Hard Times, Hard Liquor, and Hard Luck: Selective Enforcement of Prohibition in North Florida, 1928-1933

John J. Guthrie, Jr.

HARD TIMES, HARD LIQUOR, AND HARD LUCK: SELECTIVE ENFORCEMENT OF PROHIBITION IN NORTH FLORIDA, 1928-1933

by JOHN J. GUTHRIE, JR.

A recent body of scholarly literature has extensively studied moonshining and the enforcement of federal liquor laws.[1] Focusing mainly on the post-Reconstruction mountain South, historians have portrayed moonshiners as traditionalists who resisted federal liquor laws in order to "preserve a way of life that was being threatened by the centralizing forces then shaping America."[2] In one encompassing study, for example, Wilbur R. Miller raised the question: "What are the conditions under which unpopular laws can be enforced, and what are the limits of their enforcement?" After investigating this matter, Miller found that the universal hostility of Democratic state officials to federal authority posed one of the most serious difficulties that revenuers confronted in the mountain South. Yet such obstructionism, Miller concluded, failed to prevent the development and completion of "an administrative apparatus capable of penetrating all parts of the nation's territory."[3]

John J. Guthrie, Jr., is instructor of social science, Daytona Beach Community College. The author wishes to thank Mary Ann Hawkins at the Federal Records Center, East Point, Georgia, and Kermit L. Hall.

1. William F. Holmes, "Moonshining and Collective Violence: Georgia, 1889-1895," *Journal of American History* 67 (December 1980), 589-611; idem, "Moon shiners and Whitecaps in Alabama, 1893," *Alabama Review* 24 (January 1981), 31-49; Wilbur R. Miller, *Revenuers & Moonshiners: Enforcing Federal Liquor Law in the Mountain South, 1865-1900* (Chapel Hill, 1991); idem, "The Revenue: Federal Law Enforcement in the Mountain South, 1870-1900," *Journal of Southern History* 55 (May 1989), 195-216; Stephen Cresswell, *Mormons & Cowboys, Moonshiners & Klansmen: Federal Law Enforcement in the South and West, 1870-1893* (Tuscaloosa, 1991). Other related works include Rayman L. Solomon, "Regulating the Regulators: Prohibition Enforcement in the Seventh Circuit," in *Law, Alcohol, and Order: Perspectives on National Prohibition,* ed. David E. Kyvig (Westport, CT, 1983), 81-96; John F. Padgett, "Plea Bargaining and Prohibition in the Federal Courts, 1908-1934," *Law and Society Review* 24 (1990), 413-50.
2. Holmes, "Moonshining and Collective Violence," 610.
3. Miller, *Revenuers & Moonshiners,* 4, 108-09.

Although historians have done much to illuminate the execution and resistance to federal liquor laws in southern Appalachia, their work all but ignores moonshining and prohibition enforcement in the lowland South during the Great Depression. To help remedy this gap, this article tests the scope of national power during the "Noble Experiment" by focusing on the Bureau of Prohibition's effort to enforce the Volstead Act in north Florida between 1928 and 1933.[4] Based primarily on court records, the following elucidates the world of the Florida moonshiner and sheds new light on the impact that prohibition had on state and federal courts.[5] In doing so, it shows clearly that national prohibition enforcement fell disproportionately upon persons who ranked near the bottom of Florida society.[6]

By the late 1920s the Bureau of Prohibition confronted a dilemma. With public support for national prohibition waning, the repeal of the Eighteenth Amendment seemed almost certain. What is more, agents knew that they had a vested interest in the Eighteenth Amendment and had much to lose by its repeal.[7] To show the efficiency of the department and to demonstrate that lawlessness had reached epidemic proportions, agents picked up the tempo of arrests and brought in as many violators as possible. As this drama unfolded, federal agents preyed

4. For temperance and prohibition in Florida, see Frank Alduino, "The Noble Experiment in Tampa: A Study in Prohibition in Urban America," (Ph.D. diss., Florida State University, 1989); Paul S. George, "Bootleggers, Prohibitionists and Police: The Temperance Movement in Miami, 1896-1920," *Tequesta* 39 (1979), 3-41; John J. Guthrie, Jr., "The Florida Supreme Court and the Intoxicating Liquor Laws: From Local Option to National Prohibition, 1885-1920," *Georgia Journal of Southern Legal History* 3 (Spring/Summer 1993), 99-137.
5. This article will also help shift the focus of legal history from the North to the South. For a probing analysis of this issue, see Paul Finkelman, "Exploring Southern Legal History." *North Carolina Law Review* 64 (1985), 77-86.
6. For the purposes of this article, "lower ranks" refers to anyone whose personal assets were less than or equal to $900.00. That members of the "lower ranks" bore the brunt of prohibition enforcement remains consistent with the findings of related works. According to Holmes, "One of the most striking characteristics of the whitecaps was that more of them came from a class owning less than $200 in land." In short, "Moonshining was practiced chiefly by small farmers who ranked near the bottom of the economic system." See Holmes, "Moonshining and Collective Violence," 598.
7. For a complete discussion of repeal see David E. Kyvig, *Repealing National Prohibition* (Chicago, 1979).

