice Pres & Treas.*

I notice, Mr. Brown, that the board of directors of the American Commercial Alcohol Corporation did not give its formal approval to these various transactions under which 25,000 additional shares of the common capital stock of that corporation were issued to Phagan and Capdevielle, until late in May 1933. That is the fact, is it not?

Mr. BROWN. It gave its formal approval simply to approve a verbal commitment that had been made by me either on the 1st or the 2d of May 1933.

Mr. PECORA. It was an absolutely necessary formal approval, was it not, to enable the corporation to go ahead and issue those 25,000 additional shares?

Mr. BROWN. There are certain legal mechanics that have to be complied with.

Mr. PECORA. And it did not become legally effective until sometime late in May 1933. Do you know what that date was?

Mr. BROWN. I have forgotten the date.

Mr. PECORA. It was May 31, 1933, was it not?

Mr. BROWN. You mean the minutes of the board there?

Mr. PECORA. Yes.

Mr. BROWN. May 29, is it not?

Mr. PECORA. May 31, according to the application made to the Stock Exchange.

Mr. BROWN. It was May 31.

Mr. PECORA. May 31, 1933.

Mr. BROWN. Yes.

Mr. PECORA. But this option to Bragg was made on May 2, 1933.

Mr. BROWN. That is correct, after the board meeting of May 2, 1933.

Mr. PECORA. Now, at the time, on May 31, 1933, that the board of directors, by formal resolution, approved these transactions—

Mr. BROWN. Which had previously been agreed to; yes.

Mr. PECORA. The board of directors also authorized the issue of some 41,000 additional shares to be offered and sold directly to the existing stockholders of record of the American Commercial Alcohol Corporation, did it not?

Mr. BROWN. Yes, sir.

Mr. PECORA. And those shares were all duly subscribed for by the existing stockholders of record at \$20 a share?

Mr. BROWN. That is correct, sir.

Mr. PECORA. And that proves, does it not, that if the corporation had chosen to offer these other 25,000 shares to its stockholders of record it could have sold them for cash to the stockholders of record for \$20 a share?

Mr. BROWN. It does not. The situation—

Mr. PECORA. Does it prove the contrary?

Mr. BROWN. The answer is just this, that the situation changed, and changed very materially, within a period of 30 days.

Mr. PECORA. What 30-day period was that?

Mr. BROWN. The latter part of April until the end of May. The situation then became apparent that it was possible to issue stock to stockholders, and the management immediately took advantage of it so as to put the company in an even stronger financial position.

Mr. PECORA. The situation changed before May 31, did it not?

Mr. BROWN. At or about that times, yes.

Mr. PECORA. Up to that time, all that you had done in the furtherance of your plan to enable the corporation to issue 25,000 shares of its capital stock without first offering them to the stockholders of record was done through two dummies, Phagan and Capdevielle, who were carrying out your instructions.

Mr. BROWN. That is correct, sir.

Mr. PECORA. In view of the fact that that situation developed before May 31, 1933, why did not the board of directors give its existing stockholders of record the benefit of the right to subscribe to the 25,000 additional shares at \$20 a share.

Mr. BROWN. Verbal commitments had already been made on it, in accordance with the contracts which were finally worked out, and which you have had here.

Mr. PECORA. Those verbal commitments were made by your dummies.

Mr. BROWN. Those verbal commitments were made by me, personally.

Mr. PECORA. By your dummies and by you, personally.

Mr. BROWN. That is correct.

Mr. PECORA. You were chairman of the board of the American Commercial Alcohol Corporation, were you not?

Mr. BROWN. That is correct.

Mr. PECORA. And owed to the stockholders of that corporation the duty of fair dealing to them.

Mr. BROWN. I owed the stockholders of that corporation fair dealing, and further than that, as I have indicated to you, the paramount interest that the executives and officers and directors of that company had was the protection of the stockholders' interests and the corporation's interest.

Mr. PECORA. Could not that paramount interest have been best served by offering to the stockholders—

Mr. BROWN. At the time—

Mr. PECORA. Please let me finish my question. Could not that paramount interest have been best served by offering to the stockholders these 25,000 shares?

Mr. BROWN. Not on the 2d of May; no, sir.

Mr. PECORA. I am talking about May 31, sir.

Mr. BROWN. I understand that.

Mr. PECORA. Which was the date when your board of directors gave its necessary legal approval to the entire scheme you had evolved?

Mr. BROWN. Gave its necessary legal approval to a verbal commitment which had been made by me on behalf of the corporation, in my best judgment.

Mr. PECORA. What was that verbal commitment that you had made in behalf of the corporation?

Mr. BROWN. To Capdevielle and Phagan.

Mr. PECORA. But you said they were simply your dummies in the entire transaction, and that they had no beneficial interest in the negotiations.

Mr. BROWN. They accepted my instructions. That is correct.

Mr. PECORA. Do you regard that as a verbal commitment?

Mr. BROWN. I certainly do.

Mr. PECORA. What commitment had you made to Capdevielle and Phagan? You have told us repeatedly that they were simply your dummies, acting in the furtherance of your instructions, selected by you as instruments or agents to enable you to carry out some plan you had evolved?

Mr. BROWN. I had made the commitment to them to give 10,000 shares of the company's capital stock in exchange for 10,000 shares of Maister, and also 15,000 shares of the company's capital stock in exchange for 2,700 shares of the preferred stock of Noxon, Inc., and 3,900 shares of the common stock.

Mr. PECORA. You were dealing with yourself, because you were dealing with your dummies in the making of that commitment.

Mr. BROWN. Not necessarily.

Mr. PECORA. Did Phagan and Capdevielle have any independent interest in the matter?

Mr. BROWN. No.

Mr. PECORA. Now, as a matter of fact, when these applications were filed by your corporation with the New York Stock Exchange to list these additional shares, the applications, as you notice, were dated, respectively, on June 2 and on June 27, 1933. You knew that you had evolved this whole scheme for the purpose of putting \$450,000 cash into the treasury of the company through the issuance of 25,000 additional shares.

Mr. BROWN. That is right.

Mr. PECORA. Which were not offered to the stockholders.

Mr. BROWN. That is correct.

Mr. PECORA. Why was not that statement or information given to the New York Stock Exchange in these applications?

Mr. BROWN. That I do not know. I had nothing to do with the preparation of those.

Mr. PECORA. Who had to do with the preparation and filing of these listing applications?

Mr. BROWN. They were prepared by the secretary of the company.

Mr. PECORA. Mr. Page?

Mr. BROWN. Mr. Page; yes, sir.

Mr. PECORA. Do you know what the market value was on May 31, 1933, of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. No, sir.

Mr. PECORA. For your information, let me tell you that according to the quotations of that stock on the New York Stock Exchange on that day, May 31, 1933, they ranged from a low of 30 $\frac{1}{8}$ to a high of 33 $\frac{1}{2}$.

Mr. BROWN. What week is that?

Mr. PECORA. Not any week; on May 31, 1933, the date that your board of directors adopted the resolution approving this scheme or

plan that you had evolved for the issuance of 25,000 shares which were eventually turned over to Bragg under this option agreement.

Mr. BROWN. And the funds for which came into the organization, Mr. Pecora.

Mr. PECORA. At what price did they come into the organization?

Mr. BROWN. At \$18 a share.

Mr. PECORA. At \$18 a share, although on the date when your board of directors approved of it the market was from \$30 to \$33 a share.

Mr. BROWN. The value on the date that the contracts were agreed to and the arrangements made, on the 1st or 2d of May, was approximately \$18 a share.

Mr. PECORA. And, according to the quotations of the stock on the New York Stock Exchange on May 2, the value was between \$20 and \$21 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. But the fact of the matter is that the corporation, through this process that you evolved, sold for \$18 a share to Bragg, 25,000 shares at a time, when the stock was worth in the market at least 50 percent more than that.

Mr. BROWN. The commitment was made on the 2d of May.

Mr. PECORA. Who got the benefit of that profit?

Mr. BROWN. I do not quite understand your question.

Mr. PECORA. I will reduce it to very simple terms. Bragg got 25,000 shares at \$18 a share.

Mr. BROWN. That is correct.

Mr. PECORA. The 25,000 shares, however, were not authorized to be issued by the directors of your corporation until May 31, 1933.

Mr. BROWN. That is correct. They were not issued until——

Mr. PECORA. And they were not issued until subsequent to that time.

Mr. BROWN. They were not issued until the legal requirements had been complied with.

Mr. PECORA. That was May 31, 1933. At that time the market value of the stock was between \$30 and \$33 a share; is that right?

Mr. BROWN. I assume so.

Mr. PECORA. That is the profit I refer to. Who got the benefit of it?

Mr. BROWN. I do not know.

Mr. PECORA. Did you get any of it?

Mr. BROWN. I can answer your question in this way——

Mr. PECORA. I want you to.

Mr. BROWN. At the time this whole situation arose, and a proposition had to be evolved to——

Mr. PECORA. No; can you not answer the question? Did you get any of that profit?

Mr. BROWN. I will answer the question in this way——

Mr. PECORA. Is it necessary to make a speech about this whole plan again in order to answer that simple question?

Mr. BROWN. It is not necessary to go through the whole plan, but I will explain the transaction with Bragg, which answers your question.

Mr. PECORA. First answer the question. Did you or did you not participate in that profit?

Mr. BROWN. I participated in a syndicate which underwrote the issue of additional stock to stockholders. I participated in a pool. I realized a profit of approximately \$20,000. I sacrificed more than that.

Mr. PECORA. We will put your sacrifices in another category and we will come to them any time you want to elaborate on them before the committee. At the present time I am asking you if you participated in the profit that accrued as a result of this plan which you evolved?

Mr. BROWN. That is correct.

Mr. PECORA. What other officers and directors of the American Commercial Alcohol Corporation also participated in that ensuing profit?

Mr. BROWN. Mr. Chadbourne, Mr. Grimm, Mr. Kies, and Mr. Publicker.

The CHAIRMAN. You refer to a syndicate and also to a pool. Who composed the syndicate to which you referred?

Mr. BROWN. Senator, after the verbal commitment had been made to Phagan and Capdevielle to put the company in strong financial shape the market situation changed materially, and further discussions were had, because apparently, as we assumed it to be, the fever had hit the public for buying repeal stocks, and the officials took immediate advantage of the situation and promptly offered the stock to the stockholders, arrangements having been made with Mr. Bragg for an underwriting.

The CHAIRMAN. I simply asked the question, Who composed the syndicate?

Mr. BROWN. The gentlemen that I have just mentioned and some others.

The CHAIRMAN. Then who composed the pool?

Mr. BROWN. The same people.

The CHAIRMAN. How many shares of stock were handled by this pool?

Mr. BROWN. I think 65,000 shares was the total handled by the pool and syndicate.

Mr. PECORA. Who managed that pool?

Mr. BROWN. Mr. Bragg.

Mr. PECORA. Mr. Bragg is this gentleman to whom you referred yesterday as a market operator?

Mr. BROWN. Yes, sir.

Mr. PECORA. He is not a member of any exchange?

Mr. BROWN. No, sir.

Mr. PECORA. And you had known him for some time?

Mr. BROWN. Maybe a year or two. I have forgotten how long.

Mr. PECORA. Do you know what brokers were used in the execution of the orders in behalf of that pool?

Mr. BROWN. No; I assume W. E. Hutton & Co.

Mr. PECORA. That is not Mr. Cutten's firm?

Mr. BROWN. No; that is E. F. Hutton. This is W. E. Hutton & Co.

Mr. PECORA. Do you know what particular broker or brokers actually executed the orders for the pool?

Mr. BROWN. No, sir.

Mr. PECORA. None of them?

Mr. BROWN. I do not know who they were; no.

Mr. PECORA. You never did know, did you?

Mr. BROWN. No.

Mr. PECORA. Are you sure of that?

Mr. BROWN. Yes; I am telling you perfectly frankly. I do not know.

Mr. PECORA. If this plan that you claim the authorship of and which you have described here this morning, had not been evolved, those 25,000 shares would have been issued to the stockholders of the company and they would have made the profit resulting therefrom, would they not?

Mr. BROWN. The only answer I can make to you on that is that if my foresight was as good as my hindsight, the situation might have been different.

Mr. PECORA. But that is the fact, is it not, that they would have made the profit which, instead, went to a small group of officers and directors of the company?

Mr. BROWN. I made no money on the transaction.

Mr. PECORA. Mr. Bragg and such other persons as were associated with you in this pool and this syndicate?

Mr. BROWN. I lost money as a result of this whole transaction.

Mr. PECORA. If that plan had not been evolved and if the 25,000 shares we have been discussing here had been offered and sold to the existing stockholders of record at \$20 a share at a time when they were worth in the market between \$30 and \$33 a share, those stockholders would have obtained the profits instead of you and the other officers and directors of the company who were banded together in this syndicate and in this pool, isn't that so?

Mr. BROWN. We would have acted differently on May 31 than we did on May 2.

Mr. PECORA. What was there to prevent the directors of your company, on May 31, when they knew that the stockholders would subscribe for these additional shares, or felt certain that the stockholders would subscribe for these additional shares, from making such a provision?

Mr. BROWN. I do not believe I follow your question.

Mr. PECORA. What prevented the board of directors of the American Commercial Alcohol Corporation when, on May 31, 1933, it gave its formal and legal approval to the plan that you had evolved, from discarding that plan and offering those 25,000 additional shares to its stockholders of record?

Mr. BROWN. Because of the verbal commitment which had been made by me.

Mr. PECORA. What you call a verbal commitment, made to your dummies?

Mr. BROWN. That is correct.

Mr. PECORA. Who lent themselves to your plan?

Mr. BROWN. Yes.

The CHAIRMAN. When was this pool operation terminated, do you remember?

Mr. BROWN. I do not remember, Senator; no, sir.

The CHAIRMAN. Do you remember what the stock was worth at that time?

Mr. BROWN. That I have forgotten, too.

Mr. PECORA. I am going into the pool, Mr. Chairman. I will be able to do that after recess.

You spoke of a syndicate. What was that syndicate organized for?

Mr. BROWN. About the latter part of April, I had a discussion with Mr. Bragg—

Mr. PECORA. April 1933?

Mr. BROWN. April 1933—and asked him what, in his opinion, could be done with American Commercial Alcohol stock. At the time of my discussion with him no question was raised about the banks or anything like that. He told me at that time—

Mr. PECORA. One moment. I thought you said that back in March 1933 the banks had served notice on you that they wanted their loans paid.

Mr. BROWN. Nothing was said to him, I said.

Mr. PECORA. Oh.

Mr. BROWN. He at that time stated that he believed it would be possible for him to do something in the market, because he felt that repeal was coming along, and he said that he believed he would be able to handle about 25,000 shares of stock, and I told him that I would discuss the question and see what could be worked out. An option was given to him on May 2, 1933, and he was not at that time willing to make it an underwriting, but he felt that because of his opinion that repeal was most certain to come, that he would be able to dispose of the securities. The option was given to him at that time. As the market improved a further discussion was had with him as to the possibilities of securing an underwriting agreement to issue additional stock to the stockholders, and at that time he indicated that he would make such an arrangement for a fee of \$2 per share, which afterwards was reduced to a fee of \$1 per share, upon the officers and directors whom I have previously mentioned participating in the group. We also said at the time that the entire operation under the option, the underwriting, and so forth, would be banded together and required various participants to put up a total of \$100,000, of which I contributed \$10,000; Mr. Grimm, \$10,000; Mr. Phagan, \$5,000; Mr. Kies, \$10,000; Mr. Chadbourne, \$5,000; Mr. Capdevielle, \$1,000; my brother, H. S. Brown, \$2,000; M. M. Ewing, my secretary, \$1,000; W. J. Butler, \$1,000; Philip Publicker, \$5,000. The other participants, as I understand it, were Mr. Carl C. Conway, Mr. L. C. Young, Mr. John Bowen, and Mr. Thomas Bragg, each of whom were presumably bound for \$12,500 each.

The CHAIRMAN. We will resume this after recess. At this time I want to put into the record certain telegrams and letters which have come to me with reference to the bill itself. I will ask that they be inserted in the record without reading.

The first is a telegram from Arthur M. Wickwire.

Next is a letter from William A. Gordon, of Philadelphia.

Next is a letter from Dahlbender Co., of New York.

Next is a letter from George D. Hirst, of New York.

The next is a letter from I. R. Edmands, of Brookline, Mass.

The next is a letter from R. B. Covington, of Jacksonville, Fla. Most of the letters and telegrams coming to me are in praise of the bill. Some make objections, and most of the objections appear to apply to the provision for margins, which we will go into in more detail later. Just at this moment I am asking to have these inserted in the record.

(Communications in re S. 2693 will be found at the conclusion of today's proceedings.)

The CHAIRMAN. We will adjourn now until half past two.

(Whereupon, at 1:05 p.m., Thursday, Feb. 15, 1934, a recess was taken until 2:30 p.m. of the same day.)

AFTER RECESS

The committee resumed at 2:30 p.m., on the expiration of the recess.

The CHAIRMAN. The committee will please come to order. Mr. Brown will resume the stand.

TESTIMONY OF RUSSELL R. BROWN—Resumed

Mr. PECORA. Mr. Brown, in the course of your testimony yesterday and today you referred to a certain meeting of the board of directors of the American Commercial Alcohol Corporation held on April 27, 1933.

Mr. BROWN. Yes, sir.

Mr. PECORA. At which you said you presented your plan with regard to the issuance of 25,000 additional shares of the capital stock of the corporation for the purpose of raising additional working capital for the corporation.

Mr. BROWN. I do not think I testified that I presented the plan. I did not so intend, if I did.

Mr. PECORA. Then, for what purpose did you refer to the meeting of the board of directors held on April 27, 1933?

Mr. BROWN. I believe at that meeting I outlined to the board the necessity for immediate action because of the financial condition in which the company then was.

Mr. PECORA. That is, the necessity for immediate action toward raising additional working capital?

Mr. BROWN. That is correct.

Mr. PECORA. I show you this book, which purports to be the minute book of the board of directors and stockholders of the American Commercial Alcohol Corporation, and ask you if you can identify it as being the original minute book of that corporation?

Mr. BROWN (after looking at the book). Yes; I should say so.

Mr. PECORA. Mr. Chairman, I offer the book in evidence, and merely ask that it be marked for identification, and not be spread on the committee's record.

The CHAIRMAN. Let it be marked for identification.

(The original minute book of the board of directors and stockholders of the American Commercial Alcohol Corporation was marked "Committee Exhibit No. 14 for identification, February 15, 1934", and only the excerpts read from the book by Mr. Pecora are to be made a matter of record.)

Mr. PECORA. Now, Mr. Brown, this minute book has been marked "Committee Exhibit No. 14 for identification." I want to read therefrom certain extracts, from the minutes of the meeting of the board of directors held on April 27, 1933, as follows:

The organization meeting of the board of directors of the American Commercial Alcohol Corporation was held at the offices of the corporation, No. 406 Lexington Avenue, New York City, N.Y., on April 27, 1933, at 3:45 p.m., this being the time and place of the regular monthly meeting of the board as heretofore ordered by the board.

Present: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Kessler, Kies, Paine, Pond, Publisher, and Runk, being a majority and a quorum of the Board.

Mr. Brown was unanimously chosen chairman of the Board, and Mr. Page, secretary of the Corporation, acted as secretary.

Then I will skip some of the proceedings and go down to the following:

The chairman presented to the Board the question of the advisability of selling additional shares of the Company's common stock to provide further working capital.

After a discussion of the matter, Mr. Page was directed to investigate the various legal questions and procedure involved, and to confer with Judge Foster and Mr. Paine, and to report their recommendations to a subsequent meeting of the Board.

The general affairs of the company were then discussed, and there being no further business the meeting adjourned.

And these minutes are signed by Cecil Page, secretary. Now, Mr. Brown, is that the action that you referred to heretofore as having been taken by the board of directors with respect to the necessity for raising additional working capital?

Mr. BROWN. I think that may be it; yes, sir.

Mr. PECORA. Well, I fail to find any references in the minutes of this meeting to any such element, other than that which I have read. Do you think there are any other references in the minutes to that subject?

Mr. BROWN. No.

Mr. PECORA. What was your answer?

Mr. BROWN. No.

Mr. PECORA. Now, I note that Mr. Page, the secretary, was directed to investigate the various legal questions involved in the plan, or involved in the question of selling additional shares of the company's common stock to provide working capital. And Mr. Page was directed to confer with Judge Foster and Mr. Paine and to report their recommendations to a subsequent meeting of the board.

Mr. BROWN. Yes, sir.

Mr. PECORA. Judge Foster was an attorney, wasn't he?

Mr. BROWN. Judge Foster is a director of the company.

Mr. PECORA. But he is an attorney as well, isn't he?

Mr. BROWN. I do not think he is a practicing attorney.

Mr. PECORA. But he is a lawyer, and has been admitted to the bar?

Mr. BROWN. That is correct.

Mr. PECORA. And for some years, a decade or two ago, he was the judge of one of the criminal courts in New York, wasn't he?

Mr. BROWN. Yes, sir.

Mr. PECORA. That is Judge Warren W. Foster, isn't it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was Mr. Paine also an attorney?

Mr. BROWN. I believe so; yes, sir.

Mr. PECORA. Was Mr. Page also an attorney?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, did these three gentlemen make any report or recommendations at any subsequent meeting of the board on the subject of raising additional working capital for the company?

Mr. BROWN. I think after that meeting was over a discussion was had with those gentlemen on this whole problem, and I outlined to that group the plan which I had in mind, and believe at that time it was approved by the committee.

Mr. PECORA. Well, the plan which you then outlined to these three gentlemen was the one that you have described here and which involved the creation of Maister Laboratories, Inc., was it?

Mr. BROWN. That is correct.

Mr. PECORA. And Noxon, Inc.?

Mr. BROWN. That is correct.

Mr. PECORA. And the making of the agreements and the execution of the transactions that you have testified to here?

Mr. BROWN. That is correct.

Mr. PECORA. You had that plan all in mind on April 27, 1933, did you?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you outlined it in detail to those three members of the board, all of whom were lawyers; is that right?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did they give you any opinion, or did they express any judgment, upon the plan on April 27, 1933, after you had outlined the plan to them?

Mr. BROWN. I think they did, yes.

Mr. PECORA. Did they approve of it?

Mr. BROWN. I believe they did.

Mr. PECORA. As a legal proposition they approved of it, did they?

Mr. BROWN. I believe they did.

Mr. PECORA. Now, was there any formal report made by those three directors, or by any one of them, to the board of directors?

Mr. BROWN. As to that I don't know, or don't remember.

Mr. PECORA. In regard to the legal questions involved in the execution of your plan, I mean.

Mr. BROWN. As to that I don't remember.

Mr. PECORA. Now, you also referred in your testimony heretofore to a meeting of the board of directors of the American Commercial Alcohol Corporation held on May 2, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. In reference to this plan.

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, I will read to you what appears in the minutes of the meeting of the board of directors held on May 2, 1933, from the minute book of the company which has been marked "Committee Exhibit No. 14 for identification." It is as follows:

A special meeting of the Board of Directors of the American Commercial Alcohol Corporation was held at the offices of the Corporation, No 405 Lexington Avenue, New York City, N Y, on Tuesday, May 2, 1933, at 3:30 p.m.

Present: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kessler, Kies, Paine, Page, Pubbecker, and Runk, being a majority and a quorum of the Board

Mr. Hersey Eggerton, of the firm of Larkin, Rathbone & Perry, counsel to the Corporation, was also present

Mr. Brown, the chairman, presided, and Mr. Page acted as secretary of the meeting.

The chairman stated to the Board that he believed there was an opportunity to acquire certain new processes, some of which might be obtainable for the manufacture of a dry yeast, having a very high and superior quality of vitamin content, presenting large advantages over existing products, such as non-deterioration and long life, for which it appeared there was a large and profitable market.

It was believed, he said, that the process could be developed and the product marketed at a very reasonable cost of operation, and made to yield profits annually of at least \$50,000, and that the process was worth at least \$250,000.

He further said that it might be acquired by issuing the stock of this company in exchange for the stock of a new company and the latter's agreement to purchase its supplies and needs from this company, and the giving to this company of a note in an appropriate amount, and possibly with a satisfactory guarantee.

He further expressed the idea that the plan would involve the issuance of the stock of this company in an amount to meet the value as found by this board of the property to be received in exchange, including all the shares of the yeast company, its contract for its supplies, and its note, and its other assets.

He asked the board to consider the advisability of issuing not to exceed 25,000 shares of the common stock for this purpose.

He further said that if the stock were issued as proposed it would materially strengthen and improve the company's asset position, which would be a decided advantage during the distressing business and banking conditions now prevailing.

The chairman further said that there appeared to be a trend in the alcohol trade and industry toward doing the whole or the major part of this business on a consignment basis, whereby the income from sales would be realized seasonally, or in December of each year, against which there must be cash available, and explained that this company might be affected by the general banking restrictions in procuring the long-time credit extension necessary to care for these consignment needs.

The chairman further said that these matters had been considered with counsel, and he thereupon left the matter with the board, asking for an expression of opinion.

After lengthy discussion it was, on motion, duly made and seconded, and unanimously passed, duly resolved:

That the board finds the proposition generally acceptable, subject however to the approval of counsel, and authorizes and directs the proper officers to promptly negotiate with respect thereto, and in connection with counsel to prepare proposals in definite form, including as to the yeast process a report showing its merits, the market, and its possibilities, and its apparent value; and also a report on the values of the other properties offered, all in further consideration of this board, so as to enable them to make a determination of the value of all the properties for which the common stock may be authorized to be issued.

There being no further business to come before the meeting, it was, on motion duly made and seconded, unanimously passed for it to adjourn to reconvene at the same place on Thursday, May 4, 1933.

And these minutes are signed by Cecil Page as secretary. Now, Mr. Brown, it appears that that was the only business transacted at this special meeting of the board of directors held on May 2, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. Now, in presenting the proposition to the board that is referred to in the minutes of the meeting of May 2 which I have just read to you, it was the proposition that you originally outlined in your discussion with the board at the meeting of April 27, 1933: was it?

Mr. BROWN. That is correct.

Mr. PECORA. And which you elaborated in detail in your discussion with Messrs. Foster, Page, and Paine after the meeting of the board of directors on April 27, was it?

Mr. BROWN. That is correct.

Mr. PECORA. And that proposition was to raise additional working capital for the company?

Mr. BROWN. That is correct.

Mr. PECORA. In order to enable it to meet its banking loans.

Mr. BROWN. Yes, sir.

Mr. PECORA. Which were maturing.

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, had you meanwhile—that is, between April 27 and May 2, 1933—discussed the details of your plan with counsel to the corporation, namely, Messrs. Larkin, Rathbone & Perry, or any member or associate of that law firm?

Mr. BROWN. Yes, sir.

Mr. PECORA. With whom?

Mr. BROWN. With Mr. Eggenton.

Mr. PECORA. With Mr. Hersey Eggenton?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was he specially requested to be present at this meeting, I mean this special meeting, of the board of directors held on May 2?

Mr. BROWN. Yes.

Mr. PECORA. Now, as a matter of fact, in this meeting of May 2 you stated to the board that it was your belief this process for the manufacture of dry yeast, having a high and superior quality of vitamin content, was worth at least \$250,000?

Mr. BROWN. That is correct.

Mr. PECORA. And that was before the process had been patented.

Mr. BROWN. Yes; and it has not yet been patented.

Mr. PECORA. Do you say it has not yet been patented?

Mr. BROWN. It has not been patented as yet.

Mr. PECORA. It has not yet been patented?

Mr. BROWN. No, sir; and is not to be patented.

Mr. PECORA. And it was before anything had been done to exploit the process?

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

Mr. PECORA. That was before even the organization of the company that was to acquire this process?

Mr. BROWN. Well, it was after a study of the yeast process.

Mr. PECORA. No; that is not the point of my question. When on May 2, 1933, you went before your board at a special meeting and told them of this process, that it was worth, in your opinion, at least \$250,000, you gave that opinion at a time when the process had not yet been commercially exploited; at a time when the process had not been patented; at a time when the corporation which was to own the process had not yet even come into existence, is that it?

Mr. BROWN. That is correct. But at the same time, Mr. Pecora, a product of that kind, to which this is superior, is sold in substantial quantities in the country at the present time.

Mr. PECORA. That is the same product that you referred to in your testimony heretofore as being the creature of the brain of Dr. Maister, is that right?

Mr. BROWN. That is correct.

Mr. PECORA. And that is the same thing that has not yet been commercially exploited?

Mr. BROWN. That is correct.

The CHAIRMAN. Did that product require the use of alcohol?

Mr. BROWN. No.

The CHAIRMAN. What relation has yeast to alcohol?

Mr. BROWN. That comes in as a fermentation process, and the yeast cultures through fermentation are developed, and, finally, after a period of time, you get your yeast.

Mr. PECORA. By the way, Mr. Brown, is Maister Laboratories Corporation functioning today?

Mr. BROWN. Do you say Maister Laboratories Corporation?

Mr. PECORA. Yes.

Mr. BROWN. Yes, sir; I think so.

Mr. PECORA. Do you know whether it is or not?

Mr. BROWN. I assume it is.

Mr. PECORA. Is it turning out any manufactured product?

Mr. BROWN. Oh, not yet; no, sir.

Mr. PECORA. You say not yet?

Mr. BROWN. No, sir.

Mr. PECORA. And yet you were expecting on May 2, 1933, that this process for the manufacture of this special dry yeast would yield annual profits of at least \$50,000?

Mr. BROWN. That is correct.

Mr. PECORA. Why has so much time been allowed to go by without reaping or attempting to reap any part of this handsome profit?

Mr. BROWN. As I explained to you this morning, it was necessary, in spite of the time involved, in order to save money to the organization, that rather than put up a new building we tried it at Philadelphia, and after we developed that Philadelphia was not the proper location for the plant, we then moved Dr. Maister to the Pekin plant; and at that time, after he was moved, we started construction on an addition to the Pekin plant. We are abandoning an integral part of the plant that is there, called the mill building, and into that building is to go the Maister process.

Mr. PECORA. And for that reason your company has not yet begun to develop this process that you said promised a profit of at least \$50,000 a year, and that you solemnly told your board of directors on May 2, 1933, it was your belief would be received from it.

Mr. BROWN. That is correct.

Mr. PECORA. By the way, Mr. Brown, at this meeting of either April 27 or May 2, 1933, did you inform the board of directors of this option agreement given to Mr. Bragg?

Mr. BROWN. No. At the board meeting I did not. But, informally, after the board meeting I told the various members that I believed this deal could be worked out, that discussions had been had with Bragg, and that he felt the proposition could be handled.

Mr. PECORA. Why was that told to the directors informally after the meeting and not told to them formally at the meeting and a minute made of the discussion?

Mr. BROWN. Well, I suppose at that time we did not assume, as long as I was giving the option and they had informally agreed to

support me in that option, that it was necessary, and that it did not go into the corporate procedure. That is, they informally agreed to support me in that option.

Mr. PECORA. They agreed to support you informally, but not at the meeting.

Mr. BROWN. Well, they informally agreed to support me in that option.

Mr. PECORA. I notice that according to this minute book at the next meeting of the board of directors, which was scheduled for May 4, 1933, a meeting was not actually held because there was no quorum present, the only director present being Mr. Page.

Mr. BROWN. That is correct.

Mr. PECORA. Now, according to this minute book, the next meeting of the board of directors was held on May 25, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. And I notice reference in the minutes of that meeting to this plan of yours, which I will read to you from the minute book:

A special meeting of the board of directors of the American Commercial Alcohol Corporation was held at the offices of the corporation, no. 405 Lexington Avenue, New York City, N.Y., on Thursday, May 25, 1933, at 3:45 p.m.

Present Messrs Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kies, Paine, Page, Pond, Publiker, and Runk, being a majority and a quorum of the board. And Mr. Hersey Eggenton, of the firm of Larkin, Rathbone & Perry, who was present as special counsel for the corporation.

The chairman, Mr. Brown, presided, and Mr. Page acted as secretary of the meeting.

Then I will skip what immediately follows—well, I see there is here a list of the salaries of the elective officers of the corporation for the current year as approved by the executive committee, which was then presented and read to the meeting, and the same was approved and payments authorized in accordance therewith. What were those salaries?

Mr. BROWN. It was \$22,500 for Mr. Grimm, and \$21,000 for me. I don't remember the rest of them.

Mr. PECORA. Then I notice the following in the minutes of the special meeting held on May 25, 1933 [reading]:

The chairman reported progress in the negotiations with Mr. Ralph Nottebaum for the acquisition of an interest in his plant spray, and the principal points of the contract that was being drawn

The chairman referred to the plan that had been considered by the board and the executive committee for the acquisition of the stock of a corporation that would be formed and which would take over certain processes, and so forth, of Dr. Hans Maister, including his yeast product, in exchange for the common stock of the company to be issued for that purpose; and also the proposal that it might be advisable for the company to offer additional stock to its stockholders in order to improve the company's asset position.

He said that the corporation referred to had been organized as Maister Laboratories, Inc., under the laws of Maryland.

Mr. Kies thereupon stated that he felt the board should approve the steps taken by Mr. Brown.

A lengthy discussion ensued, and the directors all expressed approval of what had been done.

There being no further business it was unanimously voted to adjourn to reconvene at the same time and place on Wednesday, May 31, 1933

These minutes are signed by Cecil Page, secretary.

Now, Mr. Brown, from that statement that you made to the committee at this meeting on May 25, 1933, it would appear that no agreement had yet been made.

Mr. BROWN. Agreement with whom?

Mr. PECORA. I say, it would appear that no agreement had yet been made.

Mr. BROWN. The directors, as I stated—

Mr. PECORA (interposing). Wait a minute, and let me get an answer to that question.

Mr. BROWN. I am sorry.

Mr. PECORA. No agreement had yet been made to take over these processes of Dr. Maister, but the matter was simply referred to by you here as [reading]:

The plan that had been considered by the board and the executive committee for the acquisition of the stock of a corporation that would be formed and which would take over certain processes of Dr. Hans Maister, including his yeast product, in exchange for the common stock of the company to be issued for that purpose.

Mr. BROWN. On the 2d of May, after the board meeting, I spoke to the members of the board informally and told them of the situation with Mr. Bragg, and received their full approval, and told them that I would now verbally contract with both Capdevielle and Phagan—

Mr. PECORA (interposing). When did you tell this to the board?

Mr. BROWN. I told this to the board informally after I had received their approval of—

Mr. PECORA (interposing). When, I asked you.

Mr. BROWN. On the 2d of May, after the board meeting.

Mr. PECORA. Didn't you say heretofore that you had not told the board of directors anything about your option agreement with Mr. Bragg?

Mr. BROWN. I assumed that you were speaking about the formal meeting of the board when I answered you in that way.

Mr. PECORA. Did I ask you if you had told them about it formally? Didn't I ask you, on the other hand, if you had ever told the directors about the execution of this option agreement with Bragg, and you said "No"?

Mr. BROWN. Well, no; I don't think I answered you "No" there. I think I told you at the time that I told the members informally of the option agreement with Bragg. I think I answered you that way just a moment ago.

Mr. PECORA. Just a moment ago you did, but when I asked you on yesterday, and again this morning, my recollection is that you said you had not told the directors anything about this option agreement that you, in behalf of yourself and your three associate officers and directors, had made with Bragg.

Mr. BROWN. I think the secretary's minutes here [pointing across the table to the committee reporter] will show that I told you I told the board members about it informally.

Mr. PECORA. Our recollections differ on that, and we will let the record speak for itself.

Mr. BROWN. All right.

Mr. PECORA. The next meeting of the board of the American Commercial Alcohol Corporation appears to have been held, according to this minute book of the company, on May 31, 1933. And still according to the minute book there were present at that meeting: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kessler, Kies, Page, Bond, Publicker, and Runk. Also Mr. Eggenton, counsel for the corporation. You presided and Mr. Page acted as secretary. The minutes then go on to recite, as follows:

The chairman then presented to the meeting the form of agreement made May 6, 1933, between Mr. K. B. Phagan and this corporation, providing, among other things, for the sale to this corporation of 10,000 shares of the capital stock of Maister Laboratories, Inc., in exchange for 10,000 shares of the common stock of this corporation, and requested that said contract, as made and executed on May 6, 1933, be ratified and approved, and that agreement confirmatory of that contract be authorized.

Said agreement was ordered marked "Exhibit A" and attached to the minutes of the meeting.

And then it appeared that a resolution was adopted by the board by the unanimous vote of all present, authorizing the corporation to enter into that proposed agreement with Mr. Phagan. The resolutions are rather lengthy and I won't take the time to read them. It then appears, according to the minutes, as follows:

The chairman then presented to the meeting the matter of providing additional cash for the corporate purposes by issuing and selling additional shares of common stock of the corporation, of the par value of \$20 per share, and offering to the common-stock holders the right to subscribe for such additional shares, and presented to the meeting the forms of full share and fractional share warrants representing the rights of the common-stock holders to subscribe as aforesaid, and also the form of scrip certificate for fractional interests in the common stock of the corporation.

Copies of said subscription warrants and certificates for fractional interests are attached to these minutes.

After full discussion, and on motion, duly seconded, the following resolutions were then adopted by the affirmative vote of all of the directors present at the meeting aforesaid:

Resolved, that in order to provide additional cash for the proper corporate purposes of this company, this company issue and sell 40,949 shares of its common stock of the par value of \$20 a share, at a price of \$20 a share.

Further resolved, that this company offer to common-stock holders of record at the close of business June 14, 1933, the right to subscribe prorata for such additional shares, at the price of \$20 per share, at the rate of 1 share of such additional stock for each 5 shares held on such date.

And then follows other formal matter embodied in the resolutions, intended to carry out the plan of issuing those 40,949 shares and of offering them to the existing stockholders at \$20 per share, with the right to stockholders to subscribe for 1 share of the additional stock for each 5 shares they then held.

Mr. BROWN. That is correct.

Mr. PECORA. And that resolution was unanimously adopted?

Mr. BROWN. That is correct.

Mr. PECORA. Now, Mr. Brown, in view of the fact that the resolution to acquire from Mr. Phagan 10,000 shares of the capital stock of Maister Laboratories, Inc., which he had acquired by giving his promissory note therefor to Maister Laboratories, Inc., in return for 10,000 shares of the capital stock of the American Commercial Alcohol Corporation, and in view of the fact that that was not authorized until this very meeting of May 31, why wasn't provision made to offer those 10,000 shares also to your stockholders of record?

Mr. BROWN. Because, as I indicated to you before, first, that the informal approval of the members of the board was given, and after that was given I had made the commitment to Phagan and Capdevielle, and also made the commitment, which was purely a part of the plan, for 25,000 shares to Bragg; and because neither Mr. Grimm, nor Mr. Publicker, nor Mr. Kies, nor I wanted to lose any of that stock, nor expected to be put in the position where we would have to deliver that stock at the time—all these things, as I indicated to you, meant that there were certain legal mechanics, apparently, that are to be complied with, and after the informal discussion with the members of the board, and knowing the attitude of the board, and receiving their assurances of approval, I went ahead and made these arrangements, all of which were a part of the plan.

Mr. PECORA. But, Mr. Brown, are you overlooking the fact that this commitment that you are speaking of was not a commitment by the corporation, but your individual commitment?

Mr. BROWN. That is correct.

Mr. PECORA. And the corporation was in no way bound to deprive its stockholders of the right to subscribe for these 25,000 additional shares at \$20 a share merely because you individually had made an individual commitment to somebody else, was it?

Mr. BROWN. I made the individual commitment with the full approval of the board, as I told you in this discussion.

Mr. PECORA. Well, now, you cannot find a single thing in any minutes of a meeting of your board that proves that as a fact, can you?

Mr. BROWN. No; that is correct, except the testimony of the board members.

Mr. PECORA. Now, I want to suspend the examination of the witness for the purpose of examining Mr. Altschul.

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

The CHAIRMAN. Mr. Altschul, will you come forward and be sworn? You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matters now under investigation by this committee, so help you God?

Mr. ALTSCHUL. I do.

The CHAIRMAN. State your name and place of residence and occupation.

Mr. ALTSCHUL. Frank Altschul, 550 Park Avenue, New York City; banker.

The CHAIRMAN. What banking institution are you connected with, Mr. Altschul?

Mr. ALTSCHUL. Lazard Freres.

The CHAIRMAN. You are a member of the New York Stock Exchange?

Mr. ALTSCHUL. Yes, sir.

The CHAIRMAN. How long have you been a member?

Mr. ALTSCHUL. I think since about 1924, sir.

The CHAIRMAN. Are you connected with any of its committees?

Mr. ALTSCHUL. Yes, sir; I am a member of the governing committee; chairman of the committee on stock list. As chairman of the committee on stock list I am a member of the conference committee; also a member of the committee on wages.

Mr. PECORA. Mr. Altschul, how long have you been a member of the New York Stock Exchange?

Mr. ALTSCHUL. Since 1924 or 1925.

Mr. PECORA. And how long have you been a member of the board of governors of that exchange?

Mr. ALTSCHUL. Since October 21, 1925.

Mr. PECORA. And how long have you been a member of the stock list committee of that exchange?

Mr. ALTSCHUL. Since November 2, 1925.

Mr. PECORA. And are you chairman of the latter committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And have been since 1925?

Mr. ALTSCHUL. Since May 14, 1930.

Mr. PECORA. Have you been in attendance before this committee at the session which commenced this morning?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Have you heard substantially all of the testimony given by the preceding witness, Mr. Russell R. Brown?

Mr. ALTSCHUL. I think I have heard a large part of it, sir.

Mr. PECORA. Have you heard enough of it to indicate to you in your opinion that you became familiar through the medium of this testimony with the general plan and purpose under which and for which the American Commercial Alcohol Corporation made an additional issue of 25,000 shares of its capital common stock in May or June of 1933?

Mr. ALTSCHUL. I learned that from what I heard of the testimony before this committee.

Mr. PECORA. I show you Committee's Exhibit No. 11 of this date in evidence here and which is a printed copy of the application made to the New York Stock Exchange by and on behalf of the American Commercial Alcohol Corporation for leave to list 51,298 additional shares of its capital common stock. Will you look at it and tell me if you recognize that application as a copy of the one filed with the Stock List Committee of the New York Stock Exchange?

Mr. ALTSCHUL (after examining paper). I do, sir.

Mr. PECORA. Do you recall the proceedings that were had and the action that was taken by the Stock List Committee of the New York Stock Exchange upon that application?

Mr. ALTSCHUL. My recollection is that this application—that in the first instance the Committee on Stock List received from the executive secretary of the committee a report covering this application; that then later in the usual manner they received the application on a Friday afternoon, having an opportunity to go over it before the committee on Monday morning.

The usual procedure was followed in this case: The members went over the application. They saw the different things that were set forth in the application and were prepared to act on it at the meeting on Monday.

In the case of an application of this sort, which is for an additional listing of stock, the questions that are asked by the committee of the executive secretary, who has all of the documents in charge, are to determine whether all of the papers have been placed on file, whether the opinion of counsel is in order, whether the documents that have been filed with us substantiate the printed material that is in the listing application.

Having found nothing in the application that disturbed us in any way, the application was thereupon acted on.

Mr. PECORA. You have through the medium of the testimony given by Mr. Brown today and that you have heard, learned, or acquired knowledge of many facts which you did not heretofore possess with regard to this application, have you not?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Now, if that information and that knowledge of those facts that you gained through hearing Mr. Brown's testimony here today had been before your committee, had been in the possession of your committee or had been acquired by your committee prior to its acting upon the application, do you think your committee would have granted the application?

Mr. ALTSCHUL. If the information, as we understand the information that has been developed here today, sir, had been before us, it would have appeared that this stock was being issued for the purpose of supplying the company with working capital, not for the purpose of acquiring properties. Under those circumstances the question of the preemptive right of stockholders would have been immediately before us, and the application would have probably been turned down on that ground, if upon no other.

Mr. PECORA. Now I show you committee's exhibit no. 12 in evidence here, which purports to be a photostat copy of another application made to the New York Stock Exchange for an additional listing of 15,000 shares of the common stock of the American Commercial Alcohol Corporation, which is dated June 27, 1923. Will you look at it and tell me if you recall the filing of that application or one similar in form to it with your committee in June 1933?

Mr. ALTSCHUL. I could not say that I recall that specifically, sir; but I am sure that this application is an application that was filed in the usual way and was acted upon in the manner that I have indicated to you about the last.

Mr. PECORA. And that application also was granted, was it not, by your committee and subsequently by the exchange, acting upon the report of your committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. If you had heard or if you had known that facts that you have learned today with regard to the issuance of the 15,000 shares referred to in that application that has last been shown to you, do you think your committee would have favorably acted upon the application?

Mr. ALTSCHUL. We would have raised the same question, sir, and taken the same action.

Mr. PECORA. What was the procedure followed by the stock listing committee of the New York Stock Exchange with regard applications to list additional shares of capital stock of a corporation whose shares had previously been listed?

Mr. ALTSCHUL. The usual procedure in a case of this sort—and that was the procedure followed in these two instances—was to study the application, to read the purposes of the issue as set forth there, to satisfy ourselves as far as we can that that represents a legitimate corporate purpose, to consider the legal opinion which supports the application, and then in case there is nothing that has come to our attention that puts us on notice of anything that we should inquire further into to grant the application.

Mr. PECORA. Was any independent investigation made by or in behalf of the stock list committee in order to determine whether or not the representations and the matters set forth in those two applications were in accordance with the actual facts?

Mr. ALTSCHUL. The opinion of counsel, which I think you have in the records we left with you, was considered, and it was found to be as far as we could see an unqualified approval by competent and reliable counsel who were familiar with the facts. In cases of that sort it has not been the practice of the stock exchange in the past to go beyond the action of the board of directors assuming responsibility toward their stockholders for acquisitions made in this manner and supported by the opinion of qualified and responsible counsel.

Mr. PECORA. The counsel that you referred to in the answer that you have just made was not counsel for the stock exchange, but counsel for the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. Quite right, sir.

Mr. PECORA. Was it the procedure or practice or custom for the stock list committee in the past, or has it been in the past its custom, practice, and procedure, to make no independent investigation of the matters set forth in applications for listing additional shares of stock?

Mr. ALTSCHUL. Beyond the investigations I have just described to you in connection with the additional listings of stock, it has not been the practice of the stock exchange to go further.

If you want me to amplify it: When we have before us for consideration an initial listing of stock where the question that is before us is primarily the question of whether that is a stock that should be made available for a public market place at all, the examination is very thoroughgoing and exhaustive. When it comes to an additional listing of stock where a concern has passed the first test and is on the list, simply applies for stock on the basis of a determination of the board of directors to issue the stock for certain corporate purposes, it has not been the practice of the stock exchange to go on the theory that they should examine into what the business judgment was or what other reasons led the board of directors to take the steps they took, and this application as it was submitted to us, there was nothing on the face of it that struck us as suggesting that we ought to go further.

Mr. PECORA. The fact of the matter is then that the stock-list committee virtually took for granted that the statements and representations made in the applications in question here, exhibits nos. 11 and 12, were truthful and accurate statements of fact?

Mr. ALTSCHUL. In view of the fact that they were backed up by opinion of reputable counsel confirming the authority of the board to proceed in this matter, that is quite right.

Mr. PECORA. Do you think that affords proper measure of protection to the public that might deal in those shares once they are listed, those additional shares?

Mr. ALTSCHUL. I would like to answer that question this way, if I may, Mr. Pecora: In this particular case, from the evidence that we have heard here today I think that I would be only fair to the stock-list committee to say that we had been misled as to the purposes of this thing. I further believe—

Mr. PECORA (interposing). Don't you think that an independent inquiry into the matters set forth in those two applications might have prevented your committee from having been misled; that is, an independent inquiry might have brought to light for the guidance of the committee the facts that you have heard testified to here today by Mr. Brown?

