

P U B L I C H E A R I N G

before

SPECIAL SUBCOMMITTEE

of the

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

Current Practices in New Jersey Liquor Industry
and Question of Price Deregulation

Held:

May 29, 1979

Montclair State College

Montclair, New Jersey

MEMBERS OF SUBCOMMITTEE PRESENT:

Assemblyman William J. Bate (Chairman)

Assemblyman Walter M. D. Kern, Jr.

ALSO:

Burton D. Weltman, Research Assistant
Office of Legislative Services

Aide, Assembly Judiciary, Law, Public Safety
and Defense Committee

* * * *

ASSEMBLY RESOLUTION No. 3006

STATE OF NEW JERSEY

INTRODUCED JANUARY 25, 1979

By Assemblymen KAVANAUGH, DOWD, T. GALLO, OTLOWSKI, JANESZEWSKI, ADUBATO, RAND, HURLEY, SMITH, Assemblywoman BURGIO, Assemblyman D. GALLO, Assemblywoman MUHLER, Assemblyman ALBANESE, Assemblywoman CROCE, Assemblymen McMANIMON, BORNHEIMER, PAS-CULLI, MAYS, PATERO, SAXTON, CALI and FLYNN

(Without Reference)

AN ASSEMBLY RESOLUTION directing the Judiciary, Law, Public Safety and Defense Committee of the General Assembly to conduct an inquiry into the alleged abuses in segments of the State's liquor industry and any and all changes that may be recommended in the regulation of the liquor industry as proposed by the Department of Law and Public Safety and the Division of Alcoholic Beverage Control.

1 WHEREAS, Recent allegations by the Attorney General have called
2 into question the business practices of the State's liquor indus-
3 try; and,

4 WHEREAS, The liquor industry is a significant factor in the State's
5 economy, both as a source of employment and tax revenue; and,

6 WHEREAS, It is incumbent upon the State to insure that this industry
7 is properly regulated; and,

8 WHEREAS, It is altogether fitting and proper, and wholly consistent
9 with the public interest, for this House to inquire into these
10 allegations concerning this vital industry; now, therefore,

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey:*

1 1. That this House hereby directs the Judiciary, Law, Public
2 Safety and Defense Committee of the General Assembly to conduct
3 an inquiry into the allegations made by the Attorney General
4 concerning alleged abuses in segments of the State's liquor industry

5 and any and all changes that may be recommended in the regulation
6 of the liquor industry as proposed by the Department of Law and
7 Public Safety and the Division of Alcoholic Beverage Control.

1 2. That the committee shall be entitled to call to its assistance
2 and avail itself of the services of such employees of any Federal,
3 State, county, or municipal department, board, bureau, commission
4 or agency as it may require and as may be available to it for said
5 purpose, and to employ such stenographic and clerical assistants
6 and incur such traveling and other miscellaneous expenses as it
7 may deem necessary, in order to perform its duties, and as may
8 be within the limits of funds appropriated or otherwise made
9 available to it for said purposes.

1 3. That for the purposes of its inquiry the committee shall have
2 all the powers provided pursuant to chapter 13 of Title 52 of the
3 Revised Statutes.

1 4. That the committee may meet and hold hearings at such place
2 or places as it shall designate during the sessions or recesses of
3 the Legislature and shall report its findings and recommendations
4 to the Legislature as soon as practicable, accompanying the same
5 with any legislative bills which it may desire to recommend for
6 adoption by the Legislature.

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ASSEMBLYMAN WILLIAM J. BATE (Chairman): The hearing is called to order.

On January 25, 1979, twenty-one members of the General Assembly introduced Assembly Resolution No. 3006, requesting the Assembly Judiciary, Law, Public Safety and Defense Committee to conduct an inquiry into the allegations made by the Attorney General concerning alleged abuses in segments of the State's liquor industry. The Resolution also provides that the Committee consider any and all changes that may be recommended in the regulation of the liquor industry, as proposed by the Department of Law and Public Safety and its Division of Alcoholic Beverage Control. The Committee is to report its findings and recommendations to the Legislature with any legislative bills which it may desire to recommend for adoption by the Legislature.

On April 19, 1979, Committee Chairman, Assemblyman Martin A. Herman, appointed a Subcommittee of the Assembly Judiciary, Law, Public Safety and Defense Committee, consisting of myself, William J. Bate, as Chairman; Assemblyman Walter M. D. Kern, Jr.; and Assemblyman Eugene H. Thompson, to carry out the intent of A 3006.

The Subcommittee will address itself to seeking answers to some of the following questions and issues: will there be an economic impact; whether there will be a positive or a negative consumer impact; whether there will be a positive or a negative impact on the alcohol beverage industry, itself; and, if so, what distinction between the wholesaler, retailer, etc.? Is there any validity to the industry's claim that deregulation, in effect, substantially increases consumption or substantially increases the alcohol problem in this State?

Knowing that this matter is now pending before the courts for determination regarding the right of the Attorney General to deregulate, should the Legislature, as a whole, await the outcome of the court's decision; and, if not, what legislative proposals, if any, should be made in reference to the subject matter and those other matters raised in the body of the Resolution?

Notwithstanding recent enactment into law of population increase per license, should there be a further restriction on the issuance of new licenses, to determine the tax consequences to the State, that is, whether there will be a loss of revenues, whether existing laws are satisfactory, assuming that deregulation is put into effect?

Representatives of the Attorney General's Office, the liquor industry, both wholesale and retail groups, as well as individual tavern, restaurant and package store owners have been invited to testify. The hearing is also open to any interested public interest group or individual.

Every effort has been made through the news media to publicize both the today at Montclair State College and the hearing scheduled for Thursday, May 31st, 1979, at Glassboro State College.

As previously noted, the question of price deregulation and other aspects of the operation of the liquor industry in New Jersey is pending before the courts. We would caution any party to that suit, Irving Heir versus John J. Degnan, Attorney General of the State of New Jersey, to seek approval of or representation by legal counsel before offering to testify at this hearing. Written statements concerning the matters before this Committee will be accepted for the record through June 15th, 1979.

I would like to call as the first witness Deputy Attorney General Dennis O'Keefe.

D E N N I S O ' K E E F E: Assemblyman Bate, ladies and gentlemen, on behalf of the Attorney General, I would like to thank the Assembly and the Subcommittee for the opportunity extended to the Office of the Attorney General to present information to the Subcommittee.

Briefly, as you noted, Assemblyman, there is pending litigation. Therefore, I will be rather circumspect in my remarks. For the time being, I thought it would be of benefit to the Committee and the Assembly to provide a brief historical perspective of what has transpired and where the program to "deregulate" now sits.

In November of 1976, following both local and national disclosures concerning alleged improprieties in the alcoholic beverage industry, particularly the indictment in the United States District Court of Matthew Feldman, S.E.C. disclosures concerning Emersons and certain brewers, charges brought by the New York State Liquor Authority against Schenley and Seagrams, two major distillers, the then Attorney General Hyland announced, together with Director Lerner of the Division of Alcoholic Beverage Control, that the Department of Law and Public Safety would undertake investigation of the alcoholic beverage industry, for two basic purposes: to ascertain whether or not the Division's regulatory scheme had been violated, and whether or not any changes should be made to improve enforcement capability.

Shortly thereafter, Attorney General Hyland sent a letter to all licensees in the State, requesting their cooperation and advising that, if there were transgressions involving trade practices, that they should cease.

Since very little information was forthcoming, shortly thereafter, in the spring of 1977, Director Lerner executed a questionnaire inquiring of the 600 State licensees, that being the suppliers, the distillers and the wholesalers, of the nature and extent of their trade practices. Almost immediately after the questionnaire was mailed, litigation was entertained by the liquor salesmen, the wine and spirit wholesalers, and the beer wholesalers.

The matter went from the Chancery Division of the Superior Court to the Appellate Division of the Superior Court, with resolution in favor of the Division of Alcoholic Beverage Control. At that point in time, the salesmen's union pursued the matter to the Supreme Court of this State. The Wine and Spirit Wholesalers Association and the beer distributors did not.

Ultimately, the Supreme Court found that the questionnaire was a proper and appropriate method of obtaining information, but found that a cover letter appended thereto had a chilling effect on the Fifth Amendment rights of the salesmen. In the interim, however, the investigation of trade practices continued. Subpoenaes were issued, members of the Anti-Trust Section of the Division of Criminal Justice became involved, and a Task Force was created to review the trade practices that were uncovered vis-a-vis Title 33 of the New Jersey Statutes and the New Jersey Anti-Trust Act.

On January 2nd, 1979, at a press conference attended by the Governor, the Attorney General, Director Lerner of the Division of Alcoholic Beverage Control, Director Stier of the Division of Criminal Justice, and many others, including myself, the Attorney General released a copy of the Division of Criminal Justice Anti-Trust Task Force to Study the Alcoholic Beverage Industry Report. I have a copy here and I would like it marked into the record for your consideration.
(Hands copy of report to Committee Aide.)

Additionally, at that time, the Attorney General issued a policy statement to the Governor concerning price deregulation of the liquor industry. I also

have a copy of that for the record. (Copy handed to Committee Aide.)

At the same time, Director Lerner announced the filing of charges against thirty wholesale licensees involved in the alcoholic beverage industry in the State, relating to a broad variety of trade practices. I have copies of the investigative reports and complaints in that matter for purposes of the record. (Copies handed to Committee Aide.)

On February 8th and 9th, 1979, the Attorney General and Director Lerner held public hearings on the proposed deregulation program. The first day was at the War Memorial in Trenton and those who attended, I think, could quite safely say that it was packed to the rafters. The second day was in the Assembly Chamber with a lesser attendance by industry members. Twenty-three witnesses presented testimony at that time, ranging from economics professors to members of the industry, to the Director of the Division of Alcoholism, the Associate Director of Rutgers Center on Alcohol Studies, many retailers, and many members of trade associations. Rather than attempt to review the testimony that was presented at that time, I have a transcript to be made part of this record. (Hands transcripts to Committee Aide.)

On both occasions, the Attorney General and Director Lerner announced that they would be happy to receive additional information. Indeed, many industry members sought out meetings with various persons within the Department of Law and Public Safety. Some members of the industry, the public and the Legislature either commented or inquired as to exactly what was going on. And some persons provided input in writing. For the benefit of the Committee again, I have a copy of a letter from John H. Shenefield, the Assistant Attorney General in charge of anti-trust litigation for the United States Justice Department.

Following the public hearings, the staff within the Department of Law and Public Safety began drafting regulations. On March 8th, 1979, a notice of intention to amend the Division's regulations was published in the New Jersey Register. It is 11 NJR 143 (a). The text of the regulations, approximately 60 pages, were made available at the Division of Alcoholic Beverage Control and through various State offices to the industry.

Over the ensuing 20 days, which was the minimum time period under law under which the regulation could be adopted, numerous comments were received by Director Lerner of the Division of Alcoholic Beverage Control. The regulations could have been adopted on March 28, 1979. They were not. Before the expiration of the 20-day period, a newly formed retail trade association filed suits in the Chancery Division of Essex County to delay the deregulation program.

The matter was transferred from the Chancery Division to the Appellate Division on March 26th, 1979. On the following day, the Appellate Division dismissed the matter as premature. At the request of Judges Crane and Lynch, the Attorney General agreed to give counsel for the association seven days' notice prior to the effective date of any adopted regulations.

On April 4th, 1979, Director Lerner filed the regulations substantially as proposed originally, to be effective essentially May 1st. There was one regulation that was to be effective on the 12th of April, which was required in order to have price filing requirements in to have the system up on May 1. I have a copy of the regulations that were adopted for purposes of the record. (Handed to Committee Aide.)

On April 5, 1979, the day following adoption, class action was filed by essentially the liquor salesmen's union of the State to restrain the regulations. Judge Fritz carried the emergency application to the following Monday before the

full panel, which was April 9th.

On April 9th, before the Appellate Division, the Wine and Spirit Retailers' Association, the group that had previously filed the matter in Essex County Court, joined in the application for an emergency stay. Also on that date, two retailers and their officers filed a suit in the Superior Court of Morris County, seeking to have the two-license ownership provisions of N.J.S.A. 33:1-12.31 through 12.38 declared unconstitutional. I have a copy of the original complaint in that matter for the record. (Hands complaint to Committee Aide.)

On April 10th, 1979, the Appellate Division granted an injunction to the Liquor Salesmen's Union and the Wine and Spirit Retailers' Association, restraining and enjoining the Director from effectuating and enforcing all of the new regulations that were proposed. I have a copy of that order for the record. (Hands to Committee Aide.)

By May 11, 1979, all of the wholesalers charged with offenses by the Division of Alcoholic Beverage Control on January 2nd had entered pleas of non vult. At that time, the Director entered orders collectively fining the 30 licensees representing essentially 11 groups controlling 87 percent of the distilled spirits and 40 percent of the wine distributed in the State. The Director accepted fines in lieu of suspension in the amount of \$185,800. I have a copy of the orders in those matters for purposes of the record. (Hands to Committee Aide.)

In the interim, the Department of Law and Public Safety continues to review regulations as proposed. In the last two weeks, internal procedures required that any filing of any changes to the regulations be made with the Office of Administrative Law. In the June 7th New Jersey Register, there will appear further proposed amendments to the regulations that were previously adopted and restrained. I have a copy of those amendments to the regulations for purposes of the record. (Hands to Committee Aide.)