An illegal whiskey still near Tampa after a 1920 raid. *Photograph reproduced from Charlton W. Tebeau, A History of Florida (Coral Gables, 1971).*

mainly on easy targets such as small-time moonshiners and destitute dealers who possessed little knowledge of the legal system and whose stills contributed a mere trickle to the river of liquor production in the state. In short, federal agents proved adept at apprehending small-time moonshiners and logged an impressive number of arrests but failed "to carry out the sophisticated undercover work needed to dry up the source of supply."[8]

In 1928 the U.S. Senate introduced a bill calling for the addition of a third judge to the Southern District of Florida. According to Senator Duncan U. Fletcher, the bill's chief sponsor, Florida's overloaded dockets required federal judges from other jurisdictions to venture south to help clear the judicial backlog. Since 2,809 cases remained pending for the Southern District as of August 4, 1927, judges and other officials backed Fletcher's idea. The Department of Justice also supported the

8. Dorothy M. Brown, *Mabel Walker Willebrandt: A Study of Power, Loyalty, and Law* (Knoxville, 1984), 53. Brown contends that Mabel Walker Willebrandt had reformed the Bureau, making it far more professional. The Florida record suggests that problems plaguing the Bureau in 1925 still existed as late as 1932.

proposal, and Chief Justice William H. Taft, who originally opposed the plan, gave his endorsement on March 23, 1928. Noting that the Southern District extended a distance of 520 miles from Florida's northern boundary to Key West, the chief justice realized that the expansive coastline provided "convenient hiding and landing places for smugglers and rumrunners."[9]

The amount of business transacted by the federal courts in Florida during the 1920s warranted Taft's change of opinion. National prohibition, coupled with the state's rapid population increase, had spawned a massive amount of litigation that overwhelmed both federal judicial districts in Florida. In 1921 the courts of the Southern District settled 551 criminal prosecutions, including 463 federal liquor violations. The Northern District closed 164 criminal prosecutions, including 121 liquor cases. In 1928 the southern courts disposed of 1,319 criminal prosecutions, 85 percent of which concerned federal liquor laws. Figures for the Northern District in the same year had increased to 210 and 191 respectively.[10]

Although federal court dockets swelled during the waning years of the "Noble Experiment," the number of prohibition cases heard in Florida's supreme and lower courts declined. Several reasons help explain the drop in litigation in these tribunals.

9. United States Congress, House Committee on the Judiciary, *Additional Judge in Florida,* 70th cong., 1st sess., May 24, 1928 (Washington, 1928), 1859.

10. Data compiled from *Report of The Attorney General,* 1915-1934. Because the Southern District encompassed the state's fastest growing region and, as Taft noted, the area most conducive to smuggling, prohibition's impact on that district proved more profound than on the northern jurisdiction. Between 1920 and 1930, for example, the Northern District's population grew only 13 percent, from 291,243 persons to 329,260. The Southern District, during the same period, realized a 68 percent population increase, adding 461,724 people to the 677,227 counted in 1920. One should bear in mind, however, that the number of cases cited plus the percentage of total criminal prosecutions that they represent are both overstated. As John F. Padgett has noted: "Before 1922, charges were classified by legal charge; after 1922, charges were aggregated into administrative categories. In particular, Volstead Act liquor cases were included in 'Public Health and Safety' along with internal revenue liquor cases, narcotics cases, white slavery (i.e., prostitution) cases, peonage cases, and a few others." Despite this aggregation of statistics, Padgett claims that prohibition cases consistently comprised roughly 90 percent of the category "Public Health and Safety." For the purposes of this article, "Public Health and Safety" crimes will serve as a safe approximation for liquor cases. See Padgett, "Plea Bargaining and Prohibition," 418.

Revenue shortfalls precipitated a fiscal crisis for all levels of Florida government, which in turn prompted many state and local officials to pass responsibility for prohibition enforcement to their federal counterparts. As the debt of counties, cities, and other political districts expanded from $100 million in 1922 to $600 million in 1929, local authorities saw little justification to fund and/or duplicate services that federal agencies provided concurrently.[11]

By 1931 the state's financial pinch had become so bleak that Governor Doyle E. Carlton proposed an austerity program to save Florida's precious dollars "by reducing the number of circuit courts, using grand juries in fewer cases, [and by] reducing the number of county offices and the salaries associated with them."[12] Faced with budgetary problems of unprecedented proportions, prohibition enforcement became a luxury that most Florida communities could ill-afford.

Not surprisingly, county grand juries reduced the number of indictments issued for transgressions against the liquor laws. A still smaller number of cases ended in conviction. According to one study, during the period 1929-1933, the Hernando County Circuit Court failed to convict anyone for violating national prohibition.[13] The state and local criminal justice systems had essentially diverted the flood of prohibition litigation to the federal courts.