Mr. ALTSCHUL. I would have to be prepared to admit that it might have brought them to light in this particular case; yes, sir.

Mr. PECORA. By the procedure that it is customary to follow the stock-list committee virtually precluded itself from making the kind of inquiry that would have developed the true facts, the actual facts; isn't that so?

Mr. ALTSCHUL. I prefer to deal with that rather more generally. The alternative would be to inquire into the business judgment, the business wisdom, the honesty, and propriety of every additional listing that is submitted to us with the approval of the board of directors. Now, we have never conceived that that was an obligation that we could either properly discharge or that would be proper for us to try to discharge, and the number of cases of this sort in the course of a long experience that have come to our attention are exceedingly few. We assume that the board of directors, by and large, are acting in the interest of the stockholders. If they bring us a statement covering an additional listing of some stock issue for a corporate purpose, in general our experience has been that the purpose set forth in the application is the purpose that actually guided the board in making the decision. I can see that in this case we have been misled.

Mr. PECORA. 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. 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.

Mr. PECORA. There is a reference in those applications to an exchange of stock to be issued for the stock of other companies that, according to the face of the applications themselves, were companies very recently organized.

Mr. ALTSCHUL. They were companies very recently organized. In one case it was a company that was supposed to have taken over the business, I think, of a company that was previously organized. Isn't that the fact? And the other one it is quite true it was just recently

organized? In the case of the one that was just recently organized the value of the stock in the opinion of the directors was set forth in the application.

Mr. PECORA. As how much, as being how much?

Mr. ALTSCHUL. \$300,000.

Mr. PECORA. Which company was that?

Mr. ALTSCHUL. That is the Maister Laboratories.

Mr. PECORA. Yes. That company, according to the application itself, had been only very recently organized?

Mr. ALTSCHUL. Yes.

Mr. PECORA. Well, was it conceivable that it would have at the very outset assets worth at least \$300,000?

Mr. ALTSCHUL. In our experience that happens every day. A business that may have been conducted in private form and something new has been turned up, it is put into corporate form, and at the time of the corporation it already has a substantial value.

Mr. PECORA. Isn't that a circumstance that in and of itself, in your opinion now, should have put the stock list committee on notice and caused it or prompted it to make an independent inquiry or investigation of the matters set forth in the application?

Mr. ALTSCHUL. You mean the mere fact that these companies that they acquired had been recently organized?

Mr. PECORA. Yes.

Mr. ALTSCHUL. I would say that in the light of what we have heard today something could be said from that viewpoint, but as the thing was before us at the time, the mere fact of its recent organization was not a fact of such a nature that would put us on notice about anything at all.

Mr. PECORA. Well now, you know a Mr. L. Hasselbach, do you not?

Mr. ALTSCHUL. Yes, sir. He is in our office, office of the committee on stock list.

Mr. PECORA. What is he, an auditor?

Mr. ALTSCHUL. He is an examiner.

Mr. PECORA. And his services are utilized to make investigations or examinations of these applications for listings?

Mr. ALTSCHUL. That is right.

Mr. PECORA. And he makes a report or recommendation to the committee for its possible guidance?

Mr. ALTSCHUL. He makes his report to the executive assistant, who afterward makes his own report to us.

Mr. PECORA. The executive assistant is Mr. George Tirrell, isn't it?

Mr. ALTSCHUL. No; Mr. Hoxsey. Mr. Tirrell is one of the expert examining officers.

Mr. PECORA. I have here what purports to be a copy of a memorandum dated June 7, 1933, addressed to Mr. George Tirrell and signed by L. Hasselbach. This copy was furnished to us by the stock exchange at our request. Will you look at it and tell me if you recognize it as a copy of a report or memorandum made to Mr. Tirrell by Mr. Hasselbach for the use and guidance of the committee on stock list in connection with the application to list the fifty-one-thousand-odd shares of the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. I do not recognize it. I have never seen it, but I do not question it. It is a document that has every appearance of

being the sort of communication that Mr. Hasselbach would have addressed to Mr. Tirrell.

Mr. PECORA. I want to offer that in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated June 7, 1933, from L. Hasselbach to George Tirrell, was thereupon designated "Committee Exhibit No. 15, February 15, 1934", and appears in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The exhibit marked "Committee Exhibit No. 15" of this date reads as follows [reading]:

JUNE 7, 1933

Memorandum to Mr. George Tirrell:

American Commercial Alcohol Corporation Additional Common Stock

Application is presented by Mr. Page, Secretary of the company, 405 Lexington Avenue, Vanderbilt 3-7390.

Application is made to list 10,000 additional shares of common stock in exchange for 10,000 shares of common stock of Maister Laboratories, Inc., and 41,293 additional shares pursuant to an offer to stockholders to subscribe.

Maister Laboratories, Inc., was recently organized to acquire certain processes for the manufacture of vitamin yeast and other products from Dr. Hanns Maister. American Commercial will acquire all of the issued outstanding shares of the Maister Laboratories. It is stated in the application that the directors of American Commercial Alcohol valued the stock of Maister at more than \$300,000.

The company has also offered the common stockholders of the company the right to subscribe to additional shares of common stock at \$20 per share (par value) on a basis of one additional share for each five shares held. 10,000 shares to be issued for the Maister Company will also have the right to subscribe.

There doesn't appear to be any relationship between the manufacture of commercial alcohol and the manufacture of vitamin yeast and other products. Apparently for that reason a new corporation is created to handle this line of business. The proceeds from the sale of the additional shares of common stock will be used for paying off bank loans and providing funds for working capital.

(Signed) L HASSELBACH

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Do you recall whether this memorandum was brought to the notice of yourself and the other members of the stock-list committee?

Mr. ALTSCHUL. Why, probably it was not. It would be a memorandum which would be one of the documents on the basis of which Mr. Tirrell, who apparently was acting for Mr. Hasselbach in this matter, would make his report to our committee.

Mr. PECORA. Was that in conformity with the general practice and procedure of the stock-list committee in making these applications for additional listings?

Mr. ALTSCHUL. In accordance with the general practice and procedure, the juniors who will do the studying will file with one of the executive assistants, and he may exchange memoranda with the executive assistants covering this point, and after the executive would digest all this material he would make a report to us, which would come to us at the time the application was passed on.

Mr. PECORA. Have you the report that was formally made to the committee?

Mr. ALTSCHUL. I think that was in the papers that we gave you this morning. I have not seen it. I do not have it.

Mr. PECORA. I show you what purports to be a memoranda with respect to the additional listing of 51,293 shares of common stock

of the American Commercial Alcohol Corporation. Will you look at it and tell me if that is the report that was formally made by the examiners of the stock-list committee to the committee and upon which the committee acted on an application for such listing?

Mr. ALTSCHUL. This is the report that was made, sir, and upon this report in connection with the listing application itself the committee acted.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated June 12, 1933, with regard to additional listing of 51,293 shares American Commercial Alcohol Corporation stock was thereupon designated "Committee Exhibit No. 16, Feb. 15, 1934", and appears in the record immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum in question has been marked in evidence as "Committee's Exhibit No. 16", and reads as follows [reading]:

MEETING OF JUNE 12, 1933—COMMENT BY MR. TIRRELL

American Commercial Alcohol Corporation common stock \$20 par value (additional listing) 51,293 shares.

The stock covered in this application is to be issued as follows:

10,000 shares of common stock in exchange for 10,000 shares, the entire outstanding common stock, of Maister Laboratories, Inc, and

41,293 shares for subscription by stockholders at \$20 per share in the ratio of one share for each five shares held as of June 14, 1933. The 10,000 shares to be issued in exchange for Maister stock is included in the subscription offer. The proceeds of the sale will be used for the purpose of paying off bank loans and providing working capital.

The Maister Laboratories, Inc, was recently organized to acquire certain patented processes for the manufacture of vitamin yeast and other similar products from Dr. Hanns Maister. It is stated that American Commercial Alcohol Corporation values the stock of the Maister Company at more than \$300,000.

Although the production relationship between vitamin yeast and commercial alcohol is not entirely clear to me, it is stated that the company expects to derive a large profit from the sale of the dietary yeast which will be produced under the Maister processes

The common stock of the applicant company is quoted 32 to 32½.

There is no objection to the listing requested.

And it was upon the data just presented in evidence, plus the application itself, that your committee granted the application in this case?

Mr. ALTSCHUL. That is correct.

Mr. PECORA. Now, with regard to the application to list 15,000 additional shares dated June 27, 1933, which is before you, your committee followed the same procedure as it followed on the application of June 2, 1933?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Do you know what data the committee had before it other than the information set forth in the application itself that prompted the committee to grant the application?

Mr. ALTSCHUL. Whatever data the committee had before it beyond what is in the application itself, sir, is filed with you now. It is in the general data covering this particular transaction, and it includes among other things the legal opinion of counsel.

Mr. PECORA. Mr. Altschul, I show you what purports to be a photostatic reproduction of a memorandum relating to the application for the additional listing of the 15,000 shares of the American Commercial Alcohol Corporation common stock. Will you look at it and tell me if you recognize it to be a true and correct copy of a memorandum or report made by the examiners of the stock list committee to the stock list committee?

Mr. ALTSCHUL. I do recognize it, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated July 10, 1933, in regard to 15,000 shares American Commercial Alcohol Corporation common stock, was thereupon designated "Committee Exhibit No. 17, Feb. 15, 1934", and appears in the record immediately following where read by Mr. Pecora.)

Mr. PECORA. The document which has just been received in evidence is marked "Committee Exhibit No. 17" of this date, and reads as follows [reading]:

COMMITTEE EXHIBIT NO 17

Meeting of July 10, 1933—Comment by Mr Tirrell

AMERICAN COMMERCIAL ALCOHOL CORPORATION

Common Stock, \$20 Par (Voting Additional Listing)-----15,000 shares

The stock covered in this application will be issued in exchange for 2,700 shares of 6% Cumulative Preferred Stock, \$100 Par, and 3,900 shares of the Common Stock, no Par, of Noxon, Inc, a Maryland Corporation. The total authorized capitalization of Noxon, Inc is 3,000 shares of Preferred, and 6,000 shares of Common. The acquisition represents a controlling interest in the Noxon Company

Noxon, Inc, is the owner of valuable formulae and processes for the manufacture of cleaner polish, floor waxes, household insecticides, etc, which are the property of one Ralph Nottebaum, Sr, of Short Hills, New Jersey. He is practically the sole owner of the Noxon Company

Because of the private nature of the business, no formal financial statements are available, but the assets to be acquired are regarded by the Directors of the applicant Company as of a value considerably greater than that of the stock which is to be issued.

The applicant Company made application early in June for the listing of additional shares. The financial statements provided with the current application are the same as those submitted in the earlier one.

There is no objection to the listing requested.

Do you know whether there were any other data or facts submitted to your committee than this memorandum that has just been read in evidence, and the listing application plus any opinion of counsel, that prompted your committee to grant the application?

Mr. ALTSCHUL. I am perfectly satisfied that there was nothing more than that submitted, sir.

Mr. PECORA. I assume that this memorandum marked "Committee Exhibit No. 17" was prepared by Mr. Tirrell?

Mr. ALTSCHUL. I do not know, sir.

Mr. PECORA. I judge so, from the fact that it bears the parenthetical statement reading "Comment by Mr. Tirrell."

Mr. ALTSCHUL. Yes.

Mr. PECORA. Mr. Tirrell says that Noxon, Inc., is the owner of valuable formulas and processes for the manufacture of cleaner polishes, floor wax, household insecticides, and so forth, which are the property of one Ralph Nottebaum, of Shorthills, N.J. Do you know how Mr. Tirrell reached the conclusion that these formulas and processes were valuable?

Mr. ALTSCHUL. He based that statement undoubtedly on information furnished in the listing application and such discussions as he may have had with the company in preparation of it.

Mr. PECORA. You notice that in his memorandum report to your committee Mr. Tirrell says also that because of the nature of the business no formal financial statements are available, but that the assets to be acquired are regarded by the directors of the applicant company as of a value considerably greater than that of the stock which is to be issued. In view of that comment or statement of Mr. Tirrell, don't you think the stock-listing committee was put on notice to make some independent inquiry as to the value of those assets of the Noxon company?

Mr. ALTSCHUL. In a case of this sort, where the issue is relatively small in relation to the total, while he would like to have had financial statements for the reasons advanced, as in this case here, if no financial statement should be furnished we would not have considered it essential. From what we have heard today we would be prepared to draw the conclusion that we ought to make in every case an effort to obtain financial statements of the vendor companies.

Mr. PECORA. But now, despite the fact that Mr. Tirrell said in this memorandum or report to your committee, that no formal financial statements are available, it would seem that there were financial statements available; and in connection therewith let me call your attention to the following memorandum for Mr. Tirrell dated July 5, 1933, signed by Mr. L. Hasselbach and attached to which is a so-called "pro forma" balance sheet of Noxon, Inc., as of June 27, 1933. Do you recognize that memorandum of Hasselbach to Tirrell with the accompanying pro forma balance sheet, as having been brought to the notice of your committee?

Mr. ALTSCHUL. I do not recognize it. I do not question it, but I am sure it was never brought to the attention of the stock-listing committee.

Mr. PECORA. We were furnished that copy of a memorandum, with the accompanying pro forma balance sheet, by the stock exchange.

Mr. ALTSCHUL. Quite right. I am sure it is a part of the records.

Mr. PECORA. I offer it in evidence as one exhibit.

The CHAIRMAN. Let it be admitted.

(A 2-page document dated July 5, 1933, and headed "Memorandum for Mr. Tirrell in re American Commercial Alcohol Corporation", etc., was received in evidence, marked "Committee Exhibit No. 18, Feb. 15, 1934.")

Mr. PECORA. The document which has just been received in evidence as committee's exhibit no. 18, reads as follows [reading]:

COMMITTEE EXHIBIT NO. 18

JULY 5, 1933.

Memorandum for Mr Tirrell.

In re American Commercial Alcohol Corporation Additional Common Stock. Application presented by Mr. Cecil Page, Secretary; 405 Lexington Avenue; telephone Vanderbilt 3-7390

Application is made to list 15,000 additional shares of common stock in exchange for 2,700 shares of 6 percent preferred stock and 3,900 shares of common stock of Noxon, Inc

Noxon, Inc. is a recently organized corporation which acquired formulae, processes, etc., for the manufacture of cleaner polish, floor waxes, and a household insecticide, machinery and equipment, etc.

American Commercial has acquired all the outstanding preferred stock and 3,900 shares out of 6,000 shares of the outstanding common stock of Noxon.

Noxon products have been manufactured and sold for a number of years by a predecessor corporation.

American Commercial made an application two or three weeks ago for the listing of additional shares. The financial statements in this application are identical with those published in the last application. I have requested the company to furnish a pro forma balance sheet or a balance sheet of the Noxon Company. Attached is a letter from the treasurer of the company giving reasons why financial statements of the predecessor corporation are not available.

L. HASSELBACH.

Mr. PECORA. And the pro forma balance sheet of Noxon, Inc., as of June 27, 1933, shows the following:

Notes receivable	-----	\$270,000
Inventory	-----	25,000
Machinery and equipment	-----	25,000
Good will, licenses or processes	-----	380,000
	-----	<hr/>
Total assets	-----	\$700,000
	-----	<hr/>
Liabilities:		
Purchase contract payable	-----	\$80,000
Preferred stock, \$100 par, authorized, 300,000 shares, less un- issued outstanding 30,000 shares	-----	\$270,000
Common stock, no par, 6,000 shares	-----	\$350,000
Total liabilities	-----	\$700,000

It says "Certified correct this 27th day of June 1933."

You say that this pro forma balance sheet was never brought to the notice of the stock list committee?

Mr. ALTSCHUL. Surely not, sir.

Mr. PECORA. Can you give any reason why that was not done?

Mr. ALTSCHUL. There are only two reasons. One is that a mistake was made in the office, and the other reason is that the balance sheet only came to our hands long after the action had been taken. I do not know the date of Mr. Hasselbach's first memorandum.

Mr. PECORA. July 5, 1933.

Mr. ALTSCHUL. The first one in which it was stated that no balance sheet was available, the one which you read a photostatic copy of.

Mr. PECORA. That had reference to the Maister Laboratories situation.

Mr. ALTSCHUL. I do not mean that; I mean the first comment you read of Mr. Hasselbach in regard to—

Mr. PECORA. It is here. It says [reading]:

I have requested the company to furnish a pro forma balance sheet or a balance sheet of the Noxon Company. Attached is letter from the treasurer of the company giving reasons why financial statement of the corporation are not available

Mr. ALTSCHUL. But there was an earlier comment that you read. I am trying to find out where the slip up occurred—the comment of Mr. Hasselbach in which he came to the conclusion that there was no objection to the listing. I do not remember which one that was.

Mr. PECORA. That had reference to the Maister Laboratories.

Mr. ALTSCHUL. Did you not read a comment in regard to Noxon from Hasselbach, an earlier one?

Mr. PECORA. No.

Mr. ALTSCHUL. I thought there was one.

Mr. PECORA. The memorandum identified as exhibit no. 18 is a memorandum addressed to Tirrell by Hasselbach. It is dated July 5, 1933. The report by Mr. Tirrell to the committee on this application for the listing of the 15,000 additional shares is dated July 10, 1933, 5 days after the date of Hasselbach's memorandum to Tirrell.

Mr. ALTSCHUL. As I say, the only explanation that can possibly be made is that either these reports that you have before you came into our office at some subsequent date—we will try to trace that—or if it was in there at the time, the memorandum to our executive assistant was not complete, and the material that would have affected our judgment was not in our hands.

Mr. PECORA. Let us assume that this pro forma balance sheet did not come to the attention of any of the employees or attaches of the stock-listing committee at the time that the committee acted on the application, which was apparently on July 10, 1933. When it was received, do you know why it then was not brought to the notice of the stock-listing committee?

Mr. ALTSCHUL. It should have been; there is no question about that.

Mr. PECORA. Do you know why it was not?

Mr. ALTSCHUL. I do not.

Mr. PECORA. This is the first time you have ever seen it?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Looking at it now, would it excite your suspicion if you had seen it before you acted?

Mr. ALTSCHUL. Without the slightest question.

Mr. PECORA. What are the circumstances that would have aroused your suspicion as you now look at this pro forma balance sheet?

Mr. ALTSCHUL. In view of the facts set forth in the application, the bobbing up in this balance sheet of \$270,000 of notes receivable would have been the first thing that would have struck us. The second thing would be the item of purchase contracts payable, \$80,000; and the balance sheet as a whole would have put us on notice that before there were a number of things that we would like to inquire into.

Mr. PECORA. Would you not particularly have liked to inquire into the valuation of \$380,000 under the item of goodwill, licenses, and processes?

Mr. ALTSCHUL. There is no question about that.

Mr. PECORA. You will note that in the memorandum of Hasselbach to Mr. Tirrell, dated July 5, 1933, and marked "Committee Exhibit No. 18" in evidence, the statement is made as follows:

Attached is a letter from the treasurer of the company giving reasons why financial statements of the predecessor corporation are not available.

And the letter apparently which was attached to this memorandum is the letter which I now show you [handing a paper to the witness]. A copy of that letter was introduced in evidence here this morning. Do you know whether or not you ever saw that letter before?

Mr. ALTSCHUL. I know I did not. I have not had a chance to read it. Are you going to read it to the committee?

Mr. PECORA. I will read it for your benefit. It is already in evidence. It was put in this morning when you were not here.

I will read it, but you need not put it in the record, Mr. Reporter.

(Mr. Pecora then read committee exhibit no. 13)

Mr. PECORA (after reading exhibit no. 13). That you never saw before or never heard of before?

Mr. ALTSCHUL. No, sir; but I would assume, sir, that from the facts we got the impression from the background that it was just a normal business transaction, and therefore it was not drawn to our attention. When this thing [indicating] came in I do not know.

Mr. PECORA. By "this thing" you mean the pro forma balance sheet?

Mr. ALTSCHUL. Yes. It was enough to put anybody on notice.

Mr. PECORA. The letter which has just been read was marked in evidence this morning as committee exhibit no. 13.

Now, I want to show you another letter that was addressed, under date of July 1, 1933, to Mr. Louis Hasselbach, of the committee on stock list, New York Stock Exchange, signed by Cecil Page, secretary of the American Commercial Alcohol Corporation, which has been furnished to us as an original letter received by the New York Stock Exchange. Did you ever see that before?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Do you know whether or not that was ever brought to the notice of your committee in passing on this application of the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. I offer the letter in evidence.

The CHAIRMAN. Let it be admitted.

(Letter dated July 1, 1933, from Cecil Page, secretary American Commercial Alcohol Corporation, to Mr. Louis Hasselbach, was received in evidence, marked "Committee Exhibit No. 19, February 15, 1934", and appears in the record where read by Mr. Pecora.)

Mr. PECORA. The letter is marked "Committee Exhibit 19" and reads as follows [reading]:

COMMITTEE EXHIBIT No 19

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
New York, July 1, 1933.

Mr. LOUIS HASSELBACH,

*The Committee on Stock List, New York Stock Exchange,
11 Wall Street, New York, N.Y.*

DEAR MR. HASSELBACH: Mr. Colby and I tried to get you on the phone this morning, but I understand you will be away until Monday.

We wanted to read to you, before mailing, the letter Mr. Colby was to write, and I wanted to give you my suggestion as to the revision of the text under Authority for and Purpose of Issue.

In order to save time I am enclosing Mr. Colby's letter as drafted, and also my suggestions for your consideration.

Will you kindly phone me at your convenience Monday morning and let me know if you desire any changes.

Thanking you for your uniform courtesy and cooperation that you have always shown us.

Sincerely yours,

(Signed) *CECIL PAGE, Secretary.*

Do the contents of this letter suggest anything to you, Mr. Altschul, with regard to the procedure followed by Hasselbach in behalf of the stock list committee?

Mr. ALTSCHUL. Quite frankly, it would suggest to me that he was following his normal procedure of trying to bring the text of the application into accord with the facts as he understood them; and I think I would like to add, sir, that as a matter of routine of the office this correspondence is only brought to our attention in exceptional cases where there seems to be something that requires special note.

Mr. PECORA. Do you recall an application made to the Stock Exchange to list shares, that is, an original application for original listing, of the shares of General Theatres?

Mr. ALTSCHUL. That takes me back a long time.

Mr. PECORA. Have you any present recollection of it?

Mr. ALTSCHUL. Yes; I have a recollection that there was such an application. I recollect that there was quite a lot of discussion in connection with it.

Mr. PECORA. Discussion where?

Mr. ALTSCHUL. In the committee. It was a troublesome application, as I remember it.

Mr. PECORA. Before the stock list committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. The application was granted eventually, was it not?

Mr. ALTSCHUL. As I remember, it was, sir.

Mr. PECORA. Are you familiar with the testimony that was given before this committee—I believe it was in November 1933—by Mr. Harley L. Clarke?

Mr. ALTSCHUL. I am familiar with some sections. It is rather a voluminous document, and I have only gone through it very casually.

Mr. PECORA. Are you familiar with that portion of his testimony in which he referred to that particular application for the listing of shares of that company?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Are you familiar with the portion of his testimony in which he admitted here, in words or in substance, that the asset value of the company was marked up from \$4,000,000 and a fraction to upwards of \$24,000,000?

Mr. ALTSCHUL. I remember there was something of that sort said, but I am not familiar with the details.

Mr. PECORA. Original applications for listing I assume are given the most thorough kind of investigation before the stock is listed?

Mr. ALTSCHUL. Yes.

Mr. PECORA. Do you recall what investigation was given to that particular application?

Mr. ALTSCHUL. I am very much handicapped, because I did not have a chance to look this thing up to see what was done; but I

am sure there was an appearance or several appearances, according to my recollection, of Mr. Harley Clarke, and, of course, the affairs of the company were discussed rather fully. But I did not realize that that was going to be one of the topics of the day, and I am not prepared.

Mr. PECORA. When did Mr. Clarke's testimony to that effect first come to your notice?

Mr. ALTSCHUL. The testimony before the committee?

Mr. PECORA. Yes.

Mr. ALTSCHUL. My recollection is that I saw a transcript of the minutes of the meeting of the Committee on Banking and Currency and had a chance to look through it rather hurriedly, some parts of it, before it was in print. Since it was in print I have had a chance to look through it again.

Mr. PECORA. Do you recall coming across that part of his testimony wherein he admitted that the assets had been marked up in value from around \$4,000,000 to \$24,000,000, at the time they filed their application for the original listing of their stock with the stock list committee of the New York Stock Exchange?

Mr. ALTSCHUL. I have a general recollection of it, but not very detailed or completely satisfactory in order to answer any questions about it.

Mr. PECORA. When that testimony of Clarke, which was given last November, came to your notice did it not arouse in you a desire to find out, as chairman of the stock list committee, how it was that your committee, after a thorough investigation of that application for an original listing, approved it, although there had been a mark up in asset value of from \$4,000,000 to over \$24,000,000?

Mr. ALTSCHUL. The general history of the Fox Film and General Theatres Equipment Co. development was such that the committee was misled—

Mr. PECORA. Even when you learned through the testimony given here by Mr. Clarke last November that your committee had been misled into the approval of the application for the listing of the stock of a company which in its application showed assets worth \$24,000,000 which in reality were worth only about \$4,000,000, did not that arouse in you an intense desire to find out how your committee had been misled in that fashion?

Mr. ALTSCHUL. Of course the committee is guided by its desire to determine the facts in all these cases. I cannot say that this particular revelation had impressed us with any new desire to look into that particular thing which was a matter of history; but a desire to make our investigation more satisfactory in the future than in the past. When the damage was done I am afraid we did not go into it.

Mr. PECORA. It was a great American patriot who said that we can only judge the future by the light of the experience of the past. When through the medium of Clarke's testimony you learned that your committee had been deceived in that case into the approval of an original application for the listing of shares of a corporation allegedly worth and having assets worth \$24,000,000, when in reality they were only \$4,000,000, did you not seek to find out how you had been misled, so that you could guard against such deceptions in the future?

Mr. ALTSCHUL. I can answer that I do not know of any positive steps taken purely as a result of that revelation. We were constantly in process of trying to protect against misleading statements. We have a few bad experiences in the course of a year which cause us a great deal of concern.

Mr. PECORA. In connection with the testimony that this committee received last November with regard to that application for original listing there was put in evidence here a memorandum prepared by Mr. Murray W. Dodge, who at that time was an officer of one of the security affiliates of the Chase National Bank; and that memorandum, or letter, appears at pages 3528 and 3529 of the printed minutes of the hearings before this committee.

Mr. ALTSCHUL. Yes; I remember that.

Mr. PECORA. Let me read that letter to you. Do you recall the letter?

Mr. ALTSCHUL. Yes; I remember that.

Mr. PECORA. Well, let me read it to you again. It is dated October 14, 1929, and reads as follows [reading]:

Mr HARLEY L CLARKE,

President Utilities Power & Light Corporation, Chicago, Ill.

DEAR HARLEY Enclosed is the latest list of members of the stock exchange committee on stock listing. Of course, I could be of assistance to you if Charlie Sargent were here. He is on the board of directors of Chase Securities Corporation, and has been very helpful to us in the past. Unfortunately, however, he is abroad. He sails the end of this week and will not be back until the end of next week. We may be able to do something with Ruxton of Spencer Trask & Co., but I do not like to ask favors of them until we get into a tough position. Frank Altschul of Lazard Freres is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful. Gibson, the chairman, is the most important one, but we do not know him very well. He is a hard nut to crack. I am always fearful in cases like this that we would do more harm than good pressing the matter too hard. I do feel that when the right time comes, whether it is a week from today, or 2 weeks from today, after Charlie Sargent is back, that if you appear before them and I go with you we may be able to push the matter over.

Enclosed find also memorandum given me by Tim Edwards. I think this is the one you are working on. If so, do you want me to call Mahoney off, or can we make use of him in some way? This conversation took place while I was out West.

Sincerely yours,

M. W. D.

Which are the initials of Murray W. Dodge.

The listing application, Mr. Altschul, to which this memorandum refers, was that very listing application by which your committee apparently was deceived as to the asset value of the company which sought to list its shares.

Mr. ALTSCHUL. Mr. Pecora, may I interject something here? I think my testimony would be unfair to the committee if I did not say that Mr. Haskell, who is here, informs me that Mr. Hoxsey, our executive assistant, has been making an exhaustive study of the situation with regard to the General Theaters Equipment to see what steps can be taken to guard against such things in the future.

Mr. PECORA. Apparently Murray Dodge and Harley Clarke appeared before your committee back in October 1929, and, to borrow the picturesque language of Mr. Dodge, pushed the matter over. Is that so?

Mr. ALTSCHUL. The listing application was granted.

Mr. PECORA. The listing application was granted, so the matter was pushed over.

Mr. ALTSCHUL. I prefer not to indorse Mr. Murray Dodge's language in that regard.

Mr. PECORA. Unfortunately, it is his language and it is in the record, and I am bound by it. Apparently, from this memorandum of Dodge, or letter of Dodge to Clarke, he had previously spoken to you about this application. Do you recall whether he had or not?

Mr. ALTSCHUL. I think it is quite possible he had.

Mr. PECORA. The reason I say that apparently he had is because in this letter he says [reading]:

Frank Altschul, of Lazard Freres, is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful.

Do you recall what he said to you that caused him to tell Harley Clarke in this letter that you probably would be friendly and helpful to the granting of the application?

Mr. ALTSCHUL. I have no recollection of it at all. I take it for granted that I was polite.

Mr. PECORA. What was it you said a moment or two ago that you had just been informed, that the exchange had been looking into the deception that was practiced on it in October 1929 by Harley Clarke?

Mr. ALTSCHUL. Mr. Haskell tells me that when this testimony was made up Mr. Hoxsey immediately undertook a study of the testimony and was going over it and comparing it with our records to see what lessons could be learned from the facts in the case. Mr. Hoxsey would be here today, but he happens to be on his way to Rio de Janeiro for a vacation, and will not be back for a few weeks.

Mr. PECORA. Mr. Clarke's testimony was given here last November, or about 3 months ago. Has not that investigation been completed?

Mr. ALTSCHUL. I do not know when the printed record of it was available. I do not know when Mr. Hoxsey was in a position to start his study.

Mr. PECORA. As I recall it, Mr. Altschul, one or more of the New York newspapers published this testimony practically verbatim the day after it was given here.

Mr. ALTSCHUL. What conclusions Mr. Hoxsey may have reached as a result of his study I am not in a position to inform you today.

Mr. PECORA. Is Mr. Hoxsey a member of the committee?

Mr. ALTSCHUL. Mr. Hoxsey is the executive assistant. He is the right hand of the committee.

Mr. PECORA. No report has been made by him to you as yet, as chairman of the committee, with regard to the investigation he undertook to make after becoming familiar with Harley Clarke's testimony?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Are you acquainted with the fact that early last August I personally asked Mr. Whitney, president of the New York Stock Exchange, to make an inquiry, through the facilities and authority of the exchange, into the trading that had taken place on the floor of the exchange on the so-called "alcohol stocks", including the American Commercial Alcohol Corporation issues?

Mr. ALTSCHUL. Yes, sir. I am familiar with that fact.

Mr. PECORA. In connection with that inquiry which the exchange made, didn't it occur to you, or to any other member of the stock-list committee, or to the board of governors of the exchange, to inquire also into the applications for the listing of these additional shares last year by the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. We had no information as to what the purpose of the investigation was. We assumed it was purely an investigation of the speculative developments in the market, which is a matter that comes up from time to time in various departments of the market. We did not connect that with this application. We did not know it had any bearing on it.

Mr. PECORA. The statement has been made in the past, I believe, either in behalf of the stock exchange or its stock-list committee, that the committee had also been deceived on the occasion of its granting the application for the listing of the Krueger and Toll stock on the exchange?

Mr. ALTSCHUL. There is no question about that.

Mr. PECORA. Do you know how that deception was practiced?

Mr. ALTSCHUL. Yes; I do know, but it is a very long story. I do not know whether it is necessary to take your time with it.

Mr. PECORA. Has the committee made a complete investigation into that situation?

Mr. ALTSCHUL. We have made a very complete investigation into the Krueger and Toll situation. The basis for the deception in that case was the outstanding personal reputation of Ivar Krueger, who was considered all over the modern industrial world as one of the outstanding constructive forces of the post-war world. Even after his death the London Economist had laudatory articles about the tragedy of Ivar Krueger, and how this great constructive force that had been going on, and doing such wonderful things, had disappeared from the picture. Nobody had the remotest conception of Ivar Krueger's real activities. It was just one of those things that occasionally happens in the world, unfortunately, but it occasionally does.

Mr. PECORA. In other words, it is another one of those instances where the exchange took for granted matters set forth in an application because of the identity of some great personality with the security.

Mr. ALTSCHUL. In the case of Ivar Krueger we had before us applications which, in the manner of applications for foreign companies, were unaudited in the case of Krueger and Toll. We have drawn from that the very obvious conclusion that unaudited statements should no longer be accepted by the committee, and rules to that effect have been incorporated in our procedure. Beyond that, we had the case of International Match Co., which was another one of the Krueger group where, curiously enough, statements were audited by reputable American accountants.

In that case we investigated, and we found that the trouble had come in that it was a holding-company audit that they submitted, and that they had never gone in themselves and audited the subsidiaries of the holding company. Obviously, in that case we also drew some important lessons for the future.

Mr. PECORA. But none of those lessons were of a character that caused your committee, in June and July of last year, when it had before it for its determination, judgment, and decision these applications for listings of additional shares of the American Commercial Alcohol Corporation, to inquire into the situation where not even a balance sheet of a corporation whose shares were to be acquired in exchange of some of the new shares which the American Commercial Alcohol Corporation sought to list was inquired into?

Mr. ALTSCHUL. I am not trying to go into the American Commercial Alcohol case at the moment. The cases were not analogous, and the lessons of the Krueger & Toll case would not be the lessons that would be applicable in this particular instance. However, in this particular instance I think there is a lesson to be drawn from it.

Mr. PECORA. What is that lesson, as you now see it?

Mr. ALTSCHUL. In connection with the additional application for the acquisition of ownership of the stock of another corporation, the balance sheet and the income account, if any, of the vendor corporation should be incorporated in the listing application. You have drawn to my attention this document [indicating]. If this had been in the listing application, the action on it would have been very different. The lesson is perfectly obvious.

Mr. PECORA. Mr. Altschul, that pro forma balance sheet you have referred to was received by the stock exchange sometime, and was never brought to the notice of the stock list committee. Do you know the reason for that?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Does not that indicate a laxity or weakness in your procedure somewhere along the line?

Mr. ALTSCHUL. As I said before, that is capable of two explanations, neither of which is satisfactory. The first explanation would be that this balance sheet reached us after the event, sometime after the event, in which case it should still have been drawn to the attention of the committee. The other explanation is that the balance sheet was actually in the hands of the staff at the time when a memorandum was prepared to the effect that no balance sheet was available, in which case a mistake was made. There is no question about that.

Mr. PECORA. While we are on this subject of the deceptions that have been practiced on the stock list committee in the past, let me read to you a very brief extract from a speech delivered by Mr. Richard Whitney, president of the New York Stock Exchange, before the Industrial Club of St. Louis and the Chamber of Commerce of St. Louis and over the Nation-wide network of the National Broadcasting Co. on September 27, 1932, a printed copy of which I have before me. Here is what he said [reading]:

I say, without fear of contradiction, that our listing requirements are the most searching in the world.

Mr. ALTSCHUL. I think that is correct, sir.

Mr. PECORA. Do you subscribe to that statement?

Mr. ALTSCHUL. Compared with the listing applications on the London Stock Exchange, the Paris Stock Exchange, or the Berlin Stock Exchange, which are the only three that come into play, there

is no question that our listing requirements are the most searching in the world.

Mr. PECORA. Did they apply these searching methods in connection with the application to list the Krueger & Toll securities?

Mr. ALTSCHUL. Are you talking about the conditions abroad?

Mr. PECORA. No; on the New York Stock Exchange.

Mr. ALTSCHUL. They probably applied the methods they always applied. I tell you in that case we were deceived. I have here, in case it is of interest to you, a rather lengthy document, which I do not think would be of very much interest, showing you the general tightening up in our procedure from 1926 to 1933. It is constantly in process of development, on the basis of experience. I do not know of any experience in any field that is going to forewarn you against every new kind of deceit. With the enormous number of applications acted upon when they are put on the floor, the cases of deceit are rather few, and we try to improve our procedure every time something new comes to our attention, but the trouble about those things is that there is always somebody who is smart enough to try something new, and if he tries something new that has never been tried before, even with the most rigid requirements in the world, he may find some way of fooling you. Whenever that happens, we try to profit by it. I think Mr. Whitney's statement that our requirements go far beyond those of any other market place in the world is unquestionably so.

Mr. PECORA. Last November your committee learned, in an informal way through the medium of Harley Clarke's testimony here, the deception that had been practiced in October 1929 upon your committee.

Mr. ALTSCHUL. Yes.

Mr. PECORA. It has not yet found out how that deception was practiced?

Mr. ALTSCHUL. I am not familiar with the details.

Mr. PECORA. Although 3 months have elapsed since that time?

Mr. ALTSCHUL. I am not familiar with the details of Harley Clarke's practice, but I understand Mr. Hoxsey is familiar with it. Mr. Hoxsey is our expert on accounting matters, and whatever lessons he has learned from that he is undoubtedly applying in his day's work.

The CHAIRMAN. Are you familiar with the listing requirements on the London, Berlin, and Paris exchanges?

Mr. ALTSCHUL. Yes, sir. They are very casual in nature. In London, as far as I remember it, under the British companies act a certificate has to be filed at Somerset House covering the major particulars of the company in a very general and sketchy form. The listing requirements in Paris really do not exist. The Agents de Change get together and make up their minds that a security is going to be put on the list or is not going to be put on the list. That is about all there is to that. In Berlin, also, there is no printed document that gives the information. Furthermore, in all the continental centers the audited report is almost an unknown instrument. So that, while I am the last one to argue that we have reached the end in developing our methods, we have gone very much further than any other stock exchange has gone. I say that without the slightest hesitation.

Mr. PECORA. There was a third application filed by the American Commercial Alcohol Corporation, which I have not time to inquire about now.

Mr. ALTSCHUL. I can tell you this much about it. That was an application the listing of which was authorized on official notice of issuance. The procedure would be that when the stock was going to be issued for the purposes covered by the application, the transfer agent would inform us, and if we found that there were no impediments in the way of the issue, we would tell the registrar he could register the stock. After hearing the evidence that was brought before you today, as you can imagine, we were much disturbed about it, and we took steps to advise our office in New York that that permission should not be given, pending subsequent developments.

Mr. PECORA. I want to go into that tomorrow morning.

There is one more thing I want to call to your attention before we adjourn. Is it part of the custom and procedure of the stock-list committee, in passing upon applications for additional listings, to require an officer of the company making the application to fill out a questionnaire?

Mr. ALTSCHUL. It is.

Mr. PECORA. I show you what purports to be an original questionnaire filled out by the American Commercial Alcohol Corporation, by Guy I. Colby, as its treasurer, dated June 2, 1933. Will you look at it and tell us if that was the questionnaire that your committee received as part of the application?

Mr. ALTSCHUL (after examining paper). No doubt about it.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Questionnaire June 2, 1933, American Commercial Alcohol Corporation to listing committee, New York Stock Exchange, was received in evidence, marked "Committee's Exhibit No. 20", Feb. 15, 1934, and portions thereof were subsequently read into the record by Mr. Pecora.)

Mr. PECORA. There is just one question and answer on this questionnaire that I want to read to you. The questionnaire is marked "Committee's Exhibit No. 20." Question no. 2 reads as follows [reading]:

Are there within your knowledge any syndicate or concentrated holdings of this security

The answer is "No."

Today Mr. Russell R. Brown testified that there was a syndicate formed on May 31, 1933, and that there was a pool operation formed.

Mr. ALTSCHUL. Also that there were concentrated holdings.

Mr. PECORA. That there were concentrated holdings vested in about four officers and directors of the company, amounting to approximately 50 percent of the total outstanding capital common stock. So that it would appear that that answer was incorrect, if Mr. Brown's testimony was correct.

Mr. ALTSCHUL. There is no doubt about it.

The CHAIRMAN. We will now take a recess until 10:30 tomorrow morning.

(Whereupon, at 4:40 p.m., Thursday, Feb. 15, 1934, an adjournment was taken until tomorrow, Friday, February 16, 1934, at 10:30 a.m.)

COMMUNICATIONS IN RE S 2693

NEW YORK, N Y, February 10, 1934

HON DUNCAN U. FLETCHER,

Chairman Senate Committee on Banking and Currency

The courage and constructive statesmanship of the highest order manifested by you and your colleagues and counsel in inaugurating this epochal reform merits the profound gratitude and enthusiastic acclaim of every right-thinking citizen. I wish to express my sincere tribute

ARTHUR M WICKWIRE

HON DUNCAN U FLETCHER,

*Chairman Committee on Banking and Currency, United States Senate,
Washington, D C*

DEAR SENATOR FLETCHER: Congratulations to you and your conferees for the good job done in the proposed "National Securities Act of 1934" introduced by you in the Senate last Friday

While the bill is broad in scope, there are two or three phases, in my judgment, which should be incorporated in any regulatory law controlling stock exchanges and their member brokers

May I make the following suggestions

First, incorporate in section 6 (B) provision that margins must be based on the cost price of issue, so as to prohibit basing margin on amount of broker loans, known as debit balance (I wrote you regarding this trick last October 3)

Second, prohibit marginal trading in all issues quoted under and at \$10 a share (This will protect the man whose capital resources are limited to a few hundred dollars A case in point came to my knowledge last week A man whose sole capital was \$300, bought 100 shares Chicago & Northwestern on margin at \$6 The price dropped to 5% in 36 hours He was called for \$125 additional margin Unable to produce, he was sold out Of course, he was a fool But it is from the large army of fools totally ignorant of the odds against them that certain types of member houses of the New York Stock Exchange and other exchanges derive their largest income just as does the gambling houses thrive off the "piker player."

Third, prohibit brokers from borrowing stocks, instead of actual buying for the customer's account, and pocketing the larger share of the deposited margin, after paying interest on the stock loan, which I suspect was done in the case cited above

If the greatest number of our people who are inveigled into marginal trading in stocks are to be protected against this most damnable and destructive form of gambling, then the marginal requirements should be placed at the highest limit, and issues selling at specified minimum price be restricted from marginal trading

It is because of the rich pickings from margin trading that practically all stock brokerage houses discourage outright buying orders from their customers, because from those orders the broker gets only his commission

Unless the "margin player" has large available resources for additional marginal requirements, 7 out of every 10 margin traders are wiped out

By no stretch of the imagination or any logical reasoning can margin trading be defended as fair speculation. It is fundamentally gambling in its worst phase

It is to be hoped that every national legislator will stand fast and fight for the most drastic regulatory measure, despite the strenuous opposition which will be leveled against its passage by the interests that profit the most from the now most indefensible racket

With highest esteem and the hope you will, with others, make a herculean fight to at least curb this form of racketeering,

Sincerely and cordially,

WILLIAM A GORDON.

FEBRUARY 12, 1934.

DAHLEBENDER Co.,
New York, February 10, 1934.

Hon. Senator DUNCAN U. FLETCHER,
Chairman Senate Committee on Banking and Currency,
Washington, D C.

DEAR SIR: More power to you and to the people back home who sent you to Washington. Honest brokers certainly have nothing to fear from the anticipated stock market bill and the investors throughout the country have everything to gain. It does appear to me that Mr. Roosevelt is more interested in those who do the investing than in those who merchandise the securities, and this is as it should be. I am a Wall Street man and make my livelihood here in the Street trading for my clients in but one stock, namely, General Electric common, listed on the New York Stock Exchange. I do believe that many others on the Street, like myself, want to see the public get a square deal in the market.

I merely trade for my clients; I do not take part in any pools, do not match any orders, do not wash any sales, do not give any market tips, do not manipulate any stocks, do not take any options on any stocks, do not use any stop orders. All of my transactions are executed through New York Stock Exchange houses with whom I have my accounts. I am merely enclosing a copy of my agreement with my clients so as you can see for yourself just what I do do and what I don't do. This agreement was compiled for me by a very able attorney, by name Mr. Carl Ehlerman, of Ehlerman & Crawford, at 42 Broadway, New York City. Mr. Ehlerman is a friend and college classmate, I believe, of our President, Mr. Roosevelt.

I shall be very happy to reveal the names of my clients if you wish and you can see for yourself what we have accomplished under the present administration, and it could not have been accomplished under the previous administration because the confidence was not there. I honestly believe that this bill will restore even more confidence than ever. To be certain, it will no doubt reduce trading and turn over in the beginning, but in the long run it will bring more money from the little fellow into American securities. We little fellows just hope and pray that God will spare this administration and keep them with us for a long time. More power to you.

Very respectfully yours,

GROVER C. DAHLEBENDER.

DAHLEBENDER & Co, Inc.,
42 Broadway, New York City.

DEAR SIR: I authorize you to trade for me in the common stock of the General Electric Company as follows:

1 Herewith I pay you the amount set opposite my name. Others have signed or will sign, similar authorizations for varying amounts. All transactions are for all, proportionately, on basis of amount signed for, with adjustment as to earlier signatures, plus or minus, for transactions made before respective signature. The total signed for by all shall not exceed seventy-five thousand dollars (\$75,000)

2. You are to determine in your sole discretion, when to buy, and whether outright or on margin, and when to sell, including short sales, and that when any purchase is made on margin, or any short sale, the total margin including previous margin transactions not completed, shall be at least 50%, though it might later fall below that according to market fluctuations.

3 Trading will be in your name. You are to keep detailed accounts, to exhibit them to me on request, to furnish daily statement of all transactions, but collectively, for the day, for this and similar authorizations, and to render a complete statement, collectively, at the end of each month. All securities are to be held by you or Stock Exchange firms selected by you, but subject to their customary terms, including usual right of such firm to hypothecate.

4. Upon closing my account, (a) any loss shall be borne by me and none by you, but I shall not be required to pay in more than the amount I am now paying and, if the final accounting for my whole account, after deducting profits paid me, shows a loss in excess of the amount I am paying in, you will bear the excess; (b) net profits shall be divided 75% to me and 25% to you. We pay our own office expenses, but transfer stamps and Stock Exchange com-

missions and any loss through failure of a Stock Exchange firm, are expenses or losses of the account, and are deductible before determining profits. Distribution of profits, from time to time, is considered desirable but is not required.

5. Profits include trading profits, dividends stock dividends, rights and all other profits on my account, but any loss to me in a prior accounting under this authorization shall first be deducted. You receive your share in any partial distribution of profit without responsibility to repay should there be a subsequent loss.

6. I may terminate my account on written notice to you and purchases and sales to close my account shall be made not later than the day of receipt of my notice, plus one additional day on which the Exchange is open, such transactions being for me (and not proportionally for all) You may also terminate all accounts under this and similar letters any time. Upon any such closing, a final account shall be promptly rendered me and payment and delivery made accordingly.

Yours very truly,

(Date) (Name and address) (Amount)

I approve the foregoing (1934).

We accept the foregoing and agree to its terms (1934).

DAHLBENDER & COMPANY, INC.

By _____

752 WEST END AVENUE,

February 12, 1934.

MY DEAR SENATOR FLETCHER: Congratulations! If anything, the proposed stock-market legislation is not drastic enough.