Finally, I thought it would be to the Committee's benefit to have a copy of the regulations that existed prior to amendment by the Division. And I have a copy of those for the record. (Hands to Committee Aide.)

With respect to the litigation that is pending against the Attorney General and Director Lerner and the Division of Alcoholic Beverage Control, there are numerous motions presently under review of the Appellate Division of the Superior Court. One of the motions requests to expand the record and take depositions. Those of whom the plaintiffs seek to take depositions are: the Attorney General, Director Lerner, Deputy Director of the Division of Criminal Justice Alfred Luciani, and myself, also members of the New Jersey Wine and Spirit Wholesalers Association and their counsel, Chief Justice Designee Robert Wilentz.

Due to the fact that the Attorney General has opposed this motion, I feel, as I said earlier, constrained to comment only broadly on the aspects of deregulation. But I would be happy to respond to any questions that you might have.

ASSEMBLYMAN BATE: I am concerned about the mom and pop stores. I would like you to answer that question as far as the fact that they are threatened.

MR. O'KEEFE: The Task Force Report which has been provided as an exhibit to the Committee has an excerpt from an economic study conducted at the request of the Task Force. The bottom line of the economic study is that the economist feels that there is a potential failure rate between 3 and 8 percent. He felt that the conservative side would probably be more appropriate and that those who would potentially be affected would not be what are traditionally known as ma and pa

privately owned enterprises, but rather payroll corporations which exist essentially because of the fat in the system resulting from price-fixing.

I would refer the Subcommittee and the general Committee to the economist report contained therein.

ASSEMBLYMAN BATE: Are you prepared to dispute the claim that deregulation will bring about a substantial increase in the consumption of alcohol and cause a consequent problem?

MR. O'KEEFE: I think, again, that these matters were all considered by Director Lerner prior to adoption of the regulation. If the Committee has the opportunity to review the transcript of the public hearing on February 8th and February 9th, you will see that there was economic testimony presented there concerning the elasticity or inelasticity of the proposals to deregulate and their impact. This should be compared, in addition, to the Task Force report, itself. I prefer to stand on those positions.

ASSEMBLYMAN BATE: Assemblyman Kern called last evening and wanted to advise me and advise the committee that he is going to come here from Newark - he is expected momentarily - and he would like the opportunity to question you before you leave.

MR. O'KEEFE: I would be happy to accommodate him.

ASSEMBLYMAN BATE: As to the records you have submitted, we will just make reference to it and that is it. We don't want to put it all in the record again, do we?

MR. O'KEEFE: You mean to read it?

ASSEMBLYMAN BATE: No. I am talking about just making specific reference to it. When we publish the transcript of this hearing, there is no reason to republish all the other matters.

MR. O'KEEFE: I understand what you are saying. I have no objection - whatever the Committee feels is best.

ASSEMBLYMAN BATE: Thank you.

Special Assistant to the Attorney General Michael Faigen.

M I C H A E L F A I G E N: Assemblyman, I have no statement prepared for the Committee. I am prepared to answer questions, again obviously constrained by the fact of the litigation.

I am Special Assistant to the Attorney General. I have taken part, as a liaison between the Task Force and the Attorney General, in helping to prepare the regulations that were, and are, subject to litigation. I don't know what you have in mind to elicit from me, but I am prepared, within the constraints that I have listed.

ASSEMBLYMAN BATE: Perhaps you can stand by awaiting the arrival of Assemblyman Kern.

MR. FAIGEN: Fine.

ASSEMBLYMAN BATE: The next witnesses will be Thomas O'Neil and Hugo Munzer, Treasurer, Liquor Retailers' Legislative Action Committee. Do you want to testify as a team?

MR. O'NEIL: We had hoped to.

H U G O M U N Z E R: Assemblyman Bate and Mr. Weltman, my name is Hugo Munzer. I reside at 10 Pequot Path in Oakland. I am here to represent the New Jersey Liquor Retailers' Legislative Action Committee. If I may, Mr. Bate, I would like to give my personal background and my history in the alcoholic beverage business.

I am Past President of the North Jersey Package Stores Association, Past President of the New Jersey Package Stores Association, and Immediate Past Vice-President of the National Liquor Stores ---

ASSEMBLYMAN BATE: Are you a party to the pending litigation?

MR. MUNZER: No, sir.

(Continuing) --- Immediate Past Vice President of the National Liquor Stores Association.

I have been a retailer all my adult life. I am the son of a retailer, who is a son of a retailer. There are some who call me a son of something else. But my family has been in the retail end of the liquor business since 1875. I think I understand the business thoroughly. I have been active in trade associations.

I am familiar with government, having served on many boards. Presently I serve as a member and Secretary of the Bergen County Planning Board. I am a member, Past Chairman and present Secretary of the Oakland Planning Board, Vice Chairman of the Northwest Development Program, and so on. I do understand government, its processes, how it works, as well as my own chosen profession, the retail liquor business.

Several months ago, a group of retailers, after reviewing the suits which were filed against the Attorney General and the Director of the ABC on the new regulations and after reviewing the regulations, felt that the answer to the situation did not lie totally with the courts or it did not lie totally with the Attorney General. The whole structure under which we as retailers, the wholesalers and other segments of the industry basically operate is a product of the Legislature. The power has been given to the ABC to implement the desires as expressed in legislation and it was our feeling that the addressing of the problem and the solutions to it could be best served by going to the Legislature with a program. And this is how the New Jersey Liquor Retailers' Legislative Action Committee came to be, and it has been operating ever since.

There is a great deal of chaos and uncertainty and fear in the retail end of our business today. We don't know where we are. We are in limbo. We knew where we were for some 44 years since repeal, under the regulations which existed. In the main, I think everyone would agree that the regulations up until the proposal was presented by the Attorney General earlier this year were one of the best in the United States. New Jersey was looked to as a model state. It is not to say that there was not need for improvement or change, but on the whole we had a very good program which allowed the retailer to operate. This all fell by the wayside by the regulations adopted by Director Lerner after the hearings, which were just alluded to, by the Attorney General.

There is a great fear of instability in the market and we look to the Legislature to correct this problem and remove this fear. To this end, we have a several point program, some of which has already been introduced in the Legislature, to address the problem.

One is the replacement of the inequitable taxing system with a 3 percent across-the-board levy on all retail sales, which has been proposed by Assembly Taxation Committee Chairman Richard Van Wagner.

The second point is a mandatory minimum markup on retail liquor sales, which will protect the small stores from predatory pricing.

We also propose to have eliminated the costly government participation in debt collection for wholesalers. This would be addressed by enacting Senate Bill

3259 sponsored by Senator Friedland.

We would also look for a limitation on price and trademark advertising. We endorse S 3010 by Senator Perskie which provides for strict licensing standards.

We also endorse strong civil and criminal anti-trust penalties and prohibitions, which are included in the new proposed regulations.

We are also in favor of licensing of cooperative buying groups.

All these points will be further amplified by Mr. O'Neil.

If I may, since many of us in the business do not fully understand how the pricing structure is arrived at, for your information, may I briefly go through how the pricing structure is set up and how the prices on each level of the industry are determined. I think this is most important.

In New Jersey, we have what is called affirmation. Affirmation is the lowest price available anywhere in the United States plus tax differential and freight charge. That is the price the wholesaler pays to the supplier, the distiller, the importer or from whomever he purchases his product. In the main, I think you will find that this price is consistent throughout. It is in line as far as we can determine. New Jersey wholesalers are not paying any more or any less on the average than wholesalers anywhere in the country for a base item plus the differential and tax.

The wholesaler through the ABC files quarterly, under the present system, a wholesale price book, by which the wholesaler determines the price at which he wishes to sell to the retailer, using what formula, I don't know, and that is the price that that wholesaler cannot sell it below and is the price the retailer pays for his merchandise. There is a minimum consumer retail price list which is published quarterly by the Division, in which the brand owner or the wholesaler files the price at which he wishes to have that item sold at retail in the State of New Jersey. The retailer may not under any circumstance sell below the price which is listed in the book plus the sales tax.

In all of these steps, the retailer has no participation or no determination in the price at which he sells merchandise, with the exception of private labels. Basically, we cannot make any determination. We have been consistently told that any discussion of price with our wholesalers or brand owners is illegal, and they refuse to speak to us on price. Whether this be the case, I leave to the attorneys. It is not in my province. But we can make no determination on a retail level as to our profit or the price structure whatsoever. I did wish to bring that out because I know it is a thing that many people in our own industry do not understand.

There are many deficiencies in the Attorney General's proposal. Throughout the presentation which was just given and in the hearings, it was constantly mentioned that the wholesalers were charged, the distillers were charged, with certain violations of the regulations and of the statute. Nowhere have I heard mention that the retailers were charged or that the retailers were involved in this. No charges, to my knowledge, have been brought against a retailer in conjunction with a wholeseller or distiller or a brand owner. Obviously there were some deficiencies. There were some inequities. There were things wrong with our business and the Attorney General's Office and the ABC have addressed themselves to this. But nowhere was any comment made that 87 percent of the retailers were involved or that any percent of the retailers were involved. Yet in the Attorney General's and the ABC's new set of regulations, the burden of solving the problem of other ends of the industry fell totally upon the retailer. There is no proposal to deregulate the wholesale price of alcoholic beverages, but there most certainly is to the retail price. There is no provision to reduce prices on the level that

the retailer must pay. But there are many proposals which would reduce the prices that the consumer would pay. It is our feeling that any reduction in price would come out of the retailer's profit, which has eroded through the years, and there is no evidence, to our minds, that any reduction in wholesale price will exist.

Basically, that is what I have to say, Mr. Bate and Mr. Weltman. Mr. O'Neil will carry on, unless you have some questions to ask me at this point.

ASSEMBLYMAN BATE: We will let Mr. O'Neil present his statement.

T H O M A S O ' N E I L: I would like to first address the question of the appropriateness of legislative action at this point in time, given that there is litigation pending regarding these rules and regulations.

I would like to return to the initial scope of inquiry framed by Attorney General Hyland in 1976, in conjunction with Director Lerner. The second aspect of that was to determine whether existing statutes and regulations should be amended or supplemented. There is specific reference there to statutes. The Attorney General and the Director, it seems, have made the determination now, after some investigation and the filing of some charges, to move strictly in a regulatory sense and not move in a statutory manner. I think that that is an inappropriate and an incomplete method of reform at best.

There clearly is power within the Legislature to act. Whatever the Director of the ABC does, he does through a delegation of power from the Legislature. The power always resides in the Legislature to modify that delegation of power or to issue specific guidelines. So the power is there to act. We think there is also a need. Litigation leaves us in a very tenuous position, as Mr. Munzer has said. It is not very easy to sell a package store license right now when you can't tell a potential buyer what the system of law or regulation will be a few months from now or a year from now. The uncertainty and the chaos have brought a real paralysis in the market.

We are aware that deregulation came to the State of California by judicial decision. We are aware - and it has been put in the record - that the Attorney General has serious constitutional questions about the present system of regulation. That appears in the Attorney General's transmittal letter to the Governor of, I believe, January 2nd or January 3rd, which Mr. O'Keefe put in the record. We are aware that hanging like the sword of Damocles there is always the possibility of an Attorney General's opinion on the constitutionality of the system that could wipe out the present system.

We don't know what the courts might ultimately decide or how long that process will take. But we know that we are in an uncertain and tenuous position while that litigation is pending. So we have come to the Legislature with an alternative program that we think supplements some of the findings in the Task Force report and would help preserve and protect the position of the small liquor store in this. And I want to make clear, I am talking about liquor stores as opposed to hotels, motels, taverns, and other people in the business of retail liquor sales. It is important to note that the price of liquor, the minimum consumer retail price, is regulated in package liquor stores. It is not regulated in taverns, hotels, etc. In a restaurant, if you have dinner and buy a bottle of wine, you pay whatever the going rate is, whatever the market will bear. There is no minimum or maximum that is determined by the brand owner. That may explain why

the Hotel and Motel Association took a position at the earlier hearings in support of deregulation.

The package store owner is, as Mr. Munzer described it, locked in. He has no control over what he may charge for a national brand. The national brand owner determines that. There is no public input into that pricing and there is no retailer input into that pricing. When his costs go up, when his utilities go up, for example, he has no real ability to pass that cost along to his customers.

What we are seeking is a legislative protection in the form of a mandatory markup, which a number of states have. That is a provision that would prevent predatory pricing, pricing that is designed to destroy competition or eliminate competition, a provision that stores could not sell below a certain markup. Even in California where the courts wiped out the price structure, which was very similar to New Jersey's price structure, there still is in California a minimum markup in a sense. There is a general statute in California that applies not only to liquor but to other goods that provides a 6 percent markup. That was alluded to in the testimony of the ABC Director from California, Baxter Rice. There really hasn't been, to my knowledge, any constitutional question raised about that. The constitutional difference there, I think, is that that determination was made by the Legislature, as it is made in New York. New York has a mandatory minimum markup. The pricing decisions are made privately in New Jersey and were made privately in California in the system that was declared unconstitutional there as being inconsistent with the Sherman Anti-Trust Act.

What we are saying is that the markup ought to be set in some sort of public fashion. That could be either through a legislative enactment, as is done in New York, or it could be through the delegation of pricing power to some governmental agency, such as the ABC, or the ABC in conjunction with Consumer Affairs, or whatever. What I am saying as an alternative is a PUC type rate-making structure, or legislative enactment.