Budget deficits aside, other factors also contributed to the federal judicial logjam. Some writers have contended that the tepid support for prohibition by regional officials stemmed from political concerns rather than economics. According to a contemporary account, after 1929 county sheriffs throughout the state willingly yielded to federal agents the burden of prohibition enforcement in order to avoid local political animosities. Or as Charlton Tebeau put it, "Local authorities proved indifferent if not outright hostile to enforcement."[14]

---

11. Charlton W. Tebeau, *A History of Florida* (Coral Gables, 1971), 394, 396.
12. Ibid.
13. Richard Cofer, "Bootleggers In The Backwoods: Prohibition and the Depression in Hernando County," *Tampa Bay History* 1 (Spring/Summer 1979), 17-23.
14. Frank Buckley, "Prohibition Survey Of Florida," in United States Senate, *National Commission on Law Observance and Enforcement*, 71st cong., 3rd sess. (Washington, 1931), 114-16; Tebeau, *History of Florida*, 390.

Based on a close reading of court records, however, it appears that Tebeau and others have overstated their case. Sufficient evidence exists to demonstrate that local authorities did cooperate with federal personnel. Although they might have seemed indifferent, local police provided at least passive support to federal agents. They supplied information about suspects, and on occasion they testified against local moonshiners in court.[15]

Regardless if police turned a blind eye, federal agents cast a discriminating eye at prohibition violations.[16] According to the reports of federal district attorneys, by 1930 "enforcement officers had filed stronger and better cases . . . and as a rule the courts [had] acted upon them accordingly."[17] This achievement stemmed in part from the Prohibition Bureau's "selection of agents more carefully [and] training them to a higher standard of legal knowledge." It also arose, however, from the bureau's objective "to bring to justice commercial violators . . . because [they could] be reached by the law directly, whereas the purely private violators [had] many constitutional and statutory protections."[18]

In using the phrase "commercial violators" the Bureau of Prohibition seemingly referred to large-scale operations such as those controlled by organized crime. But as it turned out in north Florida, agents defined "commercial violators" so broadly that virtually any person who produced spirits for domestic consumption or sold moonshine in amounts as small as a pint became a likely candidate for federal apprehension. Yet to simplify their task, these same agents narrowed the field of investigation by excluding from the pool of suspects the sort of people who best understood constitutional safeguards, who lived in relative economic comfort. and/or those who had earned substantial

15. For an example of local cooperation, see *U.S. v. Harry W. Grimsley and Moses Bell.* box 7. United States District Court, Northern District of Florida, Pensacola, January term, 1933, Federal Records Center, East Point, GA (hereinafter, FRC).
16. As early as 1921 Judge William B. Sheppard castigated prohibition officers "for combing the dockets of state courts in order to find violators of local liquor statutes and bring[ing] them into federal court on identical charges." Kermit L. Hall and Eric W. Rise, *From Local Courts to National Tribunals: The Federal District Courts of Florida, 1821-1990* (Brooklyn, 1991), 75.
17. *Report of the Attorney General* (Washington, 1930), 55.
18. *Report of the Attorney General* (Washington, 1932), 66.

profits from a rather extensive involvement in the liquor trade. Such tactics in north Florida, thus led prohibition officers to target suspects based on a high probability of securing a conviction. They generally went after small-time moonshiners who lived marginal lives, lacked strong community ties, and/or possessed limited knowledge of due process.

In the majority of arrests agents met little more than token resistance. The first and perhaps most obvious way a bootlegger could avoid detection was to hide the still in an inconspicuous setting such as a swamp. If that failed and federal agents caught moonshiners in the act of "plying their illicit trade," culprits either denied having an interest in the operation or confessed their crime and suffered the penalties.[19]

On some rare occasions, however, alleged moonshiners presumed an absolute right to privacy in the home and forcefully resisted a search of their premises. A few of these cases resulted in the death of the investigating officer.[20] Moonshiners who took the law into their hands may have assumed that local juries would acquit them, but this belief did not bear out in court. Florida judges, juries, and local citizens shared similar viewpoints regarding justifiable homicide and were generally unwilling to acquit individuals who killed or injured officers involved in liquor raids.[21]

---

19. In an important study of social change in Appalachia, Altina Waller revealed "a complexity not usually associated with Appalachian communities." Focusing on the well publicized and highly documented feud between the Hatfields and McCoys, Waller managed to forge links between moonshiners and local authorities. In so doing, she showed clearly that most moonshiners believed in a rule of law and that they "did not accept violence as part of the normal course of events." See Altina L. Waller, *Feud: Hatfields, McCoys, and Social Change in Appalachia, 1860-1900* (Chapel Hill, 1988), 38.

20. In ten years of prohibition enforcement in Florida, only nine federal agents died in the line of duty. See United States Congress, *Enforcement of the Prohibition Laws,* 157-58; 160-61.