The stock market has been and always will be (unless the stocketeers are curbed) the greatest single source of misfortune and disaster in the history of the American people. The professional gambler and his prostitute broker perform no economic function, in spite of their rationalization about "making a marker" and "minimizing fluctuations." Actually is it value that attracts them? No; it is technical position, the possibilities for profit. They exploit an essential market place with the poker player's economic motive—profit through disservice. Indeed, they cannot profit except through the frailty of human nature. They must have fools to work on or they cannot make a living.

Small wonder they are up in arms against this vital legislation. Are they expected to go into honest toil? Are they to be compelled to work for a living? Are they no longer to be permitted to get together and run a small issue up and unload on pathetic suckers? Is the Government and "politics" going to spoil that nice game they have been playing with impunity for so long? Not if they know it. They have instructed all their help to write letters to Washington complaining that they will lose their jobs if the bill goes through. But do they ever think of the hundreds of thousands who have lost their small pittances and savings through this degradation of an essential economic function of security transfer?

Hew to the line, Senator. Put real teeth into this act. Let's have places where we can buy and sell shares of stock as business men, not common crap shooters. Let's prevent the country, my sons and daughters and yours, from ever being drawn into the gambling vortex again. Let's back up the President in his enunciation of caveat vendor. Let us forbid or tax away the fruits of cupidity.

Don't be misled by the press which opposed the securities act because it would curtail their financial advertising, and who now oppose this legislation because it may do the same. The great, vast, preponderant majority of the people want this legislation. The sound, conservative, mature business man wants it. The country wants it and expects it.

In closing, I am sorry that the dice-throwing floor trader was not covered by a sliding scale of taxes depending upon the time interval in the consummation of trades. That would have been a splendid thing, but probably will be considered later.

With kindest wishes,
Cordially yours,

GEORGE D. HIRST.

HON. DUNCAN U. FLETCHER, BROOKLINE, MASS., February 12, 1934.
 United States Senate, Washington, D C.

DEAR SIR: As an owner and purchaser of securities and having no interest in any brokerage or investment business, I wish to inform you of my convictions that the proposed clause in the Fletcher stock exchange regulation bill requiring "60 percent margin, etc.", will prove a mistake and will result in the safety of investors being less secure than with the present regulation.

The proposed clause will limit the borrowing so materially that the tendency will be to buy much nearer the limit. This would result in distress selling with smaller market fluctuations.

I would respectfully suggest the present margin regulation, 50 percent on accounts under \$5,000, and 30 percent over that figure.

Very truly,

I. R. EDMANDS.

HON. DUNCAN U. FLETCHER, JACKSONVILLE, Fla., February 12, 1934.
 United States Senate, Washington, D.C.

MY DEAR SENATOR FLETCHER: I have taken the liberty of sending you a night message, copy of which is enclosed.

I am informed that when a member of the stock exchange, or broker, makes a loan to a customer, they require the customer to give them written permission to hypothecate his securities to any extent that the member or broker may see fit.

The effect of this could be, to illustrate, a customer might borrow 25 percent of the value of his securities and the broker could pledge such securities for 75 percent of their value, 50 percent of which would be for his own benefit. In the event of the insolvency of the broker, the customer would lose his stock unless it was so identified and so separated from the assets of the broker, and the loan on same restricted to the amount of the loan to the customer, then the customer could pay the amount of his loan and redeem his stock.

I am sure that you will understand exactly what I mean, and, if possible, amend your bill so as to protect the customer as far as possible.

With kindest personal regards, I am

Very truly yours,

R. V. COVINGTON.

COMMITTEE EXHIBIT No. 11 FEBRUARY 15, 1934

Francis E. Fitch (Inc), 188 Pearl St., New York.

A-10073

COMMITTEE ON STOCK LIST
 NEW YORK STOCK EXCHANGE

AMERICAN COMMERCIAL ALCOHOL CORPORATION

(An operating and holding company organized under the laws of Maryland, April 19, 1928)

COMMON STOCK (\$20 PAR VALUE)

Application to list additional Common Stock:	Shares
Additional listing.....	51, 293
Authorized by Charter.....	375, 000
Previously authorized to be listed.....	196, 468
Outstanding June 2nd.....	194, 748
Total applied for.....	247, 761
Authorized by Directors.....	May 31, 1933

CAPITAL SECURITIES

Stock	Par value	Number of shares			
		Authorized by charter	Authorized for issuance	Previously listed	Outstanding
Class of stock:					
7% cumulative preferred stock.....	\$100	1 16, 024	None	None	None
Common stock.....	20	375, 000	247, 761	194, 748	194, 748

1 Original authorization of Preferred Stock was 40 000 shares. 23,976 were issued. All retired on February 1st, 1930 whereby the authorized Preferred Stock was reduced by that amount. Neither the Company nor its subsidiaries have any funded debt.

NEW YORK, N. Y., June 2, 1933.

Referring to their previous applications, and especially to A-9904, dated April 21, 1932, American Commercial Alcohol Corporation (hereinafter called the "Company"), hereby makes application for the listing on the New York Stock Exchange of

10,000 shares of the Common Stock of the Company of the par value of \$20 per share, on official notice of issuance, in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share; with authority to add

41,293¹ shares of the Common Stock of the Company of the par value of \$20 per share, upon official notice of issuance thereof pursuant to offer to stockholders to subscribe to such additional stock; making the total amount applied for

247,761 shares (of a total authorized issue of 375,000 shares).

All of said shares of the Common Stock will be, when issued, full paid and non-assessable, with no personal liability attaching to holders thereof.

AUTHORITY FOR AND PURPOSE OF ISSUE

At a meeting held May 31, 1933, the Board of Directors authorized the issuance of 10,000 shares of the Common Stock of the Company of the par value of \$20 per share in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share, which will then be the only issued and outstanding stock of the latter Corporation. Maister Laboratories, Incorporated, a Maryland corporation, is the owner of valuable processes acquired from Dr. Hanns Maister for the manufacture of vitamin yeast and other products. The Directors of American Commercial Alcohol Corporation at their said meeting valued this stock at more than \$300,000.

At said meeting the Board also authorized the offering to Common stockholders of the Company of the right to subscribe for additional shares of the authorized but unissued common stock of the Company at the price of \$20 for each share subscribed for, in the proportion of one additional share for each five shares held by common stockholders of record at the close of business on June 14, 1933, all subscriptions upon such offerings accompanied by payment in full in New York funds to be made at the office of the City Bank Farmers Trust Company, 22 William Street, New York City, New York, on or before 3 P. M. July 5, 1933. Said offering will be based on the 194,748 shares of Common Stock outstanding, the 10,000 shares authorized for issuance in exchange for common stock of Maister Laboratories, Incorporated, and any additional shares which may be issued on or prior to June 14, 1933, pursuant to the exercise of stock purchase warrants outstanding in connection with the original bond issue of the Company.

The proceeds of the issue and sale of the said additional Common Stock offered to stockholders, are to be used for the purpose of paying off bank loans, and providing funds for working capital.

To evidence such subscription rights, the Board of Directors at said meeting authorized the issuance to Common stockholders of record at the close of business June 14, 1933, of subscription warrants registered in the name of the stockholder for the full number of shares to which his holdings at the close of business on June 14, 1933, entitle him to subscribe, and fractional warrants representing any fractional interest in his subscription rights. No fractional shares will be issued. Fractional interests in the additional stock will be represented by Scrip. Such Scrip shall be non-dividend bearing, shall confer no voting rights, shall be exchangeable in round amounts for shares of the additional stock and shall be void at 3 00 o'clock P. M. Daylight Saving Time, on July 5, 1935.

Subscription rights evidenced by the warrants issued to Common stockholders will terminate at 3 o'clock P. M. on July 5, 1933 and warrants will become null and void at that time.

Arrangements have been made for the underwriting of this offer, for the consideration of \$1 per share.

BUSINESS

The Company is, and its predecessors were, engaged in the business of manufacture and sale of alcohol for commercial purposes. Under a ruling by the United States Treasury Department dated January 21, 1928, industrial alcohol is now produced by the various manufacturers according to definite quantity allotments. The Company at the present time has permits (including permits held

¹ 344 shares of this number are issuable on subscription to the extent that holders of stock purchase warrants, who are entitled to buy 1,720 shares of Common Stock, may purchase such stock on or before the close of business on June 14, 1933.

by American Commercial Alcohol Corporation of California) to produce 11.82% of the gallons authorized under the allotment plan of the Treasury Department.

PLANTS AND PROPERTIES

The Company owns directly manufacturing plants at Pekin, Ill., Philadelphia, Pa., New Orleans, La., and, through its subsidiary, American Commercial Alcohol Corporation of California, a manufacturing plant at Sausalito, Calif. The Company also leases warehouses in strategic distribution centers throughout the country. For a more extensive description of the properties of the Company see Exhibit A, which is attached to application A-8723

SUBSIDIARY COMPANIES

The Company owns the entire issued and outstanding Capital Stock (except necessary qualifying shares) of American Commercial Alcohol Corporation of California and The Kessler Chemical Corporation. For detailed information with respect to the acquisition and organization of these companies reference is made to applications A-8723 and A-8922.

EMPLOYEES

The Company and its subsidiaries, American Commercial Alcohol Corporation of California and The Kessler Chemical Corporation, employed 242 persons on June 2, 1933, exclusive of brokers and salesmen working entirely on commission.

DEPRECIATION POLICY

Since organization, depreciation amounts have been written off annually on the basis of the life of the property depreciated. An approximate table of depreciation percentages in accordance with the straight line method, which have been written off each year follows

	Percent
Buildings-----	2
Machinery-----	5
Equipment (depending upon its nature)-----	10-20

DIVIDENDS

Preferred Stock. At the rate of 7% per annum, declared and paid quarterly from its issuance on April 25, 1928, until retired on February 1, 1930.

Common Stock: An initial dividend on the Common Stock of 40 cents in cash and 3% in Common Stock was paid on July 15, 1929. Similar cash dividends were paid quarterly up to and including April 15, 1930, at which time a dividend of 2% payable in Voting Trust Certificates representing Common Stock was also paid. Since the last mentioned date no dividends have been declared.

FINANCIAL STATEMENTS

The following financial statements as of December 31, 1931, December 31, 1932 and March 31, 1933, are set forth below in comparative columns:

- (a) Condensed consolidated statements of income and profit and loss.
- (b) Consolidated condensed statement of capital surplus as at December 31, 1931 and December 31, 1932.
- (c) Consolidated Condensed General Balance Sheets.

The statements of December 31, 1931 and December 31, 1932 have been prepared by the Company's auditors, Messrs F. W. LaFrentz & Co. and certified by them as follows:

To the Stockholders of American Commercial Alcohol Corporation:

We have examined the records and books of account of American Commercial Alcohol Corporation and its Subsidiaries, for the years ending December 31, 1931, and December 31, 1932, and have prepared therefrom the following Exhibits applicable to the year ending December 31, 1931, and to the year ending December 31, 1932; and

Hereby certify that the following Consolidated Condensed General Balance Sheets, and statements of Income and Profit and Loss, and Capital Surplus, applicable to the year ending December 31, 1931 and the year ending December 31, 1932, compiled from our general reports, in our opinion, correctly reflect the financial status of the Company, as at December 31, 1931 and December 31, 1932, and the results of its operations for these years

F. W. LAFRENTZ & CO.,
Certified Public Accountants.

The statements of March 31, 1933 have been prepared by the Company, and are certified to by the Treasurer as follows.

I hereby certify that the following Consolidated Condensed General Balance Sheet, and Statement of Income and Profit and Loss, in my opinion, correctly reflect the financial status of the Company, as at March 31, 1933, and the results of its operations for three months ended that date

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
GUY I. COLBY, Vice President and Treasurer.

American Commercial Alcohol Corporation and its subsidiaries

(A) CONSOLIDATED CONDENSED STATEMENT OF INCOME AND PROFIT AND LOSS

	Year 1931	Year 1932	First quarter 1933
Profit on sales before depreciation.....	\$387,047 59	\$1,449,829 67	\$224,410 09
Interest received.....	10,056 13	4,001 49	1,903 21
Other income.....	20,723 92	8,459 12	2,026 08
Total.....	397,827 64	1,462,290 28	228,338 38
Deductions*			
Selling expenses.....	365,781 24	330,577 32	52,173 37
Administrative expenses.....	298,113 03	227,968 81	29,829 38
Bad debts.....	55,817 23	30,356 32	8,007 11
Interest paid.....	17,116 66	56,237 90	7,709 54
Discount on sales.....	31,777 54	26,670 24	3,970 73
Depreciation.....	226,873 41	204,041 30	49,876 82
Total.....	995,479 11	875,851 89	151,566 95
Profit for the period.....	597,651 47	586,438 39	76,771 43
Surplus beginning of period.....	46,483 93		586,438 39
Miscellaneous surplus adjustments.....	25,144 87		244 56
Charged against capital surplus.....	¹ 576,312 14		
Balance earned surplus from December 31, 1931.....		586,438 39	662,965 26

¹ Loss.

(b) CONSOLIDATED CONDENSED STATEMENT OF CAPITAL SURPLUS—AS AT DECEMBER 31, 1931

Amount of Capital Surplus determined and authorized by the stockholders at their meeting of November 24, 1931, arising out of an apportionment of the amount shown on the Company's books at that date, of \$3,769,697 42, representing outstanding Common Stock to the number of 389,495 shares of no par value. This sum was apportioned in such manner as to show \$3,894,950 as representing the 389,495 shares of Common Stock at a par value of \$10 each, and the remainder as Capital Surplus, i. e. **\$4,374,747 42**

At the same meeting the stockholders authorized the directors to charge the deficit in Surplus Account against the Capital Surplus so created, and further authorized the Directors in their discretion, to set up reserves out of the Capital Surplus so created. In accordance with this authority, the directors have authorized and directed that the following several sums be entered on the books of account, as of December 31, 1931

Appropriation of Capital Surplus		
Reduction of book value of treasury stock from \$230,531 11 to a par value basis of \$130,970 30.....		\$149,560 81
Reserve provided for excess cost of raw materials.....		267,493 19
Reserve provided for future contingencies.....		8,614 67
Extraordinary losses and adjustments		
Reduction of inventory valuations, necessitated by the purchase of molasses under contracts made in prior years.....	\$144,915 77	
Losses due to trading in corn options.....	87,591 04	
Reduction in valuations of fixed assets, based upon appraisals and estimates made by the officials of the Company.....	156,635 82	
Losses due to revaluations of containers.....	212,819 35	
Organization expenses—Unamortized balance.....	72,669 68	
Provision for income tax assessments, applicable to prior years.....	110,977 99	
Miscellaneous items.....	36,483 83	
Total extraordinary losses and adjustments.....		822,093 48
Net deficit—December 31, 1931—Charged to Capital Surplus.....		576,312 41
Total deductions from Capital Surplus.....		1,824,074 06
Balance—Capital Surplus December 31, 1931.....		\$3,050,673 36

American Commercial Alcohol Corporation and its subsidiaries—Continued

CONSOLIDATED CONDENSED STATEMENT OF CAPITAL SURPLUS—AS AT DECEMBER 31, 1932

Capital surplus—Balance December 31, 1931.....		\$3,050,673.86
Add—Balance of reserves, December 31, 1931, which were created out of Capital Surplus in 1931		
Income taxes prior years.....	\$112,391 76	
Provision for Stock Warrants.....	8,653 30	
Provision for raw material commitments.....	267,493 19	
Provision for contingencies.....	8,614 67	
		<u>397,152.92</u>
Total.....		3,447,826 28
Deduct—Charges to Capital Surplus and Reserves.		
Income taxes for prior years and expenses in connection therewith.....	\$54,412 41	
Settlement of claim for liability in connection with Stock Warrants.....	7,000 00	
Cost of molasses and grain consumed in manufacture.....	\$1,161,239 55	
Less—Charged to operations on basis of market price deter- mined as at December 31, 1931.....	905,839 09	
Balance charged to reserve for raw material commitments provided for at December 31, 1931.....	255,400 46	
Salary due at December 31, 1931, under a contract made at time of organ- ization of the Company with an executive who discontinued function- ing as an officer of the Company—as at January 1, 1932.....	39,798 59	
Loss incurred through sale of Treasury Stock and extinguishment of employee stock purchase agreements.....	46,478 91	
Legal, printing and other expenses incident to change of Capital Stock from No Par Value to a Par Value of \$10 00 per share, and from a Par Value of \$10 00 per share, to a Par Value of \$20 per share.....	10,636 27	
Portion of cost of moving Chemical Plant from Orange, N J, to Phila- delphia, Pa.....	3,676 20	
Bonus to discharged employees and salary contract adjustment paid in recognition of long term services.....	5,852 56	
Expenses and adjustments applicable to prior years		
Allowances to customers and adjustment of claims.....	\$16,063 70	
Excess of allowances for and expenses incident to recondi- tioning drums—in hands of customers December 31, 1931— over actual inventory value.....	10,592 87	
Experimental expenses.....	3,566 43	
Legal and auditing expenses.....	6,139 21	
Sundry other expenses.....	6,422 52	
Total.....	\$42,784 73	
Less—Collection of freight claims and other credit adjust- ments.....	6,108 72	
Balance of expenses and adjustment applicable to prior years.....	36,676 01	
Total of charges to Capital Surplus and Reserves.....		<u>459,931 41</u>
Balance.....		\$2,987,894 87
Reserve for Stock Warrants—Balance remaining December 31, 1932.....	\$1,653 30	
Reserve for contingencies—Authorized by Board of Directors at their meeting March 2, 1933.....	400,000 00	
		<u>401,653 30</u>
Capital Surplus—Balance December 31, 1932.....		\$2,586,241.57

(c) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
ASSETS			
Current assets			
Cash.....	\$443,228 14	\$251,961 24	\$216,004 68
Notes and acceptances receivable—Trade.....	\$47,452 97	\$46,851 78	\$45,839 14
Accounts receivable			
Trade.....	\$839,260 25	\$601,826 55	\$556,887 40
Less: Reserve for doubtful accounts.....	81,174 38	70,927 61	55,160 67
Balance.....	\$758,084 87	\$530,898 94	\$501,726 73
Due from officers and employees.....	13,222 90	12,724 05	8,689 89
Miscellaneous accounts.....	14,677 55	12,871 31	12,500 00
Total accounts receivable.....	\$785,985 32	\$557,494 30	\$522,896 62
Inventories (at the lower of cost or market)			
Finished product.....	\$513,775 41	\$739,801 22	\$781,402 08
Raw materials and supplies.....	431,168 09	893,870 83	979,210 17
Advance payment on raw material purchased.....	62,768 77	50,000 00	238,907 06
Containers.....	64,489 28	48,256 12	82,501 29
Total inventories.....	\$1,052,191 55	\$1,731,628 17	\$2,082,020 60
Total current assets.....	\$2,328,857 98	\$2,587,935 49	\$2,866,761 04

American Commercial Alcohol Corporation and its subsidiaries—Continued

(c) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
Fixed assets			
Land, buildings, machinery, etc (appraisal value December 31, 1927 plus additions at cost).....	\$6,600,700 33	\$6,679,519 40	\$6,673,440 05
Less—Depreciation reserve.....	669,761 14	827,998 27	875,118 19
Construction work in progress.....	\$5,940,949 19	\$5,851,521 13	\$5,798,321 86
	5,781 90		39,349 59
Total fixed assets.....	\$5,946,731 09	\$5,851,521 13	\$5,837,671 45
Cash in escrow—on account of contingent liability under Property Purchase Agreement.....	\$94,668 96		
Prepaid and deferred items			
Cost of investment in Rossville Alcohol & Chemical Corporation Syndicate.....		\$284,006 87	\$284,006 87
Insurance and taxes prepaid.....	\$69,957 21	42,089 66	38,090 35
Miscellaneous expenses.....	14,830 66	42,597 91	48,119. 13
Deferred expenses.....			52,821 45
Total prepaid and deferred items.....	\$84,787 87	\$368,694 44	\$423,038 30
Goodwill trade marks formulae, etc.....	\$1 00	\$1 00	\$1 00
Total assets.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79
LIABILITIES			
Current liabilities			
Notes payable to bank.....	\$400,000 00	\$794,739 16	\$886,500 00
Trade acceptances.....	\$492,701 65	\$290,302 62	\$539,612. 97
Accounts payable			
Trade.....	\$286,706 97	\$180,153 52	\$145,334 35
Others.....	45,465 30	61,952 50	46,155 34
Total accounts payable.....	\$332,172 27	\$242,106 02	\$191,539 69
Total current liabilities.....	\$1,224,873 92	\$1,327,147 80	\$1,567,652 66
Sundry reserves			
Provision for containers in customer's hands.....	\$18,367 50	\$11,721 00	\$14,009. 00
Income tax prior years.....	112,391. 76		
Provision for Stock Warrants.....	8,663. 30	1,653 30	1,663 30
Provision for raw material commitments.....	267,493 19		
Provision for contingencies.....	8,614 67	400,000 00	400,000. 00
Total sundry reserves.....	\$415,520 42	\$413,374 30	\$415,662 30
Capital Stock and surplus			
Capital Stock—Common	1931 par \$10 Shares	1932 par \$20 Shares	
Authorized.....	750,000 00	375,000 00	
Less—Unissued.....	360,605 00	180,252 50	
Issued.....	389,495 00	194,747 50	\$3,894,950 00
Less in Treasury.....	13,097 08		\$130,970 80
Outstanding.....	376,397 92	194,747 50	\$3,763,979 20
Capital surplus.....			\$2,586,241 57
Earned surplus from December 31, 1931.....			536,438 39
Total Capital Stock and surplus.....			\$7,144,156 83
Total liabilities.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79

NOTE—None of the 16,024 shares of Preferred Stock at present authorized, was outstanding at the above dates. Contingent liability as at December 31, 1931 under property purchase agreement—\$189,331 04

¹ The Company is under agreement with the Whitney National Bank of New Orleans to retain on hand at all times, sufficient molasses, which at inventory values will amount to 110% of the Company's unpaid notes—\$86,500 00 as at December 31, 1932

AGREEMENTS

American Commercial Alcohol Corporation, in consideration of the listing of the securities covered by this application, agrees with the New York Stock Exchange as follows

To notify the New York Stock Exchange promptly of any change in the general character or nature of its business

To notify the New York Stock Exchange immediately if it or any subsidiary or controlled company should dispose of any property or of any stock interest in any of its subsidiary or controlled companies, when such disposal would impair or materially affect its financial position or the nature or extent of its operations as theretofore conducted

To publish periodical statements of earnings, as agreed upon with the Committee

To publish at least once in each year and submit to stockholders at least fifteen days in advance of the annual meeting of the Corporation, but not later than March 15th, a Balance Sheet, and Income Statement for the last fiscal year and a Surplus statement of the applicant company as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or, in lieu thereof, eliminating all intercompany transactions:

A similar set of consolidated financial statements. If any such consolidated statements exclude any companies a majority of whose equity stock is owned, (a) the caption will indicate the degree of consolidation; (b) the Income Account will reflect, either in a footnote or otherwise, the parent company's proportion of the sum of or a difference between current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of report; and (c) the Balance Sheet will reflect, in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions. Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries, in either parent company statements or consolidated statements

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of any controlled corporation whether consolidated or unconsolidated.

To publish all future annual financial statements of any character, in substantially the form contained in the listing application and, in the publication of reports of earnings for any period of less than a fiscal year, to show net profits in the aggregate with the same degree of consolidation as in the annual report and earnings per share after Depreciation, Depletion, Income Taxes and Interest, estimating the proportionate amount of these items as accurately as may be if not finally determined at date of publication

Not itself, and not to permit any subsidiary, directly or indirectly controlled, to take up as Income stock dividends received at an amount greater than that charged against Earnings, Earned Surplus or both of them by the issuing Company in relation thereto

Not to make any change in depreciation policies as described in the application and not to make any substantial change in any percentages therein recited as applicable to particular classes of property without notifying the Stock Exchange and without calling attention to such changes in the next succeeding published report and, if this be an interim report, also in the next succeeding annual report

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, south of Chambers Street, other than its transfer office or agency in said city, where all listed securities shall be registered. If its transfer books should be permanently closed, to continue to split up certificates of listed stock into smaller denominations in the same name so long as such stock shall be retained upon its list by the New York Stock Exchange. If its transfer office or agency should be or should become located north of Chambers Street, to arrange, at its own cost and expense that its registry office will receive and re-deliver all securities deposited at such registry office for the purpose of transfer.

Not to add to the number of its transfer agencies nor to make any change of a transfer agency, or of a trustee, or fiscal agent of its listed bonds or securities, without prior notice to the Committee on Stock List, and not to add to the num-

ber of registrars of its listed stock nor to change a registrar of its listed stock without the prior approval of the Committee on Stock List, nor to select an officer or director of the Company as a trustee of its mortgages or other listed securities unless such officer or director be a co-trustee for an issue having a corporate trustee.

Not to make any change in the form or nature of its listed securities or in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Committee on Stock List of such proposed changes, and having made application for the listing of the securities as changed, if the Committee on Stock List so requires

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, and to afford the holders of its listed securities a proper period within which to record their interests and to exercise their rights, and to issue all such rights in form approved by the Stock Exchange and to make the same transferable, payable and deliverable in the Borough of Manhattan, City of New York

To notify the Stock Exchange promptly in the event of issuance of Options or Warrants to purchase stock, otherwise than

(a) pro rata to stockholders,
 (b) to officers and employees under general employees' stock purchase plan,
 (c) firm offers of stock to be taken in a block within four months from the date of such offer, of the number of shares covered by such Options, of their terms and of the time within which they may be exercised and of any subsequent changes therein and thereafter to include this information together with like information as to any Options in existence at the time of approval of this application so long as said Options are outstanding, in all annual financial reports furnished to stockholders and in all formal published reports

To make application to the Stock Exchange for the listing of additional amounts of listed securities sufficiently prior to the issuance thereof to permit action in due course upon such application.

To publish promptly to holders of listed stock any action in respect to dividends on shares, or allotments of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books, or extensions, or of the taking of a record of holders for any purpose.

To forward to the Stock Exchange copies of all notices mailed to stockholders looking toward Charter amendments, and to file with the Stock Exchange two copies of amended Charter, or Resolutions of Directors in the nature of amendments (one of which must be certified) as soon as such amendments or resolutions have become effective

Not to purchase listed Preferred Stock for retirement at a price in excess of that at which the stock purchased might then be obtained in the open market and not to select Preferred Stock for redemption otherwise than pro rata or by lot; to notify the Stock Exchange immediately and at least fifteen (15) days in advance of any such redemption, and to furnish to the Stock Exchange any information requested in reference to such redemption

To notify the Stock Exchange immediately of any change or removal of collateral deposited under any of its mortgage or trust indentures under which listed securities are outstanding.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

If at any time the stock certificates of the Company do not recite the preferences of all classes of stock the Company agrees with the Exchange that it will furnish stockholders, upon request and without charge, with a printed copy of the preferences of all classes of stock.

To furnish the New York Stock Exchange, on demand, such reasonable information concerning the Company as may be required

GENERAL

The fiscal year of the Company ends December 31st.

The annual stockholders meeting of the Company is held on the first Tuesday in April in each year, but if that be a legal holiday, on the next succeeding day not a legal holiday. All stockholders meetings of the Company are held at the statutory office of the Company, 10 Light Street, Baltimore, Md.

The principal executive office of the Company is located in the Chrysler Building, 405 Lexington Avenue, New York, N. Y. The Company also has offices at each plant and sales offices throughout the country.

The Directors (elected annually) are Robert W. Atkins, Russell R. Brown, Guy I. Colby, Humphrey W. Chadbourne, Warren W. Foster, Richard H. Grimm, J. M. Kessler, W. S. Kies, Cecil Page, Edward S. Paine, Robert L. Pond and Marshall H. Runk, all of New York City, N. Y.; H. G. Atwood, Chicago, Ill.; Walter E. Buck, San Francisco, Calif.; James A. S. MacMeekin and Phillip Publicker, Philadelphia, Pa.; S. M. Mayer, Gretna, La.

The Elective Officers (elected annually, but the Board of Directors may elect for a period not exceeding five years) are Russell R. Brown, Chairman of the Board; Richard H. Grimm, President; Walter E. Buck, Guy I. Colby, Samuel M. Mayer and A. L. Oppen, Vice-Presidents, Guy I. Colby, Treasurer; and Cecil Page, Secretary.

The Transfer Agent for 7% Cumulative Preferred Stock and for Common Stock of the Company is City Bank Farmers Trust Company, New York, N. Y.

The Registrar of the 7% Cumulative Preferred Stock and for Common Stock of the Company is The National City Bank of New York, N. Y.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By **CECIL PAGE**, *Secretary*.

This Committee recommends that the above-mentioned

10,000 shares of Common Stock (\$20 Par Value) be added to the list on official notice of issuance in exchange for a like number of shares of the Common Stock of Maister Laboratories, Incorporated, with authority to add

41,293 shares of said Common Stock on official notice of issuance pursuant to an offer to stockholders to subscribe to such additional stock, in accordance with the terms of this application,

making the total amount authorized to be listed:

247,761 shares of Common Stock (\$20 Par Value).

FRANK ALTSCHUL, *Chairman*.

J. M. B. HOXSEY,
*Executive Assistant to the
Committee on Stock List.*

Adopted by the Governing Committee, June 14, 1933.

ASHBEL GREEN, *Secretary*.

COMMITTEE EXHIBIT No 12, FEBRUARY 15, 1934

Francis E. Fitch (Inc), 138 Pearl St., New York

COMMITTEE ON STOCK LIST
NEW YORK STOCK EXCHANGE

A-10102

AMERICAN COMMERCIAL ALCOHOL CORPORATION

(An operating and holding company organized under the laws of Maryland,
April 19, 1928)

COMMON STOCK (\$20 PAR VALUE)

	Shares
Additional listing.....	15,000
Authorized by Charter.....	375,000
Previously authorized to be listed.....	247,761
Outstanding June 2nd.....	204,953
Total applied for.....	262,761
Authorized by Directors.....	June 15, 1933

Capital securities

Stock	Par value	Number of shares			
		Authorized by charter	Authorized for issuance	Previously authorized to be listed	Outstanding
Class of stock					
7% Cumulative preferred stock.....	\$100	1 16,024	None	None	None
Common stock.....	20	375,000	262,761	247,761	204,953

¹ Original authorization of Preferred Stock was 40,000 shares. 23,976 were issued All retired on February 1st, 1930 whereby the authorized Preferred Stock was reduced by that amount.

Neither the Company nor its subsidiaries have any funded debt.

NEW YORK, N.Y., June 27, 1933.

Referring to their previous applications, and especially to A-10073, dated June 2, 1933, American Commercial Alcohol Corporation (hereinafter called the "Company"), hereby makes application for the listing on the New York Stock Exchange of

15,000 additional shares of the Common Stock of the Company of the par value of \$20 per share, on official notice of issuance, in exchange for 2,700 shares of the 6% Cumulative Preferred Stock of the par value of \$100 per share, and 3,900 shares of Common Stock without par value of Noxon, Inc.; making the total amount applied for

262,761 shares (of a total authorized issue of 375,000 shares)

All of said shares of the Common Stock will be, when issued, full paid and non-assessable, with no personal liability attaching to holders thereof

AUTHORITY FOR AND PURPOSE OF ISSUE

At a meeting held June 15, 1933, the Board of Directors authorized the issuance of 15,000 shares of the Common Stock of the Company of the par value of \$20 per share, in exchange for 2,700 shares of the 6% Cumulative Preferred Stock of the par value of \$100 a share, and 3,900 shares of the Common no par Stock of Noxon, Inc., a Maryland Corporation. The total authorized capitalization of Noxon, Inc., is 3,000 shares of 6% Cumulative Preferred Stock of the par value of \$100 per share and 6,000 shares of Common Stock without par value. The 2,700 shares of Preferred Stock is all the issued and outstanding Preferred Stock of the latter Corporation. All the 6,000 shares of Common Stock have been issued, 3,900 shares to the Company as stated above, and 2,100 shares to other interests.

Noxon, Inc. was organized on June 19, 1933 and has acquired certain valuable formulae, processes, etc., for the manufacture of a certain cleaner polish, floor waxes, and a household insecticide, heretofore manufactured and sold for many years under the trade name of "Noxon," and also certain machinery, equipment, materials and other assets required for the manufacture of said products on an adequate commercial scale. Noxon, Inc. has furthermore contracted with the Company to purchase all of its requirements for the manufacture of its products, which consist of alcohol, solvents, etc., so far as they are manufactured or handled by the Company, at prevailing market prices, for a period of ten years. The Company has also acquired as a part of above transactions, exclusive rights to certain formulae and processes for the manufacture of new agricultural and horticultural plant sprays, which the Company believes can be manufactured and sold on a profitable basis. These sprays consist of about 85% of Alcohol.

BUSINESS

The Company is, and its predecessors were, engaged in the business of manufacture and sale of alcohol for commercial purposes. Under a ruling by the United States Treasury Department dated January 21, 1928, industrial alcohol is now produced by the various manufacturers according to definite quantity allotments. The Company at the present time has permits (including permits held by American Commercial Alcohol Corporation of California) to produce 11 82% of the gallons authorized under the allotment plan of the Treasury Department.

PLANTS AND PROPERTIES

The Company owns directly manufacturing plants at Pekin, Ill., Philadelphia, Pa., New Orleans, La., and, through its subsidiary, American Commercial Alcohol Corporation of California, a manufacturing plant at Sausalito, Calif. The Company also leases warehouses in strategic distribution centers throughout the country. For a more extensive description of the properties of the Company see Exhibit A, which is attached to application A-8723.

SUBSIDIARY COMPANIES

The Company owns the entire issued and outstanding Capital Stock (except necessary qualifying shares) of American Commercial Alcohol Corporation of California, The Kessler Chemical Corporation, and Maister Laboratories Incorporated. For detailed information with respect to the acquisition and organization of these companies reference is made to applications A-8723, A-8922, and A-10073.

EMPLOYEES

The Company and its subsidiaries, American Commercial Alcohol Corporation of California, The Kessler Chemical Corporation, and Mauser Laboratories Incorporated, employed 242 persons on June 2, 1933, exclusive of brokers and salesmen working entirely on commission

DEPRECIATION POLICY

Since organization, depreciation amounts have been written off annually on the basis of the life of the property depreciated. An approximate table of depreciation percentages in accordance with the straight line method, which have been written off each year follows

	Percent
Buildings	2
Machinery	5
Equipment (depending upon its nature)	10-20

DIVIDENDS

Preferred Stock. At the rate of 7% per annum, declared and paid quarterly from its issuance on April 25, 1928, until retired on February 1, 1930.

Common Stock An initial dividend on the Common Stock of 40 cents in cash and 3% in Common Stock was paid on July 15, 1929. Similar cash dividends were paid quarterly up to and including April 15, 1930, at which time a dividend of 2% payable in Voting Trust Certificates representing Common Stock was also paid. Since the last mentioned date no dividends have been declared.

FINANCIAL STATEMENTS

The following financial statements as of December 31, 1931, December 31 1932 and March 31, 1933, are set forth below in comparative columns:

- (a) Condensed consolidated statements of income and profit and loss.
- (b) Consolidated condensed statement of capital surplus as at December 31, 1931 and December 31, 1932.
- (c) Consolidated Condensed General Balance Sheets

The statements of December 31, 1931 and December 31, 1932 have been prepared by the Company's auditors, Messrs F. W. LaFrentz & Co. and certified by them as follows

To the Stockholders of American Commercial Alcohol Corporation.

We have examined the records and books of account of American Commercial Alcohol Corporation and its Subsidiaries, for the years ending December 31, 1931, and December 31, 1932, and have prepared therefrom the following Exhibits applicable to the year ending December 31, 1931, and to the year ending December 31, 1932; and

Hereby certify that the following Consolidated Condensed General Balance Sheets, and statements of Income and Profit and Loss, and Capital Surplus, applicable to the year ending December 31, 1931 and the year ending December 31, 1932, compiled from our general reports, in our opinion, correctly reflect the financial status of the Company, as at December 31, 1931 and December 31, 1932, and the results of its operations for these years

F. W. LAFRENTZ & CO.,
Certified Public Accountants.

The statements of March 31, 1933 have been prepared by the Company, and are certified to by the Treasurer as follows

I hereby certify that the following Consolidated Condensed General Balance Sheet, and Statement of Income and Profit and Loss, in my opinion, correctly reflect the financial status of the Company, as at March 31, 1933, and the results of its operations for three months ended that date.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
GUY I. COLBY, Vice-President and Treasurer

American Commercial Alcohol Corporation and its subsidiaries (a) consolidated condensed statement of income and profit and loss

	Year 1931	Year 1932	1st quarter 1933
Profit on sales before depreciation.....	\$367,047.59	\$1,449,829.67	\$224,410.09
Interest received.....	10,066.13	4,001.49	1,903.21
Other income.....	20,723.92	8,459.12	2,025.06
Total.....	397,827.64	1,462,290.28	228,338.36
Deductions:			
Selling expenses.....	365,781.24	330,577.32	52,173.37
Administrative expenses.....	298,113.03	227,968.81	29,829.38
Bad debts.....	55,817.23	30,356.32	8,007.11
Interest paid.....	17,116.66	56,237.90	7,709.54
Discount on sales.....	31,777.54	28,670.24	3,970.73
Depreciation.....	226,873.41	204,041.30	49,876.32
Total.....	995,479.11	875,851.89	151,566.95
Profit for the period.....	1 597,651.47	586,438.39	76,771.43
Surplus beginning of period.....	46,483.93		586,438.39
Miscellaneous surplus adjustments.....	1 25,144.87		1 244.66
Charged against capital surplus.....	1 576,312.41		
Balance earned surplus from December 31, 1931.....		586,438.39	662,965.26

¹ Loss

(b) Consolidated condensed statement of capital surplus—as at December 31, 1931

Amount of Capital Surplus determined and authorized by the stockholders at their meeting of November 24, 1931, arising out of an apportionment of the amount shown on the Company's books at that date, of \$3,769,697.42, representing outstanding Common Stock to the number of 339,496 shares of no par value. This sum was apportioned in such manner as to show \$3,694,950 as representing the 339,496 shares of Common Stock at a par value of \$10 each, and the remainder as Capital Surplus, i. e. **\$4,874,747.42**

At the same meeting the stockholders authorized the directors to charge the deficit in Surplus Account against the Capital Surplus so created, and further authorized the Directors in their discretion, to set up reserves out of the Capital Surplus so created. In accordance with this authority, the directors have authorized and directed that the following several sums be entered on the books of account, as of December 31, 1931:

Appropriation of Capital Surplus

Reduction of book value of treasury stock from \$230,531.11 to a par value basis of \$120,970.30.....	\$149,560.81
Reserve provided for excess cost of raw materials.....	267,493.19
Reserve provided for future contingencies.....	8,614.67
Extraordinary losses and adjustments:	
Reduction of inventory valuations, necessitated by the purchase of molasses under contracts made in prior years.....	\$144,915.77
Losses due to trading in corn options.....	87,591.04
Reduction in valuations of fixed assets, based upon appraisals and estimates made by the officials of the Company.....	156,635.32
Losses due to revaluations of containers.....	212,819.35
Organization expenses—Unamortized balance.....	72,669.68
Provision for income tax assessments, applicable to prior years.....	110,977.99
Miscellaneous items.....	36,488.83

Total extraordinary losses and adjustments..... 822,093.45
 Net deficit—December 31, 1931—Charged to Capital Surplus..... 576,312.41

Total deductions from Capital Surplus..... 1,824,074.06
 Balance—Capital Surplus December 31, 1931..... **\$3,050,673.86**

Consolidated condensed statement of capital surplus—as at December 31, 1932

Capital surplus—Balance December 31, 1931.....		\$3,060,673 36
Add—Balance of reserves, December 31, 1931, which were created out of Capital Surplus in 1931.....		
Income taxes prior years.....	\$112,391 76	
Provision for Stock Warrants.....	8,653 30	
Provision for raw material commitments.....	267,493 19	
Provision for contingencies.....	8,614 67	
		<u>297,152 92</u>
Total.....		\$3,447,826 28
Deduct—Charges to Capital Surplus and Reserves.....		
Income taxes for prior years and expenses in connection therewith.....	\$54,412 41	
Settlement of claim for liability in connection with Stock Warrants.....	7,000 00	
Cost of molasses and grain consumed in manufacture.....	\$1,161,239 55	
Less—Charged to operations on basis of market price determined as at December 31, 1931.....	905,839 09	
		<u>255,400 46</u>
Balance charged to reserve for raw material commitments provided for at December 31, 1931.....		255,400 46
Salary due at December 31, 1931 under a contract made at time of organization of the Company with an executive who discontinued functioning as an officer of the Company—as at January 1, 1932.....		39,798 59
Loss incurred through sale of Treasury Stock and extinguishment of employees stock purchase agreements.....		46,478 91
Legal, printing and other expenses incident to change of Capital Stock from No Par Value to a Par Value of \$10 00 per share, and from a Par Value of \$10 00 per share, to a Par Value of \$20 per share.....		10,636 27
Portion of cost of moving Chemical Plant from Orange, N J to Philadelphia, Pa.....		3,676 20
Bonus to discharged employees and salary contract adjustment paid in recognition of long term services.....		5,852 56
Expenses and adjustments applicable to prior years.....		
Allowances to customers and adjustment of claims.....	\$16,063 70	
Excess of allowances for and expenses incident to reconditioning drums—in hands of customers December 31, 1931—over actual inventory value.....	10,592 87	
Experimental expenses.....	3,566 43	
Legal and auditing expenses.....	6,139 21	
Sundry other expenses.....	6,422 52	
		<u>\$42,784 73</u>
Less—Collection of freight claims and other credit adjustments.....		6,108 72
		<u>36,676 01</u>
Balance of expenses and adjustment applicable to prior years.....		36,676 01
Total of charges to Capital Surplus and Reserves.....		<u>459,931 41</u>
Balance.....		\$2,987,894 87
Reserve for Stock Warrants—Balance remaining December 31, 1932.....	\$1,653 30	
Reserve for contingencies—Authorized by Board of Directors at their meeting March 2, 1933.....	400,000 00	
		<u>401,653 30</u>
Capital Surplus—Balance December 31, 1932.....		\$2,586,241 57

American Commercial Alcohol Corporation and its subsidiaries

(C) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
ASSETS			
Current assets			
Cash.....	\$443,228 14	\$251,961 24	\$216,004 68
Notes and acceptances receivable—Trade.....	\$47,452 97	\$46,851 78	\$45,839 14
Accounts receivable			
Trade.....	\$839,259 25	\$601,826 55	\$556,887 40
Less Reserve for doubtful accounts.....	81,174 38	70,927 61	55,160 67
Balance.....	\$758,084 87	\$530,898 94	\$501,726 73
Due from officers and employees.....	13,222 90	13,724 05	8,669 99
Miscellaneous accounts.....	14,677 55	12,971 31	12,500 00
Total accounts receivable.....	\$785,985 32	\$557,494 30	\$522,896 62
Inventories (at the lower of cost or market)			
Finished product.....	\$512,775 41	\$789,801 22	\$781,402 08
Raw materials and supplies.....	431,169 09	898,570 83	679,210 17
Advance payment on raw material purchased.....	52,768 77	50,000 00	238,907 06
Containers.....	64,489 23	48,266 12	82,501 29
Total inventories.....	\$1,061,192 50	\$1,786,638 17	\$2,082,020 60
Total current assets.....	\$2,328,867 98	\$2,587,935 49	\$2,866,761 04

American Commercial Alcohol Corporation and its subsidiaries—Continued

(C) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
Fixed assets			
Land, buildings, machinery, etc (appraisal value December 31, 1927 plus additions at cost).....	\$6,600,700 33	\$6,679,519 46	\$6,673,440 05
Less—Depreciation reserve.....	689,751 14	827,909 27	875,118 19
Construction work in progress.....	\$5,940,949 19	\$5,851,521 13	\$5,798,321 86
	5,781 90		39,349 59
Total fixed assets.....	\$5,946,731 09	\$5,851,521 13	\$5,837,671 45
Cash in escrow—on account of contingent liability under Property Purchase Agreement.....	\$94,668 96		
Prepaid and deferred items			
Cost of investment in Rossville Alcohol & Chemical Corporation Syndicate.....		\$284,006 78	\$284,006 87
Insurance and taxes prepaid.....	\$89,957 21	42,089 66	38,090 85
Miscellaneous expenses.....	14,830 66	42,597 91	48,119 13
Deferred expenses.....			52,821 45
Total prepaid and deferred items.....	\$84,787 87	\$368,694 44	\$423,038 30
Goodwill trade marks formulae, etc.....	\$1 00	\$1 00	\$1 00
Total assets.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79
LIABILITIES			
Current liabilities			
Notes payable to bank.....	\$400,000 00	¹ \$794,739 16	¹ \$836,500 00
Trade acceptances.....	\$492,701 65	\$290,302 62	\$539,612 97
Accounts payable			
Trade.....	\$286,706 97	\$180,153 52	\$145,384 35
Others.....	45,485 30	61,952 50	46,155 34
Total accounts payable.....	\$332,172 27	\$242,106 02	\$191,539 69
Total current liabilities.....	\$1,224,878 92	\$1,327,147 86	\$1,567,652 66
Sundry reserves			
Provision for containers in customer's hands.....	\$18,367 50	\$11,721 00	\$14,009 00
Income tax prior years.....	112,391 76		
Provision for Stock Warrants.....	8,653 30	1,653 30	1,653 30
Provision for raw material commitments.....	267,493 19		
Provision for contingencies.....	8,614 67	400,000 00	400,000 00
Total sundry reserves.....	\$415,520 42	\$413,374 30	\$415,662 30
Capital Stock and surplus			
Capital Stock—Common			
Authorized.....	750,000 00	375,000 00	
Less—Unissued.....	360,505 00	180,252 50	
Issued.....	389,495 00	194,747 50	\$3,894,950 00
Less in Treasury.....	13,097 08		\$130,970 80
Outstanding.....	376,397 92	194,747 50	\$3,763,979 20
Capital surplus.....	\$3,050,673 36	\$2,586,241 57	\$2,586,241 57
Earned surplus from December 31, 1931.....		586,438 39	662,965 26
Total Capital Stock and surplus.....	\$6,814,652 56	\$7,067,629 96	\$7,144,156 83
Total liabilities.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79

NOTES—None of the 16,024 shares of Preferred Stock at present authorized, was outstanding at the above dates

Contingent liability as at December 31, 1931 under property purchase agreement—\$189,331 04

¹ The Company is under agreement with the Whitney National Bank of New Orleans to retain on hand at all times, sufficient molasses, which at inventory values will amount to 110% of the Company's unpaid notes—\$96,500 00 as at December 31, 1932

Nozon, Inc., pro forma balance sheet June 27, 1933

ASSETS	
Notes receivable.....	\$270,000.00
Inventory.....	25,000.00
Machinery and equipment.....	25,000.00
Good will, licenses and processes.....	350,000.00
Total assets.....	\$700,000.00
LIABILITIES	
Purchase contract payable.....	\$80,000.00
Preferred Stock \$100 par Authorized 300,000 shares Less unissued outstanding—30,000 shares.....	270,000.00
Common Stock, No Par—6,000 shares.....	350,000.00
Total liabilities.....	\$700,000.00

AGREEMENTS

American Commercial Alcohol Corporation, in consideration of the listing of the securities covered by this application, agrees with the New York Stock Exchange as follows.

To notify the New York Stock Exchange promptly of any change in the general character or nature of its business.

To notify the New York Stock Exchange immediately if it or any subsidiary or controlled company should dispose of any property or of any stock interest in any of its subsidiary or controlled companies, when such disposal would impair or materially affect its financial position or the nature or extent of its operations as theretofore conducted.