It has been pointed out, I believe, in the Task Force report and in different statements made by the Attorney General and members of his staff in support of their deregulation initiative that the price is too high in New Jersey and that it would go down if deregulation were to take place. They point across the river to the State of New York. They suggest that we are losing business to New York and that prices are lower in New York. I think generally it is probably true that their prices are lower in New York. But I would point out that New York does have a mandatory minimum markup. With a mandatory minimum markup in New York, the prices still may be lower and the Legislature is in the process - and I believe just did - of raising that mandatory markup. So I don't think a mandatory minimum markup is necessarily inconsistent with the general goals of the Administration in terms of opening up the pricing system and perhaps bringing about some lowering of the price to the consumer.

The State of Connecticut also is a mandatory markup type state.

The next aspect of the proposal that we have put forth to the Legislature that I would like to address is the tax reform proposal that Assemblyman Van Wagner is sponsoring. I would like to at this time put into the record a letter that I have from the Assemblyman - it is a copy of a letter - and it is really for purposes of clarification. This is a letter addressed to Mr. Joseph Matzner, who is the publisher of a trade publication, in which there were some reports that the Assemblyman felt misconstrued his position on the tax. I think the situation is set forth

very clearly in a couple of paragraphs. I would like to have the letter marked for the record.

ASSEMBLYMAN BATE: Do you want to read it into the record?

MR. O'NEIL: I don't think it is necessary that it be read. To capsule it, what the Assemblyman is proposing is that should deregulation occur - and he does not support deregulation --- but he said, should deregulation occur, as Chairman of the Taxation Committee and because of his involvement in the Appropriations Committee, he would have to be sure that the State doesn't lose its tax revenue. And he is offering as one alternative for consideration a 3 percent across-the-board levy. (See page 1X for Assemblyman Van Wagner's letter.)

Now that helps package stores. There is no question about it. The brunt of deregulation falls on the package store, not on the other retail elements of the industry in the sense that they are already price deregulated.

What we are saying is, equalize the levy on everyone. It is not a tax on the drink. That is a terrible misunderstanding. I think he is talking in terms of a gross receipts tax.

If you would like, I will explain the present taxing structure. It is very complicated. There is a 5 percent sales tax - it is called a sales tax, but it really isn't - on the minimum consumer retail price. So what happens is when a package store buys a bottle of liquor from a wholesaler, he prepays to the wholesaler a 5 percent tax, 5 percent of the price at which he sells it to the consumer, not the price at which he buys it. When a tavern or restaurant makes that purchase, he also prepays the sales tax, based on the price of the bottle as if he sold it as a full bottle at a package store price, not based on what he would actually receive from that bottle. If he sells a bottle of wine, he might sell it at a higher price. If it is a bottle of liquor, it might be broken down into numerous drinks, on a drink by drink basis, and would generate substantially more revenue than would come from the package store sale. So, yes, it is a measure that would help provide some sort of a cushion for the package store, as well as reducing the price to the consumer in the package store. That is why it has been proposed and that is why we support it very strongly.

One other element of the program that I would like to talk about in a little bit of detail is the credit reform bill that Senator Friedland is sponsoring in the Senate, together with a number of co-sponsors. The Task Force has concluded and recommended that the State of New Jersey get out of the business of being the credit manager for the wholesalers, and it documents at great length abuses of that system. I won't go through that in its entirety. What we have done is proposed -- and this is something that I think can go forward while the litigation is pending because it has nothing to do with pricing, itself - that the Legislature direct the ABC to get out of that business. What the ABC does for the liquor industry is done for no other industry in the State of New Jersey, not even the casino gambling industry. If you are a retailer, you are supposed to pay for your goods within 30 days. That is a federal law and the Bureau of Alcohol, Tobacco and Firearms enforces that. The State of New Jersey goes beyond that. It says to the wholesaler, "We will help you collect your debt. We will help you in this manner: If you tell us that a retailer hasn't paid you within 30 days, we will prevent any other wholesaler from giving him goods on credit." The effect of that - and it happens that it is at the discretion of the wholesaler - is that it is a club that can be

used or not used over the retailers by the wholesalers.

Nobody else does that in any other business. To use an example, if I go to Macy's and I don't pay my bill to Macy's, in 30 days Macy's can't get the government to prevent Sears-Roebuck and me from doing business. Maybe I didn't pay for a reason. Maybe I never got the goods for which I was allegedly billed. Maybe the merchandise was distressed, whatever. The government doesn't do that for anybody else and there is no real policy reason for them to do that here.

There is probably a fundamental violation of due process in that no independent determination is made by the ABC whether or not someone is in default. There is no hearing. There is nothing. Simply the word of the wholesaler is accepted. If there are extraordinary circumstances, such as billing errors, which certainly happen in this computer age, there is no power of remedy. The remedy is exclusively with the wholesaler. The retailer must make good with that wholesaler. Then that wholesaler may remove him from the cash on delivery list or his default list, as it is more commonly referred to.

Another area not addressed in the proposals, in the regulatory proposals put forward by the Director of ABC, is the matter of exclusives. I understand from a legal standpoint that is an appropriate legislative issue, not an issue of regulation. Let me explain what an exclusive is and I will use Smirnoff's Vodka, which is a very popular brand, as an example. You cannot have a package store without having Smirnoff's Vodka on your shelf. Smirnoff's Vodka is on exclusive. Only one wholesaler has it. Deregulating the price of Smirnoff's Vodka to the consumer is in no way going to lower the price of Smirnoff's Vodka to the retailer. So whatever price saving there is must come out of the pocket of the retailer. As long as the monopoly is allowed to continue, there is no incentive for that wholesaler to reduce the price of that product.

Other states which have deregulated - Minnesota and Wisconsin, in particular, broke up the exclusives when they deregulated. New Jersey chose not to. Unless that exclusive situation - and sometimes it works on geographic territorial boundaries, particularly in the beer industry --- unless that is addressed, you haven't really deregulated the price of liquor. You have only hurt the people who can least afford it, the small mom and pop package stores.

When the Attorney General announced the charges on January 2nd, accompanied by the Governor, those charges, as Mr. Munzer pointed out, were not against retailers. They involved wholesalers. Yet we find that the burden of remedying the system that allowed those violations to take place is not falling on the wholesalers at all; it is falling on the retailers. That is not only my opinion. It is the editorial opinion of such newspapers as the Bergen Record, the Hudson Dispatch, the Paterson News, the New Brunswick Home News, any number of newspapers which originally endorsed the Attorney General's initiative, and then were very, very skeptical once they saw the final regulations and once they saw the extent to which the retailer would have to bear the financial burden of the proposed deregulation, if you will.

Because of the shortcomings within the administrative proposal and because of the uncertainty now with pending litigation and with the questions raised about the present system, we think it is appropriate for the Legislature to come in and attempt to resolve the impasse that we have between the Executive and Judicial Branches. We can see a course of protracted litigation that really doesn't serve anyone's interest. It may delay the present situation. It may freeze things. But it really doesn't help anyone who wants to get into this business or get out of this business. It just leaves a lot of unanswered questions. And we think the

Legislature can act and should act, and that is why we put forward the program that we have.

What I would like to do now, since I know there are many other speakers, is stop at this point and take whatever questions you have.

ASSEMBLYMAN BATE: Mr. O'Neil, you have referred to several states, among them Minnesota and Wisconsin, I think, which are states without so called RPM, namely, retail price maintenance. Notably, in those states, you can buy a fifth of liquor for an average of about a dollar less than you can in New Jersey. I think that is one of the big arguments of deregulation.

MR. O'NEIL: Yes. I did try to point out in my remarks with regard to New York, which has a price maintenance system in the form of a mandatory markup for retailers, not for wholesalers - some states have it for both - the price is lower. So I think a mandatory markup is consistent with the general goal of lower prices. You have to get into a very detailed analysis of who is causing the price to go up. We start with the basic principle that liquor should enter every state at the same price because of affirmation, which actually works to the harm of New Jersey because a lot of liquor comes right into New Jersey and it probably should be cheaper here. We start with that principle. Now we have to figure out, in getting it from that affirmation price ultimately to the consumer, who is adding substantial cost. Is it the retailer? Is it the wholesaler? Is it the salesman, or whoever?

The testimony in the February hearings, I believe from either Professor Simon or Professor Ferguson, experts retained by the wholesalers, talked about the higher costs generally. I think there are more salesmen in New Jersey than in other states in regard to the amount of liquor sold. We found that the wholesalers' markup is generally higher in New Jersey than in many other states. They might say they have different or higher costs because of the salesmen or because of other factors. I don't know, but I think that is the kind of analysis that has to be made and it really was lacking in the report of the Attorney General in their economics. They used as an example, trying to follow through the price of a case where they had an 18 percent markup for the wholesaler and a 30 percent markup for the retailer. More likely, it is just the opposite. The wholesaler's markup is closer to 30 percent generally and the retailer's markup is more in the order of 22 and 22 1/2 percent. So it is hard to pinpoint any one element. But it is clear that the retailer is not responsible for the high price, if it is higher in comparison with other states.

Just one last rather extreme example, you will find in the February hearing evidence that--Maryland and New Jersey are both affirmation states. I know because we sent some retailers down to Maryland to buy some liquor and they bought it at retail in Maryland for a price lower than they can buy at wholesale in New Jersey.

ASSEMBLYMAN BATE: If the Van Wagner Bill becomes law in its present form, what will that mean in the way of additional revenue for the State of New Jersey?

MR. O'NEIL: It does not mean any additional revenue. It is a replacement of existing revenue. We don't know exactly how much will be generated there because I believe that one of the things the Assemblyman would address --- for instance, keg beer is not taxed at all. It is treated like milk. It is hard to know exactly how much will come in from that. He is confident from whatever research OFA has done for him that 3 percent will certainly cover the existing \$56 million that is now collected through the 5 percent tax.

ASSEMBLYMAN BATE: I have nothing further.

Frank Tripucka, Trip Distributors.

F R A N K T R I P U C K A: My name is Frank Tripucka. I am currently President of Trip Distributors in Paterson, New Jersey. As a beer wholesaler serving Hudson, Passaic and Bergen Counties, I am vitally concerned with the impact and ramifications of the proposed deregulation or re-regulation of the alcoholic beverage industry in New Jersey. Accordingly, I welcome the opportunity to submit to you the following brief comments:

From discussion with a number of our retail customers, I concur with testimony given on several occasions by Mr. John Garrity, Director of the New Jersey Bureau of Wholesalers Association, wherein he has estimated approximately 15% of the Mom and Pop retail liquor licenses will be forced out of business. Clearly, the implications of this statement are both serious and disheartening, and, quite possibly, 10,000 or more individuals will be unemployed and many of these will also see their life's work and investment go down the drain.

Secondly, although I am not personally privy to all the facts, the results of deregulation in the State of California would seem to more than negate the consumer price benefits which have been expounded on several occasions by our State Attorney General. As I recall, the results in California evolved as follows: First, deregulation took place; second, the transition period, many small licenses were forced out of business when large retailers significantly reduced the prices to consumers. The post-transition period, prices increased to levels above those in existence prior to de-regulation; third, Mr. Joe De Marco actively testified against proposed de-regulation. Mr De Marco is a wholesaler, for those of you who are not familiar with the name, with operations both in New York and New Jersey. He is in an excellent position to compare the impact on prices of a de-regulated state, New York, with a fair trade state such as New Jersey. His research and comments clearly support the fact that on average throughout the year, beer prices in New York are not less than they are in New Jersey.

This is certainly contradictory at least in terms of beer to statements made by the Attorney General.

Finally, worthy of further attention are statistics referred to by the Attorney General's task force. It was suggested that wholesalers are working on a 35% gross margin. The gentleman before me also testified to this. This is absolutely untrue. That figure used included sales taxes as part of the wholesalers' revenue, and excluded freight, handling, et cetera, from the cost of the product. As a point of fact, most wholesalers are working at 18% and 19% gross margin and the net profit after taxes is about 1 1/2% to 3%.

In closing, as my comments indicate, there are many open questions regarding the ultimate impact of deregulation. Logic and sound reasoning clearly suggest that nothing would be sacrificed by keeping the proposal in a hold status until you and your fellow legislators have had ample opportunities to thoroughly hear research and study all relevant aspects of deregulation. I thank you for this opportunity to speak before this panel.

ASSEMBLYMAN BATE: Are you a party to the present litigation?

MR. TRIPUCKA: No, I am not.

ASSEMBLYMAN BATE: I have no further questions. Dave Evans, Division of Alcoholism.

D A V E E V A N S: Good morning. I am here representing the Division of Alcoholism in my capacity as Coordinator of Justice Programs. We are going to comment today not on the issue of de-regulation, but whether or not de-regulation will

affect alcoholism problems, not on the rightness or wrongness of deregulation. It is the position of the Division on Alcoholism that regulating alcoholic beverage prices as a means of promoting temperance, which was one of the original intents of the regulating legislation, had no demonstrated effect on the prevention or control of alcoholism or alcohol problems. Before I go on, let me say that we are not opposed, under certain circumstances, to the use of laws and regulations as a means of promoting the responsible use of alcohol. For example, we are in favor of the enforcement of laws that focus on prohibiting the sale of alcohol by bartenders to persons who are already intoxicated.