21. Localism had little or no bearing on litigation involving homicides that stemmed from prohibition enforcement. Out of eleven cases instituted against federal officers for killing suspected violators of prohibition, coroner's juries dismissed eight as justifiable homicides. The remaining three tried in state courts ended in one acquittal, one conviction overturned in federal court, and one conviction upheld following a federal court's review. Clearly federal agents who killed civilians in Florida did not have to confront hostility from either judge or jury. See United States Congress, *Enforcement of the Prohibition Laws,* 181, 192, 196, 198, 200, 202, 208-09, 215.

In *Buchanan v. State* (1928) the Florida Supreme Court heard its first and only homicide case stemming from prohibition enforcement. A Taylor County jury had indicted and convicted moonshiner J. W. Buchanan of first-degree murder with recommendation of mercy and had sentenced him to life in the state prison. Claiming mistrial, Buchanan appealed to the high court.[22]

According to court reports, Buchanan and his wife shared a hardscrabble life in a four-room cottage about fourteen miles from Perry, Florida, in Taylor County. One December morning in 1926 Buchanan left his home to go on a deer hunt. Accompanied by companion D. W. Blue, Buchanan returned home at mid morning and asked his wife to prepare a lunch for the two men. As his wife made lunch, Buchanan noticed that two men in an automobile had arrived at his front gate. The driver, Jacob P. Brandt, sounded the car's horn, and Buchanan stepped out to meet his visitors. After brief introductions Buchanan invited Brandt and his partner Walter D. Mobray into the house. When the three men reached the front path, Buchanan told his guests to wait there while he informed his wife that they had company.[23]

At this point Buchanan's account conflicted with the prosecution's reconstruction. According to the government's version the two agents went to Buchanan's home "for the purpose of making a purchase of liquor, upon which to base the issuance of a search warrant." After stating their business Buchanan allegedly ran into his house, secured two guns, returned, and opened fire on both officers. Alarmed and wounded, Mobray tried to escape. He staggered a distance of about twenty-five feet before falling to the ground. Brandt fared no better. Buchanan first shot him with a pistol in the left shoulder. Then, as Brandt sought shelter under the house, Buchanan unloaded his shotgun on the helpless officer.[24]

22. *Buchanan v. State*, 95 Fla. 301 (1928). While more exceptional than typical, *Buchanan* spawned litigation that provides clues to the nature of prohibition enforcement in Florida. In addition to placing federal enforcers within their cultural and institutional contexts, an examination of this legal contest helps ground moonshiners within their local community.
23. Ibid., 303, 305-06.
24. Ibid. United States Congress, *Enforcement of the Prohibition Laws,* 160-61.

In his initial trial Buchanan claimed he had killed the officers in self defense. Despite many contradictions in statement and fact, Buchanan tried to reconstruct the events to justify the homicides.[25] He shot and killed Brandt because, as Buchanan put it, "he started to shoot me first and I had to shoot him for my own protection."[26]

Later testimony revealed the improbability of Buchanan's account. As the courtroom drama unfolded, Buchanan's chances for acquittal deteriorated. A sheriff, several neighbors, and his hunting companion Blue testified against Buchanan. His neighbor J. P. Jones claimed that a week prior to the shooting he had asked Buchanan "if he was not afraid to have whiskey in the house." In response, Buchanan boasted that "he would walk over anybody that went to search his place."[27]

Following his conviction in the lower court Buchanan appealed the decision to the state supreme court. The high court, however, found the original trial flawless. With this issue resolved, Buchanan still had to stand trial for killing agent Mobray. As expected, the second court drama replicated the first. A jury heard the same testimonies, arguments, and, after comparable deliberation, reached the same verdict. Buchanan again appealed his conviction claiming that the officers had unlawfully entered his home.[28]

The high court again found the appellant's position untenable. When the two men told Buchanan their business and he acknowledged, he in effect invited them to enter his home to search it. "This amounted," wrote Justice Armstead Brown, "to waiver of his right to demand the production of a legal search warrant and rendered the existence of such a warrant immaterial. It removed from the case the question of the lawfulness of their entry."[29]

Besides illuminating the selective nature of prohibition enforcement in north Florida, Buchanan is significant for another

25. Buchanan maintained that he had "returned the officers' fire when he ordered them not to enter a room where his wife was dressing." See *Gainesville Sun*, September 17, 1927.
26. *Buchanan v. State*, 304.
27. Ibid., 303-06.
28. Ibid., 309-11.
29. Ibid.

reason. The case shows clearly that neither the state courts nor the local community impeded the enforcement of federal law. The kind of state obstructionism that Miller and others have found elsewhere failed to occur in north Florida. In Buchanan's case, his peers and neighbors proved his harshest critics.[30]

Most arrests and/or investigations stemming from prohibition enforcement in Florida occurred without violence or bloodshed. The typical case, more often than not, arose from a citizen's complaint and invariably ended in a conviction. Of twenty-two cases examined by the author, approximately 91 percent resulted from a local citizen's discontent. In fact only one case in the entire sample stemmed from an investigation initiated by prohibition agents.