To publish periodical statements of earnings, as agreed upon with the Committee

To publish at least once in each year and submit to stockholders at least fifteen days in advance of the annual meeting of the Corporation, but not later than March 15th, a Balance Sheet, and Income Statement for the last fiscal year and a Surplus statement of the applicant company as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or, in lieu thereof, eliminating all intercompany transactions:

A similar set of consolidated financial statements. If any such consolidated statements exclude any companies a majority of whose equity stock is owned, (a) the caption will indicate the degree of consolidation; (b) the Income Account will reflect, either in a footnote or otherwise, the parent company's proportion of the sum of or difference between current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of report; and (c) the Balance Sheet will reflect, in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions. Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries, in either parent company statements or consolidated statements.

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of any controlled corporation whether consolidated or unconsolidated.

To publish all future annual financial statements of any character, in substantially the form contained in the listing application and, in the publication of reports of earnings for any period of less than a fiscal year, to show net profits in the aggregate with the same degree of consolidation as in the annual report and earnings per share after Depreciation, Depletion, Income Taxes and Interest, estimating the proportionate amount of these items as accurately as may be if not finally determined at date of publication.

Not itself, and not to permit any subsidiary, directly or indirectly controlled to take up as Income stock dividends received at an amount greater than that charged against Earnings, Earned Surplus or both of them by the issuing Company in relation thereto.

Not to make any change in depreciation policies as described in the application and not to make any substantial change in any percentages therein recited as applicable to particular classes of property without notifying the Stock Ex-

change and without calling attention to such changes in the next succeeding published report and, if this be an interim report, also in the next succeeding annual report.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, south of Chambers Street, other than its transfer office or agency in said city, where all listed securities shall be registered. If its transfer books should be permanently closed, to continue to split up certificates of listed stock into smaller denominations in the same name so long as such stock shall be retained upon its list by the New York Stock Exchange. If its transfer office or agency should be or should become located north of Chambers Street, to arrange, at its own cost and expense that its registry office will receive and re-deliver all securities deposited at such registry office for the purpose of transfer.

Not to add to the number of its transfer agencies nor to make any change of a transfer agency, or of a trustee, or fiscal agent of its listed bonds or securities, without prior notice to the Committee on Stock List, and not to add to the number of registrars of its listed stock nor to change a registrar of its listed stock without the prior approval of the Committee on Stock List, nor to select an officer or director of the Company as a trustee of its mortgages or other listed securities unless such officer or director be a co-trustee for an issue having a corporate trustee.

Not to make any change in the form or nature of its listed securities or in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Committee on Stock List of such proposed changes, and having made application for the listing of the securities as changed, if the Committee on Stock List so requires.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, and to afford the holders of its listed securities a proper period within which to record their interests and to exercise their rights, and to issue all such rights in form approved by the Stock Exchange and to make the same transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange promptly in the event of issuance of Options or Warrants to purchase stock, otherwise than

- (a) pro rata to stockholders,
- (b) to officers and employees under general employees' stock purchase plan.
- (c) firm offers of stock to be taken in a block within four months from the

date of such offer, of the number of shares covered by such Options, of their terms and of the time within which they may be exercised and of any subsequent changes therein and thereafter to include this information together with like information as to any Options in existence at the time of approval of this application so long as said Options are outstanding, in all annual financial reports furnished to stockholders and in all formal published reports.

To make application to the Stock Exchange for the listing of additional amounts of listed securities sufficiently prior to the issuance thereof to permit action in due course upon such application.

To publish promptly to holders of listed stock any action in respect to dividends on shares, or allotments of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books, or extensions, or of the taking of a record of holders for any purpose.

To forward to the Stock Exchange copies of all notices mailed to stockholders looking toward Charter amendments, and to file with the Stock Exchange two copies of amended Charter, or Resolutions of Directors in the nature of amendments (one of which must be certified) as soon as such amendments or resolutions have become effective.

Not to purchase listed Preferred Stock for retirement at a price in excess of that at which at which the stock purchased might then be obtained in the open market and not to select Preferred Stock for redemption otherwise than pro rata or by lot; to notify the Stock Exchange immediately and at least fifteen (15)

QUESTIONNAIRE

(To be signed by an officer of the company)

JUNE 2, 1933.

This questionnaire accompanies application of the AMERICAN COMMERCIAL ALCOHOL CORPORATION for the listing of 51,293 additional shares of its \$20 par common stock.

- 1—Is the management control of the Company held by any other Company through either stock ownership, lease or contract? No.
- 2—Are there within your knowledge any syndicate or concentrated holdings of this security? No
- 3—Is there any restraint on any portion of the security? No
- 4—What dividends (if any), are in arrears on the preferred stocks either of the Company or of any of its subsidiaries? Kessler Chemical Corp (wholly owned subsidiary) pfd. stk
- 5—What dividends (if any) have been declared (and not paid) since the date of this application? None.
- 6—What rights (if any) to subscribe to any present securities or new securities remain unsettled as of the date of this application? None except present offering to stockholders
- 7—Are the transfer books to be closed or a record of stockholders to be taken in the near future for any purpose? Record on June 14, 1933 of stockholders entitled to subscribe on the new offering
- 8—Has there been any change in your Charter or By-Laws since previous filing with the Committee? No.
- 9—Will you agree to publish quarterly statements of earnings based upon the same degree of consolidation as shown in annual reports and transmit copies of such statement to the Committee on Stock List? Yes.
- 10—If it is legal under your Charter will you agree to take a record of stockholders for dividends and meetings instead of closing your books? Yes
- 11—To avoid the congestion caused by the fact that numerous corporations have adopted the same date of record of stockholders for payment of dividends, will you agree to make your record date of stockholders for such purpose some date other than the 15th of March, June, September and December? Yes.
- 12—In case the securities to be listed are in temporary form, will you agree that orders for permanent engraved securities to replace them shall be placed within thirty days and that, when ready for delivery, a notice will be sent to stockholders asking that temporary certificates be exchanged immediately for permanent and calling attention to the fact that it is the practice of the New York Stock Exchange to strike temporaries from the list ten days after the admission of permanents? Not applicable.
- 13—When and by whom was the last audit of your books prepared? Dec. 31, 1932 by F. W. Lafrentz & Co.
- 14—What accountant or accounting firm audits the books and accounts of the company? F W. Lafrentz & Co.
- 15—Will you inform the Stock Exchange immediately if there is a change? Yes.
- 16—Has any member or employee of the accounting firm any official relation with the applicant company? No. Describe relationship
- 17—Will you make copies of the audits of your books available to the Committee on request? Yes.
- 18—Have any other reports of a financial, accounting or engineering nature been made either on your behalf or on behalf of any banker or underwriting or banking group within the past three years? No. If so, please indicate the character of these reports and state whether they will be made available for the inspection of this Committee upon request?
- 19—Is there any litigation pending or threatened that would affect the Company's income from, title to, or possession of any of its property? No.
- 20—The Committee in order to facilitate the business of the Exchange, desires that the transfer agent of your Company be directed to sign the Stock Transfer Department receipts for all stock submitted by the Stock Clearing Corporation for transfer Will you so agree? Yes
- 21—Will you agree to issue new certificates replacing lost ones forthwith upon notification of loss and receipt of proper indemnity, making any changes which may be necessary in your Charter or By-Laws to permit this to be done? Yes.

- 22—Will you agree that in the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed, and the subsequent appearance of the original bond in the hands of an innocent bondholder, you will take up either the original or duplicate and replace the bond taken up by another bond theretofore issued and outstanding? Not applicable
- 23—Will you agree that all calls for redemption (Foreign Bonds) published abroad will be published on the same day or days in a newspaper of general circulation published in the Borough of Manhattan, City of New York? Not applicable
- 24—The Committee desires to be kept informed as to any diminution in the supply of stock available for the market occasioned by deposit of stock under Voting Trust Agreements or other deposit agreements. If knowledge of any such actual or proposed deposits should come to the official knowledge of the officers or directors of the Company, will you agree promptly to notify the Exchange giving the names and addresses of the Deposit Committee and, if known to the Company, the amount or number of shares so deposited? Yes.
- 25—If action on your application is favorable how many copies of the application do you require printed for you at your expense? 100.
- 26—In the event any additional papers should be required for the Committee's files, will you agree to furnish same on request? Yes.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By GUY I. COLBY, *Treasurer*.

175541—34—FR 13—11

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		4,000	1,000				793	
May 16		900			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									
June 16	100				July 24, long	1,491			

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
Total assets.....	700,000.00
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
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.

STOCK-EXCHANGE PRACTICES

TUESDAY, FEBRUARY 20, 1934

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

The committee met at 10 a.m., pursuant to adjournment on Friday, February 16, 1934, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Adams, Townsend, Couzens, Steiwer, 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.

Mr. PECORA. Mr. Wright, will you take the stand, please?

TESTIMONY OF CHARLES C. WRIGHT, STOCK BROKER, NEW YORK CITY

The CHAIRMAN. Mr. Wright, you do solemnly swear that the testimony you are about to give in the matters under investigation by this committee will be the truth, the whole truth, and nothing but the truth. So help you God.

Mr. WRIGHT. I do.

Mr. PECORA. Mr. Wright, will you give your full name and address for the record?

Mr. WRIGHT. My name is Charles C. Wright; age 46; residence, 1040 Fifth Avenue, New York City.

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

Mr. WRIGHT. Broker.

Mr. PECORA. Stock broker?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How long have you been in that business?

Mr. WRIGHT. Since 1901.

Mr. PECORA. Since 1901, continuously?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Are you a member of any firm?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Engaged in that business?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And what is the name of the firm?

Mr. WRIGHT. Wright & Sexton.

Mr. PECORA. Who are the other members of that firm?

Mr. WRIGHT Jere A. Sexton, George S. Simpson, and Alexander V. Doyle.

Mr. PECORA. Are you a member of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How long have you been a member of it?

Mr. WRIGHT. Seven years.

Mr. PECORA. Are any other of your partners connected with that exchange or any other exchange?

Mr. WRIGHT. Mr. Doyle and Mr. Simpson are both members of the stock exchange.

Mr. PECORA. Do you or any of your partners hold memberships in any other securities exchanges than the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. What other exchanges?

Mr. WRIGHT. We are members of the New York Curb, Chicago Stock Exchange, Philadelphia Stock Exchange, Commodity Exchange, Produce Exchange, and Chicago Board of Trade.

Senator ADAMS It might be easier to ask him which ones he is not a member of.

Mr. PECORA. Are you a member of any of the standing committees of the New York Stock Exchange?

Mr. WRIGHT. No, sir.

Mr. PECORA. Is any of your partners?

Mr. WRIGHT. No, sir.

Mr. PECORA. Are any of your partners or yourself a member of any committee of any other stock exchange than the New York Stock Exchange?

Mr. WRIGHT. No, sir.

Mr. PECORA. Are you one of the so-called "specialists" among the members of the New York Stock Exchange, Mr. Wright?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. For what stocks are you the specialist on the floor of that exchange?

Mr. WRIGHT. On the stock exchange?

Mr. PECORA. Yes.

Mr. WRIGHT. American Commercial Alcohol.

Mr. PECORA. Any other securities?

Mr. WRIGHT. Eaton Axle, Foundation Co. Those are about the three principal ones.

Mr. PECORA. Foundation Co. You say those are the principal ones?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Are there any others?

Mr. WRIGHT. There are other books at my post which we alternate and take. If one man is busy with one of his books they pitch in and help him. Those are the three stocks that I devote my time to.

Mr. PECORA. The stock for which a member of the New York Stock Exchange is appointed a specialist is referred to as the book?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And how long have you held the book in American Commercial Alcohol?

Mr. WRIGHT. Three years.

Mr. PECORA. How long have you had the book in Eaton Axle?

Mr. WRIGHT. Probably 6 years.

Mr. PECORA. And the Foundation Co.?

Mr. WRIGHT. Six years.

Senator ADAMS. There is a single specialist in a particular stock on a stock exchange?

Mr. WRIGHT. Sometimes there are 3 or 4. There are rival books. In my particular case I am the only specialist in those stocks.

Senator COUZENS. What do you mean by "rival books?" Do you mean you compete to get the business?

Mr. WRIGHT. Yes, sir.

Senator COUZENS. Do you work on a commission basis or a salary?

Mr. WRIGHT. We work on a commission basis prescribed by the rules of the stock exchange.

Senator COUZENS. You are not employed by any particular broker or agency?

Mr. WRIGHT. No, sir.

Senator COUZENS. How do you get to be a specialist in these particular stocks that you have just enumerated?

Mr. WRIGHT. Well, there is no particular set rule about how you get them. The exchange does not appoint you a specialist. You just seem to drift into it over a period of time. As a general rule, a man starts out helping a specialist in a stock and gradually he works his way in until he is a specialist.

Senator COUZENS. How did you happen to be a specialist in those particular stocks that you have just enumerated?

Mr. WRIGHT. I don't know how I could answer that, Senator.

Senator COUZENS. You don't know how you can answer it?

Mr. WRIGHT. No; I just kind of drifted into them, I guess.

Senator COUZENS. Did you drive the other fellows out, or were there any ahead of you?

Mr. WRIGHT. I never had any rival specialists.

Senator COUZENS. You never had any rival specialists in any of your books?

Mr. WRIGHT. No, sir.

Senator ADAMS. Is there any difference in the commission which the specialist gets and that which the ordinary floor broker gets?

Mr. WRIGHT. Exactly the same.

Senator ADAMS. And is there any requirement in the transactions in which the stock in which a particular man is a specialist whereby it must go through him or his book?

Mr. WRIGHT. No, sir.

Senator ADAMS. They can be transactions on the floor just the same?

Mr. WRIGHT. Yes, sir.

Senator COUZENS. In other words, you get to be known as a specialist for this alcohol stock the same as a Senator may get to be known as a motor Senator or sugar Senator or power Senator, or what-not; is that it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Mr. Wright, I show you document typewritten and signed "Wright & Sexton" and which purports to be the answers

to a questionnaire which was addressed to your firm last November in behalf of this committee. Will you look at it and tell me if you recognize it to be the original return to that questionnaire made in behalf of your firm?

Mr. WRIGHT. Yes, sir. I was in Europe at the time the return was made by my office.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Answer of Wright & Sexton to questionnaire, dated Nov. 17, 1933, was thereupon designated "Committee Exhibit No. 32, February 20, 1934", and is as follows:)

COMMITTEE EXHIBIT No 32, FEBRUARY 20, 1934

WRIGHT & SEXTON, MEMBERS NY STOCK EXCHANGE, MEMBERS NY. CURB EXCHANGE

ONE WALL STREET, NEW YORK

NOVEMBER 17, 1933.

Mr. FERDINAND PECORA,
Counsel, U.S. Senate Subcommittee on Banking and Currency,
235 Madison Avenue, New York City.

DEAR SIR: We wish to submit the following answers to the Questionnaire which you sent us as a member form of the New York Stock Exchange.

Question 1:

(a) No.

(b) No.

(c) Charles C Wright, Specialist

(d) George S Simpson, Specialist on New York Curb Exchange

Question 2:

Charles C. Wright, Specialist in the following: American Commercial Alcohol, Eaton Manufacturing Company, Foundation Company, Indian Refining Co., Inc., Panhandle Producing & Refining, Timken-Detroit Axle Co

Question 3:

(a) None.

(b) None.

Question 4:

(a) Purchases 411,872 shares—Sold 416,051 shares

(b) Charles C Wright—Purchased 8,750 shares—sold 2,000 shares

Question 5:

None

Question 6:

(a) Yes (Copies of options attached)

(b) Yes (Copies of options attached)

Question 7:

(a) Yes (See answer to Question 6).

(b) Yes (See answer to Question 6).

(c) No.

Question 8

(a) No.

(b) No

Question 9:

(a) No.

(b) No.

Question 10:

Statement of Receipts & Disbursements attached.

Question 11:

(a) Not engaged in odd lot business.

(b) Not engaged in odd lot business.

Trusting this is the information you desire, we remain,

Very truly yours,

WRIGHT SEXTON.

Mr. PECORA. I think in order to make the record intelligible, it would also be well to offer in evidence the printed part of this exhibit, the printed form of the questionnaire to which the exhibit itself is a reply. That would be necessary, in view of the fact that the replies to the questionnaire does not state what the questions are. The printed form of questionnaire will be just what the questions are.

The CHAIRMAN. Let it be admitted.

(Printed questionnaire was thereupon designated "Committee Exhibit No. 33, Feb. 20, 1934", and the same appears in the record in full, as follows:)

COMMITTEE EXHIBIT NO. 33—FEBRUARY 20, 1934

COMMITTEE ON BANKING AND CURRENCY, UNITED STATES SENATE

QUESTIONNAIRE

MEMBER FIRMS OF THE NEW YORK STOCK EXCHANGE

1 Furnish the information requested below as of July 31, 1928; July 31, 1929; December 31, 1929, December 31, 1930, December 31, 1931; December 31, 1932; and September 30, 1933.

(a) Did any member partner of your firm on or about the above dates act primarily as a floor trader in stocks? If so, furnish the name or names of such member partner or member partners and set forth upon which of said dates each acted in such capacity.

(b) Did any member partner of your firm on or about the above dates act primarily as a floor broker in stocks? If so, furnish the name or names of such member partner or member partners and set forth upon which of said dates each acted in such capacity.

(c) If the answers to (a) and (b) are negative, furnish the name or names of your member partners who were active on the floor of the exchange on or about the above dates, and in what capacity.

(d) Furnish list of all member partners not included in (a), (b) or (c), describing the duties of each on or about the above dates.

2 If any of the member partners of your firm were specialists in listed stocks on the floor of the New York Stock Exchange on July 1, 1933, furnish as to each, a list of such stocks.

3. Submit the following information for the whole year 1929 and for the period from January 1, 1933, to September 1, 1933.

(a) Approximate total number of customers (persons, partnerships, and/or corporations) who bought or sold any securities through your firm.

(b) Approximate total number of the above whose transactions were of a cash character.

4 (a) State total numbers of shares bought and total number of shares sold on the New York Stock Exchange for the account of your firm for the month of July 1933, excluding transactions in error accounts.

(b) Submit on behalf of each member and nonmember partner (whether active or inactive) a statement showing the approximate total number of shares bought and the approximate total number of shares sold on the New York Stock Exchange for their respective personal accounts for the month of July 1933 (odd lot houses need not answer question 5).

5 State the approximate total number of accounts on the firm's books having debit balances as of December 31, 1928, July 31, 1929, December 31, 1929; December 31, 1930, December 31, 1931, December 31, 1932, and June 30, 1933.

6 (a) State whether your firm held any option or had a participation in any option, exceeding 10,000 shares of any single security during the years 1929 to 1933, inclusive. If answer is in the affirmative and firm held the original option or acted for the optionee or optionees, furnish a photostatic copy of each of such options.

(b) State whether any partner of your firm or any person acting on behalf of your firm or any partner thereof, held any option or had a participation in any option, exceeding 10,000 shares of any single security during the years 1929 to 1933, inclusive. If answer is in the affirmative, furnish the name or names of such person or persons, and if such person or persons held the original option or acted for the optionee, or optionees, furnish a photostatic copy of each such options

7. (a) State whether your firm participated in the profits and/or losses in any syndicate, pool, and/or joint account during the years 1929 to 1933, inclusive. If the answer is in the affirmative and your firm was manager or acted for the manager or managers for such accounts, furnish a photostatic copy of each of said syndicate, pool and/or joint account agreements

(b) State whether any partner of your firm or any person acting for or on behalf of your firm or of any partner thereof, participated in the profits and/or losses in any syndicate, pool and/or joint account during the years 1929 to 1933, inclusive. If the answer is in the affirmative, furnish the names of all such partners or persons, and if such partners or persons were the managers or acted for the managers for such accounts, furnish a photostatic copy of each of such syndicate, pool and/or joint account agreements

(c) State whether any joint syndicate and/or pool accounts have been maintained on the firm books during the years 1929 to 1933 inclusive, in which the firm or any partner thereof had no proprietary interest. If answer is in the affirmative and the firm was the manager or acted for the manager or managers for such accounts, furnish photostatic copies of each of syndicate, pool and/or joint account agreements.

NOTE—For the purposes of this questionnaire a syndicate, pool, or joint account shall be deemed to be an account in which two or more parties participated for the purpose of trading actively in a single security listed on the New York Stock Exchange and in which account more than 10,000 shares were bought and sold

8. (a) Has firm during the years 1929 to 1933, inclusive underwritten or has it participated in the underwriting of any securities which were subsequently offered for public sale? Give separate answer as to each year.

(b) Has firm during the years 1929 to 1933, inclusive made any public offering of securities or has it participated with others in a public offering of securities? Give separate answer as to each year

9. (a) Has firm acted as promoter, organizer, or manager under contract of any investment trust of the management type during the period 1929 to 1933, inclusive? If the answer is in the affirmative, furnish name of such investment trust or trusts and describe the relationship existing between firm and such trust or trusts, giving in each case the period of such relationship

(b) Has any partner of the firm or agent thereof acted as promoter, organizer, officer, director or manager under contract of any investment trust of the management type during the period 1929 to 1933, inclusive? If the answer is in the affirmative, furnish name or names of such investment trust or trusts, the names of any partners of the firm or agents thereof, having any of the said relationships thereto; a description of the relationship of such partners or agents and the period of such relationship

10. Furnish on behalf of the firm for each year from 1928 to 1932, inclusive, and for the period January 1, 1933 to September 1, 1933, inclusive, a detailed annual income statement of receipts and disbursements by classification. Such statement should clearly specify the net commissions and net interests

11. The following information is to be furnished only by firms engaging in the odd-lot business:

(a) State the total number of shares bought by your firm in odd lots during the periods from January 2, 1929 to December 31, 1929, inclusive, and from April 1, 1933 to July 31, 1933, inclusive

(b) State the total number of shares sold by your firm in odd lots during the periods from January 2, 1929 to December 31, 1929, inclusive, and from April 1, 1933 to July 31, 1933, inclusive.

Mr. PECORA. The questionnaire has been marked "Exhibit No. 33." The answer to this questionnaire made in behalf of the firm of Wright & Sexton and identified by the witness is marked "Exhibit No. 32."

Now, Mr. Wright, I want to call your attention to question no. 2 on the questionnaire, in which your firm was asked if any of the

member partners of your firm were specialists in listed stocks on the floor of the New York Stock Exchange on July 1, 1933—"furnish as to each a list of such stocks." In answer to that question your return, marked "Exhibit No. 32", lists the following stocks as those in which you were the specialist: American Commercial Alcohol, Eaton Manufacturing Co., Foundation Co., Indian Refining Co., Inc., Panhandle Producing & Refining, Timken-Detroit Axle Co. In your answer here this morning you have mentioned only 3 of those 6 stocks or issues.

Are you also the specialist in the other three, namely, Indian Refining Co., Inc., Panhandle Producing & Refining Co., Timken-Detroit Axle Co.?

Mr. WRIGHT. Mr. Arthur J. Vogel is the specialist in those stocks, but the stocks are considered my books. He is not a member of the firm. He is an associate that works on the floor with me. He handles the cheaper class of stocks that we have as specialties.

Mr. PECORA. When you say the books in those three stocks are considered your books, although someone else is the specialist, just what do you mean by that?

Mr. WRIGHT. Well, you see, Mr. Pecora, it would be impossible for one man to handle all those books; so Mr. Vogel, who is a member of the exchange, takes a certain group of the books on one side of the post and we take a certain group on the other side. If he gets busy at any time we jump in and help him, and if I get busy he jumps in and helps me. He is not associated with me.

Mr. PECORA. Do you consider yourself a specialist in those three issues?

Mr. WRIGHT. Yes, sir; American Commercial Alcohol, Foundation Co., and Eaton Axle.

Mr. PECORA. And also Indian Refining Co., Panhandle Producing & Refining, and Timken-Detroit Axle Co.?

Mr. WRIGHT. No, sir.

Mr. PECORA. Then why was the return to the questionnaire so drawn as to show that you were the specialist in those three issues as well?

Mr. WRIGHT. That I don't know anything about. But on my pads, on my report pads which are sent out to brokers on the execution of an order, all these various stocks are given, and they copy that from my report pads. Sometimes those report pads are kept 4 or 5 years.

Mr. PECORA. Is it at all necessary or has it been the practice or custom for members of the New York Stock Exchange who want to become specialists in a stock traded in on the floor of that exchange to obtain the approval of the governing authorities of the stock exchange in order to become such a specialist?

Mr. WRIGHT. No, sir.

Mr. PECORA. Isn't there a practice or custom under which the governing authorities of the exchange may take away a book from a specialist and give it to another broker?

Mr. WRIGHT. If he is unable to handle it; yes, sir.

Mr. PECORA. Well, isn't there a rule, practice, or custom under which the stock exchange may for any other reason take a book away from the so-called "specialist" and give it to another member?

Mr. WRIGHT. I never heard of it, Mr. Pecora.

Senator COUZENS. What is the commission fixed by the New York Stock Exchange?

Mr. WRIGHT. Stocks under \$10, a dollar and a quarter a hundred; stocks over \$10, two and a half a hundred.

Senator ADAMS. That is an increase over the former schedule, isn't it?

Mr. WRIGHT. Yes; it is about a 25-cent increase over the dollar rate and a 50-cent increase over what used to be \$2.

The CHAIRMAN. Who fixes that?

Mr. WRIGHT. The stock exchange.

The CHAIRMAN. Has that been stabilized at that price for some years past?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. How long; do you know?

Mr. WRIGHT. I should say 5 or 6 years.

The CHAIRMAN. They can change it at any time they like?

Mr. WRIGHT. I do not know in exactly what form it would go through the exchange, but it would be in the hands of only one, and as long as I have been in the Street I have not known it to be changed.

The CHAIRMAN. What other expense is there in connection with an operation of that kind? I mean, is there anything more than the commission that you have mentioned?

Mr. WRIGHT. What other expense?

The CHAIRMAN. Yes. What other deductions are made in the transaction as against a customer?

Mr. WRIGHT. Nothing at all.

Senator ADAMS. Well, you have a tax deduction.

Mr. WRIGHT. No; I have not.

Senator KEAN. You have stamps on a transaction.

Mr. WRIGHT. If you are trading, do you mean?

Senator KEAN. No. But you have to attach stamps to the sale ticket.

Mr. WRIGHT. No, sir. The original party attaches the stamps to it.

Senator KEAN. Well, you are the original party.

Mr. WRIGHT. No, sir. If you are acting as a specialist you are acting for other people, and they attach the stamps.

Senator KEAN. But the customer has to pay for the stamps.

Mr. WRIGHT. Yes, sir. And he is the principal.

Senator KEAN. That is the thing I am getting at. The customer has to pay for the stamps.

Mr. WRIGHT. Yes; but I am acting——

Senator KEAN (interposing). But you are nothing but the broker. You are executing orders for other people, in other words.

Mr. WRIGHT. Yes, sir.

Senator COUZENS. And you have to be a member of the stock exchange?

Mr. WRIGHT. Yes, sir.

Senator KEAN. But you are executing orders, and in this case not for the customer but for brokers.

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

Senator KEAN. And therefore your responsibility ceases with the order, and you only get a small commission

Mr. WRIGHT. That is right.

Senator KEAN. But as far as the customer is concerned, he not only has to pay that commission, I mean a commission which is different from what you stated here.

Mr. WRIGHT. Yes, sir.

Senator KEAN. Well, now, what commission does he have to pay?

Mr. WRIGHT. According to the price of the stock.

Senator KEAN. Go ahead and give it to us for the record.

Mr. WRIGHT. I do not know the exact rates. I haven't got a commission card here with me. It runs from \$6 25 to stocks under \$5— and this is only as far as my memory goes; and I believe from \$10 to \$20 it is about \$10.50, and then it runs into the \$15 class for stocks selling higher.

Senator KEAN. That is practically a quarter of 1 percent.

Mr. WRIGHT. That is graded according to the prices.

Senator KEAN. And in addition to that the customer has to pay the stamp tax.

Mr. WRIGHT. On the sale of the securities; yes.

Senator KEAN. That was what you wanted, Mr. Chairman, I believe.

The CHAIRMAN. Yes. I wanted to get at what the customer has to pay, as well as the commission to the broker. The broker pays you, I suppose?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And he then charges it against the customer?

Mr. WRIGHT. Yes, sir.

Senator KEAN. But, as far as this particular commission we have been talking about, the customer pays you nothing.

Mr. WRIGHT. Yes he does. He pays me \$2.50.

Senator KEAN. No; the broker pays you.

Mr. WRIGHT. I beg pardon, Senator Kean, but that comes out of the commission. If the commission is \$12.50, he pays me \$2.50 out of it.

Senator KEAN. But, as far as the customer goes, he pays you nothing. The broker who hires you pays you \$2.50.

Mr. WRIGHT. Yes; out of the customer's commission.

Senator KEAN. That may be, or out of his own commission, or out of his own pocket if he is trading for himself. So that so far as the customer is concerned he pays nothing himself to the broker.

Mr. WRIGHT. Yes, sir.

Senator ADAMS. It makes no difference to the customer whether the transaction is made on the floor or goes through your hands.

Mr. WRIGHT. Yes, sir.

Senator ADAMS. But the broker gets a little less if it goes through your hands, because he pays you a part of his commission.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Mr. Wright, as a specialist, did you execute orders for the account of customers principally, or orders given to you by other brokers for the account of their own customers?

Mr. WRIGHT. For brokers, for the account of their customers.

Mr. PECORA. Is that exclusively the kind of orders you execute?

Mr. WRIGHT. No, sir.

Mr. PECORA. You also execute orders for the account of your own customers, then?

Mr. WRIGHT. I have no customers.

Mr. PECORA. Question no. 3 of the questionnaire which has been marked in evidence "Committee Exhibit No. 33", reads as follows:

Submit the following information for the whole year 1929, and for the period from January 1, 1933, to September 1, 1933

(a) The approximate total number of customers, persons, partnerships and/or corporations who bought or sold any securities through your firm

(b) The approximate total number of above whose transactions were not, and/or their character

In reply to that questionnaire your answer to subdivision (a) of question no. 3 is "None." And your answer to subdivision (b) of question no. 3, likewise is "None." That indicates that the orders executed by you were practically all for the account of your firm.

Mr. WRIGHT. Orders executed by me were practically all for the account of other brokers.

Mr. PECORA. Well, then, the answer "None" to the question that you were to give the approximate number of customers, persons, partnerships, and/or corporations who bought or sold any securities through your firm for the year 1929 and for the period from January 1, 1933, to September 1, 1933, was so given for what reason?

Mr. WRIGHT. Because we give up the other side of the business immediately on the transaction of the particular order. I have no customers, carry no margin accounts whatsoever, and the answer would be "None."

The CHAIRMAN. Are you now referring to yourself or to your firm or to both?

Mr. WRIGHT. I am referring to my firm.

Senator ADAMS. The term "customer" as you understand it does not include the broker who deals as you do at your post.

Mr. WRIGHT. No, sir; a customer is a client you have in your office. We do not count brokers as customers.

Mr. PECORA. Have you ever participated in any pool account trading in the stock of any listed security?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, what do you understand by the term "pool" or "pool account", Mr. Wright?

Mr. WRIGHT. I do not understand those terms, Mr. Pecora. I have never been able to understand them.

Mr. PECORA. Well, you stated that you had participated in pool accounts, and then you say you do not understand what a pool account is. How do you know you have been a participant in such an account?

Mr. WRIGHT. Well, from the subscribing to the other members of the exchange or firms or individuals, where we have bought a block of stock and where we have redistributed that stock. Whether that comes under the reference to "a pool operation" I don't know.

Mr. PECORA. Well, you have held a membership in the New York Stock Exchange for a period of 7 years, I believe you said.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Prior to that time were you a broker without holding a seat on the stock exchange?

Mr. WRIGHT. No, sir; I was a broker on the curb.

Mr. PECORA. For how many years prior to the time when you bought a seat on the New York Stock Exchange were you a member of the curb?

Mr. WRIGHT. For 12 to 15 years.

Mr. PECORA. So that you have been a stock broker actively engaged in the business of buying and selling securities for a period of around 20 years?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And still you say you do not know what a pool account is?

Mr. WRIGHT. I will swear to you, Mr. Pecora, that I could not answer what a pool account is.

Mr. PECORA. Well, you have often heard the term, have you not?

Mr. WRIGHT. I have often heard it, and have tried to define it, but I cannot answer the question. There are some pools that are put together for the apparent purpose of buying, and for the apparent purpose of selling, and some for distributing stocks, and for the purpose of making a market in stocks, and some for this purpose, that purpose, and the other purpose. I just have no way of defining the term.

Mr. PECORA. Well, let us take a pool organized for the purpose of making a market in a stock. You have been a participant in such pools in the past, I take it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How do such pools operate? Will you tell the committee from your familiarity with the activities of such a pool account, how it is operated?

Mr. WRIGHT. Some pool accounts operate on options, that is, some by way of direct purchase of stock and redistribute it, and others may be accumulation pools where they accumulate stocks that somebody desires. Each one is in a different group.

Mr. PECORA. Well, let us take a pool account organized for the purpose of making a market in a stock.

Mr. WRIGHT. All right.

Mr. PECORA. In which an account is organized to trade in the stock.

Mr. WRIGHT. All right.

Mr. PECORA. How does such a pool actually operate in the market? How does it make a market?

Mr. WRIGHT. By creating activity.

Mr. PECORA. And how does it do that?

Mr. WRIGHT. By trading in the stock.

Mr. PECORA. That is, the pool buys and sells the stock.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. For its own account.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And frequently, if not invariably, such a pool has an option covering the stock in which it trades.

Mr. WRIGHT. That is right.

Mr. PECORA. And it gets that option as a rule from what kind of persons?

Mr. WRIGHT. Sometimes from individuals, and sometimes from officers of the company, and sometimes from large stockholders, and

sometimes from the corporation which might hold a good block of stock and which wanted to get rid of it.

Mr. PECORA. And as a rule what is the object sought to be accomplished by those persons who organize a pool account in order to make a market in the stock?

Mr. WRIGHT. Will you put that question again, please?

Mr. PECORA. The committee reporter will read it to you.

(Thereupon the committee reporter read the last question.)

Mr. WRIGHT. To redistribute the stock at a higher price if possible.

Mr. PECORA. That is, to raise the price level of the stock as much as possible.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. So that they may distribute whatever accumulation of stock they have at a higher price and at a profit.

Mr. WRIGHT. But it does not often work out at a profit.

The CHAIRMAN. In short, you are trying to make money? That is the idea, isn't it?

Mr. WRIGHT. Trying to make money; yes.

Senator ADAMS. It is quite possible and not at all unknown to have a syndicate or pool account trying to run the price of the stock down some, isn't that true?

Mr. WRIGHT. I never heard of that.

Senator COUZENS. Do you say you never heard of that?

Mr. WRIGHT. I have never heard of a pool to depress stocks; no, sir.

Senator KEAN. Well, you have certainly heard of a pool trying to accumulate stocks in the market, I take it?

Mr. WRIGHT. Yes, sir.

Senator KEAN. With the object in view that they wanted to buy them.

Mr. WRIGHT. Yes, sir.

Senator KEAN. And trying to keep the market steady.

Mr. WRIGHT. Yes, sir; I have heard of those.

Senator KEAN. So that any stocks that came in on the market they would accumulate, without putting up the price.

Mr. WRIGHT. Well, I have heard of them.

Mr. PECORA. Mr. Wright, where a pool is organized for the purpose indicated by Senator Kean in the question just propounded to you, such a pool would not operate under an option, would it?

Mr. WRIGHT. No, sir.

Mr. PECORA. Because, having an option to purchase stock at prices fixed in the option, it would not be necessary for such persons to go into the market to buy the stock, would it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. What was that answer?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Do you say it would be necessary?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Where they have an option on stock?

Mr. WRIGHT. Yes. Frequently where you have an option on stock you have to step into the market and buy stocks to put the stock up.

Mr. PECORA. Well, what is the advantage of that to the person who merely wants to accumulate stock?

Mr. WRIGHT. Well, Mr. Pecora, you and I are a little bit confused on the issue, I think.

Mr. PECORA. Well, perhaps I am confused.

Mr. WRIGHT. No; I am. Where there is an option it is one thing, and where it is just a matter of accumulation it is another thing. We are not working on that thing right, I am afraid. An accumulation is just a desire to buy for one group, or one person, or syndicate, an amount of that company's stock. He tries to buy it at as cheap a price as possible. Then, when you have an option it is different. When you have an option on stock the only way you can create activity in the stock is by buying it. It frequently happens when you have an option that you have to step into the market and buy a great deal of the stock in order to create activity.

Mr. PECORA. Well, that is where the person having the option to buy stock, in addition to acquiring that stock under the option, wants to sell it through his market operations at higher prices, or at a profit.

Mr. WRIGHT. That is right.

Mr. PECORA. Well, I was talking about the kind of pool that I understood Senator Kean was questioning you about when he asked you about a pool being organized to accumulate stock. If the purpose of a pool be only to accumulate stock, such a pool would not operate under that option, would it?

Mr. WRIGHT. No, sir.

Mr. PECORA. Because it would not be necessary for it to go into the market to buy stock if its sole purpose was to acquire or accumulate stock when as a matter of fact the pool had an option.

Mr. WRIGHT. That is right.

Mr. PECORA. So that where a pool operates under an option, the fact that it has such an option is a sure indication that the purpose of the pool, or at least one of the purposes of the pool, is to distribute the stock covered by the option at higher prices.

Mr. WRIGHT. That is right.

Mr. PECORA. And in order to do that they operate, of course, through brokers who are members of exchanges where the stock is listed.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And frequently members of exchanges who execute orders for such pools of participants in the pools themselves.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And that has been your experience, hasn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. As a matter of fact, when you stated that your firm had no customers at all, did you mean to indicate that the business of your firm is principally the executing of orders for other brokers and not buying and selling for its own account?

Mr. WRIGHT. That is right.

Senator KEAN. I should like to ask Mr. Wright a question or two about pools: A pool, of course, as a rule, or options held by a pool as a rule are bases, say, on so many shares at a little below the market, and so many shares at the market, and so many shares at so much above the market, and so many shares above that price.

Mr. WRIGHT. That is generally so.

Senator KEAN. Therefore, if you are going to operate for that pool you have to create a market or else you wouldn't exercise the option to buy at the prices given about a point or two, or at something higher than the market at the time you take the option?

Mr. WRIGHT. That is right.

Senator KEAN. Is that a fact?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, Mr. Wright, take the case of a pool that is organized to distribute stock which it has under option, at higher prices than the market price.

Mr. WRIGHT. All right.

Mr. PECORA. You have handled many such pool accounts, have you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And you have participated in many such pool accounts?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, you have stated before that such a pool goes into the market, buys and sells for its own account in order to create activity in the stock.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, that activity, as trades are made for that pool account, are recorded on the ticker, but they do not appear on the ticker as an activity that is engendered or fomented simply by the members of the pool as distinguished from the general trading public, do they?

Mr. WRIGHT. No, sir.

Mr. PECORA. Now, Mr. Wright, by such processes or activities on behalf of pool accounts, especially where trading for such pool accounts is done by brokers who are also members of the pool or participants in it, isn't it a fact that the public get a false notion of the activity in the stock?

Mr. WRIGHT. I would have to think for a second before I try to answer that question.

Mr. PECORA. Surely. You may do that.

Mr. WRIGHT (after a pause of a few moments). Do you want me to talk freely and frankly on this?

Mr. PECORA. Yes, very frankly indeed.

Mr. WRIGHT. Because the public will not trade in stocks that are not active. Naturally when you make a stock active the public will trade in that stock. And many times you are successful and many times you are unsuccessful in such an effort in any particular stock; and if you are running a pool and they do not trade in the stock, that is your hard luck.

Mr. PECORA. Then activities engendered by pools that are organized to distribute stocks that they hold under option, or which they have already accumulated, at prices which would represent profits to themselves, are activities designed primarily to induce the public to come in and buy, so that distribution may be effected at higher levels?

Mr. WRIGHT. Yes, sir; which is just the same as distributing groceries or any other commodities.

Senator ADAMS. In other words, it is just like anybody going fishing, he wants to fish where the other fellows are.

Mr. WRIGHT. Yes, sir. In many cases, Mr. Pecora, prices of stocks go far beyond what anybody had in mind. I think the history of almost every stock downtown is that some days it goes far beyond any dream that anybody had.

Mr. PECORA. In other words, these pool operations are sometimes organized to distribute stocks held by pool members, or stocks which they have under option, and they succeed beyond the original expectations of the pool participants.

Mr. WRIGHT. Yes, sir. It is like in the case of the American Commercial Alcohol Corporation and—

Mr. PECORA (interposing). That succeeded beyond the expectations of the participants, did it?

Mr. WRIGHT. Yes, sir. I think the price shuffled up so far—well, I shiver every time I think of it, of the price at which the stock was distributed and the price which it went to.

Mr. PECORA. You do what?

Mr. WRIGHT. I either shiver or laugh every time I think of the difference there.

Mr. PECORA. And I suppose the laugh is on the investing public as to its going to the higher prices.

Mr. WRIGHT. Well, the investing public got the stock at the lower prices.

Mr. PECORA. And who got the stock at the higher prices?

Mr. WRIGHT. Well, there was no operation in American Commercial Alcohol Corporation stock after the original 25,000 shares had been distributed, and then the stock went up 50 points beyond that. It was carried up purely and simply by the grace of the people who wanted to invest in whisky stocks.

Mr. PECORA. And that was a course that was engendered at first by the pool operations in that stock?

Mr. WRIGHT. The pool operations in that stock were small. They just simply executed orders. That particular stock was carried up by the rise in National Distillers and United States Industrial Alcohol and Hiram Walker, and all the so-called "whisky" stocks. As to that particular stock there was no attempted manipulation, no, but just simply execution of orders in the stock.

Mr. PECORA. Don't you know that the pool that was organized and managed by Thomas E. Bragg, under the option that he received from Russell R. Brown and others associated with him who were officers and directors of the American Commercial Alcohol Corporation, carried on trading operations for the account of the pool up to and including the 24th of July last, beginning with the 3d of May, last?

Mr. WRIGHT. Well, now, I have some records here which I should like to read to you. In the month of May I received from W. E. Hutton & Co., where Mr. Bragg makes his office, \$1,270 of commissions in American Commercial Alcohol, and in the month of June that went down to \$533, and the month of July it was \$203, which would look to me as if that pool's activities faded at the end of May.

Mr. PECORA. Well, it was admitted by a member of the firm of W. E. Hutton & Co. who testified before this committee last week that the operations of that so-called "Bragg" pool in American

Commercial Alcohol Corporation stock, commenced on May 2, 1933, which was the date on which the option was given to Bragg, and terminated on July 31. Don't you know that?

Mr. WRIGHT. Well, Mr. Bragg went to Europe in the early part of June, or in the middle of June, and from then on my knowledge of the operations of the pool, outside of the testimony I heard here, were nothing.

Senator ADAMS. Is Mr. Bragg quite a traveler?

Mr. WRIGHT. He is a great traveler.

Mr. PECORA. And he is a great market operator.

Mr. WRIGHT. The cleanest in the the Street.

Mr. PECORA. And during his travels who gives his orders in his market operations?

Mr. WRIGHT. Well, I would imagine, Mr. Pecora, what he did was to telephone his orders in to his own office, at W. E. Hutton & Co., and that they were distributed from there.

Mr. PECORA. Do you know that this pool account which was carried on the books of W. E. Hutton & Co. as account no. 296, traded in American Commercial Alcohol stock from May 2, 1933, up to and including July 31, 1933?

Mr. WRIGHT. I know it simply because I heard the testimony here.

Mr. PECORA. Did you handle those trades for that account?

Mr. WRIGHT. I handled them in May and for a part of June.

Mr. PECORA. Do you know who handled them after that?

Mr. WRIGHT. No, sir.

Mr. PECORA. And do you recall when the high price for that stock was reached, last summer?

Mr. WRIGHT. I will never forget it!

Mr. PECORA. What date was it?

Mr. WRIGHT. The 18th of July.

Mr. PECORA. And what was the high price of the stock?

Mr. WRIGHT. It was 89 $\frac{7}{8}$.

Mr. PECORA. And, according to the testimony of Mr. Foster, of the firm of W. E. Hutton & Co., this pool was operating on that date, and from that date to the end of July, and you heard that testimony given here last week, didn't you?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You say the public were not buying or dealing in this stock at all in July?

Mr. WRIGHT. Yes; they were buying it and selling. They d—n near ruined me, I know. [Laughter.] That thing got to be a nightmare with me.

The CHAIRMAN. How did it affect you? Were you in the stock?

Mr. WRIGHT. No, sir; I was the specialist in that stock, and I was held responsible for every stop order, for the execution of every order in that stock. And I want to say that there was never any complaint filed with the New York Stock Exchange as to my handling of that particular stock. I was only the specialist, who stood by and took all the stop orders during the terrific break in liquor stocks.

The CHAIRMAN. Well, as I understand, you did not have any money at stake. You were either making commissions or not making commissions.

Mr. WRIGHT. Well, one day it cost me between \$45,000 and \$50,000, and I wouldn't like to tell you what it cost me on other days in making the market and keeping it, and keeping on with it. I was the specialist and the only man to come to for the market.

The CHAIRMAN. But you did not have anything at stake. You were simply the specialist in the stock, as I understand you.

Mr. WRIGHT. I was the specialist in the stock, and it was also my privilege to trade in the stock.

The CHAIRMAN. Then you lost money trading in the stock and not as a specialist, but as a trader. A specialist, as I understand, executes orders for other people, while a trader executes his own orders.

Mr. WRIGHT. Well, Senator Fletcher, there were times in that stock when there wasn't even a single bid for it, when the break came, at a time as I remember distinctly that I bought 11,000 shares of the stock at a price some 11 points down from the last sale, in an effort to make a market in that stock. And then it broke 30 points more. Yes, it was a nightmare to me. And in these fluctuations in stocks the specialist suffers a nightmare, because he is the one held responsible for the execution of every stop order, and has charge of every order brought in to the post.

Senator COUZENS. Do you think that a specialist should have the privilege of trading in stock?

Mr. WRIGHT. Well, if you take away that privilege you take away 75 percent of the liquidity of the stock market.

Senator ADAMS. Do you mean that as a specialist that is really a part of his duty?

Mr. WRIGHT. He is the man who supports and keeps the market stable to the best of his ability. And 75 percent of the liquidity of the market in a stock would be lost if you stopped the specialist from trading.

Senator ADAMS. Then a specialist isn't merely a broker?

Mr. WRIGHT. No, sir.

Senator ADAMS. He is a dealer in the stock.

Mr. WRIGHT. He is a dealer in the securities, and is held responsible for the gyrations of that security by the governors of the exchange.

Senator TOWNSEND. Then the specialist is the most important man, according to your testimony?

Mr. WRIGHT. No, sir; but in that class of stocks he is.

Senator TOWNSEND. In what class of stocks?

Mr. WRIGHT. Well, there are 3 or 4 different classes of stocks on the exchange—and, Mr. Pecora, do you want me to continue along that line?

Mr. PECORA. Yes; go ahead and explain it.

Mr. WRIGHT. There is a class of stocks, like United States Steel, General Motors, and so on, and for that class of stocks the market is automatically made. In other words, there are always bids and offers. But in the case of a stock like American Commercial Alcohol, United States Distillers, and others, the market is not made, and as to them there may be a tremendous vacuum. These breaks would not occur in the case of United States Steel or General Motors, because for such stocks a market is automatically made. Those are

volume stocks and are stabilized. But these other stocks are not stabilized stocks.