But, when it comes to laws that seek to promote temperance through regulations of prices, we don't believe that they are helpful. I think at first glance to the uninformed person, these laws make sense, the idea being, if you have a high price, consumption will go down, and that the incidence of alcohol problems will go down also. In the alcoholism field, this is called the control theory of alcohol consumption. I would like to just analyze briefly, the three propositions that this control theory is based on.

The first proposition is that the amount of consumption and the proportion of heavy users are connected. As one rises and falls, so does the other. The people who cause us the problems with alcohol are the heavy users, and the control theory says that if consumption goes up, therefore, that means automatically the heavy users begin using more alcohol, and we have more alcoholic problems. That is the first proposition that this theory is based on.

The second one is, heavy use causes high social costs, health problems, drunken driving, and alcoholic related problems.

The third proposition that the control theory is based on is that we can reduce social costs by regulating the availability of alcohol, and we should do this through the control of price. I did some study. I went to the Rutgers Center of Alcoholic Studies and researched this issue. I also contacted DISCUS, which is the Distilled Spirits Council of the United States in Washington, and I spoke to Mr. Robert Kirk. He informed me of something that is very interesting. DISCUS, which represents the distilled spirits industry, is opposed to the control theory of alcohol consumption. Also, all the studies that I looked at at Rutgers Center of Alcoholic Studies, indicated that the control theory has a lot of holes in it.

The main criticism of the control theory is that they are just concentrating on one factor, and that is the price of alcohol. They are not looking into all of the other social and economic and cultural factors that go into the rising or falling of the incidence of alcohol problems.

I have the study from DISCUS here. It is done by Dr. Michael Lauderdale, and he says that the weakness of the control theory is that it doesn't take into account the multiple factors that appear to contribute to the ideology of alcoholism. They are research models and techniques for dealing with these methodological problems, but control theory makes little use of them.

The two main proponents of the control theory were Dr. Schmidt, and Dr. Delynt. The DISCUS study says that the data indicates that Schmidt and Delynt have presented limited facts about the causes of alcoholism. They have explored the relationships between the price of alcohol, consumption of alcohol, and incidence of cirrhosis of the liver, but no conclusions can be drawn from these studies with any degree of certainty. The research techniques omit too many of the important factors to make possible definitive generalizations.

Essentially what we are saying is that by just solely looking at the price of alcohol and alcohol problems, you cannot make any clear definite statement that they are clearly related. There is another point I would like to make on this. The control theory assumes that the reason that we don't have a greater incidence of alcoholism is because the price of alcohol in New Jersey is high, that somehow alcoholics or problem drinkers are not buying more alcohol because it costs a dollar or two dollars more. We don't believe that. We think that alcoholics and problem drinkers are going to continue to buy alcohol at their present rate, unless the price is just completely out of range, and extremely high, and I think even then they would find a way to do it. We did have a period in this country when not only was the price of alcohol very high, but you couldn't buy alcohol. It was illegal to purchase alcohol and you could go to jail for it, and that still didn't deter people from buying alcohol. We don't believe it deters alcoholics from purchasing alcohol, simply because the price is a little higher.

We also did some research, looking just at the incidence of alcohol problems in states around the United States, and we compared alcohol prices in states around the United States. We took two states, California and New Jersey, where the price of alcohol is high, and we looked at the incidence of alcohol problems in California and New Jersey. The incidence of alcohol problems was based on information we obtained from the Federal Register. The Federal Government had done a study based on the number of deaths from cirrhosis, and all of the other factors that go into making this determination. California and New Jersey, while they have high alcohol prices, ranked fourth and fifth in terms of need of alcohol services, in terms of the incidence of alcohol problems. So, it is clear that even though we have high prices in these two states, that they also have a high alcohol problem. Their price is not keeping the alcoholic problems down to any reasonable level.

I would just like to make three other comments. One of them concerns juveniles. There has been concern that if the price of distilled spirits goes down that it is going to be more available to juveniles. Well, we again checked this out with the Rutgers Center of Alcohol Studies and they indicate that the primary beverage of juveniles is beer and wine, which are not going to be substantially affected. So, we think it is unrealistic to assume that the juveniles are going to be doing more drinking because the price of distilled spirits is lower. They are going to continue to drink beer and wine.

Another thing that we would like to bring to your attention is the fact that if consumption does go up, it will probably be among people who do not have alcoholic problems. These are the people that we are not primarily worried about. They won't be going to the extent that it is going to turn any of them into alcoholics or they are going to be going out and drunk driving. They may purchase a little more, or they may be purchasing it for more social occasions and that kind of thing.

We think that probably what will happen is, people will be changing brands. Instead of buying a cheaper brand of liquor, say, Fleishmann's or something like that, they may be buying Cutty Sark, now, because the price will go down. So, you may see some changes in the types of brands that are going to be consumed. I am not that familiar with liquor prices, so the last I knew, Fleishmann's was cheaper than Cutty Sark.

I have one last comment on this, and if you have questions, I will answer them. I have copies of my testimony and also the testimony of Dr. Richard Driver from the Center of Alcohol Studies who comments on these issues in more detail.

ASSEMBLYMAN BATE: Which was given when?

MR. EVANS: Dr. Driver's testimony was given at the first hearing on February 8, 1979, and he goes into these issues in a little more detail from the point of view of a political scientist.

ASSEMBLYMAN BATE: That was not a legislative hearing, was it?

MR. EVANS: It was the Attorney General's hearing at the War Memorial Building in Trenton.

Just one final comment, the alcoholic beverage industry nationwide has done an awful lot of things recently and has plans in the works to help people drink responsibly, and we support that, and we support the alcoholic beverage industry in those efforts. We feel that their concern about alcoholism and de-regulation is not an issue that they should be concerned about. We appreciate their concern about alcoholic problems and we would hope they would divert their energies to helping out with these nationwide campaigns to promote the responsible use of alcohol. Thank you.

ASSEMBLYMAN BATE: Have you done any studies on states which have de-regulated and shown an increase in the alcoholic consumption rate?

MR. EVANS: No, I don't know---

ASSEMBLYMAN BATE: You cited New Jersey and California as states which are high priced and so forth.

MR. EVANS: Right, well, the point of the beverage industry is that if the price goes down, the alcohol problems will go up. I think that we showed through our studies in the Federal Register that that isn't so, that the price doesn't affect the incidence of alcohol problems.

I do have some information about New York showing that over the period of de-regulation the consumption went up, and I think Professor Furgeson was pointing that out, but he neglected to include information from other states showing that it had gone up all around the country, and almost to the same extent. Some states had even gone up higher than New York's average rate of consumption. So, we just don't feel it will cause a higher incidence of alcohol use. I have copies of my testimony here. And Dr. Driver's testimony also. Thank you.

ASSEMBLYMAN BATE: Peter Vanola and George Buckwald, New Jersey Licensed Beverage Association.

H. G E O R G E B U C K W A L D: We certainly appreciate the opportunity to speak on this subject again. This is the third time we have had this opportunity. Things have not changed much except for litigation that is in process. However, we are going to present our view, which is basically the same view as we reported in the other hearings.

ASSEMBLYMAN BATE: Is your Association a party to that litigation?

MR. BUCKWALD: No, it is not. I am H. George Buckwald. I am President of the Leisure Lounge and Liquors, Incorporated, 400 State Highway 70, Lakewood. I am also President of the Ocean County Licensed Beverage Association and Past President of the New Jersey Licensed Beverage Association, and I have served as a member of its Board of Governors for about twenty-five years. I have been asked by the New Jersey Licensed Beverage Association to make a statement for the organized on-premise licensees with reference to the Anti-Trust Task Force Study of the alcoholic beverage industry, and the recommendations published by the Task Force.

First, I must describe the organization I represent here today. The New Jersey Licensed Beverage Association is the only statewide "C" Licensee, on-premise

retail association. Its members include licensed tavern keepers, lounge owners, restaurateurs, hotelmen, and bowling center operators. Most of our members sell for off-premise consumption, as well as on-premise. This part of our business has become increasingly more important in many areas due to the shift in the state's population to the suburbs and the trend in private entertaining. Even in the cities, the effect of today's high cost of living has dictated changes in the usual habits of the public, and the sale of calcoholic beverages for home consumption is required in order for a licensee to operate his business successfully.

As you can see, our view of the proposed price deregulation is not from a distance, but rather from the view of business persons who depend on the successful operation of their enterprise to make a living for themselves and families. Any threat to their business is a threat to their livelihood, and their employees who depend on their jobs for a living.

As you can imagine, the published report of the Task Force findings, beginning with the charge of corrupt industry trade practices and continuing with recommendations for price deregulation, and originally the removal of credit practices has shocked the industry. First of all, the retail licensee has been the target of the present ongoing regulations. He has struggled to live under rules, regulations, promulgations and outmoded statutes that were made years ago to fit a totally different society and business structure. To the average licensee, the disclosure of alleged corruption in the industry really didn't relate to his problem of making a living in a highly regulated business. If deals were being made, they were made with the big buyers, certainly not the corner tavern or neighborhood place, which, in numbers, makes up the majority of the licensed premises.

In this highly competitive industry, at least at the retail level, the businessman has had to match his competitor selling the same product at the same price that, with unusual restrictions in the marketplace, at least he had fair trade on pricing to help him merchandise the product. This really acted as a self-leveling factor, and allowed him to stand up to the big store in trying to sell his share of the market.

Illegal trade practices hardly reach this level of the industry. As hard as it is for the small buyer to get a few packages of cocktail napkins, or sip sticks from a supplier to help sell a main product, possibly the height of the ridiculous was the banning of beer coasters by an ABC ruling which has now been reversed. Post offs have helped the retailer in bolstering his profit structure, considering he gives illegal 10% discount on case purchases, but \$1 or \$2 post-down hardly helps a small retailer who has to invest in a full case to get the post-off advantage. However, the suggestion of a post-off pass through to benefit the consumer as suggested by the Task Force, if workable, is interesting and should be considered.

A Task Force recommendation that "The industry be afforded greater latitude in marketing and promoting its products" rings a bell if carried out to fruition. We have said for years that outdated restrictions on merchandising and marketing practices which are acceptable in other industries should be reviewed for changes. Restrictions on sale of allied beverage merchandise such as glasses, cork screws, and so forth, should be held up to the light. Prohibitions against floor displays in selling areas likewise need review. Present restrictions on shelf display areas for "C" licensees are not fair in the competitive market sought by the Task Force. And, neither are the rules against gondolas for bottle display. If we are to "relieve the ABC of obligations to investigate trade practices which are not regulated in other complex

industries," we should certainly review unnatural promulgations which restrict common display methods used by every other industry to merchandise their products. The Task Force might continue its work with an investigation of liquor sales on military bases which account for an enormous volume of sales to the civilian areas nearby and the resultant loss to the State of excise and sales taxes.

Stricter enforcement of laws against liquor traffic from other cheaper states should be sought, not only for a tax loss, but for loss of sales and the effect on our local industry. Consumerism being a national goal, how about the consumer who wants to buy a bottle of wine for a Sunday dinner legally. It is hard to rationalize sales by the drink being allowed and not by the bottle.

Lastly, the retailer has seen a double standard evolve with the coming of the Atlantic City casino operations. State regulations have been bent to accommodate the gambling industry, while they are immovable to the rest of the state's licensees.

We feel the altruistic goals of the task force report have merit in the progressive sense, however, we stand solidly for your consideration that price deregulation will not cure the alleged corrupt industry practices which stimulated the study. As a matter of fact, the record will show very few cases of illegal practices within the industry, in view of the numbers of licensees doing business in New Jersey. We fail to see how the removal of price controls in this important industry can affect the safeguards the Attorney General's Office is attempting to provide against those corrupt industry practices. It is amazing to us that detailed studies of the New York State price deregulation and the California State deregulation which are comparatively recent were not taken into consideration prior to the hasty decisions that were made earlier this year. It has been stated by authorities that the New York State price deregulation which began with a 4% above cost program, and has since developed into a 12% above cost program resulted in the closing of some 1100 businesses. The industry is now seeking a 16% floor above cost which indicates to us that complete price deregulation is not working in New York, and has not been taken into consideration by the New Jersey Attorney General's Office.

In addition, New York price deregulation did not involve wine, which is a major part of today's alcoholic beverage sales, yet, in New Jersey all alcoholic beverages are classed together for price deregulation. The California fair trade law was thrown out last May, and information received since that time shows that the immediate affect was a slight drop in prices and now the February, 1979, pricing shows prices higher than the last fair trade prices of 1978. A New York Times Business Section article reveals that when the pricing restrictions were lifted in California, the liquor store chains immediately cut prices by as much as 30%. Safeway, the nation's largest supermarket chain led an advertising blitz with reductions in the price of brandname liquor to just 6% over cost. A spokesman for the California Retail Liquor Dealers Association, which represents the independent liquor store owners said, "As we feared, the giant chains rushed in to capture the market with unbelievable reductions. We were clobbered."

We find it hard to believe that the State of New Jersey, through its Attorney General, is sounding the death knell, for, in the Attorney General's words, "five to eight percent of the business men." Who is to say which business shall be successful and which business shall be closed? By what authority shall the investment of an owner be dissipated, and his hard work gone for nothing with his employees being fired or replaced by family members? Since this price deregulation has begun, I have been called by licensees from various areas in

New Jersey who call me in desperation saying that their life's work has been threatened and their future now is uncertain. It has been very hard to answer these sincere businessmen. The rationale used by the Attorney General's Office, that some industry businesses are not properly run and cannot compete in the tight competitive market, and therefore are doomed, is a shocking statement. This is not what is commonly presented to be the American dream of free enterprise and opportunity.