Although a multitude of factors prompted Floridians to inform on moonshiners, a few dominated. For instance, an irate customer denied credit by a former supplier may have evened the score by reporting the bootlegger to the authorities. And some moonshiners turned in competitors in order to divert suspicion from their operation and to capture a larger share of the liquor market. Still, others could have turned informant for highly personal reasons. A woman married to a man who consumed too much liquor may have felt compelled to eradicate the source of her family's woes by notifying the authorities of the source of her husband's whiskey.[31]

In one case, to illustrate, a group of Florida women met at their church and decided to put an end to a local bootlegger's business. Following through on the plan, one of them sent a

30. In his comparative study of federal law enforcement in the South and West between 1870 and 1893, Cresswell claimed that local resistance impeded the efforts of federal attorneys and marshals to enforce the nation's laws. But such efforts proved to no avail, he asserted, because the Justice Department, "often achieved a surprisingly strong record of enforcement of the nation's laws." See Cresswell, *Mormons & Cowboys, Moonshiners & Klansmen,* 16, 264.

31. One mountain moonshiner at the turn of the century, when asked who did the informing, provided a keen analysis. "Sometimes hit's some pizen old bum who's been refused credit. Sometimes hit's the wife or mother of some feller who's drinkin' too much." "Then again," he claimed, "hit may be some rival blockader who aims to cut off the other feller's trade, and divert suspicion from his own self." But in general "hit's jest somebody who has a gredge agin a blockader fer family reasons, and turns informer to git even." Quoted in Horace Kephart, *Our Southern Highlander* (New York, 1913; reprint, Knoxville, 1976), 171.

letter to a prohibition investigator and asked him "to search [the dealer's] house and be sure and search all of his property, for I understand that he has some buried." She mentioned also that the women of her church would "keep watch on his place." She refused to sign the letter, however, fearing: "He will know who done it, for he has said that I would report him, as he sells [liquor to] my husband and boys and I do not approve of it."[32]

After receiving this letter and other reports from neighbors that John P. Finley (the alleged liquor trafficker and a sixty-year-old paraplegic) had "stated on different occasions that the Court would not put him in jail as he was crippled," the officers considered him a community nuisance. Agents went to his grocery store and requested a bottle of beer. When Finley delivered the drink they immediately arrested the merchant as he sat in his wheelchair. The church women, who had wanted Finley's speakeasy shut down, could thus rest assured for they had purged the community of a perceived moral danger.[33]

Some Florida women, however, saw nothing immoral about dealing in alcoholic spirits. Prohibition investigators found 832 bottles of beer at the Crawfordsville home of Mrs. Lena M. Severance. Following her arrest the sixty-three-year-old housewife confessed owning the beer found at her home. As it turned out, she had been handling beer for about one and a half years due to her husband's poor health. "We would do nothing else to make a living." She countered, however: "I did not sell the beer. I sold cheese and crackers and gave the beer to drink with the sandwiches. . . . I have never been arrested for any violation of the National Prohibition Act."[34]

In light of the socioeconomic conditions that characterized the state in 1930, Severance and Finley probably had difficulty finding paying customers for their illicit product. Starting in 1929 per capita accountable income began a precipitous decline

32. *U.S. v. John P. Finley and Dan Moore,* box 7, United States District Court, Northern District of Florida, Talla hassee, August term, 1932, FRC.

33. Ibid. As it happened, the deputy prohibition administrator received numerous letters voicing similar concerns. One informer complained that several moonshiners "were bad violators and were ruining the homes of the women and children of Monticello." *U.S. v. Ralph M. Utley.* box 886, United States District Court, Northern District of Florida, Pensacola, October term, 1932, FRC.

34. *U.S. v. Mrs. Lena Severance,* box 7, United States District Court, Northern District of Florida, Pensacola, September term, 1933, FRC.

throughout the state. Dropping from $510 to $478 in 1930, it fell again in 1931 to $392.[35] Anecdotal evidence amplifies these numbers. In 1931 an attorney who filed a report on prohibition enforcement in Florida for the Wickersham Commission described the panhandle as "a countryside barren of anything but pine forests, a few large sawmills, and miserable unpainted neglected habitations." Concluding that life there proved "anything but gay," he implied that the region's abject poverty had led to many liquor transgressions that involved primarily the "manufacture and distribution of a cheap moonshine product in small quantities."[36]

As the Great Depression deepened, poverty in the panhandle worsened.[37] Pressed by mean circumstances, many hardscrabble farmers turned to moonshining to tide them through trying times.[38] Consequently, prohibition agents found such farmers vulnerable game. A still found by officers in a Taylor County swamp, for example, prompted the arrest in March 1932 of Josh McCall and Dave Padgett– two backwoods yeomen farmers and part-time moonshiners– on charges of manufacturing and possession. McCall, a forty-one-year-old widower with eight children to support, owned eighty acres of land on which he kept fifty hogs and four cows. Although his real estate and livestock had a combined value of $300, the farm proved inadequate to sustain his family. McCall, who claimed he had "never been arrested for anything before," turned to moonshining to supplement his family's meager income. Yet the distillery that McCall admitted owning produced little extra