Mr. PECORA. You mean the alcohol stocks?

Mr. WRIGHT. Yes, sir; they are fairly stable now, but they were not in those days.

Mr. PECORA. Mr. Wright, I have before me data that was furnished to the committee on business conduct of the New York Stock Exchange in connection with an inquiry or investigation which the stock exchange caused to be made last summer at my suggestion, into the activities of the so-called "alcohol stocks", for the period between May 3 and the end of July 1933. And bearing on your statement made here a few minutes ago, that you did not trade in the stock of American Commercial Alcohol after June, I want to call your attention to the fact that the data furnished us by the stock exchange shows trades executed by you generally throughout the month of July 1933.

Mr. WRIGHT. Well, when I made that statement to you, Mr. Pecora, I made the statement that I had not traded for Mr. Bragg, that I had received no orders from him. But I have traded in the stock up to this morning.

Mr. PECORA. Well, you executed orders for W. E. Hutton & Co., didn't you, during June and July of 1933?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And weren't they for the Bragg account?

Mr. WRIGHT. As to that I don't know. W. E. Hutton & Co. are rather a large firm, and who they were trading for then I don't know, who their customers were I don't know.

Mr. PECORA. What orders did you have?

Mr. WRIGHT. I can show you the orders. I have brought everything down here with me so that I can show you everything you may want. W. E. Hutton & Co. might have a thousand customers. The particular orders I had for Bragg were through the month of May and the early part of June, and then he went to Europe. Now, when Hutton sends me any orders I don't know who their customers are. The particular orders I got from Bragg I got over the telephone.

Mr. PECORA. You got certain orders in American Commercial Alcohol stock during the life of his option, from Bragg?

Mr. WRIGHT. Directly from his office to the floor.

Mr. PECORA. And his office was in the office of W. E. Hutton & Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you get any of those orders also from B. W. Smith?

Mr. WRIGHT. No, sir.

Mr. PECORA. I meant from B. E. Smith.

Mr. WRIGHT. No, sir.

Senator TOWNSEND. Is Thomas E. Bragg a member of the New York Stock Exchange?

Mr. WRIGHT. No, sir.

Mr. PECORA. Did you get any orders from Mr. Quinn, who testified last week with respect to his association with B. E. Smith?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Well, those orders were for the account of Smith, weren't they?

Mr. WRIGHT. For the account of Bragg so far as I can understand. I heard the testimony given here.

Senator TOWNSEND. Can you receive orders from anyone who is not a member of the exchange?

Mr. WRIGHT. Well, you see, Senator Townsend, the form of procedure is that when I get orders over the telephone from W. E. Hutton & Co., or from any individual in the office, I hold W. E. Hutton & Co. responsible for the delivery of those orders to me. We consider that the order is executed for the account of W. E. Hutton & Co., not for the account of Thomas E. Bragg.

Senator TOWNSEND. Although they might be given by Bragg?

Mr. WRIGHT. Although they might be orders given by Bragg. We receive those orders at the regular specialist's commission of \$2.50 on each 100 shares of stock.

Mr. PECORA. Why did you say before that the higher prices paid in American Commercial Alcohol stock toward the middle of July 1933 were not prices paid by the public?

Mr. WRIGHT. I did not say they were not prices paid by the public.

Mr. PECORA. I understood you to say that the prices were not made by the public.

Mr. WRIGHT. You see, Mr. Pecora, I never have any means of knowing who is buying or selling the stock, except for the firms. I do not know the individuals. Naturally it was the public, or whoever was trading in the stock. It was trading in the stock that put the stock up. The operations of the pool in that stock did not put the price up. That was carried up by the tremendous uprising in National Distillers and United States Industrial Alcohol, and so on.

Mr. PECORA. And weren't pools working in those stocks?

Mr. WRIGHT. As to that I don't know.

Mr. PECORA. Well, you knew that the Bragg pool was working in it, didn't you?

Mr. WRIGHT. In American Commercial Alcohol; yes, sir. But I did not know anything about National Distillers, or United States Industrial Alcohol, or Commercial Solvents, which were advancing very rapidly at the same time.

Mr. PECORA. Didn't you notice externally indications that pools were operating in those stocks, too?

Mr. WRIGHT. I did not have any chance to see about those stocks.

Mr. PECORA. Now, when you were executing orders, whether conveyed to you by Bragg or by W. E. Hutton & Co., or by Quinn, in American Commercial Alcohol Corporation stock, between the beginning of May and the end of July of last year, were any of them limited orders, so-called?

Mr. WRIGHT. Why, yes.

Mr. PECORA. Now, will you describe to the committee what is meant by the term "limited orders"?

Mr. WRIGHT. A limited order is where a man says to you: Sell 2,000 American Commercial Alcohol at 30. That is a limited order, because he has fixed the price at which he wants to sell the stock.

Mr. PECORA. At 30 or better?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That is, he gives you that selling order at the minimum price for which he wants to sell the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And if you can get a better price, so much the better for him?

Mr. WRIGHT. Yes, sir; then whoever the customer may be he benefits.

Mr. PECORA. And where an order is a buying order he also gives a minimum order?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Or maximum order rather, the price which he will pay.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. But in his case you have discretion to execute the order at a lower price for his account?

Mr. WRIGHT. If I can; yes, sir.

Mr. PECORA. And that is known as a limited order?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And what does the term "market order" denote?

Mr. WRIGHT. A man will say: Sell 2,000 American Commercial Alcohol at the market, which may be $27\frac{1}{4}$; and he wants you to sell it at the market and doesn't limit the price. If you sell the stock at 26, it is all right. And if it is a buy order, it switches around to the other side in the same way.

Mr. PECORA. That is the broker might execute the order at the market?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The broker is allowed a certain latitude, although the time itself may be very brief, in the execution of the order.

Mr. WRIGHT. Sometimes he is so allowed, and sometimes he is not allowed.

Mr. PECORA. All depending upon market conditions?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You understand the term "discretionary order", do you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. When is such an order given to a broker, or I mean when such an order is given to a broker, what is understood by that term?

Mr. WRIGHT. He simply gives you an order and puts discretion on executing that order into your hands.

Mr. PECORA. That is both as to price and as to time of execution?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Those elements are left entirely to the discretion of the broker?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, as the specialist in American Commercial Alcohol Corporation stock, did you execute many discretionary orders last summer?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Between May and the end of July?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And for whose account principally?

Mr. WRIGHT. In May for the account of Bragg, and as to the rest, any order, for the account of any man who had a buying or selling

order, and because they are all smart enough that whenever they have a market order and the stock is gyrating or fluctuating violently, they are smart enough to pass it on to the specialist for execution, because then the specialist is held responsible for the execution of the order, as to time, price, and everything else, and not the broker.

Mr. PECORA. Do you know how the volume of orders executed by you directly on the order of Bragg in American Commercial Alcohol was in June and July of last year?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Give us the totals.

Mr. WRIGHT. I can give you the totals, but I can give you that by way of only the amounts for days. Mention any day and I will show you the original orders from the specialist's sheets for that day, and the purchases and sales.

Mr. PECORA. Give us that information for May 2, 1933.

Mr. WRIGHT. Here they are. [Pointing to a book.] On May 2 there were 1, 2, 4, 5, 7, 800 shares bought for the account of various firms. You will see there: Of whom purchased, description of stock, price, for whose account purchased. It shows the whole thing. But the trading was very small that day.

Mr. PECORA. You mean trading was very inactive in that stock that day?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That was the date when the Bragg syndicate commenced operations?

Mr. WRIGHT. Yes, sir. If you will look here, I will show you if I did any business for W. E. Hutton & Co. on that day. [Looks over the pages of a book.] No; nothing was done by me for W. E. Hutton & Co. on that day.

Mr. PECORA. How about on May 3, either for W. E. Hutton & Co. or for Bragg?

Mr. WRIGHT. I wouldn't know whether it was for Bragg or for Hutton.

Mr. PECORA. Well, you would know if you got the order directly from Bragg, wouldn't you, because you would enter it on your books as an order received from Bragg?

Mr. WRIGHT. No.

Mr. PECORA. In that case would you enter it up as from W. E. Hutton & Co.?

Mr. WRIGHT. Yes, sir; W. E. Hutton & Co. is my principal. If you will pick out one principal day I will show you what orders I received, and from what firm.

Mr. PECORA. One minute. What were the public quotations of American Alcohol stock on May 2, 1933?

Mr. WRIGHT. The high was 21 and the low was 20. There was very little activity.

Mr. PECORA. There was considerable activity the following day, May 3, was there not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And did you execute orders on May 3 for the account of W. E. Hutton & Co.?

Mr. BRAGG (looking at his book of record). Practically nothing.

Mr. PECORA. Well, from whom were your principal orders on May 3?

Mr. WRIGHT. For these people [holding up a package of tickets].

Mr. PECORA. Can you give their names?

Mr. WRIGHT. You will find practically every name on the stock exchange, in here. If you want to look through them you can see. Suppose you look through them and then let me read them off from this book.

Mr. PECORA. All right.

Mr. WRIGHT. Here are the original orders received on that day.

Mr. PECORA. All right.

Senator ADAMS. That is, your orders came in on those slips, do you mean?

Mr. WRIGHT. These are the original orders. I keep everything for 1 year. And here is my specialist book on that day.

Senator ADAMS. Then do you put them on those ledger figures there?

Mr. WRIGHT. Yes, sir.

Senator ADAMS. And then you transfer them into your permanent book?

Mr. WRIGHT. Yes, sir.

Senator ADAMS. Then you have three entries?

Mr. WRIGHT. Yes, sir. This is the specialist book kept in this way; this is the way we run our books.

Senator ADAMS. And here are your prices.

Mr. WRIGHT. Yes, sir. Here are 22, $22\frac{1}{2}$, $22\frac{3}{8}$, and 23. Here are the orders to buy, and here are the orders to sell, at these figures.

The CHAIRMAN. As a specialist you have orders to pay a certain price, and you have orders to sell at a certain price.

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And as a trader you can operate between the two prices for you own benefit, can't you?

Mr. WRIGHT. Yes, sir. But sometimes it is not to my own benefit as it turns out. Would you like to see, Mr. Pecora, the orders on that terrific day, the day of the big break?

Mr. PECORA. Yes; was that July 18?

Mr. WRIGHT. Yes, sir. I will have my assistant get the specialist sheet.

Mr. PECORA. I do not see it here in this book.

Mr. WRIGHT. I will get the other book for you. On July 18, the day of the big break in the market for American Commercial Alcohol, the volume was 43,600 shares.

Mr. PECORA. And the stock ranged between 77 and $89\frac{7}{8}$ on that date, didn't it?

Mr. WRIGHT. No, sir—well, here is $89\frac{7}{8}$; yes, sir; that is right.

Mr. PECORA. In other words, from a low of 77 to a high of $89\frac{7}{8}$.

Mr. WRIGHT. Yes, sir. The next day it was a little bit worse. It went down 29 points the next day.

Senator ADAMS. You only had 11,000 shares that day yourself?

Mr. WRIGHT. Yes, sir.

Senator TOWNSEND. And on July 12 there were 65,000 shares dealt in.

Mr. WRIGHT. That was the run-up market.

Mr. PECORA. That was what?

Mr. WRIGHT. The market was running up. Here, I will give you an idea of the situation from this book, as to the total number of shares traded in in that stock. Here are my specialist's sheets. But I will get the original orders. You can see that on this date what a tremendous amount of orders there were in that stock.

Mr. PECORA. On what date?

Mr. WRIGHT. July 18.

Mr. PECORA. We have it in the book, I believe.

Mr. WRIGHT. This only shows orders executed. This other shows the amount of orders given, and a great many of the orders possibly were not executed.

Mr. PECORA. Were there any other specialists in the stock of American Commercial Alcohol in May, June, and July of 1933?

Mr. WRIGHT. Well, as I am telling you, in July it does not help me out, because I was being swamped with stocks. During July many brokers came in to help me out, owing to the violent fluctuations in the stock, and owing to the impossibility of getting orders in my books, and so forth.

Senator ADAMS. When people came in to help you the commissions went to them, did they?

Mr. WRIGHT. Yes, sir. Whatever men worked on that day they got paid for it.

Senator ADAMS. And they carry whatever responsibility goes with it?

Mr. WRIGHT. Oh, no. The responsibility is all mine.

Senator ADAMS. Then they left that with you?

Mr. WRIGHT. Yes, sir. When a man comes in to help, you do not ask him to assume any responsibility. You assume it all yourself. Now, this is the other side to look at, Mr. Pecora.

Mr. PECORA. What is that?

Mr. WRIGHT. This is the other side, the other interesting thing to look at. This will show where the stock broke. Would you like to look at it?

Mr. PECORA. Yes.

Mr. WRIGHT. Here are the original books of that day when we were getting orders. And these are the selling orders that night. The reason why the stock broke you will see from that that there were no bids.

Mr. PECORA. As of the date July 18?

Mr. WRIGHT. Yes, sir. This is the buy side and this is the sell side. You will notice nothing but selling orders, with no bids. That is the explanation why the stock broke. You will see that we were getting few bids in here, and only a few any day right along there.

Mr. PECORA. What you have referred to are a few sheets of paper loosely bound together, which constitute what is called the book, is that it?

Mr. WRIGHT. That constitutes the market in the stock.

Mr. PECORA. As of July 18, 1933?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And in this book there are entered both the buying and the selling orders, at various prices at which trades were made on that day, from your book, isn't it?

Mr. WRIGHT. Yes, sir.

Senator COUZENS. And the reason the market broke was because there were no buying orders?

Mr. WRIGHT. Because the selling orders outnumbered the buying orders.

Mr. PECORA. That is, when the stock got to a level of around 89 the public would not buy any more at those figures, and then those who had the stock wanted to sell.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And get the benefit of those high levels.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And that produced an avalanche of selling orders, with practically no buying orders at all?

Mr. WRIGHT. That is correct.

Senator TOWNSEND. What is the stock bringing now, Mr. Pecora?

Mr. PECORA. It is around 49 now. Or, Mr. Wright, what is it quoted at now?

Mr. WRIGHT. At about 49.

The CHAIRMAN. And it went down to around what point?

Mr. WRIGHT. It went from $89\frac{7}{8}$ to $29\frac{7}{8}$

Mr. PECORA. Within 3 days' time.

Mr. WRIGHT. Yes, sir; within 3 or 4 days.

Mr. PECORA. Between July 18 and July 21.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The pools did not do any buying at the higher levels from July 18 and for a few days thereafter, did they?

Mr. WRIGHT. What pools?

Mr. PECORA. Whatever pools were in existence.

Mr. WRIGHT. I don't know about that.

Mr. PECORA. Don't you really know, Mr. Wright, what pools were in existence?

Mr. WRIGHT. Sure. I bought some when pools were dealing in the stock, and I got mine.

Mr. PECORA. How many pools were in existence at that time?

Mr. WRIGHT. I don't know.

Mr. PECORA. I mean at the time when the break came.

Mr. WRIGHT. Well, as to that I don't know.

Mr. PECORA. Would you, for the benefit of the committee, describe the mechanics of the handling of a book by a floor specialist of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Assume, now, that we know nothing about the mechanics of the operation, and that you are going to give us a complete education of the process of handling the book.

Mr. WRIGHT. Tell me what date you want, and you can pick out any date.

Mr. PECORA. Well, I will leave that to you.

Mr. WRIGHT. Well, I will pick this one [pointing to a book]. This was on the 11th of July.

Mr. PECORA. Well, that was a pretty active date, when 52,700 shares were traded in.

Mr. WRIGHT. That is a good day to work on.

Mr. PECORA. All right. You may go ahead.

Mr. WRIGHT. Here are my two books. I run in that what we call the odd orders, and here is the even book; that is, we will say when the stock is at 88, and the odd book we will say is when the stock is at 87. Is that much now plain to you?

Mr. PECORA. Yes; I think so.

Senator ADAMS. Why is it helpful to you to handle it in that manner?

Mr. WRIGHT. Well, because when we have two books it means that when I got through with the odd book I can grab that even book from the man who has been writing it up. In that way I always have a book in my hand. On this particular day there was a price range of what? Do you have it there, Mr. Pecora?

Mr. PECORA. My record shows a low of $43\frac{3}{8}$ and a high of 53.

Mr. WRIGHT. As I receive orders from the various firms, which constitute all of the firms on the stock exchange, those orders are handed to me. Here are the orders I received from the various firms on the stock exchange that day [holding up a bunch of what appeared to be tickets]. As an order is brought in to me, either by a broker or the boy—

The CHAIRMAN (interposing). Read one of the orders to us.

Mr. WRIGHT. This says: Buy 100 A.C. at $46\frac{1}{2}$. That means American Commercial Alcohol.

Senator COUZENS. Order given by whom?

Mr. WRIGHT. By Harris, Upham & Co. That order is immediately entered in my book. Here is the price, at the top here. We run each page one half a point. This is a page from $46\frac{1}{3}$ to $46\frac{7}{8}$. Here is the other side, I mean on that day, being the selling side. Here is an order from Jackson Bros., Boesel & Co. entered on my book. We usually abbreviate the names and all sorts of things in order to save time in the execution of the order.

Now, is there anything else that I can explain to you about it?

Mr. PECORA. Go ahead.

Mr. WRIGHT. As the stocks are sold at these prices I write alongside here who I bought it from and who I sold it to. Well, I cannot read my own writing myself at times. As that stock is bought or sold a report is immediately sent to the firm for whose account I received the order. I am, as specialist, held responsible for every order in that book.

The CHAIRMAN. Where is the stock in the meantime? Where are the actual shares of stock?

Mr. WRIGHT. Well, they are around in the offices.

The CHAIRMAN. You do not handle them?

Mr. WRIGHT. I have nothing to do with them.

Senator ADAMS. To what extent does the specialist have an obligation to take stock that is offered in case there are no purchase orders?

Mr. WRIGHT. That is a matter of pride and judgment. The way you figure that out, or the way I figure it out, and I will explain it to you fully if you would like.

Senator ADAMS. I wish you would.

Mr. WRIGHT. Well, I got my business for a number of years while specializing in that stock. Then when the break came I felt that I could not take the responsibility of refusing to take all those market orders, so I just took all the market orders as they came. And, as

I have already said, there was not one complaint on the part of the exchange over the execution of any order either during the upward rise or the downward swing. I stood responsible for the execution of every order that came, and it cost me as high as \$50,000 on one day.

Senator COUZENS. Tell us what would have happened if you had not assumed the responsibility for that order.

Mr. WRIGHT. I don't know.

Senator COUZENS. Well, let us assume a case where a specialist did not assume that responsibility.

Mr. WRIGHT. Well, during the last of July it was suspended from 1 to 2 hours' time trying to get bids.

Senator COUZENS. That is, the specialist was trying to get bids?

Mr. WRIGHT. We suspended trading when we did not have bids. The way that is: We call a governor over and tell him the situation. In my particular case as I say I had 11,000 or 12,000 shares to sell at the market, and he says: What do you want me to do about it? I says: I will bid such a price for it. And if he says O.K. then, all right. But in this case that took place, because one sale was touching off another, one stock was touching off another stock.

Mr. PECORA. Do you think that is an evil?

Mr. WRIGHT. Yes.

Mr. PECORA. Why?

Mr. WRIGHT. Because of these terrific breaks in stocks.

Mr. PECORA. And because of that would you recommend the abolition of stop-loss orders by customers?

Mr. WRIGHT. I am in no position to recommend anything. But stop-loss orders are an evil in such a case, I mean in a stock like that. That is because it differs from the case of General Motors or United States Steel, because in the case of those stock there are orders to take care of sales. But in the case of these stocks they are an evil.

Senator ADAMS. How do you define a stop-loss order?

Mr. WRIGHT. Well, we will pick out 1 day. The way it runs in the case of a stock like this: We will say that a man wants to sell 100 shares at 47 or 48, and the stock may be selling at 50. You, as the specialist, are held responsible, and the minute that stock sells at 48 that becomes a market order for execution, and you are held responsible for the next sale. That is true no matter what it is you are holding. If you have no buyers you have to purchase that stock yourself.

Mr. PECORA. At the stop-loss price?

Mr. WRIGHT. Then at the market.

Senator TOWNSEND. And if it goes below that price, what then?

Mr. WRIGHT. I have seen some purchases 3 or 4 points beyond. And on the sell side I have seen them as low as 3 or 4 points below.

Mr. PECORA. Is there any obligation imposed upon the specialist by the rules of the New York Stock Exchange to take orders whether there are any public orders or not?

Mr. WRIGHT. No, sir.

Mr. PECORA. So that when a specialist does that he does it of his own initiative or discretion?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Or his own moral sense of responsibility?

Mr. WRIGHT. Yes, sir; in his own moral sense, judgment, or discretion, whichever you want to call it.

Senator ADAMS. Was there a suspension of trading in this stock?

Mr. WRIGHT. Yes, sir; of 1 hour. I believe the stock had sold at 89¾, and then I believe the next sale was at 79¾. We suspended trading for 1 hour, and during the suspension of trading for 1 hour selling orders kept pouring in until they became a nightmare.

Mr. PECORA. And buying orders were scarce?

Mr. WRIGHT. There were none.

Mr. PECORA. And did you then buy in order to give support to the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. To what extent?

Mr. WRIGHT. I think 11,000 shares of stock that were for sale.

Mr. PECORA. Do you recall the range of prices at which you bought those 11,000 shares?

Mr. WRIGHT. I think I bought all of the stock at—the price range that day was from 79 to—let me see. [Looking over some records.]

Mr. PECORA. It was from 77, or at 77, down from 89¾.

Mr. WRIGHT. That was it.

Senator COUZENS. When you did that were you confident in your own mind that you would stand a loss?

Mr. WRIGHT. No; I was praying.

Senator COUZENS. Praying that you would not stand a loss?

Mr. WRIGHT. Yes, sir.

Senator COUZENS. Was that all that you had to rely on; prayer?

Mr. WRIGHT. Yes, sir; that was all.

Senator ADAMS. Is that rather helpful on the stock exchange?

Mr. WRIGHT. No, sir. [Laughter.]

Mr. PECORA. Mr. Wright, have you answered my question?

Mr. WRIGHT. Yes. I have shown that the stop-loss orders were—

Mr. PECORA (interposing). No. The question I asked you was, At what range did you buy those 11,000 shares when the break in the market came?

Mr. WRIGHT. From 85½ down to as low as 77.

Mr. PECORA. Were you short of the market at that time?

Mr. WRIGHT. No, sir.

Mr. PECORA. Were you ever short of the market during the movement of this stock between May and the 1st of August of last year?

Mr. WRIGHT. No, sir. And I have my daily position here, which will answer that question right away.

Mr. PECORA. All right; but your statement is sufficient.

Mr. WRIGHT. What date do you want to know about? Here is one date where I was short 600 shares, but I do not know what happened that day.

Mr. PECORA. What day was that?

Mr. WRIGHT. The 19th.

Mr. PECORA. The 19th of July?

Mr. WRIGHT. Yes. And here is another day, the 27th, when I was short 300 shares.

Senator TOWNSEND. How were you short 600 shares on the 19th of July? I mean, when you had made such heavy purchases as 11,000 shares.

Mr. WRIGHT. I sold it all out. On the 18th I bought 9,800 shares and sold 10,900 shares for my own account. On the 17th I was long 1,700 shares, and I bought 8,200 shares and sold 8,800 shares, running out at the end of the day 8,900 shares long. When we see these things coming we keep as near even as possible.

Senator ADAMS. There must have been some purchasers available in order for you to make those sales, which do not seem to be indicated on your books as I see them.

Mr. WRIGHT. They come in. They will always come in when a stock has had a drastic break.

Mr. PECORA. Did you trade actively for your own account or for your firm's account in American Commercial Alcohol during the months of May, June, and July of last year?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And at the end of July did your trades show a net profit or a loss for the 3 months' period from May to July?

Mr. WRIGHT. A profit.

Mr. PECORA. It showed a profit, do you say?

Mr. WRIGHT. Yes, sir. It showed a profit of \$138,000.

Mr. PECORA. So that when the nightmare was over it was not so bad after all?

Mr. WRIGHT. Yes, sir; it was very bad.

Mr. PECORA. Well, how much would you have to make in order to avoid a nightmare? [Laughter.]

The CHAIRMAN. Mr. Wright, you spoke about your losses a while ago. It seems that the ultimate result was fairly good for you, wasn't it?

Mr. WRIGHT. It was fairly good, but I had some very severe days.

Senator ADAMS. Well, if we might speak of a fellow who was murdered, you were a pretty live corpse.

Mr. WRIGHT. Well, that is my business.

Mr. PECORA. And it is fair to say that you know your business.

The CHAIRMAN. Did I understand you to say that you think stop-loss orders ought to be abolished?

Mr. WRIGHT. Well, I am, unfortunately, a member of the exchange, and I can make no public comment on that.

Mr. PECORA. Is there any rule which prohibits a member of the exchange from making any comments or recommendations with regard to the market?

Mr. WRIGHT. No, sir.

Mr. PECORA. Well, then, why do you say that in answer to the chairman's question?

Mr. WRIGHT. Well, I told you a few minutes ago what I thought of stop-loss orders, that in this class of stock they are a detriment to the market. I told you that a few moments ago.

The CHAIRMAN. How about the customer or trader or man dealing in stocks—isn't it a good thing for him to have a stop-loss order in order to protect himself, so that he can sleep nights?

Mr. WRIGHT. They seem to feel that way about it.

Mr. PECORA. I am a little bit interested in the answer you made a moment ago to Senator Fletcher's question, when he asked you something about stop-loss orders. You said you were a member of the exchange so that you could not make any comment.

Mr. WRIGHT. I did not mean it that way. I meant that I would rather not make public comment on it.

Senator COUZENS. In other words, it hurts your good will, doesn't it, if you run contrary to your customers' wishes?

Mr. WRIGHT. Well—

Mr. PECORA (interposing). Or the wishes of the authorities of the exchange, perhaps.

Mr. WRIGHT. No. They have expressed no wish of any kind. Any man can say anything he feels like, about what he may think is wrong.

Mr. PECORA. Now, to what extent did you, as the specialist handling American Commercial Alcohol stock, buy and sell that stock for your own account and the account of your firm during the months of May, June, and July 1933, which resulted in this profit for that period amounting to \$138,000?

Mr. WRIGHT. In May I bought 52,600 shares and sold 52,000 shares.

Senator TOWNSEND. Out of a total of what amount?

Mr. WRIGHT. I do not know the volume. I have only learned in the last 2 days that the volume was 209,000 shares from the 23d to the 31st.

Senator TOWNSEND. Have you the volume in the early part of May?

Mr. WRIGHT. Mr. Pecora has that.

Mr. PECORA. I will give you the volume for the first week of May, Senator Townsend: On May 1 it was 7,400 shares; on May 2 it was 2,800 shares; on May 3 it was 29,000 shares; on May 4 it was 8,500 shares; on May 5 it was 3,800 shares; and on May 6 it was 1,600 shares. That is the first week in May.

Senator ADAMS. What was the number of outstanding shares?

Mr. PECORA. Approximately 290,000 shares.

Mr. WRIGHT. I would say, Senator, that the stock had been turned over at least 2 for 1 for the entire capitalization that month.

Mr. PECORA. You gave us the trades you made for your own or your firm's account during the month of May as 52,600 shares bought and 52,600 shares sold. What were your figures for June?

Mr. WRIGHT. 74,900 bought; 75,000 sold.

Mr. PECORA. For the month of July to what extent did you trade on your own or your firm's account in that stock?

Mr. WRIGHT. Bought 120,200; sold 120,300. That was pretty close trading.

Mr. PECORA. You kept a pretty even position all during those 3 months?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Totaling the figures which you have just given us, it would appear that in the months of May, June, and July, 1933, you bought for your own account 247,700 shares of American Commercial Alcohol stock and sold in that same period 247,300 shares. Do you know what the total capital stock outstanding then was?

Mr. WRIGHT. About 200,000 shares.

Mr. PECORA. A little less than 200,000 shares?

Mr. WRIGHT. Yes.

Mr. PECORA. Do you know what the total trading in volume in that stock was from May 15 to July 22, last?

Mr. WRIGHT. In the month of June it was 349,000; in the month of July it was 638,000; in the month of May I would not—I lack some figures that you have; but in the month of May, in the last 7 trading days, there were 209,000 shares of the stock traded in.

Mr. PECORA. Our figure here is that the total trading in that stock on the exchange in the period between May 15 and July 22, 1933, was 1,145,100 shares.

Mr. WRIGHT. That is about right.

Mr. PECORA. So that you handled for your own account more than one fifth of the total volume of trading?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. What was the total amount of stock outstanding?

Mr. WRIGHT. Two hundred and sixty-five thousand shares in June and 200,000 shares previous to that.

The CHAIRMAN. That was the total stock outstanding?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Of the corporation?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. What was the total issue?

Mr. WRIGHT. Two hundred thousand shares up to June and 265,000 shares after June, when the capital was raised.

Mr. PECORA. During the time that you executed orders for the account of the Bragg syndicate, which orders you received directly from Bragg, what were they—oral or written orders?

Mr. WRIGHT. Oral orders.

Mr. PECORA. Were any of them of the discretionary kind?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Were most of them of the discretionary kind?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How would those orders be transmitted to you in such instances?

Mr. WRIGHT. By telephone.

Mr. PECORA. Did he call you up on the telephone?

Mr. WRIGHT. He would call me up or send over a written order, one of the two.

Mr. PECORA. At that time would he ask you what the condition of the book was on the stock?

Mr. WRIGHT. The condition of the book on the stock, Mr. Pecora, was that anybody that bought stock would be insane, because the book was full of selling orders, and any man that bought stock would look like he was insane. Pick out any date in May—pick out May—

Mr. PECORA. Then the condition of the book was what he asked you to tell him when he called you up on the phone to give you those discretionary orders?

Mr. WRIGHT. The orders in the book take precedence over Mr. Bragg's orders.

Mr. PECORA. Would he ask you what the condition of the book was when he called you up?

Mr. WRIGHT. Yes, sir. He would get the same answer all the time—"very heavy."

Mr. PECORA. Would you give him any more detailed answer than that?

Mr. WRIGHT. No, sir. When I have any stock orders or any orders I refuse to divulge my book to anybody.

Mr. PECORA. How would you know that an order on your books was a stock-list order?

Mr. WRIGHT. It is sent to me written out, a stock order.

Mr. PECORA. By the broker who turned the order over to you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. When you exercised your discretion in response to Bragg's verbal orders, how would you exercise it? What interest did you seek to serve?

Mr. WRIGHT. Will you put that question to me again?

Mr. PECORA. The reporter will read it to you.

(The question referred to was read by the reporter as above recorded.)

Mr. WRIGHT. The interest I sought to serve was to do the best I could in the execution of the order.

Mr. PECORA. Did you know at the time you executed these discretionary orders that Bragg had this option?

Mr. WRIGHT. I did not hear the details of this late lamented option until I came here.

Mr. PECORA. Did you know then that he had an option, whether you knew the details of it or not?

Mr. WRIGHT. I suspected he had an option.

Mr. PECORA. What caused you to suspect it in the absence of specific knowledge?

Mr. WRIGHT. Because of his desire to sell stock.

Mr. PECORA. That indicated to you that he was conducting a pool operation?

Mr. WRIGHT. I thought he had bought a big block of stock or had an option.

Mr. PECORA. And wanted to dispose of the stock at a profit?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Well, you could not tell that merely from the fact that he gave you selling orders, could you?

Mr. WRIGHT. Mr. Pecora, I tell a great deal from instinct.

Mr. PECORA. That is an instinct which is acquired through years of experience?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. In addition to getting discretionary orders to sell, did you also get during that period of time discretionary verbal orders from Bragg to buy?

Mr. WRIGHT. Yes.

Mr. PECORA. And it was a combination of both that gave you the impression that he was running a pool in the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Could you tell the committee from your recollection, or, if not from your recollection, from any records available now, what was the largest discretionary order either to buy or to sell American Commercial Alcohol stock that Bragg gave you during the operation of that pool?

Mr. WRIGHT. I am under oath, so I could not answer it correctly. I would say that about the largest I remember was 5,000 shares.

Mr. PECORA. In executing a discretionary order for that large amount of shares, how would you exercise your discretion? You would not buy or sell the entire 5,000 shares at one time, would you?

Mr. WRIGHT. At that time I was exercising my discretion by watching the gyrations of United States Industrial Alcohol and National Distillers. If that stock got strong I would sell, because it would get strong with others.

Mr. PECORA. So you held it for a better price?

Mr. WRIGHT. Yes, sir; for which I received \$2.50 per hundred shares.

Mr. PECORA. And when you got an order from the buying side?

Mr. WRIGHT. It would work the same way. If those stocks got weak I would have his stock to support the market. Exactly the same way, only reversed.

Mr. PECORA. You would not execute the entire order at one time, would you?

Mr. WRIGHT. No, sir.

Mr. PECORA. I presume you frequently, during that period, got orders to both buy and sell from Bragg on the same date?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. During the year 1933, the whole calendar year, how many options did you or your firm have on stock listed and traded in on the New York Stock Exchange?

Mr. WRIGHT. Is that answered in the questionnaire?

Mr. PECORA. Yes. Before I come to the detail of those options, let me ask you if, when you told the committee a few minutes ago, that the total profits that you or your firm netted in trading for its own account during May, June, and July of last year in the stock of American Commercial Alcohol were \$138,000, whether that was inclusive of the commissions?

Mr. WRIGHT. No, sir.

Mr. PECORA. How much would the commissions add to that sum of \$138,000?

Mr. WRIGHT. I could not answer that without counting them up.

Mr. PECORA. Suppose you have one of your assistants estimate it and give us an answer while I continue with the examination.

Mr. WRIGHT. Do you want the commissions on just the American Commercial Alcohol?

Mr. PECORA. Just the American Commercial Alcohol stock.

Mr. WRIGHT. For 3 months?

Mr. PECORA. For those 3 months.

When Bragg would give you a discretionary order to buy for his account, during the operation of the pool last summer, you believed from your instinct that he was buying in order to put the market up; you exercised that discretion for the purpose of putting the market up?

Mr. WRIGHT. Mr. Bragg does not work that way. When he gave me buying orders he gave me orders so that there would only be support in that stock. He didn't buy it up.

Mr. PECORA. How would the higher levels be attained?

Mr. WRIGHT. By the natural desire of people at that particular time to trade in whisky stocks. There was no so-called "manipulation" in this stock.

Mr. PECORA. No; I meant, how are those higher levels attained generally in a pool operation undertaken by persons who either have accumulated stock or have an option on stock and—

Mr. WRIGHT. In this particular stock the stock was carried up by the speculation that was going on in the other whisky stocks.

Mr. PECORA. That still does not answer my question. I have not asked you to tell us how it was done in this particular case, but how is it done generally?

Mr. WRIGHT. I am afraid, Mr. Pecora, that every incident is a different one. It would take a month to tell you.

Mr. PECORA. There are so many different ways, you mean?

Mr. WRIGHT. Yes.

The CHAIRMAN. In executing orders you made your commission whether it was a sale or a purchase?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You would get \$2.50 when you sold and \$2.50 when you bought?

Mr. WRIGHT. Yes.

The CHAIRMAN. So that as far as your commission was concerned, it made no difference to you whether the market was going one way or the other, did it?

Mr. WRIGHT. Except for my position in the stock, whatever it might be at that particular time.

Mr. PECORA. The position you take is one that you voluntarily take for your own account?

Mr. WRIGHT. Yes.

Mr. PECORA. The orders you execute for customers you execute automatically?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And as the Senator has indicated in his question of you, your commission for a buying or selling order does not affect your own position?

Mr. WRIGHT. No, sir.

Mr. PECORA. Question No. 6 in the questionnaire sent to you, which has been marked in evidence as "Exhibit No. 33", calls for the following information [reading]:

6(a) State whether your firm held any option or had participation in any option exceeding 10,000 shares of any single security during the years 1929 to 1933, inclusive. If answer is in the affirmative and firm held the original option or acted for the optionee or optionees, furnish a photostatic copy of each of such options

In making your answer to that question you submitted to us photostatic copies of certain option agreements, which I will now show to you, for the year 1933. I will arrange them in chronological order. I show you 13 photostatic reproductions of as many different options. Will you look at them and tell us if you recognize them to be true and correct copies of options held by you or your firm during the year 1933 on securities listed on the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Here is another one. That makes 14. Will you look at the other one?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I offer them in evidence and ask that they be separately marked in chronological order.

(Photostatic copies of 14 optional agreements made during the year 1933, identified by the witness, were received in evidence and marked as "Committee Exhibits Nos. 34 to 47, inclusive, Feb. 20, 1934," and will be found printed in full at the end of today's record.)

Mr. PECORA. Also in answer to that same question, 6(a), in the questionnaire, did you submit to us as copies of options held by you or your firm during the calendar year 1932 these documents which I now show you and which are four in number?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Are those documents true and correct photostatic reproductions of all the options held by you or your firm during the year 1932?

Mr. WRIGHT. As far as we have been able to find by going over the records and looking through all the files.

Mr. PECORA. I offer these in evidence and ask that each document be marked separately.

The CHAIRMAN. Let them be admitted.

(Photostatic copies of four optional agreements made during the calendar year 1932, identified by the witness, were received in evidence and marked as "Committee's Exhibits Nos. 48 to 51, inclusive, Feb. 20, 1934," and will be found printed in full at the end of today's record.)

Mr. PECORA. I now show you, Mr. Wright, eight photostatic reproductions of as many different options. Will you look at them and tell us if they constitute true and correct copies of all the option agreements held by you or your firm during the calendar year 1931?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I offer them in evidence as separate exhibits.

The CHAIRMAN. Let them be admitted.

(Photostatic copies of eight option agreements made during the calendar year 1931, identified by the witness, were received in evidence as committee exhibits nos. 52 to 59, inclusive, Feb. 20, 1934, and will be found printed in full at the end of today's record.)

Mr. PECORA. Did your firm hold any options, or did any member of the firm hold any options, on any listed security during the calendar year 1930?

Mr. WRIGHT. I don't think I worked in 1930.

Mr. PECORA. Your firm was in existence and worked that year, didn't it?

Mr. WRIGHT. Yes; but the firm had nothing to do with my particular work. When I am not there it doesn't take place. When I go back to New York I will look it up, and if there are any I will send them to you.

Mr. PECORA. The questionnaire called for copies of options for the calendar years 1929 to 1933, both inclusive.

Mr. WRIGHT. I don't think I had any in 1929.

Mr. PECORA. Can you make sure of that?

Mr. WRIGHT. Yes; by going through my records; yes, sir. We don't, as a general rule, keep those things for that period of time. If we have them, they are in the storage warehouse.

Mr. PECORA. The year 1929 was an especially active years in the stock market, was it not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Would that circumstance tend to refresh your recollection as to whether or not you or your firm or any partner in your firm had any options that year?

Mr. WRIGHT. In that particular year I was too busy taking care of my own affairs to be bothered about options.

Mr. PECORA. Does that indicate that you had no options during that year at all?

Mr. WRIGHT. To the best of my recollection I did not have any.

Mr. PECORA. How about the year 1930?

Mr. WRIGHT. There may have been one or two. That I will have to look up when I get back to my records, because I didn't work that whole year.

Mr. PECORA. Do you recall during the year 1932 having a joint account with Ames Bros., a firm of brokers, in American Commercial Alcohol stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And is Stephen M. Ames a member of the firm of Ames Bros.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did not that joint account operate under an option which ran to Stephen M. Ames from Russell R. Brown, covering 10,000 shares of American Commercial Alcohol stock?

Mr. WRIGHT. I don't remember the amount, Mr. Pecora, but I believe there was an option from Russell R. Brown.

Mr. PECORA. And that was an option under which your joint account with Ames Bros. was conducted?

Mr. WRIGHT. I had gone away at that time and I don't remember what Ames Bros.—I never saw the original option. I don't remember what it was and I have no record of it.

Mr. PECORA. If you had a joint account with Ames Bros which operated under that option, would not your records show the fact?

Mr. WRIGHT. Here it is, right here [indicating].

Mr. PECORA. Then you have one?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. In making your return to our questionnaire it does not appear that any mention was made of that joint account.

Mr. WRIGHT. It was not done intentionally, Mr. Pecora

Mr. PECORA. No; I appreciate that.

Mr. WRIGHT. If it was done, it was because it slipped by us, because I was in Europe when this answer was filed. There was no stock called, Mr. Pecora, according to the record here—there was no stock called on the option. It was simply a trading account and was unsuccessful.

Mr. PECORA. It was a trading account conducted under this option for 10,000 shares, was it not?

Mr. WRIGHT. If that is the amount; yes, sir. We had no copy of the option in our office at all.

Mr. PECORA. In addition to the options, copies of which have been put in evidence, which your firm had during the years 1931, 1932, and 1933, did you during those same years have any verbal options as distinguished from written options on any listed securities?

Mr. WRIGHT. Not that I remember, Mr. Pecora

Mr. PECORA. This memorandum [indicating] was given to us by your office under the caption of "Verbal Options", covering American Water Works certificates, General American Tank, Graham-Paige Motor Corporation, National Bellas Hess, Pacific Lighting Corporation, Pullman, Inc., National Distillers, and Zonite Products. Does that refresh your recollection?

Mr. WRIGHT. Yes, sir; I remember we had, now.

Mr. PECORA. That you had oral options on the securities which I have just named?

Mr. WRIGHT. Yes, sir; I remember them all, now.

Mr. PECORA. Have you the details of those oral options?

Mr. WRIGHT. No, sir.

Mr. PECORA. Have you any records from which you could get the details of those oral options?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Are they with you? Have you got those records with you?

Mr. WRIGHT. We have no record of the original options. We could only tell you what we did. I will draw up a transcript of the accounts, of those particular accounts, and send it to you.

(After consulting with an associate) I am told that you have it, that it was taken off in New York by one of your men.

Mr. PECORA. When you got this oral option in National Distillers were you the specialist in that stock?

Mr. WRIGHT. No, sir.

Mr. PECORA. Are you now the specialist in that stock?

Mr. WRIGHT. No, sir.

Mr. PECORA. Were you ever the specialist in that stock?

Mr. WRIGHT. No, sir.

Mr. PECORA. Will you look at this document which I now show you, which purports to be a copy of a letter addressed to the firm of Wright & Sexton by Redmond & Co., under date of May 6, 1932, and tell us if that relates to what has been referred to as the oral option in National Distillers Co. stock?

Mr. WRIGHT. I would have to look it up, Mr. Pecora, before I could answer that.

Mr. PECORA. Can you look it up during the recess, if you have your records of it here?

Mr. WRIGHT (after consulting with associates). I can call up New York by long distance 'phone and try to find out for you.

Mr. PECORA. Cannot any of your office attachés identify that document as a copy of a letter addressed to you by Redmond & Co., or addressed to your firm, giving you an option on stock of the National Distillers Co., in writing?

Mr. WRIGHT. I think this account was carried with Redmond. I would have to call up Redmond and verify it, and I could not answer it until I did that.

Mr. PECORA. All right. Now, Mr. Wright, you have said before that as a specialist you bought and sold securities for which you held the book. What were the advantages that you as the specialist had in making such trades for your own account which an ordinary broker or operator would not have?

Mr. WRIGHT. None.

Mr. PECORA. None?

Mr. WRIGHT. No, sir.

Mr. PECORA. Would you not have the advantage of the knowledge of the buying and selling orders on the books?

Mr. WRIGHT. I would have that knowledge; yes, sir.

Mr. PECORA. Is not that an advantage?

Mr. WRIGHT. No, sir.

Mr. PECORA. Is it a disadvantage?

Mr. WRIGHT. The general trend runs against the book. In other words, if the stock was going up you would find a preponderance of selling orders, and if it was going down you would find a preponderance of buying orders. It works automatically, the opposite of what it should. In other words, I might have, for instance, in American Commercial Alcohol—I can show you where I had 5 or 10 thousand shares to sell. I was long on the stock; and if I had any knowledge I would have been short and not long.

Mr. PECORA. As a specialist, you get buying and selling orders for the stock, do you not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And with that information are you not in a better position to determine what the trend of the market is going to be?

Mr. WRIGHT. No, sir.

Mr. PECORA. Why does not that information give you that advantage?

Mr. WRIGHT. I just told you.

Mr. PECORA. Because the trend of the market is the other way?

Mr. WRIGHT. Because the trend of the market is opposite to what the book is.

Mr. PECORA. Does not that give you knowledge of the trend of the market if it runs opposite from the trading indicated by the buying and selling orders on your book?

Mr. WRIGHT. Yes; you could say it did.

Mr. PECORA. Is not that an advantage?

Mr. WRIGHT. Sometimes; sometimes not.

Mr. PECORA. When is it an advantage and when is it a disadvantage?

Mr. WRIGHT. That I cannot answer. I would have to have a book in actual operation to be able to tell you.

Mr. PECORA. From your general knowledge and experience can you not tell us without having a concrete case before you?

Mr. WRIGHT. No, sir; I could not describe it.

Mr. PECORA. It is an advantage to one trading in the market to know what the trend of the market is likely to be, is it not?

Mr. WRIGHT. It certainly is.

Mr. PECORA. That is always an advantage, is it not?

Mr. WRIGHT. Yes.

Mr. PECORA. You always have that advantage from the knowledge you have as a specialist, do you not?

Mr. WRIGHT. If I always had that advantage, I would not ever lose money; and I very frequently lose money.

Mr. PECORA. It might not be an advantage which conclusively would enable you to make money every time on a trade, but it is always an advantage, is it not, to have that knowledge?

Mr. WRIGHT. Yes, sir; if you have it.

Mr. PECORA. And the specialist has got it?

Mr. WRIGHT. At times.

Mr. PECORA. Has he not always got it?

Mr. WRIGHT. No, sir. Lots of times your books will be bare and you don't have bids and offers on the stock. What advantage is the book then?

Mr. PECORA. Then he probably would not trade; is not that so?

Mr. WRIGHT. Yes.

Mr. PECORA. Are there times when, due to market conditions, a specialist makes the market for the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Under what circumstances is the specialist called upon to do that?

Mr. WRIGHT. When there are no bids or no offers of stock.

Mr. PECORA. How does the specialist make the market in that situation?

Mr. WRIGHT. He does it under the supervision of a governor of the exchange.

Mr. PECORA. How does he do it? What are the mechanics of it?

Mr. WRIGHT. A buyer comes in and there might be no sellers, and the specialist will say, "I have no sellers. I will sell you that block of stock at this price. You go back to your client and try to get a limit on it and I will not permit any trading until you get the limit. I will sell you this" or "buy this stock from you at a certain price." If that is agreeable to the customer, the order is executed.

Mr. PECORA. Are there governors of the New York Stock Exchange who are also specialists?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Are there times when the specialist is called upon to open the market on his stock?

Mr. WRIGHT. Every morning.

Mr. PECORA. I mean, to make the price himself, where there are no orders?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And how does the specialist do it in those circumstances?

Mr. WRIGHT. By the method I told you—send him back to the people to get limits; if there is a preponderance of buying orders, to try to get limits on it, and explain the situation, that there is no stock offered and on the selling side there are no bids.

Mr. PECORA. In those circumstances does the specialist get in touch with men or interests that are known to be sponsors for the stock?

Mr. WRIGHT. If he can; yes.

Mr. PECORA. And he very frequently can?

Mr. WRIGHT. And he very frequently cannot, principally when there is trouble around. Insiders are notoriously absent when there is trouble around. They are always absent.

Mr. PECORA. They are always traveling?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. They run away from the stock which they are sponsoring, in times of trouble?

Mr. WRIGHT. Yes. I have never run away from one in my life.

Mr. PECORA. I am not referring to you. I mean sponsors.