I draw your attention to proposed systems of collecting New Jersey State Sales Tax. I have been given to understand the 5% sales tax will continue to be priced at the wholesale level on the retail sales price as before. This is amazing. With price deregulation, the State will have no guide as to the actual sales price in each establishment, and the customer will pay 5% on the purchase price of the actual sale which will, without a doubt, be different than the filed consumer retail price. This is a clumsy way and an unfair system of tax collection. I believe it is illegal and should be tested in court. We urge you as respected members of the New Jersey Legislature to take any action that will provide assurance to thousands of businessmen that these proposals will be thoroughly investigated before any final decision is made. The effect of price deregulation in these uncertain economic times will certainly be felt not only by the businessmen and their families and other segments of the industry, but the failures expected may become a serious blow to an economy that is already shaky with business recessions predicted in the near future.

Assemblyman Bate, I would like to add to that, due to the comment we heard earlier, especially with reference to a proposal, that the State entertain a 3% gross receipts tax, and show you that the conversations that you have heard really do not delve into the background of pricing at the retail level in our type of establishments.

We are already operating, as retailers, under the world's highest prices of background costs, and we are talking about our overheads. We are at the highest retail real estate tax. We are at the highest liability insurance prices. We are at the highest liquor law liability insurance, fire insurance and compensation insurance. We are paying the highest energy costs. We are paying the highest costs of replacement of equipment. Our costs of renovation are sky high. Our costs of essential repairs, roof repairs and so on, are at the top level. The cost of money to borrow of the highest interest charges is on us. Mortgage rates are increasing and due to increase higher. The cost of paper goods has gone sky high. Our wage increases to employees, the cost of advertising, have increased. As a matter of fact, in the spiral of inflation that we faced, along with other businesses, this wouldn't be the time to add on any new taxes. It might interest you to know that the alcoholic beverage sales in the United States provide the second highest source of income to the Federal government, second only to income tax; that the bottle that we use in our merchandising has a Federal excise tax, a state excise tax, a federal import duty, if imported, a state sales tax, corporation, state, federal taxes on the transportation fuel that brings it to us. So, to add a tax to the present load of the small businessman has got to have an opposite effect on the profit structure and the ability to stay in business.

I would like to point out also that the State has an ongoing program to try to control alcoholism. And one of those programs is an attempt legislatively to raise the drinking age. At the same time, the Attorney General's Office is attempting to lower the liquor prices. In the Task Force recommendations, and in the re-regulation we find

an opening up of sales which would allow nips in New Jersey for the first time in some thirty-five or so years. And, for your information, and for the record, a nip is a one point six ounce bottle which you buy on railroad trains or are given or buy on aircraft. And this we feel shows that we are not headed in the same direction - all of us - because we feel that particular size will help the young people who go to school and other places, buy a drink for forty-five or fifty cents where it is not available in less than an eight ounce bottle in the present restricted laws.

I feel personally from my own experience that the report on alcoholism you just heard about was more clinical than actual. I respect the reports from that area; I have not only a personal responsibility, but a governmental responsibility as well. I feel that their studies too many times are textbook type studies and do not really reach the people. I say this because the people sitting in this room are retailers who own businesses where consumption is on premises, and they have a background and knowledge in the problems of drinking and the effect of drinking, and we disagree with their premise that lower prices will not increase drinking. As a matter of fact, we feel that the lower prices must increase the amount of drinking which is not to the benefit of communities we live in, nor to the State as a whole.

I will be glad to answer any question you may have. If there are no questions, I would like to introduce to you Peter Vanola.

P E T E R V A N O L A: Good morning. I would like to open my remarks by saying I operate Pete Vanola's bar with my wife in Neptune City for the past 31 years. I started in this business cleaning brass rails and spittoons. I know every facet of the industry. I have served as President of the New Jersey Licensed Beverage Association, and I am now serving as the National Treasurer for the Licensed Beverage Association, so I have traveled the nation. I want to compliment you, Mr. Chairman, and your committee for giving up some of your valuable time to bring the very serious problem into the right perspective.

I was very much interested in your opening statement, and I believe you hit the nail on the head when you said you are very much interested in the economic impact. That is the whole thing, as far as my group is concerned, because even by taking the figures of the Attorney General - between three and eight percent of the small Mom and Pop places going out of business - when you figure we have 12,500 licenses in the State of New Jersey, that means quite a few business people will be out of business. That is only one facet. And, we are saying in effect, the hell with them. I have been in business for 31 years. I look forward to retirement in the next few years. If this de-regulation goes into effect, my business is not worth half what it is worth today. Proof of the pudding is, since the proclamation of the Attorney General on January 3, I don't think one package store has changed hands. Also, you have to take into consideration the fact that somebody bought the place three or four years ago, sold his house to put money down, and here he has a mortgage up to his neck and he has to compete without any markup whatsoever. He is going to be out of business.

The purpose of the Attorney General's study, it seems to me, is way out. He blames the corrupt liquor industry, which I resent strongly. I am in the business. I am not corrupt. It is just like me saying there are corrupt cabinet members, because a couple of them went to jail. Who is corrupt, the ones in jail. What made them corrupt? It wasn't the Mom and Pop stores, but the Emerson chain. And,

yet, there is a lawsuit, which the Attorney General has pointed out, now pending in Morris County to declare an anti-monopoly bill unconstitutional. But, that is another step. The franchises and chains are coming into the State of New Jersey. I have seen this in Florida. There are six or seven people controlling the liquor market. And, you know what? Liquor is not that cheap - what you want to buy. What they want to sell you is cheap. But, I bought some stuff in Florida that was three times as much as New Jersey, because they have a patent, and they have other problems. It takes the average - and these are national figures, Mr. Chairman - for a package store to exist, a 14% mark up. Now, you talk about percentages. How much is in the beer percentage? We make anywhere from between 19% and 22% on beer, and that's for me to refrigerate it, handle it, and everything else. It costs me 14% to stay in business. I would be better off if I put my money in CB's and got my 10%. There would be no aggravation and no headaches, and I wouldn't have to worry about serving minors and having the ABC come in and shut me down.

Here again, Mr. Chairman, I must compliment you and thank you very much for bringing this into proper focus, because it is vital to us. People have devoted their lives. They have worked eighteen hours a day, seven days a week, and all of a sudden by the stroke of a pen of one man we will be put out of business. Now, every Agency Director from Bernat to the Honorable Joe Lordi, Judge Ranka, and all the way down to the present one, up to December--- The ABC Director spoke at the committee hearings and banquets advocating a strong fair trade price, because that was good for the State of New Jersey. Yet, this same Director a month later changes his tune. I wonder why.

Another thing that I must call your attention to is what the Deputy Attorney General referred to as fat in the system. There is no fat in the system, not on our end of it. I do not know the wholesalers' end of it. Maybe it is up to you to ask the wholesalers to give you the percentages, and maybe it is up to you to go to the distillers and find out what they sell for in the State of New Jersey. New Jersey is the best state in the union when it comes to ABC rules and regulations. I travel, as I said, the United States. We are looked upon as the model state. It isn't perfect. We recognize that. But, nonetheless, the small businessmen, the small Mom and Pop places, those that clean the ladies and mens' rooms in the morning, that close up at night, they have a chance to survive. It is not so in Florida, because you have one outfit that owns 250 stores. They can easily afford to operate on a 5% mark up, because he does \$10 million worth of business. If I could do \$10 million worth of business, at 5%, that is one-half a million dollars. I would take that. But for a man that makes \$100,000, if I only make 5%, Mr. Chairman, I can't exist. I don't even make minimum wage.

Here again I implore upon you to institute some legislative action on mark up. We will agree with the package store that we need a mark up to exist. And, I must comment on Assemblyman Wagner's bill. There is not such a bill. I spoke to Assemblyman Wagner myself personally, and he has no intention whatsoever to introduce any tax bill, unless, upon talking to all segments of the industry, they come to a fair decision. You must realize that under the present tax structure, there are only about 60 or so wholesalers that collect the sales tax and pay it to the State. Not one penny is kept back. If we go back to the old system, where 12,500 licensed people pay the sales tax, the State didn't collect it all, because it was impossible to check on everybody. Not only that, it would take about 300 or 400 more agents to get involved to collect. In the longrun, I believe that the State and the present

situation is a good thing for the State of New Jersey and for the people in the State of New Jersey, because over \$66 million every year is paid to the State of New Jersey, notwithstanding the municipal tax, notwithstanding the \$50 a year that we pay to the State, and notwithstanding the \$54 a year that we pay to the Federal government. Now, here again, I must disagree with the package stores that they are supporting S-3010, because every tavern owner, everybody involved in the business has to be finger-printed and they have to pay an additional tax. I think we pay for enough licenses. I think the ABC with its new computer has all the facts available at its fingertips, and I hope you Assemblymen, when it comes up in the Assembly see fit to vote against it - and I am not here to influence you on that right now.

I want to thank you very much for allowing us to have the opportunity to talk to you. I believe the Task Force from its inception had its mind made up. On that Task Force, there was not one knowledgeable man as far as the industry. I doubt it very much if they knew anything about it.

I will be glad to answer any questions you have. Thank you very much.
(Applause)

ASSEMBLYMAN BATE: Assemblyman Kern has now joined us. I suggested that Mr. O'Keefe stay, so that you could have the opportunity to question him. I call Deputy Attorney General O'Keefe.

ASSEMBLYMAN KERN: Do you believe that the present system of price of regulation is constitutional?

MR. DENNIS O'KEEFE: Assemblyman, as I indicated earlier, for the record, we are presently in the process of litigation over the authority of the director to promulgate regulations, and the constitutionality of the present system. I think it would be inappropriate for me to comment on those legal issues at this time.

ASSEMBLYMAN KERN: Prior to the litigation, has the Attorney General issued any opinion on the constitutionality of the present regulations?

MR. O'KEEFE: Prior to the litigation, in his policy statement to the Governor of January 2nd, the Attorney General indicated that he had problems with the price fixing aspect of the system - such as the vertical fixing of prices from the distiller to the retailers and the horizontal aspect of pricing. However, at that time he did not feel it necessary to reach a final conclusion on the legality of the system. And that, for your information, is part of the record, his policy statement.

ASSEMBLYMAN KERN: I appreciate that. What is the position of the Attorney General on the legislation proposed by Senator Friedland to implement the anti-trust fourth recommendation, that the ABC get out of the business of credit management for wholesaling.

MR. O'KEEFE: I haven't seen the bill, Assemblyman. I am unfortunately unable to comment on it.

ASSEMBLYMAN KERN: I have heard from retailers complaints that they are more severely penalized than wholesalers. What is your impression of that?

MR. O'KEEFE: I am not sure I understand your question.

ASSEMBLYMAN KERN: For instance, if a retailer buys on credit offered to him by a wholesaler, even though he hasn't paid his bill within thirty days, both parties are guilty of an offense, I believe; isn't that true?

MR. O'KEEFE: Under circumstances there could be an offense on both parties.

ASSEMBLYMAN KERN: Right, equally.

MR. O'KEEFE: Under the existing regulatory scheme, yes.

ASSEMBLYMAN KERN: What I have been told is that retailers, for this offense, they are often closed ten to fifteen days, while the wholesaler is not penalized at all. He receives only a token fine. Do you have any verification of that?

MR. O'KEEFE: I couldn't verify that. That really is a matter within the discretion of the Alcoholic Beverage Commission. I have not done any study on it. I am aware of comment in that area.

ASSEMBLYMAN KERN: Isn't the Director responsible to the Attorney General?

MR. O'KEEFE: Yes. Well, you are asking, I assume--- You want a study of sanctioning?

ASSEMBLYMAN KERN: I would appreciate it. I would like to see some statistics and some facts supplied to the Committee.

MR. O'KEEFE: I will see that something is prepared for you.

ASSEMBLYMAN KERN: Maybe this is premature, then. What can you give me with respect to equal enforcement, with respect to violations of wholesalers as well as retailers.

MR. O'KEEFE: I am not sure exactly what you want, but I will inquire of the Director and his staff and see if information can be gathered for you.

ASSEMBLYMAN KERN: I have been told that certain products, like, for instance, Smirnoff Vodka, are available through only one wholesaler. Have you proposed anything to break up such monopolies?

MR. O'KEEFE: Not in the package of regulations that deal with "deregulating the industry." The Task Force report did discuss that initiative. The dissolution of any franchise rights, most probably, would have to be an initiative directed by the legislature or the courts on a constitutional basis. At the present time, the program proposed did not contemplate interfering with private existing rights as to distributorships.

ASSEMBLYMAN KERN: Let's assume that your plan goes into effect, and we have a so-called deregulation. Assuming that there are these exclusive monopolies, they would be untouched, correct?

MR. O'KEEFE: In terms of any distributor rights, yes. That is correct.

ASSEMBLYMAN KERN: Couldn't that in effect initiate what you are trying to do?

MR. O'KEEFE: No, not really.

ASSEMBLYMAN KERN: I believe one of the rationales for your proposal is that the prices in New York State are considerably lower than they are in New Jersey; is that true?

MR. O'KEEFE: That is not an exclusive rationale behind it.

ASSEMBLYMAN KERN: No, among others.

MR. O'KEEFE: A survey conducted by the Task Force and also information available from various industry publications reveals that the price of alcoholic beverages in New Jersey are substantially higher than contiguous states, and by and large both the region and the nation.