35. Tebeau, *History of Florida,* 400-01.
36. Buckley, "Prohibition Survey of Florida," 108.
37. During the first quarter of 1933 "the number of Florida families on relief averaged about 90,000," or a little more than 20 percent of all households. By the end of the year the percentage of families receiving public assistance had increased to 26 percent of the total population. Although the proportion of families on relief varied from county to county, "almost one-third of the recipients . . . lived in rural areas and [in] towns under 500 people." See Tebeau, *History of Florida,* 399-400.
38. According to Kephart, "The immediate effect of prohibition was to put an enormous premium on illicit distilling." Therefore "farmers and others who never had before been able to make more than the barest subsistence, [then] saw a chance to get rich in a few months." Small wonder that "among a poverty-stricken class of mountaineers the temptation to run secret stills inflamed and spread." See Kephart, *Our Southern Highlanders,* 188.

cash. He stated, "Times are hard and there is not much sale for whiskey."[39]

Unlike McCall, Padgett insisted that he had nothing to do with the still. "I was not getting one penny from it. I had been in the woods looking after some hog trap pens that I had [put] there for the purpose of catching hogs to be marked." Deputy Prohibition Administrator J. B. Edwards remained unconvinced of Padgett's innocence and recommended that the government prosecute him along with McCall for violating the Volstead Act.[40]

Due to the severe dearth of money in the region, the local economy often regressed to a barter system. Realizing that the Volstead Act banned the sale of alcohol, another moonshiner, N. W. Padgett, contrived that he did not sell whiskey but instead claimed he used liquor as a commodity of exchange. Unswayed by this pseudolegal defense, in 1933 the federal court at Tallahassee convicted Padgett for possession and sentenced him to pay a $100 fine. Since Padgett had no money to pay the penalty, he spent thirty days in the Leon County jail.[41]

Although some violators, such as Padgett and McCall, managed to eke out a bare living, their deprivation proved relative when compared to the destitution of other less fortunate moonshiners. In Leon County in 1932, for example, Agent Clyde V.

39. *U.S. v. Josh McCall*, box 7, United States District Court, Northern District of Florida, Pensacola, March term, 1932, FRC. In 1930 the average Florida farm comprised 85.2 acres and had an estimated value of $7,175.54 at $84.22 per acre. In contrast, the national average equalled 157 acres worth $48.52 per acre, or $7,617.64. Although the size of McCall's farm fell just below the state mean, its given value ($300) represented only 4.1 percent of the value of a typical Florida farm. If McCall correctly stated the value of his property, he must have owned swampland or some other marginal-quality soil. For these and other agricultural statistics, see Bureau of the Census, *Fifteenth Census of the United States: Agriculture* (Washington, 1930). 60, 129, 455.

40. *U.S. v. Dave W. Padgett and Josh McCall*, box 7, United States District Court, Northern District of Florida, Tallahassee, March term, 1932, FRC. Two years earlier the Federal Court at Gainesville had convicted and fined Padgett $50.00 after the defendant pleaded guilty to possession. Past records notwithstanding, Padgett and other moonshiners who owned no land could rightly consider themselves farmers because parts of the Florida range remained open until 1949. Tebeau, *Histoy of Florida*, 382.

41. *U.S. v. N. W. Padgett*, box 7, United States District Court, Northern District of Florida, Tallahassee, January term, 1933, FRC.

Land paid $3.00 to Charlie J. Jacobs for a gallon of moonshine, put a twenty-five-cent deposit on the jug, and then arrested him for sale and possession. Jacobs, a forty-five-year-old, poverty-stricken white, had been living in the area for only three weeks. In his statement to the arresting officers, the Georgia transplant claimed he had moved to Florida in search of work. Finding no job offers there, Jacobs began selling "whiskey to negroes for fifty cents per pint." Although, he had considered escaping and returning to Georgia, Jacobs said "he changed his mind and decided to take his medicine." Owning no real or personal property, and uncertain about his future, a destitute Jacobs added: "The place where I live belongs to a negro woman who teaches school near Tallahassee. I do not know what her name is, she comes to the house and collects the rent– $3.75 per week."[42]

The illusion that moonshining would deliver easy money enticed many impoverished but otherwise law-abiding citizens to enter the illicit trade.[43] Such mistaken beliefs made these people not only ripe for exploitation by bootleggers but also easy targets for federal agents. For example, Levie Thomas, a tenant farmer arrested for operating a still, initially claimed that his patron, Ralph Casseaux, owned the distillery. Later, Thomas changed his story and claimed the still "belonged to me and no one else had an interest in [it]." Thomas said that he had operated the still for about two months and had produced fifty gallons of whiskey since he began the operation. If Thomas spoke the truth, his thirst for moonshine knew no reasonable limit. Thomas said, "I drank most of the whiskey that was made in the still and gave the balance to my friends." The prohibition investigators failed to consider seriously Thomas's confession and recommended that the government prosecute him.[44]