Mr. WRIGHT. Yes.

Mr. PECORA. And you have been a specialist and have had that difficulty?

Mr. WRIGHT. Many times.

Mr. PECORA. In establishing contact with sponsors at a time of stress when you want their support?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Do you know the brokerage firm of Eric & Drevers?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Have you ever been a participant with them in any pool or joint account in listed securities?

Mr. WRIGHT. I am told that one of the men from your office was up there and got that record.

Mr. PECORA. Got it from Eric & Drevers?

Mr. WRIGHT. One of your men. I don't remember what it was. If you can tell me the name of the stock, it might refresh my memory.

Mr. PECORA. I will give you the name of a number of stocks that are reported to us by Eric & Drevers. I understand these options and joint accounts were not reported by your firm.

Mr. WRIGHT. I do not ever remember having a joint account. I think that statement is wrong.

Mr. PECORA. The statement they gave is that they had a joint account with you in the following securities: General American Tank, Pullman, Inc., McKeesport Tin Plate—

Mr. WRIGHT. Oh. I beg your pardon. We did not have a joint account. The accounts were carried in their office.

Mr. PECORA. Did you have a participation in the accounts with them?

Mr. WRIGHT. Yes, sir. Here it is, right here [handing a paper to Mr. Pecora]. Eric & Drevers were merely the brokers.

Mr. PECORA. On the return which you made of the verbal options, so called, by which you mean oral options, you indicated that you had oral options in 8 different securities, did you not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Which are as follows:

American Water Works certificates, General Tank, Graham-Paige Motors Corporation, Pacific Lighting Corporation, Pullman Co., National Distillers, Zonite Products

Do you recall having any oral options in any other security?

Mr. WRIGHT. No, sir.

Mr. PECORA. Or any participation?

Mr. WRIGHT. I would like to check it up and be sure.

Mr. PECORA. Then let me read to you this list of issues in which, according to the report made to us by Eric & Drevers, you had a joint account with them [reading]:

General American Tank, Pullman, Inc., McKeesport Tin Plate, National Bellas Hess, Pioneer Gold, Zonite Products, American Water Works certificates, Belding Hemmway, Curtiss-Wright, Grandby Consolidated Mining, Smelting & Power—

Mr. WRIGHT. They are all listed there, Mr. Pecora.

Mr. PECORA (continuing reading):

Standard Silver-Lead, Graham-Paige, Gotham Hosiery, International Salt, Molybdenum Corporation, Truscon Steel, United Biscuit, Pacific Lighting

Mr. WRIGHT. You are getting into some curb stocks.

Mr. PECORA. Some are curb stocks and some are on the big board?

Mr. WRIGHT. Yes. I never had a joint account in them that I remember. Eric & Drovers carried those accounts for me. I had better check this up.

Mr. PECORA. Will you take this document and try to verify the information shown?

Mr. WRIGHT. General Tank is answered there. Pullman is answered there. National Bellas Hess is a curb stock. McKeesport Tin Plate—

Mr. PECORA. That is not answered here.

Mr. WRIGHT. Pioneer Gold is a curb security. Belding Hemingway—that is answered there. Curtiss-Wright, Granby Consolidated Mining, Smelting & Power. There has not been any option on Standard Silver-Lead. That was a direct purchase. Graham-Page is answered there. Gotham Hosiery, International Salt, Molybdenum Corporation, Truscon Steel. Molybdenum is a curb stock. So they are all answered there except McKeesport Tin Plate. That is the only thing I will have to clear up.

Mr. PECORA. How does it happen, Mr. Wright, that during the calendar year 1933, according to the returns made by your firm to our questionnaire, you had more options on securities listed on the New York Stock Exchange than you had in any other year?

Mr. WRIGHT. We had a rush of gold during the months of May, June, and July, and people were anxious to get rid of stocks that had been frozen over the period from 1929 to 1933.

Mr. PECORA. Does that mean that you thought conditions were more propitious for market operations in those stocks?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. During the year 1933.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The first one of the options which you had in the year 1933, in chronological order, was the one that has been marked in evidence here as exhibit no 34, and was an option granted to you by the firm of Hornblower & Weeks covering 25,000 shares of Timken Detroit Axle common stock, dated April 25, 1933, the option period expiring on May 24, 1933. Did you exercise that option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Is that one of the securities in which the book was in your name?

Mr. WRIGHT. No, sir; it was not at that date. I can put this letter in evidence to prove it [producing paper]. The book at that time was in the hands of Peter J. Maloney & Co. Previous to getting that option, I think he carried the book until about July.

Mr. PECORA. When was the book registered in your name in that issue?

Mr. WRIGHT. I do not know.

Mr. PECORA. Was it during the year 1933?

Mr. WRIGHT. I had not been working in the early part of 1933, Mr. Pecora. I was South.

Mr. PECORA. Was it at any time during the year 1933 registered in your name?

Mr WRIGHT. That I would have to find out from the exchange, but that letter was sent in at the time, at the time I had the option, and it said there would be no question that the book was registered in my name through the stock exchange.

Mr. PECORA. There is no signature to this letter. Who was the author of this letter that you have given me?

Mr. WRIGHT. Myself.

Mr. PECORA. The initials in the corner are "C. W."

Mr. WRIGHT. Yes.

Mr. PECORA. The letter produced by the witness is a carbon copy of a letter reading as follows [reading]:

APRIL 25, 1933

COMMITTEE ON ODD LOTS AND SPECIALISTS,
New York Stock Exchange,
11 Wall Street, New-York, N Y

GENTLEMEN Will you kindly register Arthur J Vogel as the specialist in TDX instead of the undersigned,
Yours very truly

And it was signed by you?

Mr. WRIGHT. Yes, sir

Mr. PECORA. TDX is the ticker symbol of Timken Detroit Axle Co., is it not?

Mr. WRIGHT. Yes.

Mr. PECORA. From this letter it would appear that you had been registered on the date of the writing of this letter as the specialist in that stock, would it not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Does that refresh your recollection now, that you were the registered specialist for that stock on April 25, 1933, and prior thereto?

Mr WRIGHT. That letter was sent in as a precaution, so that if I was, I wanted to lose the book, because I had not traded in that stock over a period of a year, and the book went to Mr. Peter J. Maloney. He had the book previous to that. He was one of the governors of the Stock Exchange, and he kept the book, I believe, through the months of April, May, June, and, I think, up to July.

Mr. PECORA. Of 1933?

Mr. WRIGHT. Yes, sir. We could not handle it, could not touch it.

Mr. PECORA. The date when you wrote this letter to the committee on odd lots and specialists of the New York Stock Exchange coincides with the date of the option given to you on 25,000 shares of Timken Detroit Axle common stock by Hornblower & Weeks. Do you notice that?

Mr. WRIGHT. Yes.

Mr. PECORA. Was it because you got this option that you wrote this letter to the specialist committee of the New York Stock Exchange?

Mr. WRIGHT. No, sir; as I explained, Mr. Pecora, I had not traded in the stock. I had not been around for about a year previous to that.

Mr. PECORA. You obtained four options, all told, during the year 1933, from Hornblower & Weeks on the shares of common stock of Timken Detroit Axle Co., did you not?

Mr. WRIGHT. If you will let me look at that, I can verify that. [After examining papers.] Yes, sir.

Mr. PECORA. Copies of all four of those options have been marked in evidence here as exhibit no. 34, because they are bound together. The second option on Timken Detroit Axle common stock is dated May 16, 1933, and covers another 25,000 shares, also from Hornblower & Weeks. The third option is dated June 2, 1933, and covers 30,000 shares of that stock, also granted by Hornblower & Weeks. The fourth option is dated June 6, 1933, and covers 16,000 shares of Timken Detroit Axle Co. stock, also granted by Hornblower & Weeks. Hornblower & Weeks, in each of those option agreements or letters, say that they give you the option in behalf of a client. Do you know who the client was?

Mr. WRIGHT. No, sir.

Mr. PECORA. Did you ask for these options from Hornblower & Weeks, or did they offer them to you on their initiative?

Mr. WRIGHT. It is my recollection, Mr. Pecora, that some third party came to me and asked me would I be interested in it, and I said "Yes."

Mr. PECORA. Did you have any participant in these options?

Mr. WRIGHT. No, sir.

Mr. PECORA. You acquired these options with a view of conducting market operations that would enable you to distribute the thousands of shares covered by these four options at prices higher than the option prices to you.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you succeed in effecting that operation?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I notice that the lowest option price for that stock in any of these four options is \$2.50 per share, granted in the option of April 25, 1933, and the highest one is \$7 per share, referred to in the options dated June 2, 1933, and June 6, 1933. Would that indicate, Mr. Wright, that between April 25, 1933, and June 6, 1933, the exchange quotations on that stock went from around \$2.50 per shares to \$7 or more a share?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The total number of shares that these options called for is 101,000, and, according to the data given by your firm to us, you took down 87,000 shares under these options. Does that conform to your recollection?

Mr. WRIGHT. If that is the record, yes, sir.

Mr. PECORA. And you would say that this was a successful distribution?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. During the period of the trading that you engaged in under these options you both bought and sold this stock, did you not?

Mr. WRIGHT. Yes, sir; in large amounts.

Mr. PECORA. And by that process were able to distribute at increasingly higher levels.

Mr. WRIGHT. And it is still selling at those higher levels.

Mr. PECORA. Exhibit no. 35 received in evidence consists of a copy of the option granted to your firm by Melvin E. Sawin, and

covers 40,000 shares of the common stock of United Biscuit Co., the prices ranging from 20 to 25. Was this option granted to you on the initiative of Mr. Sawin or did you initiate the negotiations under which you got this option?

Mr. WRIGHT. I initiated them.

Mr. PECORA. This also was an option you obtained for the purpose of making a distribution of the stock covered by the option at higher levels?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That was a successful operation, was it not?

Mr. WRIGHT. Fifty percent successful.

Mr. PECORA. What is that?

Mr. WRIGHT. Fifty percent successful.

Mr. PECORA. But you made a net profit on it.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The next option, in point of time, that you obtained during the year 1933 is the one dated May 18, 1933, and given to you by H. W. Blumenthal?

Mr. WRIGHT. Yes.

Mr. PECORA. And covers 30,000 shares of stock of Gotham Silk Hosiery Co., Inc., at prices ranging from \$12 to \$14 per share. Did you ask for this option or was it given to you upon the initiative of the optioner?

Mr. WRIGHT. It was brought to me by a third party.

Mr. PECORA. Was this option acquired by you also for the same purpose of enabling you to make a distribution of the stock covered by the option at higher levels than the option prices?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And the operations you conducted under this option also resulted in a profit to you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. In the trading that you did under this option, you both bought and sold from time to time?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. The next option for the year 1933 that you obtained, in point of time, was dated May 22, 1933, marked "Committee's Exhibit No. 37", and covers 25,000 shares of Granby Consolidated Mining, Smelting & Power Co., Ltd. The option prices range from \$10.50 to \$15. Did you ask for this option, or was it given to you on the initiative of the optioner, which appears to be the firm of Shuman & Co., members of the New York Stock Exchange?

Mr. WRIGHT. It was brought to me by a third party, Mr. Pecora.

Mr. PECORA. You took this option with a view to undertaking market operations that would enable you to distribute the stock covered by the option at higher prices than the option prices?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I believe that resulted in a small profit to you also.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I notice in this option agreement, exhibit no. 37, covering this Granby Consolidated stock, the following paragraph, which I will read therefrom [reading]:

It is to be further understood that George Douglass, at Abbott, Hoppin & Co., and associates, for their cooperation in furthering the distribution of this stock by creating the necessary purchasing power are to receive from you 17½

percent of the net profits, and that Shuman & Co are in no way obligated to Mr. Douglass.

What was the reason for the inclusion of that paragraph in this option agreement?

Mr. WRIGHT. The origination of the option.

Mr. PECORA. That means that George Douglass brought the transaction to you?

Mr. WRIGHT. I never met Mr. Douglass, but it was brought to me through Mr. Douglass.

Mr. PECORA. Through Mr. Douglass. The statement in the option agreement is that George Douglass, of Abbott, Hoppin & Co., and associates were to receive 17½ percent of the net profits from your trading in this stock for their cooperation in furthering the distribution of the stock by creating the necessary purchasing power. So, apparently, according to the terms of this option agreement, George Douglass and his associates were to do something to assist you in distributing the stock at higher levels. Isn't that quite apparent from a reading of this option agreement?

Mr. WRIGHT. Quite apparent, yes.

Mr. PECORA. What were they to do?

Mr. WRIGHT. I do not know. I never met the man. I never heard of him doing anything.

Mr. PECORA. What is meant by the expression in this option agreement "creating the necessary purchasing power" as an aid in the distribution of the stock?

Mr. WRIGHT. Creating buying power in the stock.

Mr. PECORA. How was that done, usually?

Mr. WRIGHT. I do not know.

Mr. PECORA. What is that?

Mr. WRIGHT. I do not know how he did it, or if he ever did it.

Mr. PECORA. How was it generally done?

Mr. WRIGHT. Well, by telling his clients, and so forth, that the company is a good company, and that there would be a move in the stock, and he thought the stock ought to be bought. That would be my natural assumption.

Mr. PECORA. In other words, by recommending the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. So that the public would buy?

Mr. WRIGHT. Yes.

The CHAIRMAN. Did he advertise the stock in the newspapers?

Mr. WRIGHT. No, sir.

Mr. PECORA. Would they make the recommendations by word of mouth as well as by market letters?

Mr. WRIGHT. I do not know how they do it, Mr. Pecora. I am not up on that end of the business.

Mr. PECORA. Is it fair to refer to it as a means or species of touting?

Mr. WRIGHT. I would say it would come under that head, sure.

Mr. PECORA. The next option agreement for the year 1933, in point of time, has been marked in evidence as "Committee's Exhibit No. 38", and is dated June 1, 1933. It was granted to your firm by Redmond & Co. It covers 80,000 shares of the stock of the Libby-Owens-Ford Glass Co., at prices ranging from \$27.50 per share to

\$30.50 per share. Is the firm of Redmond & Co. a stock-brokerage firm?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Do you know whether any partner holds a seat on the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Is Mr. Mason Day a partner of the firm of Redmond & Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you seek this option, or did you take it when it was brought to you on the initiative of Redmond & Co. or another person?

Mr. WRIGHT. I was one of a group in it, Mr. Pecora. I believe I had five sixty-fifths, to be exact, of the whole thing.

Mr. PECORA. That is right. The option agreement shows that you were merely a participant.

Mr. WRIGHT. That is right.

Mr. PECORA. And that the extent of your participation was 5,000 shares.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Out of a total of 65,000.

The CHAIRMAN. Who was the specialist in that stock?

Mr. WRIGHT. A boy by the name of Limburn.

Mr. PECORA. Who organized this syndicate account?

Mr. WRIGHT. I would imagine that Mr. Mason Day organized it, because he is the one that asked me to participate in it.

Mr. PECORA. Do you know who the other participants in this account were?

Mr. WRIGHT. I never inquired; no, sir.

Mr. PECORA. Did you execute any of the orders for the syndicate that operated under this option?

Mr. WRIGHT. Plenty.

Mr. PECORA. This Mason Day was formerly connected with an oil company, with Mr. Harry F. Sinclair, was he not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who was the manager of this syndicate account in Libby-Owens-Ford Glass Co.?

Mr. WRIGHT. I do not know, Mr. Pecora.

Mr. PECORA. Did that syndicate account make a profit?

Mr. WRIGHT. Yes, sir; and the stock is also selling today \$15 higher than when I started it.

Mr. PECORA. The next option in the year 1933, in point of time, that you or your firm had, is marked in evidence as "Committee's exhibit no. 39", and is dated June 7, 1933, and covers 28,824 shares of the common stock of the Consolidated Cigar Corporation. The option prices to you range from \$16 to \$19 per share. Did you seek this option, or was it offered to you on someone else's initiative?

Mr. WRIGHT. Brought to me on someone else's initiative.

Mr. PECORA. Did you have any associates in the account under this option?

Mr. WRIGHT. I did, but I took it all myself when I realized what a foolish deal I had made.

Mr. PECORA. You did not lose any money on this, did you?

Mr. WRIGHT. Well, I did not make any.

Mr. PECORA. You about broke even?

Mr. WRIGHT. About broke even?

Mr. PECORA. But with a very slight profit of \$107.90, according to your records.

Mr. WRIGHT. It was a pretty small profit after buying 20,000 shares of the stock 3 points above what it was selling for in the market.

Mr. PECORA. You bought it 3 points above the market price at the time you took this option?

Mr. WRIGHT. Yes, sir. I bought it at \$15, and it was selling at \$12.

Mr. PECORA. No; you bought it at \$16 to \$19.

Mr. WRIGHT. I bought 20,000 shares at \$15, and the option was additional, besides the 20,000 shares I bought at \$15. I made an investment in that of \$300,000 before I started.

Mr. PECORA. This was one of those instances where the profits did not exceed your expectations, or did not even come up to them?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Through no fault of yours, though.

Mr. WRIGHT. No; I tried hard.

Mr. PECORA. The next option obtained by you, in point of time, during the year 1933, has been marked in evidence as "Committee Exhibit No. 40", and is dated June 1, 1933. It was given by Louis H. Ingraham, but I notice that the option itself is addressed to Arlington W. Porter. Did he assign this option to you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You assumed all the rights and all the liabilities thereunder?

Mr. WRIGHT. Whatever his participation was, he assumed that end of it. I think it was a third.

Mr. PECORA. Is Louis H. Ingraham a broker?

Mr. WRIGHT. I do not know him, Mr. Pecora. I do not think he is a broker.

Mr. PECORA. This option covers 17,000 shares of common stock of the American Seating Co. at the following option prices: 4,000 shares at \$3; 7,000 shares at \$4; 6,000 shares at \$5. You took this option, or acquired an interest in it with Mr. Porter, for the same purposes as you took the other options that you have already been examined about?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And in this particular instance your market operations under this option resulted in profits?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And in the course of those market operations you both bought and sold the stock?

Mr. WRIGHT. Yes, sir.

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

(Whereupon, at 1:15 p.m., Tuesday, Feb. 20, 1934, a recess was taken until 2:15 p.m. of the same day.)

AFTERNOON SESSION

Upon the expiration of the noon recess the committee resumed the hearing at 2:40 p.m.

The CHAIRMAN. The committee will come to order. Mr. Wright, you may resume the stand.

TESTIMONY OF CHARLES C. WRIGHT—Resumed

Mr. PECORA. Mr. Wright, the next option acquired by you and your firm in 1933 in point of time is marked "Exhibit No. 41" in evidence and is dated June 19, 1933 and is addressed to your firm by E. G. Allyn, president of the Second National Bank of New Haven, Conn., in which he grants your firm an option on 40,000 shares of Pennsylvania Coal & Coke Corporation at \$5 per share. Did you take the initiative in obtaining this option, or was it offered to you on somebody else's initiative?

Mr. WRIGHT. Offered on somebody else's initiative.

Mr. PECORA. And this option also was taken by you with a view of making a distribution at a profit of the stock covered by the option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Through the medium of market operations?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And in the trading that you did under this option did you both buy and sell as the occasion required?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You did not draw down all of the shares covered by this option, did you?

Mr. WRIGHT. No, sir.

Mr. PECORA. You draw down only 16,000 of them?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Is that because the trading operation you conducted under it so far as you had gone showed a loss?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. According to the data you have given us your loss on this was \$922.83.

Mr. WRIGHT. I have seven or eight or nine thousand shares of the stock still.

The CHAIRMAN. In any of these stock transactions, Mr. Wright, did you trouble to look after the operations of the company issuing the stock, whether it was a successful enterprise or not, what capital they had, what assets, what liabilities?

Mr. WRIGHT. As a general rule, we did, Senator.

The CHAIRMAN. Did you have an estimate of the actual value of the stock at all?

Mr. WRIGHT. In some instances.

Mr. PECORA. Now, your next option in 1933 was marked in evidence as "Committee's Exhibit No. 42" and covers certain shares of Douglas Aircraft Co., Inc. The option agreement is dated June 20, 1933, is addressed to Mr. Sam Pass, care of Messrs. Mr. C. E. Welles & Co., 39 Broadway, New York City, and is signed by E. A.

Pierce & Co. and by Bancamerica Blair Corporation. Do you recall that?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Is this a participation that was given to you in that account?

Mr. WRIGHT. It was assigned to me by Mr. Pass.

Mr. PECORA. Who is Mr. Pass?

Mr. WRIGHT. I don't know him very well. I know who he is. In what way do you want me to describe him?

Mr. PECORA. Well, what business is he in, for instance?

Mr. WRIGHT. He is in the promotion business.

Mr. PECORA. Is he a member of any stock broker's office?

Mr. WRIGHT. No, sir.

Mr. PECORA. I notice that this letter is addressed to him care of Messrs. C. E. Welles & Co., 35 Broadway. C. E. Welles & Co., is a stock brokerage firm, is it not?

Mr. WRIGHT. I believe he was a customer of that firm.

Mr. PECORA. Did Mr. Pass assign to you his entire option?

Mr. WRIGHT (after conferring with associate). I called 13,000 shares at \$16 a share. From then on he assigned it to me.

Mr. PECORA. Who called the 13,000 shares under the option?

Mr. WRIGHT. I did.

Mr. PECORA. I want to read this option letter to you and then I want to ask you about certain of the paragraphs in it. The option letter is written on the letterhead of the Bancamerica Blair Corporation, 44 Wall Street, dated New York, June 20, 1933 [reading]:

DOUGLAS AIRCRAFT CO., INC., CAPITAL STOCK

Mr SAM PASS,

*Care of Messrs. C. E. Welles & Co.,
39 Broadway, New York City*

DEAR SIR The undersigned and associates hold an option to purchase from Douglas Aircraft Co., Inc., certain shares of its no-par value stock. We hereby confirm the sale to you today of 20,000 shares Douglas Aircraft Co., Inc., capital stock at \$15 per share, subject, however, to our being able to obtain delivery of said shares pursuant to the aforementioned option.

Delivery of and payment for said shares is to be made at the office of Bancamerica Blair Corporation, 44 Wall Street, New York City, on Wednesday, June the 21st, 1933, subject to receipt of said shares from Douglas Aircraft Co., Inc. After effecting delivery and receiving payment for the above 20,000 shares at \$15 per share the unexercised balance of the aforementioned option will be 47,969 shares, and we hereby confirm our understanding with you regarding the same as follows:

We hereby give you an order to sell for account of ourselves and associates all or any part of 24,000 shares of said stock at market prices, but in no event at less than \$16 per share net to us, and also give you an order to sell for account of ourselves and associates all or any part of the additional 23,969 shares of said stock at market prices, but in no event at less than \$17 per share net to us.

The above orders are good for a period of 30 days from date hereof, or until 3 p.m. Thursday, July 20, 1933.

It is understood that in the event that you have been successful in disposing of the first block of 24,000 shares at \$16 per share or better, we agree to extend the order on 23,969 shares at \$17 per share or better for an additional period of 30 days from July 20, 1933.

It is also understood that the shares covered by the above orders shall be disposed of by you in the market and not en bloc.

It is understood that during the life of this arrangement you are not to take a long position in the above stock for this account, but you may repur-

chase stock previously sold for the purpose of covering your short position, which short position shall not exceed at any one time 5,000 shares nor in any case more than the unexecuted balance of the above orders

In the event that your short position exceeds 5,000 shares of stock, you are to take up from us and pay for at clearance prices hereinafter referred to the number of shares equal to your short position in excess of 5,000 shares

During the life of these orders you are not to trade in the capital stock of Douglas Aircraft Co. Inc., except in the interest of the account as herein stated. You agree to inform us daily upon our request as to your net position in this stock, together with the average price of said position

It is also agreed that your operations hereunder shall be conducted in accordance with the rules of the New York Stock Exchange and within the State of New York

During the life of these orders, certificates for these shares in good delivery form as required by the rules of the New York Stock Exchange will be delivered to you or your nominee upon demand on us giving us two days' notice in writing, and upon payment of a clearance price to be agreed upon from time to time, but such clearance price shall not be less than the minimum prices specified on the above orders, namely \$16 and \$17 per share, at the office of Bancamerica Blair Corporation, 44 Wall Street, New York City

At the close of the account you agree to furnish us with a statement of your account and to pay to us the difference between the clearance prices at which shares are delivered to you and the net proceeds received therefrom, less expenses

All your transactions hereunder or in any way connected with the sale by you of the above shares are to be conducted in compliance with the Federal Securities Act of 1933

It is understood that after deducting expenses any amount received in excess of the prices herein stated from the sale of all or any part of the 67,969 shares covered by this transaction shall be divided 50 per cent to you and 50 per cent to us and our associates

We assume no obligation hereunder except to deliver stock to you as provided herein, and we shall not be liable for any loss arising out of this transaction

Kindly acknowledge or confirm that the foregoing is in accordance with your understanding by signing and returning to Bancamerica Blair Corporation the enclosed copy of this letter

Yours very truly,

E A PIERCE & Co.,
BANCAMERICA BLAIR CORPORATION

What sort of a trading operation, Mr. Wright, do you understand to be contemplated by this agreement?

Mr. WRIGHT. That was simply sent to you, Mr. Pecora, as the original option. I had nothing to do with any of the conditions in there. I assumed the option on the stock at 16 and 17 without any of those obligations in there, because the people who were operating in the stock were not operating successfully, and I took it over from Mr. Pass and I had no partners in it.

Mr. PECORA. What was the kind of operation referred to in this option agreement?

Mr. WRIGHT. I had nothing to do with that option.

Mr. PECORA. I know you had not, but you understand the kind of trading that is referred to here?

Mr. WRIGHT. I suppose the usual kind of trading.

Mr. PECORA. What do you mean by that, when you say "the usual kind of trading"?

Mr. WRIGHT. Creating activity in the stock and rise in prices.

Mr. PECORA. That is by churning the market?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Buying and selling among themselves?

Mr. WRIGHT. Not amongst themselves. It is against the rules of the stock exchange to buy and sell amongst yourselves. That con-

stitutes "washing" and is not permitted by the laws and not indulged in by any members of the exchange.

Mr. PECORA. That is as far as you know?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. In this letter you notice that they gave an option or held an option to purchase; that is to say, Bancamerica-Blair Corporation and E. A. Pierce & Co. held an option to purchase from Douglas Aircraft Co., Inc., certain shares of its capital stock, and they sold out of the number of shares covered by that option a block of 20,000 shares at \$15 per share to Mr. Pass. That is quite apparent to you from this letter, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Then it is agreed that Pass is to sell for the account of Bancamerica-Blair Corporation and E. A. Pierce & Co. as the holders of this option up to 24,000 shares at not less than \$16 per share net, and also to sell for their account an additional 23,969 shares at a price of not less than \$17 per share net; and there is this provision that you have heard me read, that any profits accruing from the sale of these shares over and above the prices mentioned in the option are to be divided equally between Mr. Pass and E. A. Pierce & Co. and Bancamerica-Blair Co.?

Mr. WRIGHT. Yes, sir; but I was no party to that at all.

Mr. PECORA. I know it. You have told us you were not a party to it.

Mr. WRIGHT. If there was a profit, I did not divide it.

Mr. PECORA. What sort of an arrangement is that, Mr. Wright?

Mr. WRIGHT. That one there?

Mr. PECORA. Yes.

Mr. WRIGHT. It looks like as though the Bancamerica-Blair and E. A. Pierce had an option and also wanted to cut themselves in on 50 percent of the profits.

Mr. PECORA. Exactly.

Mr. WRIGHT. Without any risk.

Mr. PECORA. Without any risk of loss. There is a reference here in this letter that—

During the life of these orders you—

Meaning Pass—

are not to trade in the capital stock of Douglas Aircraft Co except in the interest of the account as herein stated

What does that indicate to you?

Mr. WRIGHT. That would indicate to me that they would want to prevent whoever had the option trading for their own account.

Mr. PECORA. You mean whoever had the option given by Bancamerica-Blair Corporation and E. A. Pierce & Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. From trading for their own account?

Mr. WRIGHT. Yes, sir. Only trading for the syndicate.

Mr. PECORA. Only trading for the account of the optioner?

Mr. WRIGHT. That is right. But, as I tell you, Mr. Pecora, I had nothing to do with that arrangement.

Mr. PECORA. Yes; I know that.

Mr. WRIGHT. It was simply assigned to me and that was an arrangement made between Pass and Pierce & Co. and Bancamerica-

Blair, and subsequently that option was just handed to me as an evidence of the good faith that I had the option, none of the terms of which were to be lived up to by me.

Mr. PECORA. What purpose do you suppose would be served by the optioners in limiting the optionee, Pass, to trading only in the interest of the option account?

Mr. WRIGHT. Probably to keep Pass honest.

Mr. PECORA. Meaning so he could not play the market against it?

Mr. WRIGHT. Exactly.

Mr. PECORA. Is Pass a well-known operator?

Mr. WRIGHT. No, sir.

Mr. PECORA. E. A. Pierce & Co. is a stock-exchange house, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Members of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, your next option in 1933 in point of time is marked in evidence as "Exhibit No. 43" and is addressed to your firm by Hayden Stone & Co., dated July 11, 1933, and covers 54,796 shares of the common stock of Youngstown Sheet & Tube Co. at prices ranging from $32\frac{5}{8}$ to $34\frac{1}{2}$. Did you seek this option, Mr. Wright, or was it offered to you?

Mr. WRIGHT. It was offered to me by a third party.

Mr. PECORA. A third party. By "third party" you mean someone other than Hayden Stone & Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Hayden Stone & Co. is a stock brokerage firm with a membership in the New York Stock Exchange, is it not?

Mr. WRIGHT. Yes, sir. I believe that was offered for a client of theirs, not the firm of Hayden Stone.

Mr. PECORA. This option letter is not very long, and so I will read its text. It is addressed to Messrs. Wright & Sexton [reading]:

DEAR SIR We hereby give and grant to you the right and option to purchase 54,796 shares of the common stock of Youngstown Sheet & Tube Co. in lots and at prices and expiring on or before the close of business on dates as follows, but all subject to the terms and conditions hereinafter stated, namely—

Then follows the expiration dates of the options, the number of shares, and the price per share.

If we or our client should be enjoined or restrained by any court or judge from selling or disposing of said stock, upon notice by us, either oral or in writing or by telephone or mail to you in your office, 1 Wall Street, New York City, of such fact, we shall not be bound to recognize any calls by you hereunder nor to make any delivery of stock, and all of our obligations hereunder, including the options herein granted, shall immediately cease and determine. Title to said stock shall not pass until you pay for the same and the stock is actually delivered to you. If you fail to take up and pay for any lot of stock within the period of time mentioned as aforesaid, all of your rights hereunder shall immediately cease and determine.

This option shall not be assigned without our written consent

Very truly yours,

HAYDEN STONE & Co

Do you know who the client is that Hayden Stone & Co. acted for in the granting of this option?

Mr. WRIGHT. No, sir; but I would imagine it would have been either bank or bankers who were in trouble.

Mr. PECORA. And this was part of the liquidation?

Mr. WRIGHT. That was part of the liquidation; yes, sir.
The CHAIRMAN. Do you know anything about the Youngstown Sheet & Tube Co.?

Mr. WRIGHT. I do know quite a good deal about it, Senator.

The CHAIRMAN. About their business?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And what they are doing?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You conducted trading operations under this option, did you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And that resulted in a substantial profit?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You did not draw down all of the 54,796 shares covered by this option, did you?

Mr. WRIGHT. No, sir.

Mr. PECORA. You drew down so far as we have a record of it 34,796 of those shares?

Mr. WRIGHT. That is it.

Mr. PECORA. And the market operations conducted by you under this option were of the same general character as those that you conducted under the options that were put in evidence today?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That is, you both bought and sold?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And were enabled thereby to distribute the stock covered by the option and which you drew down at higher levels?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. During the period of your trading operations under this option do you know whether or not Hayden Stone & Co. notified you that they had been enjoined or restrained from selling or disposing of any of the stock?

Mr. WRIGHT. No, sir.

Mr. PECORA. Proceedings were subsequently brought, were they not, to—no; I withdraw that.

Mr. WRIGHT. No; they were not brought on that.

Mr. PECORA. The next option agreement you received in 1933 in point of time is marked in evidence as "Exhibit No. 44" and was given to your firm by the firm of L. F. Rothschild & Co., under date of July 17, 1933, covering 10,000 shares of Robert Reis & Co. common stock at \$3 per share, 6,500 shares at \$4 per share. The optioner in this case is also a stock brokerage firm, is it not, L. F. Rothschild & Co.?

Mr. WRIGHT. Yes, sir; I believe they were acting for a client.

Mr. PECORA. There is nothing in the option that so indicates, is there?

Mr. WRIGHT. I understand they were acting for a client.

Mr. PECORA. Do you know who the client was?

Mr. WRIGHT. No, sir.

Mr. PECORA. Are L. F. Rothschild & Co. members of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you seek this option or was it offered to you?

Mr. WRIGHT. It was offered to me.

Mr. PECORA. Through a third party?

Mr. WRIGHT. Yes.

Mr. PECORA. And did you take it with a view of conducting trading operations under it of a kind that would enable you to distribute the stock to the public at higher levels than the option prices?

Mr. WRIGHT. Yes, sir. The date on that was the 17th of July, Mr. Pecora. The market broke on the 18th.

Mr. PECORA. This is July 17, 1933; that is right. You only drew down 2,000 shares under this option, didn't you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. But in your market operations you bought 5,800 shares and sold 5,500; is that right?

Mr. WRIGHT. That includes the 2,000 I took down.

Mr. PECORA. And your transactions resulted in a profit?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And in the course of that trading you both bought and sold?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, your next option in 1933 is marked in evidence as Committee Exhibit No. 45 and also was granted to your firm by the firm of L. F. Rothschild & Co. under date of August 25, 1933. It covers 8,000 shares of Robert Reis common stock at \$3.

Mr. WRIGHT. That is a continuation of the previous option, Mr. Pecora. It expired, and the letter which you have in your hand is a continuation of it.

Mr. PECORA. Oh, I see. Oh, it is not an additional option?

Mr. WRIGHT. No, sir.

Mr. PECORA. Did you draw down any of the stock covered by this option?

Mr. WRIGHT. No, sir.

Mr. PECORA. Did you find that trading operations were not likely to be successful?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And for that reason did not draw down any of the stock?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Your next option in 1933 was received in evidence as exhibit no. 46 and was granted to you by the Bancamerica-Blair Corporation under date of September 13 and covers 135,000 shares of the capital stock of Superior Oil Corporation at prices ranging from \$2.75 net to \$4.50 net. The option was granted for the period of about one month, and this option is addressed to you individually. Do you recall the option in question?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And do you recall the trading that you did under it?

Mr. WRIGHT. Yes, sir. Small loss.

Mr. PECORA. Small loss. And you only drew down—oh, you did not draw down any of the shares under it?

Mr. WRIGHT. Times were getting very bad then, Mr. Attorney.

Mr. PECORA. That is the advantage of an option, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. But in your market operations after you acquired this option you purchased 9,000 shares and sold 8,000?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now I notice that this option agreement is somewhat different in form from most of the others that have already been put in evidence today, and the option is really in the form of an order to you to sell for the account of the Bancamerica-Blair Corporation all or any part of the 135,000 shares of the stock Superior Oil Corporation in amounts and prices fixed in the letter. That meant that any profits that would accrue from the sale of all or any part of those 135,000 shares that you might succeed in making at prices in excess of the net prices fixed in this letter were to go to you as your profits?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. What was the business of this corporation?

Mr. WRIGHT. It is an oil company, recently out of the hands of a receiver and being reorganized.

The CHAIRMAN. Operating where?

Mr. WRIGHT (after consulting an associate). Oklahoma and Texas.

The CHAIRMAN. And subsequently went into the hands of a receiver?

Mr. WRIGHT. No, sir.

Mr. PECORA. It had only recently been in the hands of the receiver.

Mr. WRIGHT. Had been in the hands of the receiver and was out by then.

Mr. PECORA. And they were trying to rehabilitate the stock in the market, weren't they?

Mr. WRIGHT. I don't know. I don't know where the stock came from, to tell you the honest truth, Mr. Pecora. I mean I don't know who the owner of the stock was.

Mr. PECORA. Apparently Bancamerica-Blair Corporation were giving you an order to sell up to 135,000 shares for their account?

Mr. WRIGHT. I don't know whether they owned it or whether they were acting for a client or not. That I don't know.

Mr. PECORA. I notice in this option letter a paragraph somewhat similar to one that was in the option given to Samuel Pass by Bancamerica-Blair Corporation, covering stock of the Douglas Aircraft Co., and that paragraph reads as follows [reading]:

During the life of these orders you are not to trade in the capital stock of Superior Oil Corporation except in the interest of the account as herein stated.

Why was that put in there, do you know?

Mr. WRIGHT. Keeping me honest.

The CHAIRMAN. That was unnecessary, wasn't it?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. As a broker and specialist and all that, suppose some man should write to you and ask you to sell him stock in a concern that was in the hands of a receiver, maybe not listed on the stock exchange, maybe on the curb, quoted on the curb, would you sell him the stock?

Mr. WRIGHT. No, sir.

The CHAIRMAN. That sort of thing has been done, I believe.

Mr. WRIGHT. It might have been done, but I would not do it, Senator.

The CHAIRMAN. When a corporation that has been offering its stock for sale goes into the hands of the receiver, you take it off your list, you would not sell that stock?

Mr. WRIGHT. No clients to sell anything to.

Mr. PECORA. Did you have any participant in this option given you by Bancamerica-Blair Corporation in the Superior Oil Co. stock?

Mr. WRIGHT. Did I have a participation in it? Fifty per cent.

Mr. PECORA. Who was the other participant?

Mr. WRIGHT. Redmond & Co.

Mr. PECORA. That is this other stock exchange house?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Referring to the option given to you for 25,000 shares of Granby Consolidated Mining Co. stock, did you have any participation in that?

Mr. WRIGHT. A very small one, sir.

Mr. PECORA. Who were your participants?

Mr. WRIGHT. Douglas, who was mentioned in that thing, whom I never met.

Mr. PECORA. That is George Douglas of Abbott Hoppin & Co.?

Mr. WRIGHT. I don't remember whether he is a member of the firm or not. I doubt it.

Mr. PECORA. Abbott Hoppin & Co. is a stock-exchange firm, isn't it?

Mr. WRIGHT. Yes, sir. Twenty percent to Bradford Ellsworth.

Mr. PECORA. Is he a broker or an operator?

Mr. WRIGHT. I think he is very quiet, not doing much of either.

Mr. PECORA. Well, what was he then?

Mr. WRIGHT. An operator.

Mr. PECORA. Not a broker? Not a broker, Mr. Wright?

Mr. WRIGHT. No; he is not a broker at all. A man by the name of Missir.

Mr. PECORA. He is another operator?

Mr. WRIGHT. No, sir; he is not an operator.

Mr. PECORA. Is he a broker?

Mr. WRIGHT. No, sir; he is an individual who lives in Paris, France. And I believe myself 37½ percent. I believe the rates were 17½ percent to Douglas, 20 percent to Ellsworth, 25 to Missir, and 37½ to Wright & Sexton.

Mr. PECORA. Now, I overlooked the option given to you, or rather the option that you returned to us as one of the options that you had during the year 1933, which was given by a man named H. B. Dwyer to a man named Mr. Oscar C. Seabass, dated May 24, 1933, which has been marked in evidence as "exhibit no. 47." Do you recall that option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That covers 7,000 shares of stock of the International Salt Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. At a price of \$26 per share for 2,000 shares, and \$28 per share for the remaining 5,000 shares. Did you have any associates or participants with you in this option?

Mr. WRIGHT. I don't think I did have any on that particular option. As I remember, Mr. Pecora, I bought from Palmer & Co., a defunct stock exchange firm, eight or nine thousand shares of International Salt two points above the market, which was amongst their assets, I believe in consideration of buying this stock. These gentlemen who gave me this option I believe are the officers of the company, and I don't believe any of the stock was ever exercised.

Mr. PECORA. This option is addressed to Mr. Oscar C. Seabass. Is he a broker?

Mr. WRIGHT. He was.

Mr. PECORA. And a member of the stock exchange?

Mr. WRIGHT. No, sir.

Mr. PECORA. Was he a member of any stock exchange?

Mr. WRIGHT. No, sir.

Mr. PECORA. How did he trade if he was not a broker?

Mr. WRIGHT. He is not a broker. He is associated with Mr. George LeBlanc of a firm of chemists. He is not a broker, but was formerly a member of a firm which went out of business, I believe in 1929. He was one of the coreceivers I believe for the firm of Palmer & Co., from which I purchased all of the International Salt which was in their liquidation account.

Mr. PECORA. And you drew down 7,351 shares?

Mr. WRIGHT. From Palmer & Co. That was a contract of purchase and not an option.

Mr. PECORA. Purchased from the optionor or in the market?

Mr. WRIGHT. That was purchased from the receivers of Palmer & Co.

Mr. PECORA. In the market operations that you conducted under this option it appears that you purchased 21,151 shares and sold an equal amount, is that correct?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did Seabass assign this option to you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Was Seabass associated with you in this option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. What participation did he have in it?

Mr. WRIGHT. He got \$4,300.

Mr. PECORA. Two percent, wasn't it?

Mr. WRIGHT. Something like that.

Mr. PECORA. Did Brad Ellsworth have a participation with you in this account, too?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Equal to 25 percent thereof?

Mr. WRIGHT. I think he had a little bit more than that, didn't he?

Mr. PECORA. Apparently not.

Mr. WRIGHT. I will tell you that story: These men owed me money, and I gave them a participation in this account so that they might pay me the money they owed me; I will say that to you very frankly.

Mr. PECORA. In other words, you gave them the participation in order to allow them to pay you what they owed you? You took them into this pool account for that purpose?

Mr. WRIGHT. Yes, sir. But I took a loss in that account myself, personally.

Mr. PECORA. Have you any tabulation that would indicate the total profits that you or your firm made from these 14 options and from your trading in them during the year 1933?

Mr. WRIGHT. You have the records there yourself.

Mr. PECORA. Well, the records we have been furnished by your office say that in connection with these 14 options and your trading thereunder developed an aggregate loss of \$45,853.19 as against profits of \$192,985.96, or a total profit of around \$148,000.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. That is exclusive, of course, of commissions?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Well, on the subject of commissions, you undertook to have a calculation made from your records of the total amounts your firm received from the trading or the orders you executed in American Commercial Alcohol stock during the months of May, June, and July 1933, and the amount given by you to me is \$19,850. Is that correct?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. You testified this morning that your profits in the trading that you did for your own account in American Commercial Alcohol stock during those 3 months of last year amounted to approximately \$138,000.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And that despite the fact that you were murdered when the stock broke.

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And commissions were in addition to that.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, the year 1932 apparently was not a good year for options, not as good as the year 1933, was it?

Mr. WRIGHT. No, sir.

Mr. PECORA. There seem to have been only four options that your firm had in listed securities that year.

Mr. WRIGHT. Except the subsequent ones that I handed to you a couple of minutes ago and that I borrowed from the records of Redmond & Co.

Mr. PECORA. In addition to the four options put in evidence this morning, as committee exhibits 48, 49, 50, and 51, have you since learned that you had two other written options?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Copies of which I now show you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And are these two copies true and correct copies of the other options that you had during the year 1932?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Mr. Chairman, I now wish to offer them in evidence. The CHAIRMAN. Let them be admitted.

Mr. WRIGHT. Mr. Pecora, I will have to return those two copies that I secured from Redmond & Co, and which I took from the records which are down here.

Mr. PECORA. Very well. I can read them into the record.

Mr. WRIGHT. Redmond & Co. records are here and I can return them tomorrow.

(The option dated Mar. 10, 1932, from Redmond & Co. to Messrs. Wright & Sexton, was marked "Committee Exhibit No. 60, Feb. 20, 1934", and will be found immediately following:)

REDMOND & Co.,
48 Wall Street, New York,
March 10, 1932

MESSRS WRIGHT & SEXTON,
One Wall Street, New York City

GENTLEMEN · Please be advised that in consideration of the National Distillers Products Corporation confirming sale to us as of this date of two thousand (2,000) shares of the common stock of the Corporation at \$22.00 per share, we have cancelled the Call given under date of February 15, 1932, good for thirty days, to purchase four thousand shares of the common stock at various prices, and have received this two thousand shares into your #3 Account at the above mentioned price

Please be further advised that we have obtained from the National Distillers Products Corporation an option to purchase all or any part of twelve thousand (12,000) shares of the common stock of the National Distillers Products Corporation, good for thirty days from this date, in the following amounts and at the following prices:

1,000 shares @ 23
1,000 shares @ 24
1,000 shares @ 25
1,000 shares @ 26
1,000 shares @ 27
1,000 shares @ 28
1,000 shares @ 29
1,000 shares @ 30
1,000 shares @ 31
1,000 shares @ 32
1,000 shares @ 33
1,000 shares @ 34

We hereby assign this option to you to enable you to trade in the stock, with the understanding that you will pay to us one-half of any profits which you may realize through the purchase or sale of the stock during this period, or through the exercising, in part or in whole, the option. It is also understood that Redmond & Co. will not be responsible for any loss which may occur through such purchases or sales.

It is further understood that you will give us notice from day to day of your purchases and sales of this stock which we will clear for your account known on our books as Account #3-A and that you will at all times keep this account adequately margined.

For the completion of your records, we enclose herewith copy of the option above referred to.

We are sending this letter with an original duplicate and for the completion of our records, we request that you sign the duplicate and return it to us at your convenience.

Yours very truly,

Accepted

WRIGHT & SEXTON (Signed)

(The option, dated May 6, 1932, from Redmond & Co. to Messrs. Wright & Sexton, was marked "Committee Exhibit No. 61, Feb. 20, 1934", and will be found immediately following:)

REDMOND & Co.,
48 Wall Street, New York, May 6, 1932

MESSRS WRIGHT & SEXTON,
One Wall Street, New York, NY

GENTLEMEN · Please be advised that we have obtained from the National Distillers Products Corporation a Call on twenty-five hundred (2,500) shares of

the common stock of the National Distillers Products Corporation, good for sixty (60) days from May 3, 1932, in the following amounts and at the following prices

500 shares @ 19
 500 shares @ 19½
 500 shares @ 20
 500 shares @ 21
 500 shares @ 22

We also confirm that we have obtained from the National Distillers Products Corporation a Put to them for fifteen hundred (1,500) shares of the common stock in the above named company at \$18 00 a share, good for sixty (60) days from May 3, 1932

We hereby assign this Call and Put to you to enable you to trade in the stock, with the understanding that you will pay to us one-half of any profits which you may realize through the purchase or sale of the stock during this period, or through the exercising, in part or in whole, the Call and Put. It is also understood that Redmond & Co. will not be responsible for any loss which may occur through such purchases or sales.

It is further understood that you will give us notice from day to day of your purchases and sales of this stock, which we will clear for your account known on our books as account no 3 and that you will at all times keep this account adequately margined

For the completion of your records, we enclose herewith copy of the Call and Put above referred to

We are sending this letter with an original duplicate and for the completion of our records, we request that you sign the duplicate and return it to us at your convenience

Yours very truly,

 Comptroller

Mr. PECORA. Mr. Wright, exhibit no. 60, which has been received in evidence is an option addressed to Wright & Sexton from Redmond & Co., dated March 10, 1932, covering 12,000 shares of the common stock of National Distillers Products Corporation, for 30 days from the date of the option, at prices ranging from \$23 a share for the first 1,000 shares, to \$34 a share for the last 1,000 shares of the total of 12,000 shares.