ASSEMBLYMAN KERN: Well, one of the features of the New York law system is that they have a mandatory mark up to protect the so-called Mom and Pop liquor stores, so that they would not be priced out by big chains. Do you feel that such a mandatory mark up is needed in New Jersey to protect small businesses?

MR. O'KEEFE: Proposals along that vein were considered by the Task Force and also by the Director by way of the public hearing that was conducted on

February 8th and 9th of this year. I can only say that the end result did not include that initiative in the regulations.

ASSEMBLYMAN KERN: Well, would you venture a guess as to whether or not that would be efficacious, as far as small businesses?

MR. O'KEEFE: I don't think it would be appropriate for me to venture a guess. I can say this, though, there are economic studies that disclose that any mandatory mark up becomes the new mandatory minimum. While I have not sat here through all the testimony, as you have not, there are indications that some retailers need 14% in order to survive, that some products are marked up, as beer was mentioned, at 18% to 22%, distilled spirits 18%. If the Committee or the Legislature was to consider a mandatory mark up, the first problem becomes, where do you affix such a mark up? Can all retailers survive at 14%? Can all retailers survive at 22%? Can all retailers survive at 30% or 6% or whatever - if that would be the intent of the Legislature. That is your first problem.

The second problem, of course, is enforcing it and the mechanism that works with it, just as an observation.

ASSEMBLYMAN KERN: I have had some conversations with Attorney General Degnan about this particular area. What provisions do you have in your proposal that are going to insure the survival of the small operations, the Mom and Pop stores?

MR. O'KEEFE: The proposal is designed to allow market forces to compete. We have put in what could be characterized as a miniature Robinson-Patman Act, which, I think, after careful reading, follows the provisions of sections 89, 90, 91, and 92 of Title 33, to prevent discrimination in pricing between the wholesalers and the retailers.

Second of all, we have permitted broader latitude in marketing initiatives so that legitimate programs could flow from the top of the system through to the retailer, to any retailer in marketing its products. I don't know whether that is responsive, or not, sir.

ASSEMBLYMAN KERN: It is a response, anyway. Is there any limit in the State of New Jersey on the number of licenses an individual corporation can possess?

MR. O'KEEFE: There is presently a statute which has been in effect since 1962 which limits ownership to two licenses. There are exceptions, however, to that, most significantly bona fide restaurants or hotels. There are some licenses that were grandfathered in under that provision. The largest operating chain in the State of package store licenses is A and P with 39, and I think an additional 10 or 11 warm beer only licenses. After that, and I am not exactly accurate, but a rough estimate would come Home Liquors with 17, and Bamburgers has a few, and a couple of other individuals that I am not familiar with. But, since '62 there has been the two license limitation.

ASSEMBLYMAN KERN: Recently some wholesaler-through this non vult-charges that there were some \$600,000 in illegal discounts, and they were fined less than \$200,000. Considering the offense, why was the fine so low? Why wasn't the wholesaler suspended from operations for a year at a time, which is what would happen to a retailer if they were caught in the same situation?

MR. O'KEEFE: Well, I see two areas that you are addressing. First, there is the question of wholesalers and the validity of the assumption that retailers would be treated differently.

First of all, part of the record here are the orders of the Director Lerner in sanctioning the wholesalers for \$180,800. As a general observation, the orders

reveal that they took into consideration the nature and extent of the cooperation of the wholesalers in the investigation---

ASSEMBLYMAN BATE: Please, refrain from any comments, those of you in the audience.

MR. O'KEEFE: ---their individual positions in the industry, vis-a-vis marketing ability. That would be, for example, ranging from sales of \$70 something million down to less than a half a million dollars.

The third factor to consider, really, is that the investigation is still continuing, and there is another side to the coin. That is, the parties that were involved in the transgressions on the other side, being both suppliers and retailers.

ASSEMBLYMAN KERN: I don't have anything else. Thank you very much. I appreciate your testimony.

ASSEMBLYMAN BATE: Jack Garrity and Joseph De Marco.

J O H N G A R R I T Y: Chairman Bate, Assemblyman Kern and Mr. Weltman, I am Jack Garrity, Executive Director of the Beer Wholesalers Association of New Jersey. We represent 95 percent of the beer wholesalers in the State. We are not a party to the present litigation.

We welcome the opportunity to participate in this hearing and appreciate your interest in these very serious problems. We hope that through your influence and good offices that common sense and sound judgment will balance the sense of urgency and expediency that prevails at this time. We don't understand the big rush.

Since 1934, after repeal, the lessons of the past have been used to formulate a system of controls that dealt with the many social and economic problems that were a carry-over from prohibition days. These lessons were well learned in the school of bitter experience. We know and have read of the fierce competition, bootlegging, rat-gut booze, gang wars, killings, captive accounts, restricted territories and the shoddy manner in which the public interest was protected.

Gradually, through the intervening years, the stigma which was attached to the industry has been erased to the point where most in the industry today are responsible businessmen and respected citizens.

The Attorney General's Task Force two years ago addressed itself to the problem of the wholesale liquor industry, based on a comment by a liquor wholesaler or his attorney that the violation he was accused of was quite customary to his segment of the industry. At the end of the two years, the Task Force released its report and recommendations. That is where we are at right now. Interestingly, they have devoted little or no space in their report to the beer wholesaling industry. I might comment that of a 98-page report, there were 7 lines commenting on the beer wholesaling industry. Yet in their recommendations, the beer wholesalers suffered the same as the accused liquor wholesalers.

Primary in this is the loss of the surveillance over fair marketing practices and unfair competition. Our credit regulation, one of the most liberal in the nation, appears to be lost. Yet 45 states have some kind of credit law in the alcoholic beverage industry.

Hear this: Wholesalers replenish retailers' beer stocks weekly and quite often twice a week. Retailers sell for cash. Wholesalers wait 30 days to be paid, carry a 30-to 45-day inventory, pay their brewers in 10 days and prepay the sales tax to the State before being paid themselves. Incidentally, the sales

tax is due the 20th of the following month. If they have to wait 30 days, they are paying it 10 days ahead of the time they are being paid for it by retailers. In cases of bad debts, they lose the sales tax also.

In contrast, 32 states require cash only for beer from retailers. Only 6 extend as much as 30 days' credit. We contend that selling off 4 or 5 shipments of beer for cash before having to pay for the first shipment is not a bad deal. It is very liberal to the retailers and not against the public interest. In fact, it works to reduce risks on receivables, thus being a factor in holding the risk factor low in the pricing structure.

You might reasonably ask, "Why do states have laws concerning payment for merchandise between wholesalers and retailers?" Here, again, the lessons of the past come forward. The State is not acting as a collection agent. It is performing a more serious responsibility, preventing the use of credit to control retail accounts as was done so widely prior to and during prohibition. Credit was the vehicle most often used to suppress competition by making captive a retail licensee and forcing him to carry the lenders' production to the exclusion of competitors.

The designers of the federal Alcohol Act, upon which all state laws are modelled, wanted to preserve competition and prohibit anti-competitive practices or the "tied house" as it is more commonly known. This evil practice of using credit to control businesses is still in use in some other industries. Just recently, hundreds of private gasoline service station operators in California were forced out of business by the method of compelling them to stock tires, batteries and supplies far beyond their normal needs. When they could not pay for them, they were taken over by the fuel supplier who was seeking the locations for self-service stations. This case is well documented. Incidentally, regarding a comment that was made earlier, California still has a 30-day credit law on beer. It follows the federal law and is substantiated by legislation there to support the federal law. Without that kind of support by the State, the federal law is inoperative.

The Task Force alleged that the public was paying for the enforcement of the credit regulation in New Jersey. This comes as news to us because we are billed yearly by the ABC for our proportionate share of the cost of administering, printing and mailing, plus a 15 percent surcharge for the ABC.

What makes this more difficult to comprehend is the fact that the ABC for the past several years has returned \$300,000 or more to the State treasury.

New Jersey has always been considered a relatively clean state as regards the alcoholic beverage industry, not the lowest priced state, nor the highest either. Consumers enjoy greater choices of brands than in most neighboring states. The benefactors were: the consumers who enjoyed convenience of purchase, the industry members who could make a fair profit and reasonable living, and the State which regularly and on time exacted taxes from these successful business.

What can we look forward to now - three to eight percent of licensees going out of business, as was commented in the Task Force or the Attorney General's report? Three percent of 12,000 licenses is 360. Eight percent is 960. Fifteen percent, which we feel is a more realistic figure, as we believe the Task Force greatly understates this, amounts to 1800 licensees going out of business. And this does not take into consideration those small stores that will have to lay off a clerk or work longer hours themselves to keep it going. Will we create a marketing jungle? I think we will. Are we going to see splashy advertising calling all to

buy cheap whiskey, wine and beer? Are we trying to attract out-of-staters to buy their liquor here and avoid the taxes in their own states? Are we trying to be the liquor mecca in the Boston to Washington run?

Except for very specialized promotions in key locations, convenient to commuters and travellers, the average New Jersey resident is not going to save any appreciable amount on his liquor purchases. It is not just in the wood for the greater number of retailers to work on a lower profit structure. In fact, it would not be surprising if it went the other way. Small and off-the-trade-route retailers may have to make up for reduced unit sales by increased unit costs. This is not new to us. In the last energy crisis, utilities did this when we reduced our use of energy at their request.

Speaking of beer, some substantial price increases are long overdue. The beer industry has shown extreme restraint in raising prices due to the keen competitiveness between brands. The beer industry has lagged far behind other industries in increasing prices. If you bought a six-pack of Coke or Pepsi recently, you are probably aware that it costs as much or more than a six-pack of beer. And Coke and Pepsi don't have an excise tax and a pyramid of license fees and permits.

Under the present system of minimum pricing, the beer consumer has the protection of the intense price competition in the industry. The minimum price essentially becomes the maximum price charged by 99 percent of the retailers. It is standard practice to do so.

Regarding some comments that were made about the inspection process, there has been some misleading information there, unintentional, I think, but nevertheless it is misleading. Prices are posted around about the 18th of the second month. Then there is a six-week time lapse between the time those prices are posted in the book --- There are two days for posting prices. There is a third day for inspection, at which competitors and everyone else can come in and look at the prices that are posted. Now the implication is that they can adjust those prices to suit themselves. They cannot. The only thing they can do is lower their price to meet a competitive price. I contend that is certainly working in favor of the consumer.

High profits -- Is 20 percent markup on beer high when the handling, storing, chilling and bagging is considered? The markup on almost any other thing we purchase runs between 33 1/3 percent and 50 percent. We suggest that it might be wrong to lead the public to believe that beer will be cheaper when it is not likely to happen. Much of the rationale applied by the Task Force is that the alcoholic beverage industry should not be accorded any different treatment on pricing or credit than other industries. If that is so, why all the stringent licensing requirements - fingerprints, fees, permits and a host of other constraints, not to mention the most heavily taxed industry in the United States? Why not allow all the other promotions and things that other industries are permitted? What the Task Force has done is leave the industry with all the responsibilities and liabilities and removed the few compensatory privileges.

We are compelled by the socially sensitive nature of the product we handle to be extremely circumspect and responsible to the public, both drinkers and non-drinkers. If the industry is so adversely affected by these changes that the number of marginal operators increases substantially, it follows that there will be more risk-taking and illicit activities combined with the business. Businessmen who operate within a reasonable and adequate profit structure are generally more

responsive to obeying the rules and avoiding the risk-taking that marginal operators with little or nothing to lose frequently engage in.

We do not take issue with anyone who suggests that some corrections are necessary. This should be done periodically. A good regulatory agency would sense this and apply timely corrections. There is no need to tear down the structure that the wisdom of 44 years since repeal has so wisely and carefully built.

Yes, the message of California's Proposition 13 has been heard clearly across the nation by both overburdened businesses and taxpayers and their elected and appointed officials. The easy solution seems to be to reduce governmental spending by having less regulatory control over private enterprise. That may be appropriate in other industries. But doing it in the alcoholic beverage industry can be nothing short of shirking responsibility and abandoning the public.

Gentlemen, I suggest to you that this matter requires the full and continuing attention of your Committee, the Assembly and the Senate. Such drastic changes which reverse the wisdom of 44 years of experience and almost completely ignores the guidelines of the Federal Alcohol Act as regards the "tied house" unfair competition and anti-competitive practices should not be done with such haste and so little research and study.

We foresee them or their successors painfully retracing their steps to reactivate many of the controls they are presently abandoning. There is just too much opportunity in this industry, like the gambling industry, for shady characters to gain control and victimize the industry and the public.

The best and most important function this Committee can perform for the benefit of the general public is to slow the process for the purpose of getting more basic homework done to resolve the very serious conflicts with the FAA Act as regards "tight house" and unfair trade practices.

I would like to leave you with a copy of a study entitled, "Trade Practices and Price Control in the Alcoholic Beverage Industry," done by Mr. Joe DeGanahl for the Duke University School of Law; and also some general comments and data by attorneys for the United States Brewers' Association. I am sure when you read these two reports, you will find justification and due cause to require that more consideration and study be done to prevent some very dangerous blunders and great harm to the public and the industry, especially as regards trade practices.

We appreciate the opportunity to participate in this hearing. We also have great confidence that you will do everything in your authority and influence to see that the public and the industry get a fair shake in this very serious matter.

ASSEMBLYMAN BATE: Mr. DeMarco, do you want to make a presentation?