42. *U.S. v. Charlie J. Jacobs,* box 7, United States District Court, Northern District of Florida, Pensacola, March term, 1932, FRC.
43. Of course moonshining was not peculiar to either highland (Scotch-Irish) or lowland (cracker) southern culture. As Gary R. Mormino and George E. Pozzetta have noted, "Prohibition provided Italian immigrants, among others, with unforeseen opportunities to capitalize upon the public's disdain for the Volstead Act." In short, "marketing moonshine brought together economic opportunity and immigrant resolution." Gary R. Mormino and George E. Pozzetta, *The Immigrant World Of Ybor City: Italians and Their Latin Neighbors in Tampa, 1885-1985* (Urbana, 1987), 264.
44. *U.S. v. Levie Thomas.* box 7, United States District Court, Northern District of Florida, Tallahassee, July term, 1932, FRC.

In addition to underscoring the selective nature of federal prohibition enforcement, some cases reveal the ubiquitous tension that has characterized race relations in Florida. After uncovering a white man's stock of moonshine stored in a shack where a poor black named William M. Riley had lived, federal agents arrested the African American. Subsequently, a frightened Riley gave anxious and somewhat inconsistent testimony. "The whiskey that the officers got out of the house was mine. I rented the place from Mr. Davis and I pay him $1.00 per month for rent. I do not want to tell on the white folks, as they would kill me. I did not put the whiskey in the house. A white man brought it from Taylor County. He left it there until he could come and get it."[45]

Yet, unlike Riley, some poor black moonshiners possessed considerable entrepreneurial talent, enabling them to set up their own operations and compete confidently with whites in the illicit liquor trade. These enterprising African Americans did not intimidate easily. When caught and prosecuted, they rarely cowered before the white-dominated criminal justice system, and they often pleaded innocent.

In *U.S. v. Samuel Kilpatrick* (1932), for instance, prohibition officers arrested Samuel Kilpatrick, a twenty-five-year-old African American, on charges of manufacturing liquor. The agents discovered twelve fifty-gallon fermenters, three hundred gallons of rye, and some cane sugar mash (but no still) in an open swamp in Wakulla County. After seizing and destroying the contraband, the officers followed a well traveled path approximately three hundred yards from the place of operation and found the missing still in a ditch to the side of the path. Agents continued along the trail until they reached a shack that appeared vacant. Without warrants they entered the house through the back door and found Kilpatrick asleep on a cot in a corner. On the floor next to the cot the officers noticed the cap of the still and promptly arrested Kilpatrick. When they asked him if the cap belonged to the still they had just seized,

45. *U.S. v. Frank Kinsey, William Riley, Charlie R. Hancock, and Homer Faglie, box* 7, United States District Court, Northern District of Florida, Tallahassee, October term, 1932, FRC.

Kilpatrick remained calm. He fitted the cap on the still but denied "knowing that the distillery was back in the swamp."[46]

On March 5, 1934, almost three years after his initial arrest, Kilpatrick finally had his day in court. Federal judge William B. Sheppard issued a general order that disposed of Kilpatrick's and seventeen other prohibition cases pending in the Tallahassee district court. "It appearing to the Court that the Eighteenth Amendment to the Constitution of the United States has been repealed," Sheppard wrote, "and [because] no power is left in this court to impose judgment in said cases, it is thereupon ORDERED AND ADJUDGED that each and every one of the styled causes be and are hereby separately and severally dismissed."[47]

With ratification of the Twenty-First Amendment national prohibition had come to an end.[48] The nation, as some texts imply, had returned to its senses by abandoning its experiment in national social control. From this viewpoint, repeal had become necessary because prohibition was unenforceable.[49] But when viewed from the vantage point of north Florida, prohibition enforcement takes on a new light. For example, a rough analysis of data gleaned from the case files of twenty-two moonshiners tried in the Northern District indicates that the average north Florida moonshiner usually plied his trade with one or two assistants and owned personal property valued at $878.03. Yet if one excludes the five wealthiest violators from the sample, average net worth for each moonshiner falls to $74.50. Although these estimates remain more suggestive than conclusive

---

46. *U.S. v. Samuel Kilpatrick,* box 46, United States District Court, Northern District of Florida, Tallahassee, January term, 1932, FRC.
47. *U.S. v. Samuel Kilpatrick, Livingston Jarvis, et. al.,* found in *U.S. v. Leo G. Carraway,* box 7, United States District Court, Northern District of Florida, Tallahassee, July term, 1932, FRC. In *Clark v. U.S.*, 69 F.2d. 258 (1934) a federal circuit court ruled that repeal of the Eighteenth Amendment invalidated all convictions for unlawfully transporting intoxicating liquor.
48. The United States Supreme Court initially interpreted the Twenty-First Amendment in a manner that bestowed upon states absolute power to restrict and/or regulate intoxicating liquors within their borders. See David S. Versfis, "The Effect of the Twenty-First Amendment on State Authority to Control Intoxicating Liquors," *Columbia Law Review* 75 (1975), 1578-1610.
49. For a concise interpretation that stresses the failure of prohibition see Paul S. Boyer, et. al., *The Enduring Vision: A History of the American People,* 2 vols., 2nd ed. (Lexington, 1993), II, 827-28.