Now, I notice that this option contains the following language:

We hereby assign this option to you to enable you to trade in the stock, with the understanding that you will pay to us one half of any profits which you may realize through the purchase or sale of the stock during this period, or through the exercising, in part or in whole, the option. It is also understood that Redmond & Co. will not be responsible for any loss which may occur through such purchases or sales

Will you tell the committee what the reason was for the inclusion of that provision in this option agreement?

Mr. WRIGHT. Yes, sir. The option was obtained by Redmond & Co. and turned over to me, for which they wanted 50 percent of the profits.

Mr. PECORA. Why was it turned over to you? Weren't they in equally as good a position as you were to trade in the stock under the option?

Mr. WRIGHT. Apparently not.

Mr. PECORA. Do you know of any reason why they were not?

Mr. WRIGHT. Well, I do not think they had the necessary broker or brokers to handle the market as well in those market conditions as I was myself.

Mr. PECORA. Well, you say that Redmond & Co. were then members of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Were you the specialist for National Distillers stock in March of 1932?

Mr. WRIGHT. I was never a specialist in that stock.

Mr. PECORA. Who was the specialist in that stock at that time?

Mr. WRIGHT. B. C. Brown

Mr. PECORA. What facilities did you have which were superior as a specialist, if you had any such facilities for trading in this stock under this option?

Mr. WRIGHT. I am too modest to answer that question.

Mr. PECORA. Well, with due allowance for your modesty, we would like to know.

Mr. WRIGHT. Well, Redmond & Co seemed to think I could handle the market all right, so they turned it over to me.

Mr. PECORA. Well, now, they had some basis for that opinion, didn't they?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. To put it briefly, they thought that you could trade with greater intelligence?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And with greater ease than anybody else on the floor of the exchange?

Mr. WRIGHT. Not greater than anybody else, but greater than anybody they knew at that time.

Mr. PECORA. Well, better than anybody else they knew at that time.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Would you say that you had established a reputation as a quick and intelligent trader, so that they were prompted by that knowledge of your reputation to arrange to have you trade for them under this option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. This option calls for prices beginning at \$23 a share for the first 1,000 shares, as I have already remarked, and stepping up a dollar a share with each 1,000 shares of the 12,000-share lot.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And the option was good for a period of 30 days from its date, namely, from March 10, 1932?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you succeed in so trading in the stock that the stock was sold at a profit which meant prices above the prices mentioned during the period of the option?

Mr. WRIGHT. I took down 2,000 shares, at a profit of \$3,500.

Mr. PECORA. Only 2,000 shares did you deal in?

Mr. WRIGHT. That is all that I took down. We bought 3,500 shares and we sold 3,500 shares.

Mr. PECORA. Is it common practice for one stock-exchange house to give another stock-exchange house an option held by the first stock-exchange house?

Mr. WRIGHT. As a general rule we like a stock-exchange name. That is why one uses it, because a stock-exchange name is your guarantee. In that particular case Redmond & Co. were probably acting for a client. Most people giving options like a stock-exchange guarantee on them.

The CHAIRMAN. A guarantee of what?

Mr. WRIGHT. Well, a guarantee as between members of the stock exchange that the trades will go through; that your particular business, whatever it is, is guaranteed by a firm. That is, either party in the stock exchange, in case anything goes wrong, can hold the other responsible. In the case of an outsider it might mean a lawsuit. In the case of a stock-exchange firm it means that the governors of the exchange would decide anything that might come up.

Mr. PECORA. In other words, when you get an option from another stock-exchange firm you have virtually a guarantee of performance by the optioner of the terms and conditions of the option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Namely, that he will deliver to you the stock as you call upon him for it under the option?

Mr. WRIGHT. That is it exactly.

Mr. PECORA. And at the prices fixed by the option.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Well, what is it that makes that guarantee? Why do you call that a guarantee?

Mr. WRIGHT. Because we have faith in one another.

Mr. PECORA. Well, does that mean that the stock exchange authorities will enforce such an agreement as between its members?

Mr. WRIGHT. Yes, sir. It is a contract between members.

Mr. PECORA. And hence will be rigidly enforced under all the powers possessed by the governing authorities of the stock exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Then does the stock exchange take cognizance of such contracts among stock-exchange houses, of one house giving another house an option to trade under?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, the second option produced by you this afternoon has been marked in evidence "Committee Exhibit No. 61", and was likewise given to your firm by Redmond & Co. under date of May 6, 1932, and covers 2,500 shares of the common stock of the National Distillers Products Corporation, the option period being 60 days from May 3, 1932, and the option prices ranging from \$19 a share to \$22 a share, in 500-share blocks.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you draw down all of the 2,500 shares covered by this option?

Mr. WRIGHT. Yes; we did—no, it was 2,000 shares that we took down.

Mr. PECORA. You took down 2,000 of the 2,500 shares optioned?

Mr. WRIGHT. We took down 2,000 shares and made a profit of \$11,000.

Mr. PECORA. Now, Mr. Wright, this option agreement also contains this clause:

We hereby assign this Call and Put to you to trade in the stock, with the understanding that you will pay to us one-half of any profits which you may realize through the purchase or sale of the stock during this period, or through the exercising, in part or in whole, the Call and Put. It is also understood that Redmond & Co. will not be responsible for any loss which may occur through such purchases or sales

Did you seek this option, or was it offered to you?

Mr. WRIGHT. It was offered to me by Redmond & Co.

Mr. PECORA. Well, in view of that provision in this option agreement, which provision I have just read to you, it would seem that you were taking all the chances of loss and that Redmond & Co. were taking none.

Mr. WRIGHT. That is right.

Mr. PECORA. And it would also seem that Redmond & Co. were to share equally with you in any profits arising from your trading under this option.

Mr. WRIGHT. That is right.

Mr. PECORA. Then they got the better of the deal.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And they sought to give you this option of their own initiative.

Mr. WRIGHT. Mr. Day, of the firm of Redmond & Co., asked me if I would be interested in it, and I told him I would.

Mr. PECORA. Were the trading operations under this option successful in that they resulted in a profit to the account?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, the other options which you had during the year 1932, consisting of committee exhibits nos. 48, 49, 50, and 51, will now be covered by me. The first one of these is committee exhibit no. 48, dated August 12, 1932, addressed to your firm, and covers 9,000 shares of the capital stock of Affiliated Products, Inc., at \$8.50 per share, and the optioners are J. R. Williston & Co. Is that firm a stock-exchange brokerage firm?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And they are members of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And did you take this option for the purpose of trading under it in the same manner as you have described heretofore?

Mr. WRIGHT. No. I sold that stock to private individuals.

Mr. PECORA. You assigned your option rights, do you mean?

Mr. WRIGHT. No. I sold the stock to private individuals.

Mr. PECORA. At what price?

Mr. WRIGHT. What was the date of that?

Mr. PECORA. It is dated August 12, 1932.

Mr. WRIGHT. We made about \$3,700 on it.

Mr. PECORA. I mean at what price did you sell it, or did you sell it in one block?

Mr. WRIGHT. No; in two blocks.

Mr. PECORA. To the same purchaser?

Mr. WRIGHT. Yes, sir. We sold 4,000 shares at $9\frac{1}{2}$ and 3,500 shares at $9\frac{7}{8}$.

Mr. PECORA. Did you have those purchases in view when you took this option?

Mr. WRIGHT. No, sir. The stock was sold on August 24 and 27.

Mr. PECORA. Well, this option gave you the right to call upon the optionor for the stock not later than 2:45 p.m., of August 24, 1932.

Mr. WRIGHT. That is the day we called it.

Mr. PECORA. And you did not contemplate trading in the market under this option?

Mr. WRIGHT. Yes; I did. But it was not the kind of market that was good for or that would take any trading.

Mr. PECORA. But you did not engage in any such trading operations under this option?

Mr. WRIGHT. No.

The CHAIRMAN. Mr. Wright, you seem to have dealt entirely in stocks. Didn't you handle bonds also?

Mr. WRIGHT. No, sir.

Mr. PECORA. Now, Mr. Wright, the option put in evidence as exhibit no. 49 is addressed to you individually, and is given by F. Gerl & Co., Inc., under date of September 1, 1932, and covers 80,000 shares of Belding Heminway Co. stock at prices ranging from 5½ to 9. Do you recall that option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you seek that option or was it offered to you?

Mr. WRIGHT. It was offered to me.

Mr. PECORA. By the optioner?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you take this option with a view to conducting the kind of market operations you have already described under the other options?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And did you succeed in effecting such operations?

Mr. WRIGHT. Partially.

Mr. PECORA. How many shares did you draw down under this option?

Mr. WRIGHT. Seventeen thousand shares.

Mr. PECORA. Did you say 17,000 shares?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. This option agreement contains the following provision:

It is understood that you have the privilege of borrowing up to five thousand shares of the above stock, and that when you are short in position of the above-mentioned five thousand shares, you are to take up from us the stock at option price

Mr. WRIGHT. Yes, sir.

Mr. PECORA. What does that mean?

Mr. WRIGHT. That means that if I am short of the stock in market operations I am privileged to borrow from them up to 5,000 shares, and the minute that I get long 5,000 shares I have to call on them for them.

Mr. PECORA. Does that mean that you are to start the operations by selling short?

Mr. WRIGHT. Not selling short in the way of putting the market down, but selling short in the interest of putting the market up.

Mr. PECORA. Well, Mr. Wright, I do not quite understand that. Did you contemplate making short sales at the commencement of your trading operations under this option?

Mr. WRIGHT. No, sir.

Mr. PECORA. What was the reason for the inclusion of that provision in the option?

Mr. WRIGHT. That is included in a great many options.

Mr. PECORA. But, I take it, there must be a reason for its inclusion, and would like to know that reason.

Mr. WRIGHT The reason is that if you get short of any stock that is the basis of your operation, this provision comes in there. It meant short sales before the new rules went into effect. It is eliminated now.

Mr. PECORA. But going back to market conditions existing at the time of this option, in September of 1932, you contemplated market operations that would be commenced by short sales, isn't that right?

Mr. WRIGHT. No, sir. It is only technically right.

Mr. PECORA. Well, this option gave you the right to call upon the optioner for the first block of 5,000 shares of those 80,000 shares at \$5.50. Now, what would be served by your selling short before you drew down any stock under this option?

Mr. WRIGHT. Because if you were short of the stock you would be able to get the stock by applying for it, and thereby filling your short position, and you could conduct sales on your short position.

Mr. PECORA. What is the advantage to the trader in doing that?

Mr. WRIGHT. He can always support this market.

Mr. PECORA. Then it is a part of the process as a rule whereby the trader—

Mr. WRIGHT (interposing). It was a part of the process; yes.

Mr. PECORA (continuing). Or was a part of the process whereby the market trader or operator, operating under the option, would support his trading.

Mr. WRIGHT. His market in order to be successful would have to be worked on a short position.

Mr. PECORA. It would have to be supported with a short position, is that it?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. And I understood you to say that that had been done away with.

Mr. WRIGHT. Yes, Mr. Chairman. On account of the new rules of the New York Stock Exchange they have prohibited the selling of stock down short.

The CHAIRMAN. Why did they do that?

Mr. WRIGHT. To prevent people selling stock short and ruining the market, which was going on during the depression. It is not like the ordinary short sale.

Mr. PECORA. In other words, it is not like bear raiding?

Mr. WRIGHT. No, sir; it is just the opposite.

Mr. PECORA. It is to get the benefit of the technical market position.

Mr. WRIGHT. Exactly.

Mr. PECORA. At the outset of a series of trading operations.

Mr. WRIGHT. Exactly.

Mr. PECORA. And it was the practice commonly indulged in under such circumstances.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And is to be distinguished from the kind of short selling that has commonly been referred to as bear raiding; is that right?

Mr. WRIGHT. That is right.

Mr. PECORA. Now, the next operation under an option that you had in the year 1932, appears to have been given to your firm by

Redmond & Co., under date of September 14, 1932, and covers 15,000 shares of the common stock of the Warren Foundry & Pipe Corporation, at prices ranging from \$13 per share to \$18 per share, the option being given up to the close of business October 5, 1932, or, for a period of about 3 weeks. Did you solicit this option or was it offered to you by Redmond & Co.?

Mr. WRIGHT. It was offered to me by Redmond & Co.

Mr. PECORA. Now, I note that this option, which is marked "Committee Exhibit No. 50", contains the following provision:

We hereby assign this option to you to enable you to trade in the stock with the understanding that you will pay to us 60 percent of any profits which you may realize through the purchase or sale of the stock during this period or through the exercising in part or whole of the option. It is also understood that Redmond & Co. will not be responsible for any loss which may occur through such purchases or sales.

Now, what was the reason for the inclusion of that provision in this option agreement?

Mr. WRIGHT. The same as in the case of the others.

Mr. PECORA. That is, the same as other general similar provisions to which I have called your attention?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Under this provision Redmond & Co. were to take no stock loss at all, but were to share to the extent of 60 percent in the profits, whereas you were to get only 40 percent and you took all the risks?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. I notice the risk was one that involved the putting of the market up within a period of 3 weeks' time, that is, between September 14, the date of the option, and October 5, the date of its expiration; and that the price range was from \$13 to \$18 a share.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How did you hope to accomplish that purpose?

Mr. WRIGHT. I don't know. I took that one with a prayer. And it did not turn out very well.

Mr. PECORA. And the prayer was answered or was not answered, which?

Mr. WRIGHT. It was not answered. I think I had to carry the stock in, that I was long of, the stock to the following year. I believe at the present time the stock is selling at \$15 or \$20 higher than that option.

Mr. PECORA. So that the prayer has been answered this year?

Mr. WRIGHT. No; I just got out even this year.

Mr. PECORA. Now, the next option in the year 1932 is shown by committee exhibit no. 51, and is dated September 21, 1932, given by Bancamerica-Blair Corporation to George F. Breen, 20 Pine Street, New York, N.Y., and covers 500,000 shares of the Curtiss-Wright Corporation common stock at \$3 per share for the first 100,000 shares, and \$3.50 per share for the next 100,000 shares, and \$4 per share for the next 100,000 shares, and \$4.50 per share for the next 100,000 shares, and \$5 per share for the final 100,000 shares. Do you recall that option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. This option, as you will notice, is addressed to Mr. George F. Breen. Who is he?

Mr. WRIGHT. He is a stock-market operator.

Mr. PECORA. He is not a broker?

Mr. WRIGHT. No, sir.

Mr. PECORA. And did he assign this option to you or to your firm?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you have any participants or associates in the market operations that you engaged in under this option?

Mr. WRIGHT. Yes. They were Breen, Bancamerica-Blair Corporation, and Wright & Sexton.

Mr. PECORA. What were their respective participations?

Mr. WRIGHT. It was 25 percent, 25 percent, and 50 percent for Wright & Sexton.

Mr. PECORA. Do you mean that Breen got 25 percent?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who was the other participant?

Mr. WRIGHT. Bancamerica-Blair Corporation, who got 25 percent. And I believe the loss in it was \$70,000.

Mr. PECORA. There was a loss in the operations that you conducted under this option?

Mr. WRIGHT. Yes, of \$70,000.

Mr. PECORA. How many shares were taken down under this option?

Mr. WRIGHT. 100,000 shares.

Mr. PECORA. Now, I notice that there is a provision here that exempts Bancamerica-Blair Corporation from liability for any loss in the trading under this option.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who sustained the loss that you say ensued?

Mr. WRIGHT. I did.

Mr. PECORA. How about your coparticipant, George F. Breen?

Mr. WRIGHT. I think his loss was 4,200 and some odd dollars, which he paid me this last year. The balance of the loss was my own. He took his stock up out of the account, and I don't know what he did.

The CHAIRMAN. What became of that corporation?

Mr. WRIGHT. The Curtiss-Wright Corporation?

The CHAIRMAN. Yes.

Mr. WRIGHT. Well, it is still functioning very well. It is the largest manufacturer of airplanes in America.

The CHAIRMAN. What is the stock worth now?

Mr. WRIGHT. It is worth \$4 or \$5 a share.

Mr. PECORA. The 500,000 shares referred to in this option appear to have consisted of stock for which it was contemplated at the time of the giving of this option an application would be made to list on the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Were those 500,000 shares eventually so listed?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, Mr. Wright, one of the option agreements that you handed to me this afternoon, or rather it is not an option agreement, but seems to be a copy of a letter addressed to your firm by Redmond & Co. under date of June 20, 1932, and reads as follows:

MESSRS. WRIGHT & SEXTON,
One Wall Street, New York City.

GENTLEMEN: On April 30, 1932 the N A D Option Accounts #2 and #3 were closed, leaving in each a credit balance. Checks to your order for your share of these credit balances are enclosed herewith.

No acknowledgment, other than your endorsement on these checks, will be necessary.

Yours very truly

And I presume it was signed by Redmond & Co., although this copy bears no signature.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Does that indicate that you had an interest or participation in two other options in stock known as "N.A.D.", which I presume refers to National Distillers?

Mr. WRIGHT. No; and I gave you those options.

Mr. PECORA. Oh, does this refer to the options of the dates March 10, 1932, and May 6, 1932, already received in evidence as committee exhibits 60 and 61?

Mr. WRIGHT. I believe so.

Mr. PECORA. How can that be in view of the fact that this letter to you of June 20, 1932, states that the option accounts were closed on April 30, 1932?

Mr. WRIGHT. I don't know.

Mr. PECORA. One of the two options you gave me is dated May 6, 1932, which is subsequent to the closing of the two option accounts referred to in this letter I have just read into the record.

Mr. WRIGHT. I don't know. I borrowed that from their records this morning. Will you let me look at it?

Mr. PECORA. Certainly.

Mr. WRIGHT (evidently inquiring of someone representing Redmond & Co.). The records in no. 3 account were kept in your office. I do not have any accounts in regard to it at all. [The party addressed, sitting back in the audience, bowed his head.] Mr. Pecora, it appears that that is one of the records kept in their office. We will have to get it for you—the records.

Mr. PECORA. It would also appear from this letter dated June 20, 1932, that prior to April 30, 1932, there were two option accounts conducted by Redmond & Co. in the stock of National Distillers. Isn't that so?

Mr. WRIGHT. Yes. My assistant is going to try to explain that if he can get the data.

Mr. PECORA. All right. Now, let us go to the year 1931. In answer to our questionnaire sent to your firm you furnished us with photostatic copies of eight different options covering as many different accounts given to you or your firm during the year 1931, and which have been marked as "Committee Exhibits Nos. 52, 53, 54, 55, 56, 57, 58, and 59." Now, I will take committee exhibit no. 52, dated January 31, 1931, which is addressed to you individually, and the optionor is A. M. Andrews Investment Corporation, and covers 25,000 shares of the Budd Wheel Co. common stock, at prices ranging from \$10 a share to \$12 a share. Did you take this option with a view to conducting market operations under it for the purpose of distributing the stock at higher prices?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Were your trading operations successful in that respect?

Mr. WRIGHT. I don't think so. I think we got about an even break as I remember it. I think I distributed the stock, but made no money.

Mr. PECORA. And in those trades you both bought and sold?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Do you know how many shares you drew down under this option which covered 25,000 shares?

Mr. WRIGHT. We drew down 25,000 shares.

Mr. PECORA. Now, the second one of these options, which is committee exhibit no. 53, is addressed to you and is dated March 3, 1931. The optioner also is A. M. Andrews Investment Corporation, and covers 10,000 shares at \$10 per share of the stock of the Trans Lux Daylight Picture Screen Corporation.

Mr. WRIGHT. That is a curb stock.

Mr. PECORA. Did you take this option with a view to conducting similar market or trading operations under it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Both buying and Selling?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And how many shares did you draw down under this option?

Mr. WRIGHT. I don't think I drew down any. And I think I traded in very little of it.

Mr. PECORA. I never heard of the A. M. Andrews Investment Corporation before. What kind of a corporation is that, Mr. Wright?

Mr. WRIGHT. That was the way Mr. Andrews put all of his investments.

Mr. PECORA. And who is Mr. Andrews?

Mr. WRIGHT. A. M. Andrews is a man who was formerly the largest stockholder of Hupmobile, Trans Lux, Budd Wheel, and Budd Manufacturing Co.

Mr. PECORA. An individual operator, is he?

Mr. WRIGHT. Well, he is not an operator, so far as I know. He is a man who at various times in his life has sold many stocks. I do not know what he does now.

Mr. PECORA. Your next operation in 1931 appears to have been an option given to your firm by W. R. K. Taylor & Co. That is a stock-brokerage firm, too, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And they are also members of the New York Stock Exchange?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And it is dated July 31, 1931, and covers participation of 1,500 shares in an account of 5,000 shares of the stock of Lily-Tulip Cup Corporation.

Mr. WRIGHT. That is a dead one.

Mr. PECORA. What was that?

Mr. WRIGHT. That was a dead one. We never did anything with that.

Mr. PECORA. Well, you accepted this participation, didn't you?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who conducted the account that was formed under it?

Mr. WRIGHT. W. R. K. Taylor.

Mr. PECORA. When you say "That is a dead one", just exactly what do you mean by it?

Mr. WRIGHT. I mean that the stock has no appeal. You could not do anything with it.

Mr. PECORA. But an effort was made to move it in the market?

Mr. WRIGHT. I don't know what they did, to tell you the truth.

Mr. PECORA. Well, this account was formed for the purpose of moving the stock in the market, wasn't it?

Mr. WRIGHT. Yes, sir. According to the records here they bought about 3,000 shares and then stopped.

Mr. PECORA. Because they could not make any headway with it in the market?

Mr. WRIGHT. At that particular time, in 1931, you could not have made any headway with anything.

Mr. PECORA. Now, the next option in 1931 was given to your firm by Redmond & Co., and is dated August 21, 1931, being marked "Committee Exhibit No. 55" in evidence, and covers 50,000 shares of the Petroleum Corporation of America, at prices ranging from \$8.25 per share to \$10.50 per share.

Mr. WRIGHT. I apparently drew down 19,000 shares of that Petroleum Corporation stock.

Mr. PECORA. Did you accept this option with a view to conducting trading operations under it for the purpose of making a distribution of the stock covered by the option, at higher prices?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And to what extent did you succeed in those trading operations?

Mr. WRIGHT. To the extent of 19,000 shares.

Mr. PECORA. And at a profit for the 19,000 shares?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And under those trading operations you both bought and sold?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Did you have any associates or participants in the market operations conducted under this option?

Mr. WRIGHT. Redmond & Co. were in on it for—let me see.

Mr. PECORA. How about M. J. Meehan & Co.?

Mr. WRIGHT. No, sir. Redmond was the only one in on it, for 40 percent.

Mr. PECORA. Well, now, let us see. Attached to this option agreement, committee exhibit no. 55, of August 21, 1931, is a letter of the same date addressed to Redmond & Co., reading as follows:

AUGUST 21, 1931

Messrs REDMOND & Co,
New York, N Y

GENTLEMEN. On August 19, 1931, you gave us an order to sell 50,000 shares of the capital stock of the Petroleum Corporation of America at certain prices, which prices have been corrected by you under today's date. It is hereby agreed between us that you may, with our consent, give an order to Messrs. M J Meehan & Co. to sell all or any part of 15,000 shares of the above mentioned stock, in amounts and prices as follows: 2,500 shares at 9¼; 2,500 shares at 9½; 2,500 shares at 9¾; 5,000 shares at 10; 2,500 shares at 10¾.

Messrs M. J Meehan & Co will agree to pay you 40 percent of any profits which they make in connection with these sales, if any, and will agree that Redmond & Co. shall not be responsible for any loss which may occur through such sales.

It is understood that you will forward to us one half of any profits you may receive from Messrs. M J Meehan & Co's sales

Yours very truly—

Now, no name is attached to this photostatic copy of the letter, but I assume it was one forwarded to your firm by Redmond & Co.

Mr. WRIGHT. I do not think that anything happened on that. I think the whole thing died at its inception so far as my memory is concerned. But I would have to go through Redmond & Co.'s records to find out if that is true. But I do not remember M. J. Meehan & Co. ever being in with me on that.

Mr. PECORA. Now, the next option in 1931 is dated August 25, 1931, and is granted to your firm by Redmond & Co., and it covers 200,000 shares of the capital stock of Transamerica Corporation at prices ranging from \$7 per share to \$10 per share.

Do you recall that option?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Was this option secured by you with the same purpose in mind of conducting market operations under it which would enable you to distribute the stock at higher prices?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. How many shares were drawn down by you under this option?

Mr. WRIGHT. About 8,000 shares.

Mr. PECORA. Did you say 8,000 shares?

Mr. WRIGHT. Yes, sir. And then it stopped.

Mr. PECORA. Times were unpropitious then for this operation; is that it?

Mr. WRIGHT. No. I was taken sick and I had to stop.

Mr. PECORA. I notice this clause in this option:

It is further understood that upon the expiration of this order, as above noted, you will forward to us 40 percent of any profits which you may realize through the sale of these shares, and it is also understood that Redmond & Co shall not be responsible for any loss which may occur through such sales

Now, the reason for the inclusion of that provision, I assume, is similar to that heretofore given by you with regard to other similar provisions in other options.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, Mr. Wright, the next option in the year 1931 was given to you or to your firm by W. R. K. Taylor & Co., of the New York Stock Exchange, being marked "Committee Exhibit No. 57", and is dated October 21, 1931. It covers 20,000 shares of the stock of the American Machine & Foundry Co.

Mr. WRIGHT. Is that in 1931?

Mr. PECORA. That is dated October 21, 1931. This letter gives your firm a 30-percent participation in the syndicate account that was formed to trade under this option. Is that right?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who managed that account?

Mr. WRIGHT. I did.

Mr. PECORA. How many shares were drawn down under it?

Mr. WRIGHT. About 13,000 shares.

Mr. PECORA. Did the account close with a profit?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Was this account also formed for the purpose of conducting trades in the stock under the option in a manner calculated to distribute the stock at higher prices?

Mr. WRIGHT. Yes, sir. No, Mr. Pecora, I find that there was no money made in that account.

Mr. PECORA. Was any money lost under it?

Mr. WRIGHT. Yes.

Mr. PECORA. How much?

Mr. WRIGHT. Our participation meant a loss of \$7,600, on the basis of a 20 percent participation.

Mr. PECORA. It was a 30 percent participation, unless you gave a subparticipation to somebody else?

Mr. WRIGHT. I think Wright & Sexton had a participation of 20 percent.

Mr. PECORA. Well, the option agreement or letter received in evidence as committee exhibit no. 57 refers to the allotment to your firm of a 30 percent participation in the option.

Mr. WRIGHT. I think it was cut down by a subsequent letter to 20 percent.

Mr. PECORA. Well, now, let us see. Attached to this exhibit—

Mr. WRIGHT (interposing). No; 30 percent is right.

Mr. PECORA. Attached to this exhibit are two other copies of letters, dated, respectively, March 10, 1931, and March 26, 1931, each addressed to your firm by W. R. K. Taylor & Co., referring to earlier joint accounts to trade in the stock of the American Machine & Foundry Co. There were such earlier trading accounts, weren't there?

Mr. WRIGHT. I have been trading in the stock for years.

Mr. PECORA. I mean that there were such earlier trading accounts formed by W. R. K. Taylor & Co. in that year.

Mr. WRIGHT. Yes, sir; in 1929, 1930, and 1931 or thereabouts.

Mr. PECORA. Now, committee exhibit no. 58 in evidence consists of an option agreement, or an option granted to you or your firm by Redmond & Co., under date of November 11, 1931, and covers, or rather relates to a joint account which is to trade in 51,500 shares of the common stock of the Kaufman Department Stores, Inc., for which options were given at prices ranging from \$9.50 to \$11 per share?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And your firm had a one third interest in that account, did it not?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Together with the firms of Redmond & Co. and Farnum, Winter & Co.?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Who conducted the trading operations under that option?

Mr. WRIGHT. I do not remember, Mr. Pecora. It was not me.

Mr. PECORA. Was it a man named Bergen?

Mr. WRIGHT. Bergen, I believe, sold the stock through dealers. I do not believe he conducted market operations. I do not think there was much of a market operation in it. He tried to sell the stock through dealers, and did not succeed?

Mr. PECORA. Who gave this option under this account in the first instance? Were they officers of Kaufmann Department Stores, Inc.?

Mr. WRIGHT. I do not think so, as I remember it. It was not officers. It was a man who was one of the largest stockholders of the company, and was formerly president of Stern Bros

Mr. PECORA. Was it Samuel Mundheim?

Mr. WRIGHT. That is it.

Mr. PECORA. And this joint account was formed for the same purpose as has heretofore been stated, namely, to conduct market operations with a view to disposing of the stock at a higher price.

Mr. WRIGHT. No, sir.

Mr. PECORA. What was this account formed for?

Mr. WRIGHT. They were selling the stock by means of dealer distribution and not by means of market operations.

Mr. PECORA. There was no market operation conducted under this option?

Mr. WRIGHT. No, sir.

Mr. PECORA. Now, the last one for the year 1931 that you have given to us is an option given to you under date of November 12, 1931, by W. H. Eshbaugh, and covers 10,000 shares of the common stock of International Salt Co., at \$32 per share, the option being given for a period of 1 month. Did you take this option with a view to conducting market operations under it so that you might distribute the stock at higher levels?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Now, Mr. Wright, that covers all the options, copies of which were reported by your firm in answer to the questionnaire submitted to your firm in behalf of this committee last fall. But, as I have remarked before, it covers options only for the calendar years 1931, 1932, and 1933, although the questionnaire called for options for the years 1929 and 1930 as well. You are going to have further inquiry made in your office for records for those years, are you?

Mr. WRIGHT. Yes; but I do not think that I had any. But I will make as much inquiry as I possibly can.

Mr. PECORA. All right.

Mr. WRIGHT. Now, Mr. Pecora, there are a couple of corrections my assistant would like to make of statements that he tells me are incorrect.

Mr. PECORA. What are they?

Mr. WRIGHT. As to the American Machine & Foundry Co. the share figures are not quite correct, although they are the approximate amounts

Mr. PECORA. Well, they will be sufficient for our purposes.

Mr. WRIGHT. All right. Then we do not want to make any changes.

Mr. PECORA. Now, Mr. Wright, to your knowledge, is it common practice for members of the exchange to operate under option agreements generally similar to those which you have produced and which have been put in evidence here today?

Mr. WRIGHT. Is it common practice?

Mr. PECORA. Yes.

Mr. WRIGHT. Well, I wouldn't say it is common practice, but it is done.

Mr. PECORA. It is frequently done?

Mr. WRIGHT. Not frequently, but it is commonly done by a small proportion of the members.

Mr. PECORA. By about what proportion of the members in your opinion, and we understand that it is purely your opinion.

Mr. WRIGHT. In my opinion I wouldn't think that 1 man out of every 100 who are members of the exchange, does it. I do not think there are more than 15 men who specialize in that kind of work. I was just trying to think, and I doubt if there are even 15 men.

Mr. PECORA. Those 15 members, taking that number by means of purely an approximation, specialize in that kind of operation or trading, do they?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And do they get their options frequently from other members of the stock exchange?

Mr. WRIGHT. Yes, sir. And that is accounted for by the fact that your options are granted by members of the exchange. That is why members' names appear so frequently.

Mr. PECORA. Do you also know it to be the practice, perhaps not common but more or less frequently, for members of the exchange to operate under options given to them by corporations which issue the stock in which the trading is done?

Mr. WRIGHT. Well, as a general rule these options would not be given by corporations to other than a stock-exchange firm, and in turn the stock-exchange firm would give it to the individual operator. In other words, they very selfishly, quite naturally, want the commissions themselves.

Mr. PECORA. That is, the stock-exchange firm that gets the option from the corporation will turn it over to one of the other members to trade in it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Is it also the practice or not infrequent for members of the exchange to trade under options granted by officers or directors of corporations whose securities are listed on the exchange?

Mr. WRIGHT. Well, the American Commercial Alcohol Corporation did, and I presume there are others doing it.

Mr. PECORA. That is an instance of such a thing, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Mr. Wright, if you would care to tell this committee your views on it, to what extent do you think that these trading accounts that are formed for the purpose of enabling persons holding stock under option to distribute that stock at higher prices, are justified when they are undertaken solely for that purpose.

Mr. WRIGHT. Might I have that question read to me?

Mr. PECORA. Yes. The committee reporter will read it to you. (Which was done.)

Mr. WRIGHT. Just the same as it is possible to sell Campbell Soup by advertising Campbell Soup. Just the same as frozen stocks which are held are of no benefit to anybody, and yet, if distributed

to the people, they are not so frozen. If you have them frozen and not in the hands of the people, you have stagnation in the stock market and in the banking business throughout the country.

Mr. PECORA. Those trading operations which are conducted for that purpose are conducted for the selfish purpose of those conducting the operations to make profits at the expense of the investing public, are they not?

Mr. WRIGHT. No; that is not true, because those stocks sometimes go up many, many points above the price at which they are sold.

Mr. PECORA. In other words, this movement that is started by pools or syndicate accounts continue beyond the expectations, hopes, or plans of the originators of the movement?

Mr. WRIGHT. In many cases they have.

Mr. PECORA. But where the trading accounts are initiated solely for the purpose of enabling the persons who hold the stock under option to sell that stock to the public at higher levels, don't you think they are more or less unethical?

Mr. WRIGHT. No, sir.

Mr. PECORA. Don't you think they tend to excite the market in a manner calculated to bring in the general public?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And a part of the operations of such trading accounts consist of buying and selling for the same accounts, in order to give the market the appearance of activity so that the public may be induced to come in; isn't that so?

Mr. WRIGHT. That is true.

Mr. PECORA. And you think that is sound and proper practice?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Despite the fact that the general public which is induced to come in has no way of knowing that that market activity is simply fomented by a group for the selfish purpose of enabling that group to dispose of its optioned stock at higher prices?

Mr. WRIGHT. That is true; but the part that you do not take into consideration is that some men who indulge this practice should not be allowed to do it, while other men who do it stand by their markets.

Mr. PECORA. And how can you draw a line between those who should not be allowed to do it and those who should?

Mr. WRIGHT. You could not draw a line, but, nevertheless, that is the case.

Mr. PECORA. Well, now, you heard the testimony given before this committee last week with regard to certain transactions in the stock of American Commercial Alcohol Corporation?

Mr. WRIGHT. Yes, sir.

Mr. PECORA. And you yourself today said that the movement which was started in that stock last May reached heights that were absurd. Those were not your words, but I take it that is what you meant to say.

Mr. WRIGHT. Yes, sir.

Mr. PECORA. Isn't that an instance, Mr. Wright, of the evil of starting a market in the manner that markets have been started, for the purpose of enabling optionees to get rid of their stock at higher levels?

Mr. WRIGHT. No, sir; because the American Commercial Alcohol appears to be an instance where the stock was carried up in sympathy with the whisky stocks, where the craze became Nation-wide, and there was no way that you could stop it. The American Commercial Alcohol pool, from the testimony I listened to here, were out of their stock around \$30 a share, and yet that same stock sold at 89 $\frac{7}{8}$.

Mr. PECORA. Well now, Mr. Wright, I think you are unfamiliar with the record brought out here before this committee when you say that, and I again want to remind you of the evidence before this committee produced last week from the records of W. E. Hurton & Co. to the effect that the Bragg Syndicate operations commenced on May 3, 1933, and continued until the end of July 1933; and yet you persist in saying that the operations of that syndicate stopped long before July 1933.

Mr. WRIGHT. I would say that their trading in the stock, the little I know about the testimony that I listened to, that they did practically no trading in the stock. You have the records there.

Mr. PECORA. We have the records and the records are here.

Mr. WRIGHT. That they did very little trading in June and July.

Mr. PECORA. Well, the records are just to the contrary, Mr. Wright.

Mr. WRIGHT. That I don't know anything about. I would say that their trading in the stock on the option of 25,000 shares at 18, and they made \$210,000 profit and then continued to trade in that, I would say it was awfully poor.

Mr. PECORA. That does not take into account whatever profits were made individually by the participants in that syndicate not through the operation of the syndicate, but taking advantage of market conditions?

Mr. WRIGHT. Those things I don't know anything about.

Mr. PECORA. No.

Mr. WRIGHT. But I do think that most of the men in that syndicate lost money in the end.

Mr. PECORA. What do you mean by saying they lost money in the end?

Mr. WRIGHT. I think on balance they lost money over and above the money they made on the options. I have heard some of the men say that.

Mr. PECORA. That because of their individual trading in the market?

Mr. WRIGHT. That is right.

Mr. PECORA. Bear in mind, Mr. Wright, that you yourself have admitted that as the specialist for this stock during this violent movement of last year, to use your own expression, were "murdered" when the break came, and yet for that 3-month period, for May, June, and July 1933, you emerged from it with a profit of around \$138,000, despite the losses you took while you were being murdered?

Mr. WRIGHT. Yes, sir. I would like to also recall the fact that I traded in 245,000 shares and sold 245,000 shares and made a profit of \$138,000 on that. That is a damned small margin of profit for that amount of stock that I traded in.

Mr. PECORA. I am going to show you, Mr. Wright, the report made to the committee on business conduct of the New York Stock Ex-

change under date of October 23, 1933, by the examiners or accountants of the New York Stock Exchange, and they show from transcripts of the accounts of W. E. Hutton & Co., account known as "no. 296", which has been identified here as the Bragg Syndicate account, tradings in that stock beginning with May 3, 1933, and ending on July 31, 1933, and show orders executed by you for that account as late as July 20. In fact there is one on July 24 executed by you.

Mr. WRIGHT. Yes. I think, Mr. Pecora, you will find that the Bragg Syndicate, so-called "Bragg Syndicate", stopped playing the market operations and started gambling, if you want to know.

Mr. PECORA. Well, that may be.

Mr. WRIGHT. And in the month of June I received from W. E. Hutton & Co., \$553 in commission; from Ben Smith, \$107 commission; Durant, \$17.50.

Mr. PECORA. Well, now, you look at this report of transactions in American Commercial Alcohol for the account of B. E. Smith, no. 296, account carried on the books of W. E. Hutton & Co., will you, please, and see if that does not indicate that the operations in that account were active all through May, June, and July 1933, and that you executed some of the orders late in July 1933 for that account?

Mr. WRIGHT. If I did, they were only a few thousand shares.

Mr. PECORA. Whatever they are, the account was only formed to trade in 25,000 shares, wasn't it, or rather the option was to distribute 25,000 shares?

Mr. WRIGHT. Yes, sir; they were just simply trading in the stock like anybody else in July.

Mr. PECORA. There were trades, according to the returns made to the New York Stock Exchange by W. E. Hutton & Co., for the account of that no. 296 account, which was identified here last week as the account through which the Bragg Syndicate traded?

Mr. WRIGHT. That is right. I would not know anything about that, because Bragg was not here.

Mr. PECORA. They are the records of W. E. Hutton & Co., which carried the account on its books.

Mr. WRIGHT. But I will say the same as I said before, Mr. Pecora, that these men turned from running the market into gamblers. If that was their business, to turn into gamblers, I had nothing to do with it. That is what they did. You can see by their records. They turned from market operators into just simply straight gambling in that particular stock.

Mr. PECORA. When did they stop being market operators and become gamblers in this trading?

Mr. WRIGHT. That is exactly what they did.

Mr. PECORA. When did they cease to be market operators and become gamblers?

Mr. WRIGHT. The height of my business with them shows that I did the height of my business for them in the month of May. There are my slips [handing papers to Mr. Pecora], which will correspond with yours. The month of May was the height of business I did. In June it started to fall down; July practically nothing.

Mr. PECORA. Now, let's see—

Mr. WRIGHT. There they are, right there. This represents the amount [indicating on documents]. This represents the height of the business that they gave me, which would be in May, the May commissions from W. E. Hutton. In June they started to drop down. In July they got down to practically nothing.

Mr. PECORA. Look at the list of sales. According to W. E. Hutton & Co.'s records, you made—or the purchases and sales you made for this 296 account in June, the latter part of June 1933—

Mr. WRIGHT. That is what I made for them, that amount of money.

Mr. PECORA. I don't care what the amount of money was. They are the long list of transactions put through by you?

Mr. WRIGHT. They do not prove to me any more than that thing proves to me. That proves that in May they reached their height of trading, and in June they started to drop down, and in July practically nothing.

Mr. PECORA. Do you challenge these figures—

Mr. WRIGHT (interposing). I don't challenge anything.

Mr. PECORA. Wait a minute—that the records of W. E. Hutton & Co. do show that, for instance, on June 26 that account, account no. 296 on the books of W. E. Hutton & Co., bought through you 700 shares of American Commercial Alcohol and sold through you 1,500 shares?

Mr. WRIGHT. What is the date?

Mr. PECORA. June 26.

Mr. WRIGHT. The volume of June 26 was—to show how little their trading meant—the volume on June 26 was 31,000 shares, and that is probably 1,500 shares out of 31,000. That is very little trading.

Mr. PECORA. And that on June 27 that account bought through you 3,100 shares?

Mr. WRIGHT. Well, to show you how little that meant, on that self-same day there was 49,200 shares traded in on the floor of the stock exchange, and this so-called "pool" did less than one tenth of that amount of trading.

Mr. PECORA. Are you overlooking the fact that according to these records of W. E. Hutton & Co., orders for the account of no. 296, which was this Bragg account, were also executed through other brokers than yourself?

Mr. WRIGHT. I would presume that they were executed through other people outside of myself. That I know nothing about.

Mr. PECORA. All of which indicates that this account did not cease operating in May or in June but continued right down to the end of July?

Mr. WRIGHT. They probably did. I don't challenge that.

Mr. PECORA. Now, as you look at the transcript of the transactions in the account of no. 296 on the books of W. E. Hutton & Co. in American Commercial Alcohol last year, you say that it would indicate that persons interested in that account stopped being market operators and turned gamblers?

Mr. WRIGHT. That is what I would judge; yes, sir.

Mr. PECORA. That includes this man Bragg, that you said was one of the cleanest operators?

Mr. WRIGHT. Yes; that includes him.

The CHAIRMAN. Smith?

Mr. PECORA. And Smith too?

Mr. WRIGHT. Smith was not around, Mr. Pecora. He is never around.

Mr. PECORA. I think that is all, Mr. Chairman, of Mr. Wright.

The CHAIRMAN. All right; you may be excused, Mr. Wright.

Mr. WRIGHT. Am I through, Mr. Pecora?

Mr. PECORA. Yes.

Mr. WRIGHT. I want to thank all of you gentlemen for your courtesies.

Mr. PECORA. If you get any more options for 1929 send them to us.

Mr. WRIGHT. I will get you 1929 and 1930 if there were any, and I will send you a copy. Am I excused for the balance of the meeting?

Mr. PECORA. Yes.

Mr. WRIGHT. Thank you very much. Good night.

The CHAIRMAN. The committee will now take a recess until tomorrow morning at half past 10. I want the committee to meet at 10 in order to have a little executive session. The regular session will begin at half past 10 tomorrow, and the witnesses are excused until half past 10.

(Accordingly, at 4:40 p.m., the hearing was adjourned until 10:30 o'clock on the following morning.)

COMMITTEE EXHIBIT No 34, FEBRUARY 20, 1934

HORNBLLOWER & WEEKS—BOSTON, NEW YORK, CHICAGO

42 BROADWAY, NEW YORK

MESSRS. WRIGHT & SEXTON,
c/o Arthur Lapper & Co.,
50 Broad Street, New York City.

APRIL 25, 1933.

DEAR SIRs: On behalf of a client, we herewith give you the right to call upon us for delivery of twenty-five thousand (25,000) shares of Timken Detroit Axle Common Stock at any time before 3.00 p.m., May 24, 1933, at the following prices:

5 000 shares,	@	\$2 50	per share.
5,000 "	@	3 00	" "
5,000 "	@	3 50	" "
5,000 "	@	4 00	" "
5,000 "	@	4 50	" "

The stock to be taken up in 100-share lots or any multiple thereof.
very truly yours.

(Signed) HORNBLLOWER & WEEKS.

HORNBLLOWER & WEEKS—BOSTON, NEW YORK, CHICAGO

42 BROADWAY, NEW YORK,

MAY 16, 1933

MESSRS. WRIGHT & SEXTON,
% Arthur Lapper & Co.,
50 Broad Street, New York, N.Y.

DEAR SIRs: This is to certify that on behalf of a client we have cancelled your present Call on 25,000 shares of Timken Detroit Axle and have replaced it by a new Call as follows:

10,000 shares at	\$4 00	per share.
10,000 " "	4 50	" "
10,000 " "	5 00	" "

good until the close of business on Friday, June 23rd

Yours very truly,

(Signed) HORNBLLOWER & WEEKS.

HORNBLOWER & WEEKS—BOSTON, NEW YORK, CHICAGO,
42 BROADWAY, NEW YORK,
June 2, 1933

Messrs. WRIGHT & SEXTON,
o/o Arthur Lapper & Co, 50 Broad Street, New York City.

DEAR SIR: On behalf of a client, we herewith give you the right to call upon us for delivery of 30,000 shares of Timken Detroit Axle stock at any time before 3 00 P M, June 23, 1933, at the following prices

7,500 shares, @ \$5.50 per share
7,500 " @ 6 00 " "
7,500 " @ 6 50 " "
7,500 " @ 6 50 " "
7,500 " @ 7.00 " "

the stock to be taken up in 100-share lots or any multiple thereof

Very truly yours

(Signed) HORNBLOWER & WEEKS.

HORNBLOWER & WEEKS—BOSTON, NEW YORK, CHICAGO,
42 BROADWAY, NEW YORK,
June 6th, 1933.

Messrs WRIGHT & SEXTON,
o/o Messrs. Arthur Lapper & Co, 50 Broad Street, New York, N Y

DEAR SIR: On behalf of a client we herewith give you the right to call upon us for delivery of 16,000 shares of Timken Detroit Axle stock at any time before 3 P M June 23rd, at the following prices—

4,000 shares at \$5 50 per share.
4,000 shares at 6 00 per share
4,000 shares at 6 50 per share
4,000 shares at 7 00 per share

stock to be taken up in 100 share lots or any multiple thereof

This call on 16,000 shares is in addition to our previous Call given you under date of June 2nd, 1933 on 30,000 shares of which you have already exercised 7,500 shares at \$5 50 per share

Yours very truly,

(Signed) HORNBLOWER & WEEKS.

COMMITTEE EXHIBIT No 35, FEBRUARY 20, 1934.

30 PINE STREET, NEW YORK,
May 16, 1933.

WRIGHT & SEXTON,
1 Wall Street, New York City.

Attention Charles Wright, Esq.

GENTLEMEN: This will confirm our understanding to the effect that you have an option from Pacific Eastern Corporation and Blue Ridge Corporation to purchase jointly from them 40,000 shares of the common stock of United Biscuit Company of America for the account of a Selling Group, to be organized, at prices as follows:

5,000 shares at 20.
5,000 shares at 21.
2,500 shares at 21½.
5,000 shares at 22.
2,500 shares at 22½.
5,000 shares at 23.
2,500 shares at 23½.
5,000 shares at 24.
2,500 shares at 24½.
5,000 shares at 25.

Any net profit realized by the Selling Group above the prices paid to these Corporations, after payment of all commissions, etc., are to be divided equally— one half to the firm of Wright & Sexton and one half jointly to the Pacific Eastern Corporation and Blue Ridge Corporation. It is understood that the

Selling Group will have a limited liability of not over 5,000 shares of stock at any one time

This option expires Thursday, June 15, 1933 at 3 p.m. It is our understanding that you will draw down stock for this account from day to day to correspond with your sales for the account of the Selling Group.

Yours very truly,

(Signed) MELVIN E SAWIN

COMMITTEE EXHIBIT No 36, FEBRUARY 20, 1934

MAY 18, 1933.