J O S E P H D E M A R C O: Mr. Chairman, with reference to what Jack said and to further back it up --- First of all, I am a wholesaler who has two beer establishments in the State of New Jersey and one in the State of New York. My original entry in the council or the discussion of deregulation came because of my knowledge of both New Jersey and New York.

I often wonder, going back to the start of this thing, exactly where did deregulation come from? I am also a member of the ICC industry and we have been being deregulated for a couple of years now, according to the good President. The original purpose of deregulation was to somehow slow down inflation. I can only tell you that over a period of a couple of years, it has done no such thing in the trucking industry. What has happened is that the big ones become bigger and

the smaller ones go out of business; and the price, itself, goes higher and not lower.

I often wondered if there was any public clamor for deregulation in the State of New Jersey. I have been in the industry for over 26 years and I have heard no public clamor or anything saying that the pricing in the State of New Jersey is unfair.

All of our laws originally were based on the term "temperance." Obviously, there are many economic issues today that are somewhat different from what our original purpose was. When you get to the question of deregulation, many people think we can use the states surrounding us as a basis for comparison. But in reality you cannot compare New York to New Jersey. To start with, the licensing is entirely different. The function of the license is entirely different. For example, a liquor store in the State of New York does not sell any malt beverages. Your beer outlets do not sell liquors or wines. In the State of New Jersey, you have one level of pricing, which is known as minimum fair trade or consumer pricing. In New York, you have three tiers of pricing. First of all, you have the chain store pricing; secondly, what is referred to as the home vendor pricing; and, last, but not least, the average tavern or mom and pop deli. A consumer in the State of New York, depending on what tier he purchases from may well pay more, not less, for a six-pack or a case of beer. The chain stores operate on leaders. If you went into a chain store for any premium product that we sell in this State, I would venture at least 40 out of the 52 weeks a year, you would pay more for the product, not less.

In New York, they also passed within the last two years what is referred to as the 180-Day Law. All of the price promotions that originally happened in New York where you would see beer, six for 99¢, \$1.09, etc. - different prices - were partially paid for by the wholesaler as well as the chain. But what the 180-Day Law does is state that any wholesaler selling to any retailer must maintain this drop or promotional price for 180 days. As a result, there is very little dropping of any prices for 180 days. The majority of the cost now goes to the chain.

As to the home vendor part of the business, I would like to say that in our State you buy beer, wine and liquor very simply by going to either one of our stores or chains. But in the State of New York, it is more complex. In the State of New York, the purpose of the home vendor is to be the go-between between the wholesaler and the retailer. They basically purchase product from the entire state, as well as perhaps 15 or 20 other states. They set up a little Robert Hall situation where you just drive in and drive out, and depress the price anywhere between 50 cents to one dollar a case. We do have home vendors in the State of New Jersey. They are not geared to operate on this basis overnight. But I can bet you that within less than a month, the New York Empire group, which is one of the strongest wholesale-retail groups in the nation, would be in your state overnight, bringing products in which would cause you to lose more taxes than you ever thought could happen. They would bring their products in from every state in the union and then open up these Robert Hall situations overnight.

The Attorney General mentioned to the Food Council that within a year there might be an issuing of both beer and wine licenses or beer. I don't know why there would be a need to issue any more licenses because if his estimate of 8 percent is correct, as far as the mom and pops are concerned, you already have

600, 700 or 800 licenses available. If you want to compare it to the State of New York, they lost in excess of 40 percent of the licenses after Rockefeller did his thing. The thing you have to do is take a look at the value of a license. Years ago when I first started in New York, in order to get a liquor license to sell liquor and wine anywhere near the area of Broadway, you would be talking maybe four or five hundred thousand dollars for a license. Now the license may be worth somewhere between \$25 and \$50 thousand. Anyone who has an address in New York can get a beer license for \$50. And that is what may well happen in this State.

When you look at the situation in New York, there is one other thing that somewhat semi-controls them and that is that you still have fair trade on wine and the fact that the chain store is not in the advertising of liquor. My personal opinion is that if you deregulate the State of New Jersey as completely as the original issue was, you would probably have the price mecca of the world. Now I have operated in New York and New Jersey. I also represented the beer wholesalers in the country as the National Chairman, so I know a little bit about many states. I would say that the State of New Jersey, with regard to the wholesale-retail-consumer situation here, is probably the envy of the world.

We have many things that have occurred in New Jersey that are much different than in other states. But yet in the long run, I believe the State, the person in business and the consumer all benefit.

Reference was made earlier to the credit situation in the State of New Jersey. You all know about the FAA Act back in 1934 and know that the liquor industry is once again regulated by the Bureau of Alcohol, Tobacco and Firearms. Under Federal law, credit has to be based on a period no longer than 30 days. In the State of New Jersey, I think there is a tremendous amount of confusion with reference to what does and doesn't happen. First of all, I don't know of anyone in the last 26 years that was closed for not paying a debt. I don't believe there are any 10- or 15-day closings for any type of credit situation. Yes, the wholesalers are fined. But obviously there is much misunderstanding about our laws in the State of New Jersey. For example, a retailer who fails to pay his invoice within 30 days, to make it as simple as possible, goes on what is referred to as the default list. That means every liquor and beer wholesaler in the State must sell him on a cash basis. Thereafter, it comes down to a situation where he has 39 weeks in which to clear the debt. I have to feel that is more than a reasonable time when you consider the wholesale obligations.

The unfortunate part of deregulation, as I see it, is that it takes an industry which is made up of many segments and narrows them down into little closets. And every now and then, you are allowed to open a closet and get a lot of yelling from people that all have their own particular methods of survival. I believe we are all well attuned to the fact that the liquor industry was in actuality charged with certain violations. If you were to compare New Jersey to New York as far as violations - and this is not out of my mouth, but out of that of the Director of the SLA in New York, which is similar to your ABC in New Jersey - what was referred to in the Task Force report over a two-year period, he would be happy to have in New York in one week.

So I don't know exactly what the Task Force report actually proves. I will say this to you: I don't see how as a result of the Task Force report we end up in deregulation. I don't see how deregulation can cure the ills recited in the Task Force report. I don't see that any ills can be cured by deregulation.

The only thing I see is a lot of situations occurring that will destroy an industry that I have to believe many people, not only in this State but in many states, respect.

Without getting into each individual situation, the purpose of my visit very simply is to state that I think, without any doubt, that we do have a good industry. I think there is need for some changes. I am ready to admit that many of the situations that have occurred in the State are as a result of greed, and as a result of compromises. They should never have happened, yet they did. I do not believe just by chopping the head off of the entire industry, we are going to cure those problems.

My suggestion is that a study be undertaken and some type of an ad hoc committee be appointed, consisting of members of the industry, to actually look at this industry the way it should be looked at, with fact rather than fiction. I believe, if the Assembly and Senate did create this type committee, that in time we could solve the inequities of our industry.

I do not believe there is any one individual that I know of in our entire political system that has the complete understanding and knowledge of our industry. It is a difficult one. It took 44 years, as was previously indicated, to come up with all these rules and regulations. It has been a regulated industry ever since Prohibition.

One of the questions I heard a few minutes ago was: Do we feel that credit is against the Constitution? If it is, there are 45 Attorney Generals that are in trouble because there are credit laws in 45 states of our Union. We also know there is a federal act with reference to credit. You don't deal with a commodity such as liquor and the problems that have been occurring in connection with it, without the knowledge that more is involved than just laws and regulations. As I indicated, there is economic value to be considered. There is greed to be considered. There are a lot of things that we must have hit the table and be rectified before we destroy what we know to be the envy of the country. Thank you. (Applause.)

ASSEMBLYMAN BATE: There are no questions.

We will move on to John Apostolik, representing the Morris County Licensed Beverage Association.

J O H N A P O S T O L I K: Assemblymen Bate and Kern, I want to thank you for the opportunity and the privilege of being able to come before your Committee and have the honor of testifying, as I feel that some of the charges made under the deregulation as proposed by the Attorney General do not cover our part of the county in which we reside.

My name is John Apostolik. I am the Board of Governors representative to the New Jersey Licensed Beverage Association from Morris County. As the C-Licensee representative from this county, I wish to state our opposition to the proposed deregulation of the liquor industry in New Jersey.

I am the owner and operator of a C-Licensed premises that has been family owned and operated since its founding in 1925. I have personally operated this establishment since 1945.

This deregulation of the liquor industry, as proposed by Attorney General Degnan, will have a severe and serious impact upon the ability of the small family type business operation to function as an economic entity in the area in which I reside and conduct my business.

The section of Morris County where our business is located has a network of roads catering to interstate traffic. With the development of Route 80, our business has decreased and percentagewise has not been able to keep pace with inflation and the general cost increases that we are obligated to operate with in order to serve the general public. Our section of this county is being overrun by shopping malls, many with prominent national names, many with tremendous financial backing. These same operators are dominating the business community and the economic conditions that now prevail are at a point where many small enterprises have gone out of business and even many large commercial operators, too, have collapsed.

One section of the Attorney General's Task Force report, I feel he did not cover, is the cost of doing business in relation to the deregulation guidelines which he feels are sufficient to operate with both stability and economically sufficient financial remuneration. With this, I disagree. Any area west of Dover is economically depressed and with the rate businesses are turning over or closing down and family operated establishments are being sold or closing down due to the lack of cash-flow needed to operate as a licensee, it has had a severe impact upon the ability of the small businessman to operate competitively against the malls and chain-store operators.

An example: within a ten-mile radius of our place of business, there are approximately 20 shopping centers. Of these, most have large supermarkets or franchised chain stores who have financial backing, waiting for the opportunity to devour the promiscuous liquor license and add to their already vast variety of competitive merchandise offered to the general public to further encroach upon the "Mamma and Poppa" operation, therefore making it harder to exist as an economic entity. In fact, during the month of April of this year, the Township of Rockaway had a resolution passed stating their opposition to deregulation and its adverse effect on the economic climate of our area and the impact it would have on the small businessman who is presently located in this vicinity of Morris County, whom they feel is the backbone of the financial stability of the community and local government.

If it would please this Committee, I have a copy of this resolution passed by the Township of Rockaway which you can have for the record. (See page 2X for resolution.)

My business records show that only just a few years ago, my bar receipts were approximately six times more than my package goods sales; through the years, the trend has reversed itself to a point where my package good receipts at the present time are almost double my bar business. The point I wish to emphasize is that through the increased cost of doing business, higher taxes, inflation, increased minimum wage rate, continuous increased food costs, increased insurance premiums, utility charges and basic operating costs in general, it is virtually impossible for the small business establishment to operate on a zero to 1 percent markup at the present day market structure, as is proposed by the Attorney General. It is difficult enough to operate on a 10 to 20 percent markup at the present time. How then can one operate a business on a zero to 1 percent margin of profit and still stay in business? Inflation alone is averaging over 10 percent annually. Insurance costs increase approximately 25 to 30 percent annually and utility costs are surging at a pace beyond operating incomes, and taxes continually spiral upward. Heaven help the licensee who tries to operate a business in the vicinity of a shopping

mall and tries to advertise and compete against a large chain store operator who draws the bulk of his people into his area through multi-full-page advertisements, at discount prices, besides having governmental assistance through supplemental access of an arterial network of road improvement all done at taxpayers' expense.

As an average operating C-Licensee, I submit to the board some of the current fixed basic operating license fees and taxes that I must absorb before I open my door for business. This consists of some ten different license fees and taxes and thirteen additional fixed costs. Some of these are as follows: municipal property taxes, \$3,073; municipal liquor license, \$500; New Jersey ABC filing fee, \$50; federal retail liquor dealers' license fee, \$54; municipal food and drink license, \$25; New Jersey cigarette vending machine license, \$5; ASCAP license, \$52.50. These are on an annual basis. In addition to this, I pay a New Jersey unincorporated business tax, New Jersey personal property tax, New Jersey motor vehicle auto registration and driver's license. Added to this list are the fixed basic operating expense items, not including wages, merchandise and inventory.

Also to be added to this, should it take effect, is Senator Perskie's Bill 3010, which would add another \$50 license fee upon anyone who has a 5 percent or more interest in a business or earns more than \$30,000 in income or is an officer or executive of a firm involved in a liquor license, in addition to whomever the Commission may feel should be licensed. We are paying taxes on top of taxes and license fees on top of license fees.

I, for one, do not see where decontrol of the retail price of liquor is going to show an increase in the demand for liquor purchases from commuters and out-of-state buyers to offset the lower prices as proposed in the Task Force report, especially the statement on page 56 of the Task Force report where, and I quote, "In spite of increased sales volume generated by lower prices, it is likely that the end of RPM will mean reduced profits for liquor retailers. In general, this should not be grounds for concern." In lieu of what I have stated about the economics of the area where our business is located, I ask you to show me where in our section of the State we will be the recipients of any increased commuter business and not be concerned about the loss of profit margin.

Being in business over thirty years, trying to support my community, pay my taxes, operate a business establishment, raise a family and try to maintain a good credit rating, deregulation will not only take away the incentive to operate an established respected business, but it will deter the incentive to stay in business trying to operate for a profit while trying to earn enough to pay my fair share to the government. It will also jeopardize my lifetime investment which will be my only source of security towards retirement in my aging years. I ask you: To whom could you interest in buying a dying horse? Is that what I am entitled to look forward to for my future years? Any threat of financial security that lessens the value of a licensed premises, that in itself does not enhance the economic value, is a threat to the financial stability of the local, state and national government.