and should be used with caution, they suggest that prohibition enforcement in north Florida fell unfairly upon poor people largely because federal agents practiced selective enforcement.[50]

Moreover, this selective approach assured that prohibition cases instituted by federal agents ended in high conviction rates. The bureau's agents initiated primarily open-and-shut cases in which the defendant's guilt, if not admitted, was usually a predetermined factor, leaving little room for legal contests in the courtroom. This helps to explain why federal prosecutors in the Northern District improved their conviction rates from 65 percent in 1928 to a high of 89 percent in 1932.[51] Plea bargaining, however, provides a second cause– and relates directly to the first– for the district's high conviction rates between 1928 and 1932.[52] In 1931, to illustrate, defendants pleaded guilty in 80 percent of liquor prosecutions tried in Northern District courts.[53] The rather widespread use of plea bargaining in federal courts during prohibition was, in part, "a consequence of professionalization– professionalization of police, professionalization of trials, and professionalization of legal training."[54] Plea bargaining was also a consequence of enforcement. Many alleged liquor violators suffered personally due to the failed economy. Beaten, bedraggled, and perhaps fatalistic, this lot– and many other Americans who suffered in the 1930s– blamed themselves for their hardships. Small wonder that when men and women took to moonshining and got caught, they submitted with dignity and pleaded guilty to preserve what little self esteem they had left.

---

50. Of this sample, at the time of arrest, the average moonshiner possessed 5.1 gallons of whiskey. In his analysis of mountain moonshiners, Kephart claimed that in larger operations "the owner himself may not actively engage in the work, but may furnish the capital and hire confederates to do distilling for him, so that personally he shuns the appearance of evil." *Our Southern Highlanders,* 105.
51. Data compiled from *Report of the Attorney General* (Washington, 1919- 1934). A closer look at this data show that between 1920 and 1928 the Northern District's rate of conviction averaged 68 percent. Between 1929 and 1932, however, the same courts raised their conviction rate average to 86 percent.
52. Judge Sheppard, one of prohibition's harshest critics, "adhered to the technical requirements of the Volstead Act but employed a variety of procedural devices, especially plea bargaining to mitigate harsh penalties." See Hall and Rise, *From Local Courts to National Tribunals,* 60, 75.
53. Data from *Report of the Attorney General* (Washington, 1919-1934).
54. See Padgett, "Plea Bargaining and Prohibition," 449.

Moonshiners became less submissive, however, as repeal of prohibition became more certain. Their new-found confidence, coupled with a change in attitude by juries and judges, helps explain the marked drop in conviction rates for 1933. In other words, with repeal appearing imminent, neither judges nor juries felt much obligation to convict a person for violating a moribund law. Perhaps equally significant, defendants, anticipating the inevitable repeal of the Eighteenth Amendment, became less inclined to plead guilty.

Furthermore, raising the Volstead Act's standard of intoxication to 3.2 percent alcohol, provides a crucial reason for the diminished number of liquor cases instituted during 1933. Because the new standard permitted sale of near beer after April 1933, the pool of potential violators probably subsided.[55] It is possible that erstwhile moonshiners may have switched from whiskey to beer production in order to capture a share of the newly established legal market. If so, prohibition officers would have found fewer suspects to arrest.

In sum, when judged by the swollen dockets and high conviction rates in Florida's federal courts, authorities had little difficulty arresting or convicting violators during most of the prohibition era. Meeting little more than token resistance from either the culprits or local institutions, agents usually arrested small-time violators whose product served a limited local market. This is not to say, however, that the government was any closer to winning the war on illegal liquor. Bather it seems that prohibition enforcement had become paradoxical.[56] Professional criminals managed to supply large quantities of liquor with little fear of federal intervention because bureau agents focused most of their attention on small-time operators.

55. In April 1933 Franklin Delano Roosevelt called Congress to a special session and urged legislators to pass a bill that changed the Volstead Act's standard of intoxication to 3.2 percent alcohol. Encouraged by the above measure, several legislators in the Florida house introduced an important state taxation bill premised on the legalization of 3.2 beer. After overcoming considerable opposition in the senate and by the Women's Christian Temperance Union. Governor David Sholtz signed five bills on May 8, 1933, that legalized near beer, light wine, and similar beverages. Jacksonville *Florida Times Union*, April 7, 9, 11, May 9, 1933. See Alduino, "Noble Experiment in Tampa," 219.

56. For a penetrating analysis along these lines see William A. Link, *The Paradox of Progressivism: 1880-1930* (Chapel Hill, 1993).