For One Dollar (\$1.00) and other valuable considerations, I hereby give Wright & Sexton, 1 Wall Street, New York City, the option to purchase from me the following number of shares of the common stock of the Gotham Silk Hosiery Company, Inc, at the following prices, for a period of thirty (30) days from date—

10,000 shares common stock at \$12 per share

10,000 shares common stock at \$13 per share

10,000 shares common stock at \$14 per share

All prices to be net

It is distinctly understood between us that I reserve the privilege of cancelling this agreement on forty-eight (48) hours notice

(Signed) H W BLUMENTHAL

COMMITTEE EXHIBIT No. 37, FEBRUARY 20, 1934.

SHUMAN & Co. MEMBERS NEW YORK STOCK EXCHANGE

25 BROAD STREET, NEW YORK

MAY 22, 1933

Mr. CHARLES C. WRIGHT,

Wright & Sexton, 1 Wall Street, New York City.

DEAR SIR: In consideration of One Dollar (\$1.00), receipt of which is hereby acknowledged, we grant to you an option on 25,000 shares of Granby Consolidated Mining, Smelting & Power Company, Ltd (a corporation of British Columbia), under the following terms and conditions

- (1) An option for 10 days on 2500 shares at 10½
- (2) An option for 17 days on 2500 shares at 11
- (3) An option for 24 days on 2500 shares at 11½
- (4) An option for 31 days on 2500 shares at 12.
- (5) An option for 38 days on 2500 shares at 12½
- (6) An option for 45 days on 2500 shares at 13
- (7) An option for 52 days on 2500 shares at 13½
- (8) An option for 59 days on 2500 shares at 14
- (9) An option for 66 days on 2500 shares at 14½
- (10) An option for 73 days on 2500 shares at 15

If options No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 are not exercised on the due date within the period of time mentioned as aforesaid, each and every succeeding option shall become null and void and cease to exist

We shall agree to deliver the certificates in one hundred share lots

We understand that you may consider it necessary to purchase not over 4,000 shares of this stock in the open market before you exercise your first option. Should you find it necessary to do so it is our understanding that you will agree to place said orders with us and we will agree to take for our own account fifty per cent of any stock you may purchase, up to 4,000 shares, covering this particular situation, for our own account and pay for same

It is to be further understood that George Douglass at Abbott Hoppin & Co and associates, for their cooperation in furthering the distribution of this

stock by creating the necessary purchasing power, are to receive from you 17½ per cent of the net profits, and that Shuman & Co. are in no way obligated to Mr. Douglas.

We shall be glad to do everything possible to help you to be successful in this undertaking.

We hand you this letter in duplicate, and if it meets with your approval, will you kindly sign the copy where marked "Accepted" and return to us

Should any of the maturity dates of these options fall on a holiday or Sunday, it is understood that the option may be exercised on the regular business day following

Yours very truly,

(Signed) W I SHUMAN

COMMITTEE EXHIBIT No 38, FEBRUARY 20, 1934

REDMOND & Co, 48 WALL STREET, NEW YORK

JUNE 1, 1933

Messrs WRIGHT & SEXTON,
One Wall Street, New York, NY

GENTLEMEN We have purchased for ourselves and associates, including you, 65,000 shares of common stock without par value of Libbey-Owens-Ford Glass Company, an Ohio corporation, at the price of \$26 50 per share, and, in accordance with previous understanding, we confirm your interest in the above purchase to the extent of 5,000 shares at said price We understand you will leave this stock with us for sale proportionately with the balance of such 65,000 shares, you to accept the average of the net avails of such sales, as determined by us in our absolute discretion, less brokerages taxes and other expenses in connection therewith

In connection with our purchase of said 65,000 shares of common stock, we have obtained for ourselves and associates options to purchase additional shares of such common stock as follows

Up to 20,000 shares on or before July 3, 1933, at \$27 50 per share,

Up to 20,000 shares on or before August 1, 1933, at \$28 50 per share,

Up to 20,000 shares on or before September 1, 1933, at \$29 50 per share,

Up to 20,000 shares on or before October 2, 1933, at \$30 50 per share,

such options being respectively conditional on the full exercise by us of the preceding option within the period specified We confirm your interest in the above options to the extent of 1,538 shares of such common stock out of each of said blocks of 20,000 shares, and it is understood that, to the extent to which we, in our absolute discretion shall exercise such options, such purchases shall be proportionately for your account and that you will promptly make payment on our call for the shares so purchased for you The stock purchased under such options and remaining unsold shall not exceed 20,000 shares at any one time It is understood that any such additional stock purchased by you will likewise be left with us for sale proportionately with the other stock purchased by us under such options, on the same terms provided above with reference to the original 65,000 shares

It is understood that we shall incur no liability for any action taken hereunder in good faith

If the foregoing is in accordance with your understanding, will you please confirm your agreement therewith by signing and returning the enclosed duplicate of this letter

Yours very truly,

REDMOND & Co,
By A PERY OSBORN

COMMITTEE EXHIBIT No. 39, FEBRUARY 20, 1934

A. HECKSCHER, 52 VANDERBILT AVENUE, NEW YORK,

WRIGHT & SEXTON,
1 Wall Street, New York City.

JUNE 7, 1933

GENTLEMEN: I hereby give you an option to purchase from me 28,824 shares of common stock of the Consolidated Cigar Corporation at the following prices.

7,500 shares @ \$16 per share
 7,500 shares @ \$17 per share
 7,500 shares @ \$18 per share
 6,324 shares @ \$19 per share

 28,824

Stock to be taken up only in lots of not less than 7500 shares each, except that the last lot shall be for the balance then remaining

This option shall expire August 5th, 1933, provided that of 20,000 shares shall have been purchased and paid for by you on or before said date, your option to purchase the remaining 8,824 shares shall be extended to and including September 5th, 1933

The stock shall be delivered at my office, 52 Vanderbilt Avenue, New York City, on not less than three days' notice against payment therefore in cash or certified check

4500 shares of stock covered by the above options, are now held as collateral for a bond issued by the National Surety Corporation and the above option with respect to said 4500 shares is subject to my obtaining consent of the Superintendent of Insurance of the State of New York to the withdrawal of the said shares. I anticipate that I will be able to obtain such consent within the next 10 days or so.

Very truly yours,

A. HECKSCHER

COMMITTEE EXHIBIT No 40, FEBRUARY 30, 1934.

Mr. ARLINGTON W PORTER,
50 Pine Street, New York, N.Y.

JUNE 21st, 1933

DEAR SIR: In consideration of your purchasing from me, for immediate delivery, 3,000 shares of no par value common stock of the American Seating Company at \$3 per share, I extend to you an option upon 17,000 shares of the above mentioned stock on the following terms:

4,000 shares at 3
 7,000 shares at 4
 6,000 shares at 5

This option to extend for a period of sixty days from the date of this letter.

If this is in accordance with your understanding, will you kindly sign and return the enclosed duplicate of this letter

Yours very truly,

(Signed) LOUIS H INGRAHAM

LOUIS H INGRAHAM
72 Wall Street, New York, N Y

COMMITTEE EXHIBIT No 41, FEBRUARY 20, 1934

THE SECOND NATIONAL BANK OF NEW HAVEN, NEW HAVEN, CONNECTICUT

Messrs. WRIGHT & SEXTON,
% Eric and Drivers, 115 Broadway, New York, N.Y

JUNE 19, 1933

GENTLEMEN: I hereby grant you an option on 40,000 shares PENNSYLVANIA COAL AND COKE CORPORATION at \$5 per share, net, good until ninety days from date (September 18, 1933) for one of our clients.

It is understood and agreed that you or your nominee will take up for delivery not less than 5000 shares at \$5 per share, net, every 30 days, otherwise we are at liberty to cancel said option.

Yours very truly

(Signed) E G ALLYN, President.

COMMITTEE EXHIBIT No. 42, FEBRUARY 20, 1934

BANCAMERICA-BLAIR CORPORATION, 44 WALL STREET, NEW YORK

JUNE 20, 1933

Douglas Aircraft Company, Inc, Capital Stock.

Mr SAM PASS,
% Messrs C E. Welles & Co,
39 Broadway, New York City.

DEAR SIR: The undersigned and associates hold an option to purchase from Douglas Aircraft Co. Inc. certain shares of its no par value capital stock

We hereby confirm the sale to you today of 20,000 shares Douglas Aircraft Co. Inc capital stock at \$15 per share, subject, however, to our being able to obtain delivery of said shares pursuant to the aforementioned option. Delivery of and payment for said shares is to be made at the office of Bancamerica-Blair Corporation, 44 Wall Street, New York City, on Wednesday, June 31, 1933, subject to receipt of said shares from Douglas Aircraft Co Inc

After effecting delivery and receiving payment for the above 20,000 shares at \$15 per share, the unexercised balance of the aforementioned option will be 47,969 shares, and we hereby confirm our understanding with you regarding the same as follows:

We hereby give you an order to sell for account of ourselves and associates all or any part of 24,000 shares of said stock at market prices, but in no event at less than \$16 per share net to us, and also give you an order to sell for account of ourselves and associates all or any part of an additional 23,969 shares of said stock at market prices, but in no event at less than \$17 per share net to us. The above orders are good for a period of 30 days from date hereof or until 3 p m Thursday, July 20, 1933.

It is understood that in the event that you have been successful in disposing of the first block of 24,000 shares at \$16 per share or better, we agree to extend the order on 23,969 shares at \$17 per share or better for an additional period of 30 days from July 20, 1933

It is also understood that the shares covered by the above orders shall be disposed of by you in the market and not en bloc

It is understood that during the life of this arrangement you are not to take a long position in the above stock for this account, but you may repurchase stock previously sold for the purpose of covering your short position which short position shall not exceed at any one time 5,000 shares nor in any case more than the unexecuted balance of the above orders. In the event that your short position exceeds 5,000 shares of stock, you are to take up from us and pay for at clearance prices hereafter referred to the number of shares equal to your short position in excess of 5,000 shares.

During the life of these orders you are not to trade in the capital stock of Douglas Aircraft Co Inc except in the interest of the account as herein stated.

You agree to inform us daily upon our request as to your net position in this stock, together with the average price of said position

It is also agreed that your operations hereunder shall be conducted in accordance with the rules of the New York Stock Exchange and within the State of New York

During the life of these orders, certificates for these shares in good delivery form as required by the rules of the New York Stock Exchange will be delivered to you or your nominee upon demand on us, giving us two days notice in writing and upon payment at a clearance price to be agreed upon from time to time, but such clearance price shall not be less than the minimum prices specified on the above orders, namely, \$16 and \$17 per share at the office of Bancamerica-Blair Corporation, 44 Wall Street, New York City

At the close of the account you agree to furnish us with a statement of your account and to pay to us the difference between the clearance prices at which shares are delivered to you and the net proceeds received therefrom less expenses.

All your transactions hereunder or in any way connected with the sale by you of the above shares are to be conducted in compliance with the Federal Securities Act of 1933

It is understood that after deducting expenses any amount received in excess of the prices herein stated from the sale of all or any part of the 67,969 shares

covered by this transaction shall be divided 50% to you and 50% to us and our associates. We assume no obligation hereunder except to deliver stock to you as provided herein and we shall not be liable for any loss arising out of this transaction.

Kindly acknowledge and confirm that the foregoing is in accordance with your understanding by signing and returning to Bancamerica-Blair Corporation the enclosed copy of this letter

Yours very truly,

E A PIERCE & Co
By E. A. PIERCE
BANCAMERICA-BLAIR CORPORATION
By J. R. MONTGOMERY, *Vice President*

COMMITTEE EXHIBIT No 43, FEBRUARY 20, 1934

HAYDEN, STONE & CO, 25 BROAD STREET, NEW YORK, N Y

JULY 11, 1933

MESSRS WRIGHT & SEXTON,
1 Wall Street, New York, N.Y.

DEAR SIRs: We hereby give and grant to you the right and option to purchase 54,796 shares of the common stock of Youngstown Sheet & Tube Company (an Ohio corporation), in lots, at prices and expiring on or before the close of business, on dates as follows, but all subject to the terms and conditions hereinafter stated, viz

Expiration date of options	Number of shares	Price per share	Expiration date of options	Number of shares	Price per share
July 11, 1933.....	4,796	32½	July 31, 1933.....	10,000	33½
July 21, 1933.....	10,000	32½	August 7, 1933.....	10,000	34
July 26, 1933.....	10,000	33	August 10, 1933.....	10,000	34½

If we or our client should be enjoined or restrained by any court or judge from selling or disposing of said stock, and upon notice by us, either orally or in writing, or by telephone or mail, to you at your office, 1 Wall Street, New York City of such fact, we shall not be bound to recognize any calls by you hereunder nor to make any delivery of stock, and all of our obligations hereunder, including the options herein granted, shall immediately cease and determine

Title to said stock shall not pass until you pay for the same and the stock is actually delivered to you

If you fail to take up and pay for any lot of stock within the period of time mentioned as aforesaid, all of your rights hereunder shall immediately cease and determine

This option may not be assigned without our written consent

Very truly yours,

HAYDEN, STONE & Co

COMMITTEE EXHIBIT No 44, FEBRUARY 20, 1934

L F ROTHSCHILD & Co,
ONE TWENTY BROADWAY,
New York, July 17, 1933

MESSRS WRIGHT & SEXTON,
1 Wall Street, New York City

GENTLEMEN Confirming our telephone conversation of this date, we agree that tomorrow, July 18th, we will deliver to you calls on Ten Thousand (10,000) shares of Robert Reis & Co. common stock at three dollars (\$3) per share, and six thousand five hundred (6,500) shares of Robert Reis & Co common stock at Four Dollars (\$4.00) per share, good for thirty days, expiring August 17, 1933

Very truly yours,

L. F. ROTHSCHILD & Co.

COMMITTEE EXHIBIT No 45, FEBRUARY 20, 1934

L F ROTHSCHILD & Co ,

*One Twenty Broadway, New York, August 25, 1933*MESSRS. WRIGHT & SEXTON,
1 Wall Street, New York City

DEAR SIR: This is to confirm that the following privileges issued on July 18th covering

8,000 shares Robert Reis common at 3

6,500 shares Robert Reis common at 4

and drawn by Mr. Harry Cowan, are to be extended to September 23, 1933, and we hereby guarantee that such privileges will be endorsed to that effect on Monday, August 28, 1933

Very truly yours,

L F ROTHSCHILD & Co

BANCAMERICA-BLAIR CORPORATION,
44 Wall Street, New York, September 13, 1933

[Confidential]

SUPERIOR OIL CORPORATION CAPITAL STOCK

MR CHARLES C. WRIGHT,
MESSRS WRIGHT & SEXTON,
1 Wall Street, New York City

DEAR SIR: We hereby give you an order to sell for our account, all or any part of 135,000 shares of the no par value, capital stock of Superior Oil Corporation, in amounts and at prices as follows

10,000 shares at \$2 75 per share net to us

25,000 shares at \$3 00 per share net to us

25,000 shares at \$3 50 per share net to us

25,000 shares at \$4 00 per share net to us

50,000 shares at \$4 50 per share net to us

The above order is good until the close of business at 12 noon Saturday, October 14, 1933

It is understood that in the event you shall have been successful in disposing of a total of 60,000 shares of the above stock at the respective prices listed above, we agree to extend the time for the execution of the balance of the order for an additional period of sixty days from October 14, 1933

It is understood that the shares covered by the above orders shall be disposed of by you in the market and not en bloc

It is understood that during the life of this arrangement you are not to take a long position in the above stock for this account, but you may repurchase stock previously sold for the purpose of covering your short position, which short position shall not exceed at any one time 20,000 shares of said stock. In the event that your short position exceeds 20,000 shares of stock, you are to take up from us and pay for, at clearance prices hereinafter referred to, the number of shares equal to your short position in excess of 20,000 shares

During the life of these orders you are not to trade in the capital stock of Superior Oil Corporation except in the interest of the account as herein stated.

You agree to inform us daily upon our request as to your net position in this stock, together with the average price of said position

It is also agreed that your operations hereunder shall be conducted in accordance with the rules of the New York Stock Exchange and within the State of New York

During the life of these orders, certificates for these shares in good delivery form as required by the rules of the New York Stock Exchange will be delivered to you or your nominee upon demand on us, giving us two days' notice in writing and upon payment at a clearance price to be agreed upon from time to time, but such clearance price shall not be less than the minimum prices specified above, at our office, 44 Wall Street, New York City

All your transactions hereunder or in any connected with the sale by you of the above shares are to be conducted in compliance with the Federal Securities Act of 1933.

Kindly acknowledge and confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this letter

Yours very truly,

BANCAMERICA-BLAIR CORPORATION,
By ROBERT C ADAMS, *Vice President*

COMMITTEE EXHIBIT No 47, FEBRUARY 20, 1934

NEW YORK, N.Y., *May 24, 1933*

Mr OSCAR C SEEBASS,
80 Broadway, New York City

DEAR MR SEEBASS In consideration of the sum of One (\$1 00) Dollar and other good and valuable considerations, I herewith grant you the option to purchase International Salt Company stock as follows

Two Thousand (2,000) shares at the price of \$26 per share, delivery of which is to be taken on or before July 8, 1933; and

Five Thousand (5,000) shares at the price of \$28 per share, delivery of which is to be taken on or before July 8, 1933.

In the event of the exercise of the option hereby granted, you are to give me notice of your desire to exercise the same not later than 3 30 pm on the day prior to the day fixed by you for delivery in such notice, and the place of delivery shall be at my office, Room 2600, No 165 Broadway, New York City, unless I shall designate a different place of delivery. Payment of stock purchased pursuant to this option is to be made by cash, or by certified check in New York funds. The option hereby granted shall be available to you or your assigns provided that notice of any assignment shall be given by you to me and confirmed by your assignee, and only after receipt of such notice and confirmation shall I be bound by any assignment.

Very truly yours,

H B DWYER

COMMITTEE EXHIBIT No 48, FEBRUARY 20, 1934

J R WILLISTON & Co.,
11 Wall Street, New York, August 12, 1932

Messrs WRIGHT & SEXTON,
1 Wall Street, New York City

DEAR SIRS For the consideration of your taking from us one thousand (1,000) shares of the capital stock of the Affiliated Products, Inc for \$8,500, we will give you the right to call upon us for delivery until two-forty-five (2:45) P M Wednesday, August 24th, 1932, of nine thousand (9,000) shares of the capital stock of the Affiliated Products, Inc, at \$8 50 per share.

As Affiliated Products, Inc stock goes ex-dividend on August 18th, 1932, any stock taken up from us prior to August 18 will carry the dividend, but any stock taken up under this call after August 18th, will be ex-dividend.

It is understood and agreed between us that, in the event of your not having exercised your option with respect to any of said shares, we shall be under no obligation to extend the option.

Yours very truly

J R WILLISTON & Co.

COMMITTEE EXHIBIT No. 49, FEBRUARY 20, 1934

E GERLI & Co, INC,
49 East 34th Street, New York

Mr. CHARLES C. WRIGHT,
% Wright & Seaton,
1 Wall Street, New York, N Y

DEAR SIR: In consideration of the sum of One Dollar, we hereby grant you the privilege to purchase from us any time within sixty (60) days from the above date, the following.

5,000	Belding Heminway Co,	5½
5,000	" "	6
10,000	" "	6½
10,000	" "	7
15,000	" "	7½
15,000	" "	8
15,000	" "	8½
5,000	" "	9

It is understood that you have the privilege of borrowing up to five thousand shares of the above stock, and that when you are short in position of the above mentioned five thousand shares, you are to take up from us the stock at option price

Very truly yours,

E GERLI & Co, INC,
JOSEPH GERLI, Tr

COMMITTEE EXHIBIT No 50 FEBRUARY 20, 1934

REDMOND & Co.
48 Wall Street, New York, September 14, 1932.

WRIGHT & SEXTON,
1 Wall Street, New York City.

DEAR SIR: We hereby confirm giving you an option good until the close of business October 5, 1932, on 15,000 shares of the Common Stock of the Warren Foundry and Pipe Corporation at the following prices

1,000 shares	at \$13 00	per share
2,500	" "	14 00 " "
2,500	" "	15 00 " "
3,000	" "	16 00 " "
3,000	" "	17 00 " "
3,000	" "	18 00 " "

We hereby assign this option to you to enable you to trade in the stock with the understanding that you will pay to us 60% of any profits which you may realize through the purchase or sale of the stock during this period or through the exercising in part or whole of the option. It is also understood that Richmond & Co will not be responsible for any loss which may occur through such purchases or sales.

Please confirm the above described option by signing and returning to us the attached duplicate of this letter

Very truly yours,

REDMOND & Co

COMMITTEE EXHIBIT No. 51, FEBRUARY 20, 1934

BANCAMERICA-BLAIR CORPORATION,
44 Wall Street, New York, September 21, 1932

Mr. GEORGE F. BREEN,
20 Pine Street, New York, N.Y.

DEAR SIR: I. In consideration of your using your best efforts to create a market for and distribute shares of Curtiss-Wright Corporation Common Stock, we hereby confirm the sale to you and your associates of 100,000 shares Curtiss-

Wright Corporation Common Stock at \$3.00 per share. We are to participate to the extent of 25% in the purchase by you and your associates from us of the above-mentioned 100,000 shares of stock at \$3.00 per share.

II. In consideration of your purchasing the said 100,000 shares of Common Stock of the Curtiss-Wright Corporation as above set forth, we offer to sell to you or your nominee or nominees, all or any part of an additional 400,000 shares of the Common Stock of said Corporation, at any time and from time to time up to and including February 2, 1933, in the amounts and at prices as follows:

- (a) 100,000 shares at \$3 50 per share
- (b) 100,000 shares at \$4 00 per share
- (c) 100,000 shares at \$4 50 per share
- (d) 100,000 shares at \$5.00 per share

provided, however, that this offer shall cease and terminate in respect to any shares not taken up and paid for pursuant hereto, in the event you shall not have purchased:

- (a) 100,000 shares at \$3 50 per share on or prior to the close of business November 2, 1932
- (b) 100,000 shares at \$4 00 per share on or prior to the close of business December 2, 1932
- (c) 100,000 shares at \$4 50 per share on or prior to the close of business January 3, 1933
- (d) 100,000 shares at \$5 00 per share on or prior to the close of business February 2, 1933

III. The provisions of this letter are subject to our receiving the approval of the Board of Directors of Curtiss-Wright Corporation, concerning the foregoing arrangements. A Special Meeting of said Board has been called for this purpose, to be held on September 23, 1932

Our agreement with the Curtiss-Wright Corporation provides that upon approval by its Board the said Corporation will apply forthwith to the New York Stock Exchange for the listing of 500,000 shares of its Common Stock, and upon the listing of said stock will deliver to the undersigned or its nominee or nominees, 100,000 shares of said Common Stock. Upon the delivery of said stock by the Corporation, the undersigned will immediately deliver the same to you or to your nominee or nominees, upon payment to the undersigned of the purchase price therefore at the office of the undersigned, No 44 Wall Street, New York City

In the event you subsequently purchase all or any part of the 400,000 shares of the Common Stock of the Curtiss-Wright Corporation herein offered to be sold to you or to your nominee or nominees, we agree that certificates for the number of shares so purchased will be delivered to you or your nominee or nominees upon five days previous notice to the undersigned in writing and upon payment to the undersigned, of the purchase price therefor. Shares so delivered shall be in good delivery form as required by the rules of the New York Stock Exchange

IV It is understood that in consideration of our accepting an interest of 25% in the purchase by you and your associates of the aforesaid 100,000 shares of stock at \$3 00 per share, you agree that we are to receive 33 $\frac{1}{3}$ per cent of any net profit realized by you and your associates through the sale of any of the shares covered by this agreement. In no event shall we be liable for any losses sustained by you or your associates our sole obligation hereunder being limited to the purchase of 25,000 shares at \$3 00 per share.

V. It is understood that during the life of this agreement you are to give us daily reports as to the number of shares sold by you, including prices of such sales, and that all stock sold by you shall be disposed of in the market and not en bloc

Kindly acknowledge and confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this letter.

Yours very truly,

BANCAMERICA-BLAIR CORPORATION,
By J. CHEEVER SANDIN, V P

COMMITTEE EXHIBIT No 52, FEBRUARY 20, 1934

ANDREWS, SEVENTEEN EAST FORTY-FIFTH STREET, NEW YORK, N Y

JANUARY 31, 1931

Mr. CHARLES WRIGHT,
30 Broad Street, New York City

DEAR MR WRIGHT: In consideration of One Dollar (\$1 00) herewith paid us, we give you herewith an option on twenty five thousand (25,000) shares of Budd Wheel Co. Common stock, as follows.

5,000 shares at \$10 00 per share, if taken up on or before February 9th, 1931

5,000 shares at \$10 50 per share, if taken up on or before February 16th, 1931.

5,000 shares at \$11 00 per share, if taken up on or before February 24th, 1931.

5,000 shares at \$11 50 per share, if taken up on or before March 2nd, 1931.

5,000 shares at \$12 00 per share, if taken up on or before March 9th, 1931.

All deliveries to be made in units of not less than 100 shares, will be made by Central Hanover Bk & Tr. Co, 42nd Street Branch, against payment.

Failure to exercise any one of the options at the price and by the time stipulated cancels all succeeding option. It is understood that the take-up of the first 5,000 shares must be confirmed on or before Saturday, February 7th, 1931.

Yours very truly,

A M ANDREWS INVESTMENT CORP
A M. ANDREWS, *Treasurer.*

Accepted: _____

COMMITTEE EXHIBIT No 53, FEBRUARY 20, 1934

MARCH 3, 1931

For Mr. CHARLES WRIGHT,
Central Hanover Bank & Trust Co.,
40 East 42nd St, New York City.

GENTLEMEN: From the stock which you are holding in safekeeping for our account, please deliver to Mr. Charles Wright, Wright & Sexton, 30 Broad Street, New York City, all or any part of ten thousand (10,000) shares of Trans Lux Daylight Picture Screen Corp'n. stock any time on or before March 30, 1931, against payment at ten dollars (\$10.00) per share.

Very truly yours,

A. M. ANDREWS INVESTMENT CORP.
A. M. ANDREWS, *Treasurer.*

COMMITTEE EXHIBIT No. 54, FEBRUARY 20, 1934

W R K TAYLOR & COMPANY,
49 Wall Street, New York, July 31, 1931

WRIGHT & SEXTON,
1 Wall Street, New York City.

GENTLEMEN: Confirming our conversation with you, we have today opened an account on our books designated as the Lily-Tulip Cup Corporation Trading Group Account. The account is formed with a maximum liability of 5,000 shares, in which you have accepted a participation of 1500 shares, representing 50%. The account has purchased 1,000 shares at a cost of \$24,316 64.

A memorandum statement of all subsequent transactions will be mailed to each participant every Monday giving a record of the transactions together with the position of the account

Kindly signify your acceptance by signing and returning to us the enclosed duplicate of this letter, retaining the original for your files

Very truly yours,

W. R. K. TAYLOR Co.

WJD: DEC
Accepted: _____

COMMITTEE EXHIBIT No 55, FEBRUARY 20, 1934

REDMOND & Co.,

*48 Wall Street, New York, August 21, 1931.*Messrs WRIGHT & SEXTON,
30 Broad Street, New York, N Y

Attention: Charles C. Wright, Esq.

GENTLEMEN: Referring to our letter of August 19, 1931, in which we gave you an order to sell for our account certain shares of the Petroleum Corporation of America Capital Stock, we wish to correct the prices at which said order was given, to be executed as follows:

5,000 shares at \$8 25 per share
 5,000 shares at \$8 50 per share
 5,000 shares at \$8.75 per share
 5,000 shares at \$9.00 per share
 5,000 shares at \$9 25 per share
 5,000 shares at \$9 50 per share
 5,000 shares at \$9.75 per share
 5,000 shares at 10.25 per share
 10,000 shares at 10 50 per share.

All other terms and conditions as specified in the above mentioned letter are to remain the same as heretofore

Yours very truly,

REDMOND & Co

Accepted

Messrs REDMOND & Co.,
48 Wall Street, New York, N Y

AUGUST 21, 1931

GENTLEMEN On August 19, 1931, you gave us an order to sell fifty thousand (50,000) shares of the Capital Stock of the Petroleum Corporation of America at certain prices, which prices have been corrected by you under today's date. It is hereby agreed between us that you may, with our consent, give an order to Messrs M J Meehan & Co. to sell all or any part of fifteen thousand (15,000) shares of the above mentioned stock, in amounts and prices as follows.

2,500 shares at $9\frac{1}{4}$
 2,500 shares at $9\frac{1}{2}$
 2,500 shares at $9\frac{3}{4}$
 5,000 shares at 10
 2,500 shares at $10\frac{1}{4}$

Messrs M J Meehan & Co will agree to pay you forty per cent (40%) of any profits which they make in connection with these sales, if any, and will agree that Redmond & Co shall not be responsible for any loss which may occur through such sales.

It is understood that you will forward to us one-half of any profits you may receive from Messrs M J Meehan & Co.'s sales.

Yours very truly—

REDMOND & Co.,

*48 Wall Street, New York, August 7, 1931*Messrs WRIGHT & SEXTON,
30 Broad Street, New York, N Y

Attention CHARLES C WRIGHT, Esq

Dear Sirs: "We confirm our understanding that we have given you an order (the execution of any part of which is optional with you) to sell for our account all or any part of fifty thousand (50,000) shares of Petroleum Corporation of American Capital Stock in amounts and prices as follows

5,000 shares at \$6 75 per share
 5,000 shares at 7.00 per share
 10,000 shares at 7.25 per share
 10,000 shares at 7.50 per share
 10,000 shares at 7 75 per share
 10,000 shares at 8 00 per share

"It is understood that the above prices are to be net to us and that this order is to expire at 12 o'clock noon on Saturday, August 15, 1931. Certificates for these shares will be delivered to you or your nominee upon one day's notice and upon payment of the aforesaid prices therefor at our office at #48 Wall Street, New York City.

"It is further understood that upon the expiration of this order, as above noted, you will forward to us one half of any profits which you may realize through the sale of these shares and it is also understood that Redmond & Co. shall not be responsible for any loss which may occur through such sales

Yours very truly,

REDMOND & Co

AUGUST 18, 1931,

Messrs. WRIGHT & SEXTON,
30 Broad Street, New York, New York

Attention: Charles C. Wright, Esq.

DEAR SIRs. Referring to our letter of August 7th giving you an order to sell for our account shares of Petroleum Corporation of America Capital Stock at various prices, and to our verbal understanding extending the agreement on terms of said letter to 12 00 o'clock noon, Eastern Daylight Saving Time, August 22, 1931, we wish to confirm the fact that we have this day cancelled the order in part as follows:

5,000 shares to be sold at \$6 75 per share
5,000 " " " " " 7 00 " "
2,000 " " " " " 7 25 " "

Redmond & Co will make efforts to find purchasers for this stock and in consideration of your accepting this cancellation Redmond & Co agrees to account to you for one-half of such price or prices as may be received for this stock in excess of the prices mentioned above.

It is further understood that you will not be responsible for any loss which may occur through such sales by Redmond & Co.

All of the other terms as outlined in our letter of August 7th are to remain in force until 12:00 noon, Eastern Daylight Saving Time, August 22, 1931.

Yours very truly,

ES: MA

Approved:

AUGUST 19, 1931

Messrs. WRIGHT & SEXTON,
30 Broad Street, New York, N.Y.

Attention. Charles C Wright, Esq

DEAR SIRs. We confirm our understanding that we have given you an order (the execution of any part of which is optional with you) to sell for our account all or any part of fifty thousand (50,000) shares of Petroleum Corporation of American Capital Stock in amounts and prices as follows

5,000 shares at \$8 75 per share
5,000 " " 9 00 " "
5,000 " " 9 25 " "
5,000 " " 9 50 " "
5,000 " " 9 75 " "
5,000 " " 10 00 " "
5,000 " " 10 25 " "
5,000 " " 10 50 " "
5,000 " " 10 75 " "
5,000 " " 11 00 " "

It is understood that the above prices are to be net to us and that this order is to expire at the close of business on Friday, August 28, 1931. Certificates for these shares will be delivered to you or your nominee upon one day's notice and upon payment of the aforesaid prices therefor at our office at #48 Wall Street, New York City

It is further understood that upon the expiration of this order, as above noted, you will forward to us one half of any profits which you may realize

through the sale of these shares and it is also understood that Redmond & Co shall not be responsible for any loss which may occur through such sales.

This order is in addition to the order given to you under date of August 7, 1931.

Yours very truly,

REDMOND & Co.

Accepted: _____

COMMISSION EXHIBIT No. 56, FEBRUARY 20, 1934

REDMOND & Co,
48 Wall St., New York, August 25, 1931.

MESSRS. WRIGHT & SEXTON,
30 Broad Street, New York, N.Y.

Attention: Charles C Wright, Esq

GENTLEMEN: We are pleased to confirm sale to you of fifteen thousand (15,000) shares of the Capitol Stock of the Transamerica Corporation to be delivered by us to you on August 26, 1931, at \$7 00 per share net to you.

We confirm our understanding that we have given you an order (the execution of any part of which is optional with you) to sell for our account all or any part of one hundred and eighty-five thousand (185,000) shares of the Capital Stock of the Transamerica Corporation in amounts and at prices as follows:

15,000 shares	at	7¼
15,000 "	"	7½
15,000 "	"	7¾
15,000 "	"	8
15,000 "	"	8¼
20,000 "	"	8½
20,000 "	"	8¾
20,000 "	"	9
25,000 "	"	9½
25,000 "	"	10

It is understood that the above prices are to be net to us and that this order is to expire at noon on September 5, 1931.

It is further understood that in the event that you sell the first 30,000 shares, as indicated above, before noon of September 5, 1931, the order for the balance shall be extended to the close of business September 22, 1931; and it is further understood that in the event that you sell the second 85,000 shares, as indicated above, before the close of business September 22, 1931, the order for the balance shall be extended to the close of business October 6, 1931.

It is understood that certificates will be delivered to you or your nominee upon one day's notice and upon payment of the aforesaid prices therefor at our office at #48 Wall Street, New York City.

It is further understood that upon the expiration of this order, as above noted, you will forward to us forty-per cent (40%) of any profits which you may realize through the sale of these shares and it is also understood that Redmond & Co. shall not be responsible for any loss which may occur through such sales.

Yours very truly,

REDMOND & Co

Accepted:

(Signed) WM. W. SEXTON.

COMMISSION EXHIBIT No. 57, FEBRUARY 20, 1934

W. R. K. TAYLOR & Co,
49 Wall Street, New York, October 21, 1931.

MESSRS. WRIGHT & SEXTON,
1 Wall Street, New York City

GENTLEMEN: We have formed an account to purchase and sell the capital stock of the American Machine & Foundry Company. The account will be carried in our office under the name of American Machine & Foundry Syndicate Account and is to run for a period of sixty days from date, expiring December

20th, 1931 The total maximum liability of this account is 20,000 shares The account has purchased a total of 3,700 shares for \$82,648 10, or at an average price of approximately \$22 33

We are giving this account the following option

8,200 shares @ \$23 per share, good for 30 days expiring at 3 00 p.m.
November 20th, 1931

You have been allotted a 30% participation in this account and we are making an initial call of \$5 00 per share on your total commitment Your participation amounts to 6,000 shares and, accordingly, we are charging your account \$30,000 to cover this initial call

Kindly signify your acceptance by signing and returning to us the enclosed duplicate of this letter, retaining the original for your files

Yours very truly,

W R K TAYLOR & Co.

WJG DEC

Accepted

W R K TAYLOR & Co.,
49 Wall Street, New York, October 10, 1931

WRIGHT & SEXTON,
30 Broad Street, New York City

GENTLEMEN. We are forming an account to purchase and sell or otherwise trade in common capital stock of the American Machine & Foundry Co, the account to be carried in our office under the style and name of "American Machine & Foundry Co Trading Group Account" The account is to run for a period of sixty days from date, expiring May 10, 1931 The total maximum liability of this account is 6,000 shares

The account was purchased 3,400 shares at \$40 00 per share

We are giving this account the following options

10,000 shares @ 38½, expiring at 3 00 p.m. April 12, 1931,

10,000 shares @ 40, expiring at 3 00 p.m. April 12, 1931,

10,000 shares @ 40, expiring at 3 00 p.m. April 9, 1931, (the last named option being given subject to our receipt through the mail tonight of an option on a like number of shares)

7,000 shares @ 41, expiring at 3 00 p.m. May 10, 1931,

1,000 shares @ 45, expiring at 3 00 p.m. May 10, 1931

You have been allotted a 30% participation in this account Kindly signify your acceptance by signing and returning to us the enclosed duplicate of this letter, retaining the original for your files.

Very truly yours,

W R K TAYLOR Co

Accepted

WJG DEC

enc

WRIGHT & SEXTON,
30 Broad Street, New York City.

MARCH 26, 1931

GENTLEMEN Referring to our letter to you under date of March 10th, 1931, in reference to the American Machine & Foundry Co. Trading Group Account, which account became a joint account of Wright & Sexton and ourselves under date of March 16th, 1931, by the withdrawal of Messrs Ladenburg, Thalmann & Co., we confirm the sale to this account of 10,000 shares American Machine & Foundry at \$37 50 per share net.

We have also given this account an option to purchase from us 10,000 shares American Machine & Foundry Co at \$39 00 per share, good for thirty days from date, expiring at 3 00 p.m., April 25th, 1931.

In view of the above, we confirm that we have cancelled the following options given to this account under date of March 10th, 1931:

10,000 shares at \$38 50 expiring at 3.00 p.m. April 12th, 1931;

10,000 shares at \$40.00, expiring at 3:00 p.m. April 12th, 1931

Very truly yours,

WJG: DEC

Accepted:

W R K TAYLOR Co

COMMITTEE EXHIBIT No 58, FEBRUARY 20, 1934

REDMOND & Co.,

48 Wall Street, New York, November 11, 1931

Messrs. WRIGHT & SEXTON,
1 Wall Street, New York, N Y

GENTLEMEN: This letter will confirm the fact that we have this day formed an undivided joint account between us to trade in and or distribute the capital stock of the Kaufmann Department Stores, Inc, at such times, in such amounts and at such prices as the managers may deem it advisable, except as otherwise restricted in this letter.

The interest and liabilities in this account are as follows.

	<i>Percent</i>
Redmond & Co.....	36 $\frac{1}{2}$
Wright & Sexton.....	33 $\frac{1}{2}$
Farnum, Winter & Co.....	33 $\frac{1}{2}$

Any net losses arising from the operation of this account will be shared by the members in proportion to their respective interests, and any net profit will be distributed in like proportion with the exception that it is understood that in the event the account shows a net profit, 20 percent thereof shall be paid first to Mr John J. Beigen and 20 percent to Mr. Phillip King, but it is agreed that Messrs. King and Bergen are not interested in any losses

Messrs. Wright & Sexton will trade in the account for the managers upon the express understanding that the debit balance shall not at any time exceed the market value of the long stock by more than six thousand dollars (\$6,000) and that the account shall at no time be long more than 2,500 shares.

This joint account will receive an option assigned to Redmond & Co for the account of Redmond & Co, Wright & Sexton and Farnum, Winter & Co, in equal third interests on 51,500 shares of the common stock of the Kaufmann Department Stores, Inc, at the following prices:

1,500 shares @ 9 $\frac{1}{2}$
42,500 shares @ 10
5,000 shares @ 10 $\frac{1}{2}$
2,500 shares @ 11

good until the close of business December 8, 1931 This account will extend until the close of business December 8, 1931, unless terminated earlier by the managers

Redmond & Co shall be the managers of this account with full discretionary power except as definitely restricted in this letter and without responsibility except for lack of good faith. Nothing in this letter is to be construed to mean that the managers of this account are partners with the participants or that the participants are partners with each other.

Messrs. Farnum, Winter & Co agree to loan to Redmond & Co, as managers of this account, 12,500 shares at \$10 00 per share for the life of the account

The Managers of the account may permit Mr. John J. Bergen to take down stock at the last tape sale on the New York Stock Exchange, plus 12 k/2¢ per share, representing the regular Stock Exchange commission, less an amount sufficient to pay 60¢ a share commission to dealers, 15¢ a share where necessary for wholesaling expenses, 12 $\frac{1}{2}$ ¢ a share representing Redmond & Co's clearance charges, and 4¢ a share representing State and Federal tax, or a total of \$91 50 per hundred shares.

The Managers of the account may also permit Mr. Bergen to charge against the account reasonable expenses including salaries, travelling expenses, postage, telephone, telegraph and printing, based upon a budget which will be submitted to Redmond & Co, and approved by Redmond & Co. as managers of the joint account Redmond & Co, as Managers of the three-way joint account, will make these arrangements with Mr Bergen by letter and will supply the other members of the account with copies of this letter together with copies of the approved budget.

Kindly acknowledge acceptance of your interest in this trading account by signing and returning to us the enclosed duplicate of this letter.

Yours very truly,

REDMOND & Co

NOVEMBER 12, 1931

MR JOHN J. BERGEN,
48 Wall Street, New York, N Y.

DEAR SIR: Messrs. Redmond & Co, Wright & Sexton and Farnum, Winter & Co. have this day formed an undivided joint account among themselves to trade in and or distribute the capital stock of the Kaufman Department Stores, Inc. Redmond & Co. will act as managers of the account The account will receive an option assigned to Redmond & Co., for the benefit of the account on 51,500 shares of the common stock of the Kaufman Department Stores, Inc, at the following prices:

1,500 shares	@	9½
42,500 "	@	10
5,000 "	@	10½
2,500 "	@	11

good until the close of business December 8, 1931.

In consideration of your aiding in the distribution of this stock, Redmond & Co, as managers of the account agree that in the event the account shows a net profit, 20% thereof shall be paid to you.

In order to enable you to make deliveries to dealers of the stock confirmed out by you, Redmond & Co, as managers of the account, will permit you to take down stock at the last tape sale on the New York Stock Exchange plus 12½¢ a share representing usual Stock Exchange commission, less 60¢ a share to be paid to dealers, 15¢ a share to be paid for wholesaling where necessary, 12½¢ a share representing Redmond & Co.'s clearance charges and ½¢ a share representing State and Federal tax, totalling \$88.00 per hundred shares Redmond & Co as managers of the joint account will also permit you, from time to time, to charge against the account your reasonable expenses, including salaries, traveling expenses, postage, printing, telephone and telegraph, based upon a budget to be submitted by you and approved by Redmond & Co. as managers of the account. This budget is to be submitted and approved before you incur any expense.

Upon the request of Redmond & Co, acting as managers of the account, you will take down sufficient stock to even any short position At no time shall you have a debit balance

This arrangement concerning wholesaling by you may be cancelled by Redmond & Co at any time by giving you written notice, but such cancellation in no way effects your 20% interest in the profits of the account, if any.

The joint account formed between Messrs Redmond & Co. Wright & Sexton and Farnum, Winter & Co in which you have the above described interest, expires at the close of business December 8, 1931, unless terminated at an earlier date by the Managers. It is understood that any expenses incurred by you after the termination of the account will not be recognized charges against this account except in so far as these expenses are incurred by you in the winding up and completion of business already done, such as making payments to dealers such as would involve principally postage, telephone, telegraph, necessary travelling and clerical expense. It is understood, however, that such bills for which you may have already committed yourself for printing and or stationary shall be a proper charge against the account It is also understood that the portion of your budget which is represented by payroll expenses shall continue for one week from either the date of the discontinuation of the wholesaling or the termination of the account.

Kindly sign the duplicate copy of this letter indicating your acceptance of these arrangements

Yours very truly,

REDMOND & Co.,

48 Wall Street, New York, November 17, 1931.

MESSRS WRIGHT & SEXTON,
1 Wall Street, New York City.

GENTLEMEN: In accordance with our understanding with you, we have committed the account to purchase Kaufmann Department Stores, Inc Common Stock, as per letter enclosed herewith.

Very truly yours,

REDMOND & Co.

NOVEMBER 18, 1931

SAMUEL MUNDHEIM, Esq
STERN BROTHERS,
West 42nd Street, New York City

Re Kaufmann Department Stores Inc Common Stock

DEAR MR MUNDHEIM: Referring to your letter of November 13th in which you furnish Messrs. King and Posner with certain options in consideration of their agreement to purchase 12,500 shares of the above stock, and with reference to the letter dated November 18th in which Messrs Redmond & Co, Farnum, Winter & Co, Wright & Sexton, Philip King and D R Posner agree jointly and severally to purchase from you on or before December 8, 1931 these same 12,500 shares, it is our understanding that we, as Managers of the Joint Account, who have so committed themselves in the letter of November 18th above referred to, shall have the right to put and deliver to you on or before December 8, 1931 on one day's notice to you, but upon the last date without notice, so much of the 12,500 shares as we may have purchased from you on or before December 8, 1931 at the following prices:

1500 shares at 9

11000 shares at 9½

Will you kindly acknowledge receipt of this letter to us as Managers of the Joint Account by "accepting" the enclosed duplicate?

Very truly yours,

(Sgd) REDMOND & Co

Accepted

SAMUEL MUNCHFIM

NOVEMBER 18, 1931

SAMUEL MUNCHEIM, Esq,
STERN BROTHERS
West 42nd Street, New York City.

Re Kaufmann Department Stores, Inc Common Stock

DEAR MR MUNCHEIM. Referring to letter of November 13th addressed to you by Messrs Philip King and D. R. Posner and accepted by you, with respect to your furnishing Messrs King and Posner with options in accordance with the terms of said letter and their agreement severally and jointly to purchase 12,500 shares of said stock, we confirm that we jointly and severally agree to purchase said 12,400 shares from you on or before December 8, 1931 in the following amounts and at the following prices

1,500 shares at 9½

11,000 shares at 10

Very truly yours,

(Sgd) REDMOND & Co
FARNUM WINTER & Co
WRIGHT & SEXTON
PHILIP M. KING
D R POSNER

Accepted

SAMUEL MUNCHEIM

NOVEMBER 17, 1931

SAMUEL MUNCHEIM, Esq,
STERN BROTHERS,
West 42nd Street, New York City

Re Kaufmann Department Stores, Inc Common Stock

DEAR MR MUNCHEIM: Referring to letter of November 13th addressed to you by Messrs Philip King and D R Posner and accepted by you, with respect to your furnishing Messrs. King and Posner with options in accordance with the terms of said letter and their agreement severally and jointly to purchase 12,500 shares of said stock, we beg to advise you as follows:

On behalf of ourselves, Messrs Farnum, Winter & Co. and Messrs Wright & Sexton, the commitment to purchase said 12,500 shares is shared by the three mentioned houses equally, so that Messrs Redmond & Co, Messrs Farnum, Winter & Co, Messrs Wright & Sexton, Mr Philip King and Mr D R Posner are agreeing to purchase such stock from you on or before December 8, 1931. We will furnish you with a new agreement signed by all of these five parties, evidencing such commitment

It is our understanding we shall have the right to put and deliver to you on one day's notice to you so much of the 12,500 shares as we may purchase from you on or before December 8, 1931 at the following prices

1,500 shares at 9

11,000 shares at 9½

We will send you the letter evidencing these two matters

Very truly yours,

Accepted · _____

COMMITTEE EXHIBIT No 59, FEBRUARY 20, 1934

PALMER AND COMPANY,
NEW YORK CENTRAL BUILDING,

Park Avenue and 46th Street, New York, November 12, 1931

Mr CHARLES G WRIGHT,

Messrs. WRIGHT & SEXTON,

1 Wall St, New York City

DEAR SIR: In consideration of One Dollar (\$1.00) in hand, I hereby grant you an option to purchase—

10,000 shares International Salt Co., Common Stock at Thirty-Two Dollars (\$32.00) per share.

This option will expire at the close of business on Saturday, December 12, 1931

Very truly yours,

W H ESHBAUGH