In our area, we have Picatinny Arsenal, a government installation located in Dover, which has its own lavish golf course, officers' club and enlisted men's club, which are open to the public for catered affairs to all types of social functions. This operation competes against legitimate licensed paying establishments on an unfair economic basis. Why then does not the Attorney General investigate this type of competition? This government-owned operation has tax-free

liquor, taxpayer employed help and governmental financed funded facilities that operate with abused club privileges against the tax-paying small businessman.

Deregulation and its credit regulations as proposed will have a severe financial impact on operating a small business. When a retailer must purchase a minimum dollar value order just to get delivery, how can one afford to stay in business by becoming a warehouse storage outlet for the wholesale distributors when too much of one's money is being tied up in unnecessary inventory, yet, find the financial resources to pay his bills within the thirty-day limit, as specified by law? This credit regulation will cause all too many small business establishments undue and severe financial hardship and it will force many licensees of marginal operations to go out of business. In fact, in our rural area, how can a person with a seasonal license obtain the necessary finances to operate a business for only six months of the year? If they too should fold up, who then is going to serve the public needs in these affected areas?

Governor Byrne in his speech to the Legislature in January of this year stated: "Let us be mindful that the government belongs to the people, and we are merely their custodians."

An orderly market of minimum pricing has served the people of New Jersey very well for the past forty years. I do not feel the proposed deregulation is going to improve the economic stability nor enhance the commerce of this State of New Jersey. If anything, it will only have an adverse effect. In the long run, the big loser will be the State of New Jersey. To be successful, we need people, we need money, and, most of all, we need business. Deregulation has not shown that it will fulfill these requirements in its entirety. I thank you.

ASSEMBLYMAN BATE: There are five more speakers: Herman Keen, Curtis Bowman, Nick DeNova, Eleanor Bosca and Barry Goldberg. Is there anyone else who wishes to speak? I am going to ask, for the remainder of the hearing, if you have a written statement, that you summarize it in order to save time.

We will now take a five-minute recess.

(Five-minute Recess)

ASSEMBLYMAN BATE: I will call the hearing back to order. Eleanor Bosca has advised the Committee that she will submit a statement in writing and Barry Goldberg will do likewise.

Our next witness will be Herman Keen.

H E R M A N K E E N: Assemblyman Bate and Assemblyman Kern, thank you for the opportunity to speak.

My name is Herman Keen. I operate a business in Newark. I am at present President of the Newark Tavern Owners Association.

For 18 years, I have been located in Newark on Central Avenue and I operate a family-run tavern. It has become increasingly difficult to make a living in the tavern business. There are many reasons for this: the unsafe streets, the high cost of operating and the fact that most of the taverns have high mortgages. The profits are very, very low under the present setup. Twenty-five percent of all the taverns in Newark are on default. They cannot pay their bills. It would be tragic to end fair trade in a market that is already struggling. Eliminating fair trade will cause many of the small retailers to go out of business. And, along with the closing, will be the loss of many job.

We certainly hope that the legislature will adopt laws that will protect the small retailers. Thank you very much. (Applause.)

ASSEMBLYMAN BATE: Thank you very much.

Curtis Bowman, a Newark retailer.

C U R T I S B O W M A N: Assemblyman Bate, and members of the Committee, my name is Curtis Bowman. I am the owner of the Red Lamp Lounge and Liquor store. I have a broad "C" license which entitles me to have a bar and a liquor store. I have been in the business for five years, and I have a mortgage on my business, plus I have a mortgage on my house. And, at the present time I operate both businesses with my brother and my son and daughter. My daughter is on a part-time basis because she is in school.

We work very hard ourselves together to try to keep our bills down, without hiring extra help. We manage to pay our bills and mortgage payments, but by no means can we afford any luxury items. I read about your regulation of liquor prices, and what it is supposed to do. Some say it is good, and some say it is bad. As far as I am concerned, it is bad.

If deregulation of liquor should become a law, I see no way myself we can get ahead. All my savings which was invested in my business would go down the drain. My reasons for saying this is, where I am located, my competitor is a member of a chain store operation. With their large quantities and bulk buying, and pricing of merchandise, it would eliminate my store as a competitor. This will force me to close my liquor store and thus eliminate members of my family. Without the operation of the liquor store, I would have trouble meeting my mortgage payments; my bar business cannot carry the load of paying my mortgage, and I wouldn't have the need for my family and so forth.

A family operation is what I have, and it is an asset because I do not have to pay them overtime and so forth. I am not only speaking for myself, but I am speaking for any small businessman that has the same situation that I have. Deregulation will only help the large liquor chains and the large liquor stores, but at the expense of a small owner like myself.

I would like to really thank this Committee for allowing me to speak today, and I hope some kind of consideration will be given to this. Thank you. (Applause)

ASSEMBLYMAN BATE: Nicholas De Nova will be the last speaker today. He is with the New Jersey Package Store Association.

N I C H O L A S D E N O V A: Good afternoon, gentlemen. I want to thank you for giving us this opportunity to say a few words on behalf of the industry. My name is Nicholas De Nova, and I am President of the New Jersey Package Store Association. We are the only package store association in the State of New Jersey. We don't represent taverns, salesmen, wholesalers, or any other group.

My business is a totally family run concern. We have been running a family business for thirty-five years, and we have been in the retail liquor business for the past fifteen. We have had three generations of De Novas that work in our store, through the combined efforts of my mother, my father, myself. We operate a six day a week business from seven in the morning until ten in the evening. We spend another ten or fifteen hours a week on bookkeeping, when the store isn't open. It is long hours, hard work, and a stringent return on our investment.

Most of the members of my association probably could tell you a similar tale. What we are faced with right now is a complete uncertainty that could wipe out our live savings and our investments. If it were our association's position, we would like it to stay the way it was before January 2nd. We feel very strongly that this should not be in the hands of one individual to have the balance of this industry at their hands, that they can strike it out and do what they want

with it at the stroke of a pen. January 2nd many new proposals came forth, and they shattered a lot of dreams. They were in complete disagreement with the industry.

I have to agree with some of the gentlemen that spoke today, but I am in disagreement with some of their figures. The Attorney General says 3% to 8%. We have heard a figure of as high as 20%. Gentlemen, I would say 30% to 40% of the package stores and taverns may go out of business if this goes into effect.

We have a very large default list in the State of New Jersey with people that can't meet their bills under the present system. The loss of the Mom and Pop store, no matter what bracket it falls in, will definitely have a great economic impact on the State and the cities of New Jersey. Every one of us here has a Mom and Pop. If a Mom and Pop are in the sixty year old bracket and have hopes of retiring, this has completely shattered their lifelong dreams and they could become a burden to the State. If Mom and Pop falls between the ages of forty and fifty, their dreams of getting their children through college and getting their mortgage paid on their homes or owning their business free and clear so they don't have to be dependent upon anyone, will be shattered also. They fear you will turn their dreams into nightmares. If Mom and Pop is in the twenty to forty year old bracket, they have just saved enough to have bought their own business, their own home, and they are faced with large mortgages on both, and raising small children are also facing the shattering of a dream. I don't care where the store is located, or if they are doing \$100,000 or \$500,000 worth of business, a lot of them are faced with heavy bills, heavy mortgage payments, everyone of them. Everyone thinks that the smaller stores are the ones that are going to go out of business. Everyone has a right to their uncertainty, because these fears that have come up with these two proposals, regulations, deregulation--- I don't know what to say. They have left us in a chaotic condition of uncertainty.

As was said before, I don't think there is one package store that has changed hands since January 2nd. No one here dares to get into the business. I wouldn't want to see anyone have to be dependent upon the State, whether it be a salesman, a package store owner, or the boy down the street that is working as a part-time clerk in a liquor store. I don't want to lose one percent of the retail package stores in the State of New Jersey.

As stated in the Task Force report, only the marginal operators will be hurt. But, even the marginal operator is not a burden to the State or the cities right now. He is still existing and he is still managing. R. S. 33 states prices should be kept at a level not to induce drinking, yet, in the last couple of weeks, months, we have seen groups advertise prices in the newspaper of one point seventy-five liters Vodka for the price of \$6.98, which they claim they are selling for a penny over cost. I believe this is to induce people to buy and drink.

Now, we have another chain that came out this past week, also, with the same type of advertising, at a \$6.48 price for a one point seventy-five liter. I believe this is to induce people to come in and buy their product and drink. The Task Force report just tipped the iceberg when they got into the irregularities of the liquor industry. That happened with the restaurants; it didn't happen with the small Mom and Pop taverns, and it didn't happen with the small Mom and Pop package stores. I think this has been all brought out by that.

I would ask you as legislators to please - with all the compassion that you may find - stop this kind of chaotic condition that can exist under these new regulations. If the Attorney General or Mr. O'Keefe has any idea on how to go along with a mark up, I myself as President submitted one to them, which was

completely disregarded. They can go along with the Federal guidelines, what it takes to remain in business in this country today, and they claim it is a 23% profit structure with an inflation factor. We can go along those fields, and I believe we can save the marginal operator and the Mom and Pop store, and the Mom and Pop tavern. The restaurant chain that caused this problem, they are not regulated, anyway. They can sell their product at any price they want to sell it.

So, gentlemen, we are asking you, as you study this, if you see anything in these new regulations or old regulations that you like to save your constituents of your area, or save the constituents of the State of New Jersey, please, act, make it law, so we won't have to live under the uncertainty of one gentleman coming in and with the stroke of a pen wipe out our life long ambitions. Thank you for your considerations. (Applause)

ASSEMBLYMAN BATE: There being no further testimony, we will resume the Subcommittee hearings at Glassboro State College on Thursday at 10 A. M. Thank you very much.

(HEARING CONCLUDED)



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

RICHARD VAN WAGNER
ASSEMBLYMAN, DISTRICT 12 (MONMOUTH MIDDLESEX)
169 STATE HWY. NO. 36
BELFORD, N. J. 07718
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May 25, 1979

Mr. Joseph Matzner, Publisher
Beverage Retailer Weekly
1661 Route 23
P.O. Box 283
Wayne, N. J. 07470

Dear Mr. Matzner:

Certain articles appeared recently in your publication relative to a legislative proposal that I had advanced in light of attempts to deregulate the liquor industry.

As a backdrop to this proposal, several questions had been raised during recent deliberations by the Joint Appropriations Sub-Committee on Revenues, of which I am Chairman, as to the fiscal impact of the proposal to deregulate. Since I am not a proponent of deregulation, I had indicated from my perspective as Chairman of the Assembly Committee on Taxation that either the Legislature, the Executive, or the Judiciary would have to construct a way to replace the loss of \$56,000,000.00 in revenues to the state. When one considers that approximately 56% of state revenues are used for local and county assistance in order to relieve local expenses, the loss of \$56,000,000 in state income would seriously hurt the ability of the state to fund many of those assistance programs.

At about that time, Mr. Allan Marcus who is representing the New Jersey Liquor Retailers' Legislative Action Committee, advanced the concepts of a lower retail gross receipts tax to head off the possibility of a state-imposed 5% tax on gross receipts or sales. Since I am an opponent of deregulation, I suggested, and Mr. Marcus concurred, that the language "Only if deregulation takes place will this bill take effect," be included. I also indicated at that time that I would discuss counter proposals so that the consuming public could have a full view of the economic effect of deregulation not only on the industry but also on the pricing of alcoholic beverages.

As Chairman of both the Sub-Committee and the Taxation Committee I seek only to replace funds which could not be collected if there is deregulation. The structure to be utilized must be fair and equitable to the entire retail liquor industry. The proposal suggested by Mr. Marcus meets these criteria.

I personally hope that in introducing this tax proposal public dialogue can continue on this issue not only for my benefit but for the benefit of the industry, the consuming public, and the state. The articles you published reflected inaccuracies as to the motivation in advancing this proposal. I appreciate this opportunity to clear that record.

Sincerely yours,

Richard Van Wagner
ASSEMBLYMAN

RVW/da

1X

TOWNSHIP OF ROCKAWAY

R E S O L U T I O N

RESOLUTION IN OPPOSITION TO RETAIL LIQUOR PRICE DECONTROL

WHEREAS, the State of New Jersey has determined that retail liquor prices are to be decontrolled, and the present regulatory practice of maintaining minimum prices is to be eliminated; and

WHEREAS, the Township Council of the Township of Rockaway has considered said actions; and

WHEREAS, the Township Council of the Township of Rockaway is particularly concerned about the effect of said actions upon small retail liquor stores;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Rockaway, as follows:

1. That the Township Council of the Township of Rockaway is opposed to the recent deregulation of liquor price controls in that the same is likely to eliminate small retail stores as vendors of liquor in the State of New Jersey, and particularly in the Township of Rockaway.

2. That the elimination of such small retail liquor stores will be a disservice to the State of New Jersey and the Township of Rockaway in that these stores generally carefully observe rules and regulations relating to the sale of liquor and represent a valuable addition to the Rockaway Township and New Jersey community - the small retailer.

3. That a copy of this resolution be directed to the Governor of the State of New Jersey, Attorney General John Degnan, and New Jersey State Senators and Assembly Members representing portions of Morris County.

I HEREBY CERTIFY the above to be a true copy of a resolution adopted by the Township Council of the Township of Rockaway at a duly convened meeting held on 1979.

EVELYN K. MORAN, Township Clerk

[illegible]

